

**IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CIVIL DIVISION)**

**OA 1/08**

IN THE MATTER

of the Property Law Act 1952

AND

IN THE MATTER

of **AREMANGO SEC 7A1A2**  
Ngatangia

BETWEEN

**TAAKOKA ISLAND VILLAS  
LIMITED**

Applicant

AND

**R T TUPANGAIA**

Respondent

Counsel: Mr Morley for Applicant  
Mr Vakalalabure for Respondent (including Mr Moore for the purposes  
of this application)  
Judgment: 13 May 2009 (NZT)

**JUDGMENT OF WESTON J (COSTS)**

- [1] In my Judgment dated 18 March 2009 (NZT) I fined Mr Moore \$100 payable within 28 days of the Judgment.
- [2] In paragraph [53] I noted that I had set out my preliminary conclusions in relation to the law as to costs as it applies in the contempt case. My preliminary view in relation to costs can be found at paragraph [33]. I had noted, in paragraph [27][c] that if a contempt is proved to the level of a balance of probabilities it may be appropriate to order costs on a solicitor/client basis.
- [3] Because I had not been addressed on the question of costs I invited memoranda from counsel. I have since received and considered such memoranda.
- [4] Mr Moreley's memorandum is dated 6 April 2009 and he seeks costs on a solicitor/client basis. He is not able to provide an exact quantification of costs because, in some respects, attendances were undertaken for multiple reasons. As best he can estimate it, however, he says that costs incurred

fall somewhere between \$9,000 and \$12,000. He seeks an order in the sum of \$10,500.

[5] Mr Vakalalabure's memorandum of 27 April 2009 rejects that proposition. Mr Vakalalabure approaches the question of costs via the Criminal Procedure Act 1980-81. I am not satisfied that that Act applies in the present case. Mr Vakalalabure then refers to the costs in Criminal Cases Act 1967 (NZ) arguing that costs should be set on a just and reasonable basis. He says the Court should take account of a number of factors including:

- the costs sought are too high;
- the applicant's submissions on the law were not upheld in their entirety;
- the costs claimed are disproportionate to the maximum fine of \$100;
- reasonable and justifiable costs would fall somewhere between \$200 and \$500;
- costs might be paid by a convicted defendant if they were properly incurred in arguing a difficult or novel point of law;
- some of the costs claimed by the applicant may relate to other alleged acts of contempt which did not form the basis of the Court's decision.

[6] He concluded by arguing that, even if, contrary to the above, the legislation dealing with costs in criminal cases does not apply, reasonable costs still would fall in the range of \$200 to \$500.

### **Discussion**

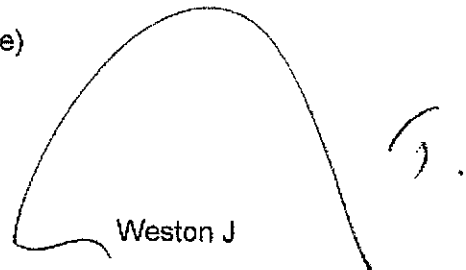
[7] Nothing in Mr Vakalalabure's memorandum persuades me that the view set out in paragraph [33] of my original Judgment is in error. It seems to me there is a wide discretion to fix costs at an appropriate level. Such a jurisdiction is to be exercised on a principled basis. I review the following factors.

[8] First, I do not believe the fact that the maximum fine is \$100 necessarily limits the quantum of costs that might be awarded. If that was the case, it is unlikely that an applicant would bring an application for contempt because,

even in the most serious of cases, there would be no chance that costs would be recovered.

- [9] Secondly, if a contempt is upheld, that prima facie provides a strong case for the award of solicitor/client costs. A finding of contempt is a significant conclusion of the Court and one not reached lightly. It goes to the heart of the administration of justice by the Court. In such circumstances, the Court will often be sympathetic to a proposition that the applicant should not be left out of pocket as a result of pursuing such a breach.
- [10] Thirdly, costs as awarded must bear some proportionality to the run of costs generally awarded in the Cook Islands. Such costs generally lie at a lower level than might be expected in New Zealand, reflecting the different economic conditions of those living in the Cook Islands.
- [11] Fourthly, the award of costs on a solicitor/client basis should not, de facto, be a punishment of the person found in contempt. In other words, the Court should not use its costs jurisdiction to overcome any perceived limitation on the amount of the fine that can be imposed.
- [12] Taking these four factors into account, I fix the costs payable by Mr Moore at \$2,500. By Cook Islands' standards this is a significant award of costs even though it falls considerably short of the indemnity costs claimed by the applicant.

Dated at Auckland 13 May 2009 (New Zealand time)

 Weston J