



PRACTICE DIRECTION 7/04

Disposal of funds following execution of distress

The undernoted Practice Direction 2/00 is re-issued as I have received complaints that its terms are not being followed. Counsels are to adhere to its terms.

NUKU'ALOFA: 24 November 2004.



R. M. Webster
R M Webster MBE
Chief Justice

Practice Direction No 2/00

Disposal of funds following execution of distress

It appears that a practice has grown up whereby practitioners seek to have funds, which have been received from the disposal of goods seized under a writ of distress or a distress warrant, paid to themselves. The reason is usually that they wish to use them to cover fees due from their client.

This is wrong. When the court gives judgment in a case, the award is to the successful party. If the order includes costs, they are also awarded to the party and not the lawyer. Whether or not the lawyer has been paid in advance or is owed money by his client is irrelevant to the court.

I direct that, in future, unless the court has endorsed the writ or warrant to the contrary, the bailiffs shall always pay all money received from such a disposal to the judgment creditor personally until the full judgment debt including costs is paid. Any balance is then to be returned to the judgment debtor.

In the past, funds have been paid to the lawyer who appears on the record but, in view of the recent practice, I direct that if any lawyer wishes to have the money paid to himself or in any way other than to the judgment creditor, application must be made at the time of application for the writ or warrant. Such application must be accompanied by an affidavit sworn by the judgment creditor stating that he consents to the money being paid in that way. Where the judgment creditor is a corporation, the affidavit must be sworn by one of its officers.

If such an order is made by the court, it must be endorsed on the writ or warrant. It is only when there is such an endorsement that the bailiffs may vary the direction to pay the judgment creditor.

Nuku'alofa: 30 October 2000

Gordon Ward
CHIEF JUSTICE

cc: Hon Attorney General and Minister of Justice
Hon Mr Justice Ford
Registrar, Supreme Court
All Bailiffs