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

**CV 541 of 2007**

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**BETWEEN : KAPELI LANUMATA - Plaintiff**

**AND : 1. SUE GARDINER  
2. PACIFIC FORUM LINE - Defendants**

**BEFORE THE HON. JUSTICE ANDREW**

**CORAM : Mr. C. Edwards for the plaintiff and Mr.  
Stevenson for the defendants**

**Date of judgment : 2 May 2008**

**J U D G M E N T**

The defendants make application for security for costs and for various amendments for striking out of parts of the statement of claim.

But the Plaintiff has applied to file an amended statement of claim. The amended statement of claim does not significantly alter the nature of the claim. In essence the same objections would apply to the amended statement. I do not think the amendments prejudice the

defendants. I propose to give leave to the Plaintiff to file the amended Statement of claim and treat the applications as applications to strike out parts of the amended claim.

The first application is for security for costs. The application was based to some extent upon previous experience in another case in which the defendant's were successful but may not have recovered costs. I do not think that that is relevant to this case. The plaintiff is said to be employed and I do not think that in general the plaintiff should be required to pay security for costs on the chance that he could not pay costs if he were to be ultimately unsuccessful in his action.

I do not order security for costs.

The second application is to strike out the first defendant from this action. The plaintiff brings proceedings for wrongful dismissal against his former employer. The 1<sup>st</sup> defendant is a manager of the plaintiff company. As such she is not the plaintiff's former employer and not the party who it can be alleged has wrongfully dismissed the plaintiff. It is not alleged she acted outside her authority. She is not liable to pay any damages. The first defendant is struck out as a defendant in this case.

The third application concerns the plaintiff's claim wherein he claims damages against the first defendant Sue Gardiner, for "victimization, ill

treatment harassment and unlawful conversion in requiring the plaintiff to pay the repairs account for LISA VEIMAU'S vehicle.”

The defendants apply to strike out this claim. I do not know of a tort of victimization, ill treatment and harassment. It seems to be part of the plaintiff's claim or particulars which might relate to his alleged unlawful dismissal. The 1<sup>st</sup> defendant is not alleged to have acted outside the scope of her employment. I think firstly that it cannot be a claim against the 1<sup>st</sup> defendant. It could only be a claim against the employer. On that basis paragraph 3 of the Amended Statement of Claim is struck out.

The costs of there applications are to be costs in the cause.

**NUKU'ALOFA: 2 May 2008**



*Andrew F. C. J.*

**JUDGE**