

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

*Not on PACCH*

CV 51/2012  
[and LA 24/2011]

**BETWEEN:**      1.    BENJAMIN TAPEALAVA  
                         2.    EMMA JANE TAPEALAVA VEA

-            **Plaintiffs**

**AND**            :      1.    LAKI NIU  
   2.    MRS MAKINETI JONES  
   3.    MRS SAUNI TAI  
   4.    'ALIPATE PASINA

-            **Defendants**

**Mrs 'A. Taumoepeau for the Plaintiffs**

**First Defendant in person**

**No appearance by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants**

**DECISION**

[1] The writ was issued on 25 July 2012. The Statement of Claim complained of events which were said to have occurred the previous day and was filed together with an "urgent ex-parte application for interim injunction against the defendants to prohibit trespass by threat of force".

[2] On the same day, 25 July, the Second Plaintiff swore an affidavit in support of the application for an injunction. In paragraph 1 of her affidavit, she described how she arrived home to find a security guard standing outside her house and a white rental car parked in the garage.

[3] In the following 22 paragraphs of her affidavit, the Second Plaintiff described how she entered her house to find the Defendants, plus six security guards (possibly including the 4<sup>th</sup> Defendant) standing about in her house. The First Defendant was demanding that two rooms be provided by the Second Plaintiff in her house to accommodate the Second and Third Defendants who were visiting Tonga. According to the Second Plaintiff :

“There were verbal abuse and threats of physical violence”  
from the Second and Third Defendants ;

“I was alone surrounded by the First, Second and Third Defendants and six security guards”;

The First Defendant “assaulted, verbally abused and accused me of swearing at the Second Defendant”;

“I was intimidated and retreated to the kitchen”.

~~[4] In the 25<sup>th</sup> paragraph of her affidavit the Second Plaintiff deposed that the Second Defendant :~~

“has hired security guards who were posted on the property for the past 24 hours. They are trespassing on our property and are invading our privacy by entering our house with no authority”.

- [5] The application for the interim injunction was heard on 27 July. Mrs Taumoepeau relied on the Second Plaintiff's affidavit. Only the First Defendant appeared. It is probably hardly necessary to explain that he is a very senior legal practitioner in Tonga. He told me he was appearing in person.
- [6] Mr Niu told me that the Defendants wanted to file affidavits in answer to those filed by Mrs Taumoepeau. He explained that the Second Defendant (who is in her 80's) was the First Plaintiff's aunt and had been occupying one room in the house on and off until earlier this year. Although she spends most of her time in Australia (where she has lived for about 50 years) she has visited Tonga regularly and stayed in her room in the Plaintiff's house which, apparently, was at least partly built by her late brother. Unfortunately, unhappy differences arose between the Plaintiffs and the Second Defendant and Mr Niu told me that she became frightened to return to her room. On one occasion, she said that she had seen the First Plaintiff armed with a gun. It was in these circumstances that the Second Defendant (and her niece companion, the Third Defendant) had turned to the First Defendant for help. With the aid of the Fourth Defendant who runs a security service and some of his men, they had been able to gain entry to the Second Defendant's room in the house.
- [7] This explanation, which was offered from the bar table by Mr Niu did not challenge the Second Plaintiff's central assertion which was that

the Defendants had entered her home without her permission. Given the volatility of the situation I delivered a ruling in favour of the Plaintiffs on the day of the hearing. An interim injunction was granted against all four Defendants prohibiting them from entering or remaining upon the Plaintiff's property until further order. I granted leave to the Defendants to file affidavit evidence in answer to that filed by the Second Plaintiff and adjourned the matter for continuation on 31 August 2012.

[8] At this point, it should be explained that on 15 December 2011 the First Plaintiff commenced proceedings (LA 24/2011) against the Minister of Lands in the Land Court. The First Plaintiff claimed that he was the rightful heir to the last registered holder of the town allotment at Haveluloto which is the land upon which the Plaintiff's home in this civil action stands. The First Plaintiff complained that the Minister of Lands had wrongly decided that the original registration of the land in the name of the First Plaintiff's father had been null and void with the consequence that the land reverted to the estate holder. The First Plaintiff sought an order setting aside the Minister's decision.

