IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY **C. NO.1165/99**

BETWEEN : WILLIAM CLIVE EDWARDS : **Plaintiff**

AND : 1. SIOSIUA PO'OI POHIVA
2. SAMIUELA 'AKILISI POHIVA : **Defendants**

BEFORE THE HON. CHIEF JUSTICE WARD

COUNSEL : Mr Paasi for Plaintiff
Mr Tu'utafaiva for Defendants

Date of Hearing : 24th January, 2000
Date of Ruling : 28th January, 2000

RULING OF WARD CJ

The Plaintiff has brought an action for defamation against both defendants in relation to an article in their newspaper. The statement of defence filed raises a number of defences including fair and accurate reports of proceedings in the Legislative Assembly, fair comment and truth.

The plaintiff moved to strike out the defence on the grounds that it is frivolous, vexatious and an abuse of the process of the court. I refused the application and said I would give brief written reasons later. I now do so.

The main thrust of the challenged article was that the conduct of the plaintiff had lead to the defeat of the Tonga National rugby team in the World Cup competition held in the United Kingdom in 1999. The article states that it was based on a story published over the Internet.

In the defence it is claimed that the article had been referred to in the Legislative Assembly and this was therefore simply a report of those proceedings. It also asserts the article is true.

The plaintiff asserts that the article in the newspaper makes no reference to the parliamentary proceedings and simply quotes the article in extenso. The suggestion it is protected by the reference in the Legislative Assembly is, he suggests, simply a bogus attempt to excuse a plainly defamatory publication. The claim it is true is made as a bald assertion with no basis suggested in the defence. In addition, it is suggested the article is not an accurate report of the Internet article in any event.

I have some sympathy with the plaintiff. The defence is poorly drafted and fails to set out clearly which defence is being relied upon and in relation to which part of the published article. If the purpose of written pleadings is to alert the other side to the case he will have to face, it has failed miserably. However, the power of the court in such circumstances to strike out is limited and should only be exercised in the plainest cases.

It has long been established that the court will only strike out where the case is obviously frivolous or vexatious. As long ago as 1892, Lindley LJ suggested that the object of a similarly worded English rule "is to stop cases which ought not to have been launched – cases which are obviously frivolous or vexatious, or obviously unsustainable"; Attorney General v London and North Western (1892) 3 Ch 274.

Our 08 r 6 allows the court to strike out any pleading that is frivolous or vexatious or if it is otherwise an abuse of the process of the court. In relation to the first ground, English authorities suggest that the pleading must be so clearly frivolous that it also would amount to an abuse of the process to allow it to proceed. I consider the inclusion of the word 'otherwise' in rule 6(1) (iv) supports the interpretation of rule 6(1) (ii) in the same way. Short of that, if there may be a proper case to be tried the court should allow it to proceed.

In Young v Holloway (1894) P 87 when considering an application to strike out a claim challenging the validity of a will, Jeune P said:

> "If, however, there be any truth in the statement that such a will was prepared in the manner alleged, it may possibly be that further details of its contents may come to light. It is so important not to shut out a litigant from what may, even possibly, be the assertion of a just right, that I cannot take on myself, at this stage, to say that this part of the case is so clearly frivolous that I should stop the proceedings."

That principle has been re-asserted many times (see, for example, Ashmore v British Coal (1990) 2 QB 338) and is still the test the court must apply when deciding whether to exercise its discretion under this rule.

I need go into no more detail. The assertion by the plaintiff that the impugned article never mentioned the proceedings in Parliament and the suggestion that it included matter that did not come from the article put out over the internet are all matters of evidence and will have to await the trial of the action.

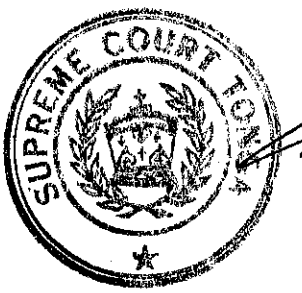
I have already expressed some sympathy with the plaintiff. I do not consider the pleadings as they stand give him sufficient indication of the defences that are to be relied upon.

I order that an amended defence be filed within 28 days particularising the defence or defences to defamation upon which the defendants rely in

relation to each passage cited in the statement of claim. The plaintiff shall have a further 28 days to file a reply and I shall then consider the matter again in chambers.

There is also an application for discovery and I order it take place within 14 days of this order.

This hearing has been brought about by a casually drafted statement of defence and I see no reason why the costs of today should not be paid by the defence in any event.



DATED: 28th January, 2000 **CHIEF JUSTICE**