

Nukuma'anu Motel Ltd v 'Aholelei & ors

Supreme Court, 'Eua

10 Lewis J

C 1116/95

21 September 1995, 9 January 1996

*Costs - successful defendants - discretion**Law Practitioners - costs - numerous successful defendants*

20 The defendants (28 in number) were successful in their defence of a claim heard by a jury.
The plaintiff objected to costs.

Held:

1. The Court is vested with a discretion when awarding costs.
2. There is jurisdiction to award costs against a wholly successful defendant but such an order should be made only in exceptional cases.
3. There was nothing here to make this case exceptional, unusual or atypical.

30 Cases considered: Aiden Shipping case [1986] AC 965
Knight v Clifton [1971] 2 All ER 378

Counsel for plaintiff : Mr Niu
Counsel for defendants : Mr C Edwards

Judgment

40 An objection has been filed by the Plaintiff corporation to the bill of costs filed by the successful defendants in this action. There have been some 88 defendants to the proceedings heard and determined by a jury at 'Eua in July 1995. The jury was engaged for some 10 sitting days if one includes the time spent in empanelling the members.

Although there was a striking similarity about the defences raised by the defendants all of whom were squash growers, it was necessary for counsel and indeed the jury to treat the defences as 88 separate cases. Each man as may have been expected, had differences in his circumstances from the next. That being the case the bill of costs presented by counsel and the solicitors of necessity reflects that fact.

The plaintiff has made a number of complaints about the bill of the defendants. It is not proposed to set all the complaints out in this brief judgment, but they have been considered.

50 There is no doubt that this court is vested with a discretion when awarding costs - Aiden Shipping Case [1986] AC 965 per Lord Goff of Chieveley at 981. In Knight v

Clifton [1971] 2 All ER 378, C.A., it was held that the court had jurisdiction to award costs of a proceeding against a wholly successful defendant but such an order should be made only in exceptional cases. There is in my opinion nothing which makes this case exceptional unusual or a typical.

It is true that a defence included by the defendants (as Mr Niu of counsel for the plaintiff company points out) was that the defendants would rely upon mutual agreement to cancel the contractual arrangements made between them and the plaintiff. However in the preparation of their defences the defendants need to account for any eventuality reasonably within their contemplation and their contemplation, therefore, must of necessity be a long one especially where there are 89, (to later become 88 after the un contemplated departure of one defendant inappropriately joined,) defendants.

I have considered the complaints of the plaintiff. This is an unusual case only in the sense that there has been an unusually large number of defendants. It is to be remembered that the onus of proof of the matter rested with the plaintiff corporation. Solicitors for the defendants were obliged to consider all ramifications of the charges against them. In light of the large number of defendants whose cases were never entirely the same it cannot in my view be said that the bill of costs filed by the defence is excessive and therefore should be taxed down. On the contrary, in my view they are, with the exception of certain items which have been taxed out, moderate.