

## Primary Produce Exports Ltd & ors v Masima & ors (No.2)

Supreme Court, Nuku'alofa

Hampton CJ

10 C.1089/96, 1090/96, 1091/96

7 February, 1997

*Practice and procedure - leave to appeal - criteria - case stated*  
*Appeal - leave - criteria - case stated*

The Crown, having been granted retrospective leave to intervene in the matter reported immediately above, sought leave to appeal.

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Held:

1. The Crown had been granted leave to intervene given the issues of public law and policy which might have arisen.
2. The Crown were refused leave to appeal as
  - (a) no satisfactory explanation was given for its delay
  - (b) no party wished to appeal
  - (c) substantive trials might be delayed and unnecessary costs incurred.
  - (d) certainty for the 1997 squash season would be affected.
  - (e) the Crown's concerns were related to general matters of the Land Act and the Constitution.
  - (f) and those concerns were irrelevant to these cases.
3. No case could be stated to the Court of Appeal, as the Crown alternatively suggested as the question of law had already been decided in the Supreme Court.

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Statutes considered : Land Act ss.16, 43  
 Court of Appeal Act ss.3, 10

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Rules considered : Court of Appeal Rules, r.4

Counsel for Crown : Mr Taumoepeau  
 Counsel for plaintiffs : Mr W Edwards  
 Counsel for defendants : Mr Tu'utafaiva (C1089, C1091)  
 Mrs Vaihu (C1090)

**Judgment**

Crown granted leave, retrospective to 21 October 1996, to intervene in these causes (given the issues of public law and policy which may arise);

Crown refused leave both to appeal out of time (O.4 r. 1 Court of Appeal Rules 1990) and (even if that leave were given) to appeal against the interlocutory judgment of this Court of 21 October 1996, (s.10(1)(b) Court of Appeal Act (Cap.9) as:-

- (a) There is no satisfactory explanation of delay - formal application by Crown to ratify its position as an intervener could have been made at any time, and earlier; but more importantly, and, in any event;
- (b) None of the plaintiffs or defendants in any of the 3 causes wish to appeal (defendants) or have the matter go on appeal (plaintiffs);
- (c) the substantive trials of these (and other similar) actions may be affected and/or delayed, and unnecessary costs incurred by the actual litigants in these causes;
- (d) certainty for the forthcoming (1997) squash season, and contracts between exporters and growers, would be affected;
- (e) the Crown's concerns, as pleaded and argued, relate to general concerns about the implications of the judgment of 21 October 1996 about "the land tenure system of Tonga and the constitutionality of certain sections of the Land Act" (particularly s.43 Land Act and whether e.g. it could be claimed to discriminate against female Tongans, or male and female non-Tongans and therefore be in breach of the Constitution) rather than to the provisions of s.16 Land Act, the subject of the said judgment;
- (f) such matters of Crown concern are not now, and cannot be, part of, or relevant to, the litigation in these 3 causes - issues such as the Crown are concerned about relating to e.g. s.43 Land Act properly should await determination in this Court and/or in the Court of Appeal if, but only if, such issues are before the courts, appropriately, in relevant other litigation.

The application (made orally) by the Crown that this Court should state a case to the Court of Appeal on the issues determined in the said judgment of 21 October 1996 is refused for the reasons as in 2(a) to (f) above and, in any event, on the basis that the "question of law" has already been decided on in this Court and is not, therefore, able to be the subject of a case to be stated "for consideration of the Court of Appeal" (s.3 Court of Appeal Act, Cap.9)