

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

Civil Action No:8/'88

B E T W E E N :

HIDAS EADA  
(Ma'ufanga)

- Plaintiff.

and

PRINCIPAL IMMIGRATION OFFICER - Defendant.  
(Nuku'alofa)

BEFORE MR JUSTICE G. W. MARTIN IN CHAMBERS.

UPON HEARING Counsel for the Plaintiff and Counsel for the Defendant.

IT IS ORDERED THAT the Defendant do not deport the Plaintiff from the Kingdom until 16th April 1988; and if an appeal has then been lodged by him under s.9(4) of the Control of Immigration Act until 7 days after such appeal has been determined.

Dated the 25th day of March 1988.



346  
220  
x2  
3001  
42

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

Civil Action No: 8/'88

B E T W E E N :

HAIKAS KADA  
(Ma'uianga)

- Plaintiff.

and

PRINCIPAL IMMIGRATION OFFICER  
(Nuku'alofa)

- Defendant.

HAIKAS KADA is a citizen of Algeria. On 18th September 1987 he arrived in Tonga and was granted a visitors permit for 1 month. That has since been extended on 3 occasions and eventually expired on 18th March 1988.

A visitor's permit is granted under s.10 of the Control of Immigration Act. It is essentially a short term permit.

In early March Mr Kada asked (apparently informally) about a permit to reside in Tonga. Such a permit may be granted under s.9 of the Act. He was advised orally that it would not be granted. On 11th March 1988, by his Counsel Mr. Liu, he made a formal written application. This gave a lot of personal detail and was supported by a letter enlarging on the reasons for his wish to stay in Tonga. Basically he says that he is here to preach and teach the Moslem religion, and without him the Moslem community will have no teacher, and may lose overseas financial assistance which he has been able to arrange.

On 16th March 1988 (2 days before his visitor's permit expired) the Principal Immigration Officer replied: "I regret to inform that Mr Haidas Kada's application for a permit to reside in the Kingdom will not be extended. His visitor's permit will expire on 19th March 1988 and he must leave the Kingdom on or before that date." No reasons were given.

On 18th March 1988 Mr Kada commenced this action. He claims that his application was not correctly considered and asks for an order that it be reconsidered, and that the Defendant state his reasons for refusing the application.

Under s.9(4) of the Act a person who has been refused a permit to reside in Tonga "may within 30 days of notification of such refusal to him appeal by petition in writing to the Premier, whose decision thereon shall be final." He has not made such an appeal. He says he can not reasonably do so unless he knows why his application was refused.

appeal procedure available to him. Otherwise the procedure could be endless with applications to the court at each stage of the administrative procedure. If he is dissatisfied with that (final) decision, he may then ask the court that it be judicially reviewed. I should add that in my view the provision that the Premier's decision "shall be final" does not oust the jurisdiction of the court, in proper circumstances, to review the means by which that decision is reached. See, for example, Radfield v. M.A.F.F. (1968) 1 All. ER 694

I express no view at this stage on the merits of the Plaintiff's application. I order that the Defendant take no steps to deport him until 16th April (when his time for appeal expires) and if an appeal has then been lodged until 7 days after his appeal has been determined.



*G. W. Martin*  
.....  
G. W. Martin  
CHIEF JUSTICE, SUPREME COURT  
T O N G A.

Dated the 25th day of March 1988.