

Fie'eiki v 'Ilavalu & others

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Land Court, Nuku'alofa
Hampton CJ
L 780/95

25 March 1996

*Land Court - assessor - removal of
Contempt - improper application*

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This was an application by the plaintiffs, pre-trial, to remove and replace the selected Land Court Assessor, not for cause, but for a failure to conform to a claimed practice of consulting counsel before selection of the assessor.

Held:

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1. s.159 Land Act specified a ground for an assessor not to sit, namely if he is personally concerned in the claim or the proceedings.
2. There is and was no practice as claimed by counsel.
3. s.146 says that the assessor is to be selected by the judge from a panel of assessors.
4. The application made improperly impugned the integrity of the assessor and the Court and bordered on contemptuous.
5. The application was dismissed.

Statute considered : Land Act, ss.146, 159

Counsel for plaintiffs	:	Mr Veikoso
Counsel for first, second & third defendants	:	Mr Kaufusi
Counsel for fourth defendant	:	Ms Bloomfield

Judgment

Today Mr Veikoso, standing in for Mr 'Euka who is ill, sought and was granted an adjournment of this case.

Mr Veikoso also sought the removal and replacement of the selected Land Court Assessor.

Quite why Mr Veikoso should so apply when he is not in fact counsel for the Plaintiffs mystifies me. It is clear from what he informed me that he has no instructions from them at all.

50 Leaving that point aside I turn to the application. I asked Mr Veikoso for his grounds for seeking such a replacement, expecting some claim perhaps of interest on the part of the assessor or some relationship of the assessor to a party in the action (refer to Sect. 159 Land Act, cap 132).

No such claims were made - in fact Mr Veikoso specifically disavowed any such reasons, or any reasons at all, save to say he wanted it done and that it was the practice of the Land Court to consult counsel as to appointment of the assessor.

60 I had never heard or read of such a practice. I have taken advice from my fellow Judge, the Registrar, and his senior staff. None of those persons know of any such claimed practice. The law is clear: Sect 146 of the Land Act says that the assessor is "to be selected by the Judge from a panel of assessors".

I am concerned as to what has occurred. As I said to Mr Veikoso at the time, his application in effect impugns the integrity of the selected assessor. When asked for reasons, no reasons could be given. I find the application made offensive in the extreme and bordering on the contemptuous of this Court, and its assessor.

I say bordering on the contemptuous advisedly. My initial view was (and I still have vestiges of that view enshrouding my mind) that the application did more than border on the contemptuous - it crossed that border.

70 However I balance the matter somewhat, and therefore (fortunately for Mr Veikoso) step back from crossing the border, by considering his very late arrival into this matter and his, therefore, speaking without proper reflection.

But this Court will not countenance such behaviour again. The Court will not stand by, idly, and have its integrity, and that of its assessor impugned in such a way. Counsel must act responsibly. The application for removal and replacement of the assessor selected is dismissed.