

IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY

Constitutional
Right - Right to Welfare

CV 119 of 2011

**BETWEEN: TONGA COOPERATIVE FEDERATION SOCIETY
LIMITED**

- **Plaintiff**

AND : 1. REGISTRAR OF INCORPORATED SOCIETIES

AND : 2. KINGDOM OF TONGA

- **Defendants**

AND : HARRIER EXPORTS LIMITED

CROSBY EXPORTS LIMITED

CENTRAL MANUFACTURING COMPANY LIMITED

PUNJAS TONGA LIMITED

- **Interveners**

BEFORE THE LORD CHIEF JUSTICE

'O. Pouono for the Plaintiff

'A. Kefu (Solicitor General) for the Defendants

L.M. Niu for the Interveners

DECISION

[1] ~~This is an application by the Defendants to strike out the Plaintiff's~~
claim brought pursuant to the provisions of Order 8 rules 8 (1)(a) and
(d) of the Supreme Court Rules.

[2] The application is supported by the interveners who submit that following the cancellation of the registration of the Plaintiff by the First Defendant on 1 September 2011 there not having been any appeal presented within the provisions of Section 43 (3) of the Cooperative Societies Act (Cap 118) the Society was dissolved by operation of law on 1 November 2011. Accordingly, the Plaintiff was not a legal entity on 16 November 2011 when the writ was issued and was incapable of commencing these proceedings.

[3] As will be seen from the statement of claim, the Plaintiff's action against the Defendants is in two parts. The first part is relevant to Order 8 (1) (d) while the second is relevant to Order 8 (1)(a).

[4] As to the first part (paragraphs 6 to 10 and 11) it is plain from the case as pleaded that the Plaintiff is seeking judicial review of the First Defendant's decision (and the Minister of Labour's decision to uphold that decision) on the ground that those decisions were reached in breach of the rules of natural justice. As pointed out by Mr Kefu, however, the leave of the Court has never been sought to commence proceedings of that nature as is required by Order 39 rule 2. It may also be added that even had leave been sought, it is unlikely that it would have been granted given the existence of the statutory appeal procedure (see *R v IRC Ex parte Preston* [1985] 1 AC 835, 852).

[5] So far as the Second part of the claim is concerned (paragraphs 12 to 23) ~~the Plaintiff is advancing a claim which is almost and essentially~~ identical to that advanced in *Dandin Group Ltd v Ministry of Police and Anor.* Nuku'alofa S.C No CV118 of 2011.

[6] In that matter, for the reasons given, I concluded that no reasonable cause of action had been pleaded and allowed an application by the Defendants to strike out the action. In the present case, for the same reasons, I am of the view that the action is misconceived and should be struck out.

[7] Mr Pouono, who did the best with a difficult brief, really had no answer to Mr Niu's submissions which in my view and self-evidently correct. (see *M.H. Smith (Plant Hire) Ltd v Mainwaring* The Times 10 June 1986).

[8] The remaining matter raised by Mr Pouono was the Minister's refusal to renew a two month moratorium granted on 15 September 2011 (see supplementary affidavit by 'Amanaki Paea sworn on 20 December 2011 and paragraph 14(b) of the Statement of Claim). While it will be appreciated that the Plaintiff wished to preserve its existence, the fact is that no appeal was presented against the First Defendant's decision as is provided for by Section 43(3) of the Act. The Minister had no power to impose any moratorium at all and his refusal to extend the moratorium beyond the two month period of appeal provided by the Act seems to me to be beyond reproach.

[9] The applications to Strike out the claim must succeed and are allowed.

[10] Before leaving the matter I wish to point out that the precise and accurate name of the Plaintiff appears to be in doubt:

- (i) Tonga Co operated Societies Federation Limited (Writ).
- (ii) Tonga Co-Operative Federation (letter 10 October 2011).

- (iii) Tonga Cooperative Federation Society (letter 15 September 2011).
- (iv) Tonga Cooperative Federation Society Limited (appointment of receiver 1 September 2011).
- (v) Tonga Co-operation Federation Limited (Writ CV220/09).

Such variations in the names of parties should be avoided, meanwhile I have chosen the title which seems most likely to be correct.

DATED: 16 March 2012.




M.D. Scott
CHIEF JUSTICE

NTu'uholoaki
9/3/2012