

Free Church of Tonga v Constitutional Free Church of Tonga

Court of Appeal
Roper, Morling and Cooke JJ
Appeal No. 13/1990

10 12 September 1990

Procedure – summary judgment under Order 14 – when not appropriate
Judgment – summary judgment under Order 14 – when not appropriate

The appellants appealed against a decision of the Supreme Court refusing to give summary judgment to the appellants in proceedings which they had instituted against the respondents, on the ground that such procedure was not appropriate where there were serious conflicts of fact or difficulties in matters of law that provided
20 an arguable defence. This decision was affirmed by the Court of Appeal.

HELD: the summary judgment procedure under Order 14 Rules of the Supreme Court (UK) is not appropriate if there is a serious conflict as to matters of fact or any real difficulty as to matters of law so as to provide an arguable defence for the defendant.

Statutes considered : Order 14, Rules of the Supreme Court (UK)

30 Counsel for the appellants : Mr S. T. Fonua
Counsel for the respondents : Mrs F. Vaihu

Judgment

This is an appeal, by leave, against a decision of Webster J. refusing to give summary judgment to the Appellants in proceedings which they have instituted against the Respondents. The proceedings were commenced in June 1989. They arise out of an unfortunate falling-out between some members of the Free Church of Tonga ("the old Church") which resulted in 1987 in the formation of the Constitutional Free Church of Tonga ("the new Church"). The members of the new
40 Church have continued to occupy a church building which until 1987 was used by the members of the old Church as a place of worship.

The Appellants claim that the members of the new Church have no right to occupy the building and seek, *inter alia*, an injunction restraining the Respondents from trespassing upon it. They claim to be the lessees of the land upon which the Church stands and allege that the Respondents have no right to possession of
50 it. The third Respondents, who are members of the congregation of the new Church,

claim they have an equitable defence to the Appellants' claim. They base this defence upon allegations to the effect that they and their families were the original founders of the new Church. They say in their defence that:

"The land was leased under the name of the Free Church of Tonga which is not a legal body but was intended to be a place for the use of the Church and members of their families and other surviving members original 30 adult persons who subscribed for the said lease."

60 The third Respondents further claim in their defence that they and their families and the present congregation of the new Church built the building and have been using it since the lease was first granted.

The application for summary judgment was made under Order 14.

As Webster J. correctly observed an application under Order 14 is not appropriate if there is a serious conflict as to a matter of fact or any real difficulty as to a matter of law. If the Judge can see that there is an arguable defence, he ought not to grant summary judgment.

70 Counsel for the Appellants submitted that the Court should determine only that part of the claim as relates to the question whether his clients are the lessees of the subject land, leaving the question as to the nature and extent of any equitable rights of the Respondents to be determined in the Land Court. We do not agree that this is an appropriate course to take. The real issue between the parties is who is entitled to use the subject land. The determination of that issue necessarily involves consideration of the Respondents' claim that they have an equitable right to occupy the land.

80 In the present case Webster J. was entirely right not to grant the application. Whether or not the facts pleaded in the defence establish such rights in the Respondents as would dis-entitle the Appellants from excluding them from the disputed Church premises is not free from difficulty. Before Webster J. the Appellants argued that the Respondents' defence could not succeed because of the provisions of section 18 of Land Act. It was put that the Respondents' occupation of the disputed premises would be tantamount to subletting, and that this was prohibited by section 18. We do not think those arguments are so obviously valid as to entitle the Applicants to summary judgment.

The appeal is therefore dismissed with costs.