

**BETWEEN :** 1. SAMIUELA 'AKILISI POHIVA - Plaintiffs;  
2. 'EAKALAFI MOALA  
3. FILOKALAFI 'AKAU'OLA

**AND :** 1. KINGDOM OF TONGA - Defendants.  
2. HONOURABLE CLIVE EDWARDS

**Counsel :** Mr S. Tu'utafaiva for the Plaintiffs  
Mr Solicitor General for the First Defendant  
Mr M. Kaufusi for the Second Defendant.

**Date of Ruling:** 1 June, 1999.

### Ruling

The first defendant in this action applies to the Court to strike out the claim against it on the single ground that no cause of action lies.

The case relates to an incident in 1996 when the plaintiffs were arrested on a warrant issued by the Legislative Assembly under the hand of the Speaker apparently for an offence of contempt of the House. The warrant was executed by the second defendant and the first defendant is sued in respect of the acts or omissions of the Legislative Assembly, the Speaker and the second defendant.

The plaintiffs claim damages for false imprisonment on the alternative grounds that it was without lawful excuse or that it was a breach of the Constitution.

I have reached the conclusion, with some hesitation, that I must refuse the application at this stage. Whilst the law is reasonably clear, the position of the Kingdom requires consideration and determination of a number of factual issues.

In the light of my ruling, I shall not set out the submissions in extenso.

The first defendant relies principally on section 4(2) of the Crown Proceedings Act, Cap 13. Section 4 deals with the liability of the Kingdom in tort and section 4 (2) then provides:

“(2) No proceedings shall lie against the Kingdom by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or any responsibilities which he has in connection with the execution of judicial process.”

Counsel also seeks support from the position under Common Law as set out in *Sirros v Moore* (1974) 3 All ER 776. The Legislative Assembly was, he suggests, a court at the time it issued the warrant and this was a trial procedure.

The present case has been before the Court of Appeal in relation to an application for a writ of habeas corpus and he further cites the judgments in this Court and in the Appeal Court.

Hampton CJ lay some emphasis on the determination of whether or not the Legislative Assembly was a court. He describes it as the High Court of Parliament as is the case in England. With the greatest respect to my learned predecessor, I do not accept the comparison to the position here in Tonga.

The Court of Appeal looked at the question of whether there was a trial. Again that may or may not be the necessary conclusion in this case. Section 4 (2) is concerned with the discharge or purported discharge of responsibilities of a judicial nature and execution of judicial process. This will clearly cover court proceedings but is, I suggest, a far wider provision.

The Plaintiffs point to section 5(1) of the same Act:

“5. (1) A person making any claim against the Kingdom of Tonga whether in contract or tort, or for any other civil remedy, may in respect of the claim bring a suit against the Kingdom of Tonga in that name and style in the appropriate Court.”

That being the case, they say, the Kingdom is still liable in tort by section 4(1).

By O8 r6(2), I must decide this matter on the pleadings alone. The statement of claim refers to a possible false imprisonment. That is a clear cause of action. Whether or not that can lie against the first defendant in relation to the actions of the Legislative Assembly, Speaker or second defendant must require evidence of the events at the time.

Counsel also raised the question of whether the court has power to enquire into the proceedings of the House. That again is a matter that must be determined on facts disclosed by evidence.

The application is refused.

The Plaintiffs seek, in that event, a substantial award of costs because the basis of the application was "totally misconceived". I cannot accept that is an accurate description of the application and I do not consider this is a case where costs should be awarded on any but the usual scale.

In view of my ruling and the reasons I have given, I order that the costs of this application be costs in the cause.

Counsel for the plaintiffs suggests that the first defendant's insistence on pursuing this application has resulted in substantial delay. It is now a little over a year since the writ was filed. I direct that all steps in the action must now be in accordance with the rules. No extension of time will be allowed without application to the court for leave.

NUKU'ALOFA: 1 June, 1999.



A handwritten signature in cursive script, likely belonging to the Chief Justice.

CHIEF JUSTICE