[9] On 27 February 2012 the Minister filed his Defence. On 12 April the matter was called for directions but there was no appearance by the Plaintiff with the result that the action was adjourned sine die. It should be noted that none of the Defendants in the present civil action are parties to the proceedings in the Land Court, although Mr Niu, acting on behalf of the Second Defendant in the present civil action sought and obtained permission to copy the papers in the Land case "so that she can properly make the necessary application to be joined". No such application has yet been made.

- [10] It should also be noted that the first ground advanced in favour of the granting of the injunctions sought in the present case was the suggestion that by acting in the way they did on 24 July, the Defendants had committed contempt of Court. After discussing the submission with Mrs Taumoepeau I indicated that I rejected it without calling on Mr Niu in answer.
- [11] On 23 August 2012 the present application was filed by the Defendants. It is an application to strike out the action for want of jurisdiction filed pursuant to the provisions of RSC O.7. As will be seen from the detailed notice of application, the central ground is that "the subject matter of this (Civil) action is land, in fact, a town allotment situated at Taufua'ahau Road, Haveluloto, Tongatapu".
- [12] In paragraphs 2 & 3 of the notice it is pointed out that statement of claim and ancillary application for an injunction, the Plaintiffs pleaded and depose that the property to which they were entitled was the property which was the subject of Land Court proceedings LA/2011 and that the Defendants had trespassed upon the property. It was also pointed out that the Order sought from the Supreme Court was an Order prohibiting the Defendants from trespassing "on the Plaintiff's property".
- [13] Mr Niu referred to the Jurisdiction given to the Land Court by Section 149 of the Land Act (as amended). He also referred to Section 151(2)(b) which gives the Land Court power to grant and issue injunctions affecting lands. Taking these provisions together with

Section 4 of the Supreme Court Act (as amended by Section 2 of Act 11/2006) Mr Niu submitted that :

“as this case is dependent upon the decision of the Land Court in the Land case (LA24/2011) which is presently before it, this case concerns a matter which has been specifically allotted to the Land Court namely the title to the town allotment in question”.

[14] As already noted, the writ and Statement of Claim were both drafted by counsel within 24 hours at most of the matters complained of which were very clearly set out in the supporting affidavit. The principal matters complained of by the Second Defendant were the entry by the four Defendants and half a dozen security guards without her permission into her home and their subsequent aggressive intimidation of her.

[15] While it is true, as stressed by Mr Niu, that counsel who drafted the Statement of Claim and the draft order referred to the Plaintiffs property and to that property being the subject of proceedings in the Land Court, it is abundantly plain to me that such references would not have been included, certainly in the words used, had the pressure to draft the papers not been so intense. While pleadings are a very useful guide to a Plaintiff's case, the Court should not be diverted from discerning the real issues between the parties by pleadings which are not perfect.

[16] It must be remembered that the Defendants are not parties to the Land Action and no dispute between them as to the entitlement to be

registered as the holders of this land exists. Such action as is pending is merely between the First Plaintiff and the Minister of Lands. It does not even concern the Second Plaintiff herein directly.

[17] The Statement of Claim in the present case asserts that the house in question belongs to the Plaintiffs. In Tonga houses are not generally regarded as part of the land. Paragraph 3 of the Statement of Claim seeks the Courts protection from the Defendants interference with "the peaceful enjoyment of their home".

[18] In my opinion the issue in the land case (the right of the First Plaintiff to be registered as the holder of the land) is quite separate and distinct from the issue in this present Civil case which is the right of a home owner to the exclusive and quiet enjoyment of his home.

### Result

The application fails and is dismissed.



M.D. Scott  
CHIEF JUSTICE

**DATED: 6 September 2012.**

N. Tu'uholoaki  
6/9/2012