

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

CV 7 of 2014

BETWEEN: DR POHIVA TU'IONETOA - Plaintiff

AND : 1. REV. LIUFAU SAULALA
2. TOKAIKOLO CHRISTIAN CHURCH
INTERNATIONAL - Defendants

JUDGMENT

[1] The Plaintiff is a former member of the Second Defendant of which the First Defendant is the President.

[2] In an amended Statement of Claim filed on 23 May 2014 the Plaintiff claims:

- (i) that in 2012 he was wrongfully dismissed from his positions as lay preacher and trainee deacon;
- (ii) that in 2013 he was wrongfully expelled from membership of the Second Defendant;
- (iii) that since 2007 the Defendants have failed to provide audited accounts to the Registrar of Charitable Trusts as required by Section 30 of the Charitable Trusts Act 1994;

- (iv) that the Second Defendant has engaged in commercial activity contrary to the terms of its incorporation, charitable status and constitution; and
- (v) that about March or April 2013 the Defendants defamed the Plaintiff in the church newspaper "Ofa Ki Tonga".

[3] This is an application by the Defendants, pursuant to O.8 r 1(b) and (d) of the Supreme Court Rules to strike out those paragraphs of the Statement of Claim relating to claims (iii) & (iv).

[4] Both Counsel filed helpful written submissions for which I am grateful. The principal arguments advanced by Mr Edwards are that paragraphs 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65 and 67 do not disclose a reasonable cause of action and/or are statute barred by virtue of Section 16 of the Supreme Court Act. In answer, Mr Bloomfield emphasised that actions should generally be heard rather than struck out, that the Plaintiff wishes to have his allegations of impropriety heard and that Section 16 does not apply to claims confined to declaratory relief. He also suggested that since it is alleged that the Second Defendant continues to engage in business rather than eleemosynary activities the 5 year period has not begun to run.

[5] While Section 16 makes no mention of claims for declaratory relief, Mr Edwards referred me to *Trawnik v Ministry of Defence* [1984] 2 All E.R. 791 in which Sir Robert Megarry held that a plaintiff cannot avoid a limitation act defence by seeking a declaration that the defendant had committed a tort against him. In my view this rule should also apply in Tonga.

- [6] While the members of a church clearly have an interest in how the church funds are administered and disbursed, the Plaintiff, on his own pleadings, is no longer a member of the Second Defendant. The duty to provide annual audited accounts is imposed on the Second Defendant by Section 30 of the Act and failure to comply with that requirement may result in an application being made for the Second Defendant, as a charitable board, to be wound up under the provisions of Section 21 of the Act. As a general rule the Court does not intervene on behalf of a private litigant when there is a statutory procedure designed to achieve the same result. The appropriate course is for the Plaintiff first to draw his concerns to the Registrar of Charitable Trusts who would then have a duty to act if the Second Defendant was found to be in default.
- [7] In my opinion the same considerations apply to the allegation of engagement in commercial activity which, it seems to me, are clearly wanting in particularity.
- [8] In my view claims (iii) and (iv) do not disclose a cause of action available to the Plaintiff and accordingly the paragraphs of the Amended Statement of Claim relevant to those claims i.e. 39 to 81 are struck out.
- [9] A re-amended Statement of Claim omitting the struck out pleadings should be filed with the minimum of delay. Consideration should also be given to providing further particulars of the matters complained of e.g. identifying the provisions of the Second Defendant's Constitution said to have been breached.

Result:

The application, as slightly amended succeeds.

Costs will be in the cause.

NUKU'ALOFA: 12 September 2014.

**N. Tu'uholoaki
12/9/2014**



CHIEF JUSTICE