

Fonua v Tonga'onevai

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Supreme Court, Pangai, Ha'apai
Hampton CJ
Civ. App. 206/97

10 March, 1997

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Affiliation - complaint - procedure - right to hearing - corroboration
Evidence - corroboration - affiliation complaint
Practice and procedure - affiliation complaint - hearing

The complaint took affiliation and maintenance proceedings in the Magistrates' Court. The Magistrate part heard the evidence and then dismissed the complaint partly on the basis that proper procedure had not been followed (under the Maintenance of Illegitimate Children Act and partly on the basis of lack of corroboration, forseeing the balance of the evidence to be called from other witnesses.

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Held:

1. The appeal should be allowed and the matter remitted for hearing.
2. The proceedings were valid, had been started by a complaint on oath, a summons had been issued and the respondent had answered it. A claim for a lump sum did not go to jurisdiction of the Court.
3. A decision should be made after hearing all the evidence.

Statute considered: Maintenance of Illegitimate Children Act

Judgment

I have reached a clear view of what has to be done about this matter and I will tell the parties now. In 1996 the Appellant, who was the complainant in the Court below, made a complaint on oath which is now before me, claiming that the Respondent, who was the defendant in the proceeding below, was the father of an illegitimate child and seeking Affiliation and Maintenance Orders.

Summons was issued and came to a hearing before the Magistrate on the 20th of August 1996. Part of the reason for the dismissal of that claim on that day by the Magistrate was the fact that the proper procedure under section 2 sub-section 1 of the Maintenance of Illegitimate Children Act (Cap 30) had not been followed. I understand the submission made by Mr Fakahua who was representing the defendant was that no proper complaint on oath had been made under section 2 sub-section 1 and therefore the summons was incompetent and should not have been issued. I add that the Appellant, complainant in the Court below had conducted her own proceeding in the Court below.

The decision in the Court below is rather strange in the circumstances, objections having been taken by Mr Fakahua for the defendant, the Magistrate then went ahead and heard the evidence of the complainant. At the end of her evidence there was an indication she had two other witnesses to be called and I am told they were the defendant's father and his mother's sister. The Magistrate indicated he did not want to hear them, indicating he knew what they might say and instead went ahead and dismissed the claim on the basis of the procedural problems about the summons and on the basis of, it seems, the lack of corroboration. Referring to that question of corroboration, I assume it is a reference to section 6 sub-section 2 of Cap 30 which provides: "that no person should be adjudged the father of an illegitimate child upon the evidence of the mother ... unless the evidence is corroborated in some material particular ...".

It seem inevitable to me that this matter must be remitted for a proper hearing in the Magistrate's Court for a decision to be made there properly after hearing all the evidence, and I stress all the evidence, including the witnesses of the complainant.

On the face of it, from what I am told, it would seem that the proceedings were valid, there had been a complaint on oath, a summons had been issued, the defendant had answered the summon. And that hearing in fact had started by the evidence of the complainant being heard. The claim, as was apparently made by Mr Fakahua on behalf of the defendant, that no lump sum could be ordered in these particular circumstances does not go to jurisdiction but goes only as to whether a particular type of order can be made. It is clear to me therefore that this matter must go back to the Magistrate's Court for re-hearing and I so direct. Hearing will have to be started again with the complainant, represented or not, outlining her case giving evidence herself and calling whatever other witnesses she wants to, and producing whatever exhibits she may want to, in order to try and satisfy the Magistrate as to her claim and as to corroboration of that claim, within section 6 sub-section 2.

Appeal allowed. No order as to costs in the circumstances.