

Solicitor General
9/09/15
File.

**IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY**

CV 91 of 2013

BETWEEN: RUI SHENG MA - Plaintiff

AND: HONG HUI YANG - Defendant

BEFORE LORD CHIEF JUSTICE PAULSEN

Mr. L. Niu SC for the plaintiff

Mr. 'O. Pouono for the defendant

Hearing: 24 and 25 August 2015

Ruling: Orally on 25 August 2015 confirmed in writing.

RULING No. 2

1. This case came on for hearing on 24 and 25 August 2015.
2. Both the plaintiff and the defendant are Chinese and do not speak English. They gave their evidence in Mandarin Chinese. A translator was engaged by the Court to put Counsels' questions to them in Mandarin and then to translate their answers into English for the benefit of the Court and Counsel. During the course of the hearing I became increasingly concerned that the translator was having difficulty

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understanding the witnesses and that the answers being provided to the Court may not be accurate. During the morning of the second day I ~~called Counsel into Chambers to voice my concerns and to ask if they shared those concerns and, if so, what this meant for the future course of the trial.~~ Both agreed that the hearing had derailed and that they would take instructions from their clients as to whether they would wish me to order a new hearing.

3. I then spoke to the translator in Chambers. She indicated to me that the witnesses spoke in dialects with which she was not familiar and that as a result she had difficulty in understanding them. She also advised me that the defendant's reading of crucial documents written by him in Chinese characters differed markedly from her understanding. This confirmed that there may well have been errors in the translations provided to the Court to date which could be crucial to the result of the case.
4. Subsequently, Counsel advised me that their instructions (from both the plaintiff and the defendant) were to abort the hearing and order a new hearing. Both are happy for the case to be heard again before me. I am satisfied that I am able under the Court's inherent powers to regulate its own procedures and prevent an abuse of process to order a new hearing.
5. Mr. Niu and Mr. Pouono have advised me that they will be liaising with each other with a view to identifying a translator who is familiar with the parties' dialects and obtaining agreement on the translations in to English of relevant documents.

The result

6. The following orders are made by consent:

6.1 The hearing conducted on 24 and 25 August 2015 is aborted.

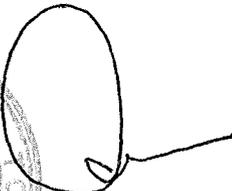
6.2 The case is to be heard again before me on a date to be agreed between the parties and the Registrar. Two days is to be reserved for the hearing.

6.3 The exhibits produced at the hearing are to be returned to Mr. Niu.

7. I did not discuss costs with the parties and so reserve them at this stage.

DATED: 26 August 2015.




O.G. Paulsen
LORD CHIEF JUSTICE