

- [4] The trial lasted two days. In my judgment, the Plaintiffs had proved negligence however I found that the pipeline which had in fact been destroyed was not actually a diesel pipeline (the destruction of which would have at least been a first step towards founding the claims for substantial consequential loss) but was in fact a disused coconut oil pipeline which was worth far less and the loss of which did not result in any consequential damage. The Plaintiffs had claimed a total of T\$872,000 by way of general and special damages but in the result were only awarded T\$300. Costs were reserved for further argument.
- [5] This is an application for an order for costs filed by the Defendants. Mr Niu submits that notwithstanding the success of the Plaintiffs in the action, there should be no order for costs against the First Defendant while the Plaintiffs should be ordered to pay the costs of the Second Defendant, to be taxed if not agreed.
- [6] In Mr Niu's submission, the Plaintiff's claim that their diesel pipeline had been destroyed was made "most unjustifiably" and "even fraudulently" and that no claim was made by them that the coconut oil pipeline had been destroyed. In these circumstances the Plaintiffs should "properly bear the costs of the Defendants in defending the claim".
- [7] Mr Fa'otusia opposed Mr Niu's submission. He pointed out that the First Defendant's denial of negligence had been rejected and that the Court had found that as a result of the negligence damages, albeit much reduced from the amount claimed, had been found to have been occasioned. In Mr Fa'otusia's submission the costs should, as is usual, follow the event.

[8] The only Rules of the Supreme Court which deal with costs are Orders 46 and 47 but these Orders do not deal with the principles guiding the exercise of the discretion to award or refuse costs. In these circumstances the Court is referred by Order 2 Rule 3 to the English Rules of the Supreme Court which existed prior to the Civil Procedure Rules 1998 which came into force on 26 April 1999. The relevant English Rule is Order 62 r (3) which reads as follows :

“If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event except where it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs”.

[9] The way in which this Rule was applied was considered in *In re Elgindata Ltd* (No 2) [1992] 1 WLR 1207. Nourse L.J. explained that:

“Where the successful party raises issues or makes allegations improperly or unreasonably the Court may not only deprive him of his costs but may order him to pay the whole or a part of the unsuccessful party’s costs” ... [this principle] “implies that a successful party who neither improperly nor unreasonably raises issues or makes allegations on which he fails ought not to be ordered to pay any part of the unsuccessful party’s costs”.

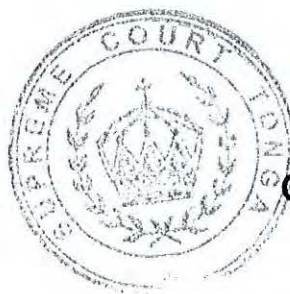
The question therefore is whether the Plaintiff’s claim that the diesel pipe had been destroyed which after investigation was found not be correct, was “improperly or unreasonably” raised.

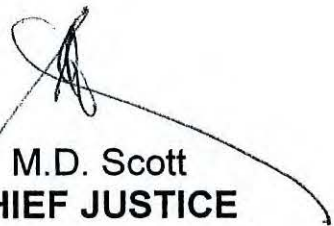
[10] Having heard and seen the First Plaintiff I was satisfied that the confusion between the two pipelines was unintentional. The First Plaintiff's late husband was the engineer, she merely helped out in the office. I do not accept that the claim that the diesel pipeline was removed (which was not met by any counterclaim by the Defendants that in fact it was only the coconut pipeline that was involved) was made "most unjustifiably", let alone "fraudulently".

[11] I accept Mr Fa'otusia's argument that the central issue in the case was whether the First Defendant's negligence had led to the Plaintiff's suffering damage caused by interference to a pipeline owned by them. That issue was resolved in favour of Plaintiffs.

[12] In my view it has not been shown that the usual rule that costs follow the event should be displaced. Accordingly the application fails. The Plaintiffs are awarded the reserved costs and the costs of this application to be taxed if not agreed.

DATED: 14 September 2012.




M.D. Scott
CHIEF JUSTICE

N. Tu'uholoaki
14/9/2012