

v.

A

THE ATTORNEY-GENERAL

[HIGH COURT, 1989 (Palmer J) 18 December]

Civil Jurisdiction

B *Crown (State) Proceedings- whether the Attorney-General is liable for the Sheriff's failure to execute a writ of possession- Crown (State) Proceedings Act (Cap. 24) Section 3(5).*

Applying the provisions of the Crown (State) Proceedings Act the High Court HELD: that the State is not liable not only for the misfeasance of the Sheriff and his officers but is also not liable for their non-feasance.

C

No case was cited.

Plaintiff in person
Miss Clare Manuel for the Defendant.

D Interlocutory application in the High Court.

Palmer J:

E

This is an application pursuant to Order 18 of the High Court Rules 1988. In his Statement of Claim in the action the Plaintiff alleges that he was the proprietor of certain lands and in 1986 obtained Judgments of the Court for possession of the same. He alleges that he took out Writs of Possession and passed the same to the Sheriff for execution, but that the Sheriff failed to execute the same, as the result of which he has sustained loss and damage.

F

The Defendant's application is that the Statement of Claim be struck out as disclosing no reasonable cause of action and that the action be dismissed with costs.

This application turns on the very narrow point of whether or not the Attorney General is liable for the Sheriff's alleged failure.

G

The Attorney - General is the only Defendant to the action. The Sheriff has not been joined. There are many reported cases in which the Sheriff has been sued in similar circumstances. However I have not been referred to, nor am I aware of any authority for the proposition that the Attorney-General is liable for the tortious acts or omissions of the Sheriff.

But in any event in my view the situation in Fiji is governed by statute, namely the Crown Proceedings Act (Cap. 24).

Section 3 of the Act circumscribes the liability of the Crown (now the State) in respect of which proceedings may be instituted against it. Section 3 (5) provides as follows:-

- “5. No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connexion with the execution of judicial process” (emphasis added).

In my view the present application may be determined by the provisions of that subsection. The portion thereof which I have underlined is clearly directed at the Sheriff and his officers.

The Plaintiff submitted that the sub-section has no application because the Sheriff did not discharge or purport to discharge his responsibilities. He did nothing. The case would be different, he submits, if the Sheriff had done anything. In my view that argument is untenable. I hold that the reference to “discharging or purporting to discharge” in the subsection extends to cover the situation where the person is charged with the discharge of the responsibilities mentioned in the subsection, such as by virtue of having a writ of execution delivered to him for the purpose of executing the same. It is not to be supposed that the legislature intended to grant immunity to the Crown in respect of acts of misfeasance but not in respect of nonfeasance, or that the Crown is not liable for omissions accompanied by some action, but is liable for total omissions to act. To introduce that implication into the subsection would in my view make a nonsense of the intention and express wording of the same. It follows that the defendant has been wrongly sued and that his application must succeed.

Accordingly I order that the Statement of Claim herein be struck out and that the Plaintiff’s action be dismissed with costs to be taxed if not agreed.

(Application allowed; Plaintiff’s Statement of Claim struck out.)