

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

CV 39 of 2010

**BETWEEN : AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED**
- **Plaintiff
(Judgment Creditor)**

AND : MAFILE'O PASIAKA PAUNGA
- **Defendant
(Judgment Debtor)**

AND : TONGA COMMUNICATION CORPORATION
- **Garnishee**

Mrs P. Tupou for the Plaintiff.

Mrs Taufateau for the Defendant.

Ms A. Mailangi for the Garnishee.

DECISION

1. This is a Summons by the Plaintiff to the Defendant for him to show cause why sums accruing to the Garnishee not be attached to satisfy a Judgment debt obtained by the Plaintiff on 27 May 2009.
2. Mrs Taufateau does not dispute the Judgment debt but submits that it may not be satisfied by garnishee proceedings.
3. The power of the Supreme Court to garnish is somewhat circuitously derived from the Magistrates' Court (Amendment) Act 13/1995, Section 3 and Section 4 of the Supreme Court Act (Cap 10).

4. Mrs Taufateau first submits that the effect of attaching the debtor's salary would be harsh and oppressive and would result in the breach of the anti-slavery clause 2 of the Constitution. Since the court has a discretion to limit the amount of the periodical deductions to ensure that no under hardship results, I do not accept this submission.
5. Mrs Taufateau next suggested that Order 32 Rule 2(d) of the Supreme Court Rules had not been complied with. In view of the fact that the Garnishee is not a financial institution I reject this submission.
6. Mrs Taufateau next referred me to Section 10(e) of the Interpretation Act (Cap 1) which requires rules and Regulations to be published in the Gazette. She suggested that there was nothing to show that the Supreme Court Rules 2007 had in fact been gazetted. In the absence, however, of any evidence either way I apply the presumption of regularity *Omnia praesumuntur rite esse acta* and also reject this submission.
7. In my opinion the Supreme Court's power to garnish is beyond doubt. The amount of money which should actually be deducted by the garnishee from the Defendant's fortnightly wages is a separate question which has yet to be answered.

DATED: 12 August 2011.

M.D. Scott
CHIEF JUSTICE