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FOR circulation to all Couns^l.

SUPREME COURT OF TONGA
CIVIL JURISDICTION

DOUBLE

No.806/92

11

SQUASH EXPORT COMPANY LIMITED (Plaintiffs) -versus- KULI FALEKAONO
(Defendant)

DALGETY J

No representation for Plaintiffs
Miss Tonga for the Defendant

Taxation Hearing : 8th September 1993
Judgment : 8th September 1993

J U D G M E N T

On the 9th August 1993 I granted Judgment in favour of the Plaintiffs and awarded them Costs as same may be taxed. The Plaintiffs' Counsel lodged a Bill of Costs on 11th August 1993, and limited objections thereto were received on 30th August 1993. A diet of Taxation was fixed for today and Notice thereof was despatched to Counsel for both parties. At today's Hearing nobody appeared to represent the Plaintiffs.

The Defendants's objections were twofold. First he opposed the 800 pa'anga fee proposed for each day of the Trial and submitted that this should be restricted to 600 pa'anga per day in line with Practice Note 02/92. At no stage in the case did the Plaintiffs' Counsel ever request an additional fee and accordingly I have never heard any justification for allowing a twenty-five per centum increase over the standard daily trial rate of 600 pa'anga. I shall sustain this objection and tax off 800 pa'anga in respect of the Trial Fee charged of 3,200 pa'anga. For the Trial I shall allow a fee of 2,400 pa'anga only, being four days at the standard rate.

Secondly, the Defendant asked me to tax-off the whole of the 500 pa'anga

claim for Travel Expenses, which expense I understand relates to a part of Mr Faaiuso's travelling costs from Apia, Western Samoa, where he is ordinarily resident. In this case there never has been application to certify the case as suitable for the employment of Counsel ordinarily resident in a foreign jurisdiction. Accordingly this charge must fall and I shall tax it off in full.

There is nothing novel about the issue raised in this Judgment and, in their own interests, Counsel should consider carefully the terms of the Practice Note and Supreme Court Judgments thereon. A complete set of all Judgments since 1st January 1991 is held by the Secretary of the Law Society : they are available for consideration by Counsel on request. It is incumbent upon Counsel to make themselves familiar with the terms of these decisions. With the consent of the Chief Justice this Judgment is being circulated to all lawyers entitled to practice in Tonga.

The Practice Note sets out the maximum fees which Counsel may charge subject to the proviso that an increase may be allowed "on special cause shown." An additional fee must therefore be applied for. It was in Tonga Development -v- Pohiva (No.63/92, decision of Dalgety J. dated 1st December 1992) That case well illustrates the circumstances in which an additional fee is payable. In order to enable Counsel to recover his travelling and subsistence costs that case was also certified as suitable for the employment of overseas Counsel. Certification in this respect means no more than that the Court considered the employment of Counsel ordinarily resident abroad as fully justified in the circumstances of that case.

No recovery will be possible for the costs of travel and subsistence from abroad without such certification and no additional fee will be sanctioned without application and justification therefor. The Tonga Development Bank -v- Pohiva case should have forewarned Counsel of the procedures to be followed. Certainly, the situation should have been clear beyond peradventure following the decision on Costs of Ward C.J. in Tonga Development Bank -v- Niu (No.231/92, dated 11th January 1993) which again emphasised the necessity to apply for certification that the case justified the employment of overseas counsel or of two counsel or payment of an additional fee.

I shall pronounce an ORDER in this case in terms as follow:-

I CERTIFY that pursuant to the ORDER made on 9th August 1993 the COSTS of the Plaintiffs have been taxed and allowed in the sum of 3,207.50 pa'anga.

Ramsey R Dalgety



NUKU'ALOFA, 8th September 1993