

TUIVAITI (TARIU) v SILA (FAAMALAGA) AND OTHERS

Supreme Court Apia
St John CJ
17 December 1980

TORT - Civil conspiracy, intimidation, trespass, loss of earnings
- punitive damages - actions in breach of the Constitution,
Art 11.

HELD: Judgment for the Plaintiff for his losses, \$10,570
together with punitive damages of \$1,000 against
three of the Defendants. Order made that
Defendants refrain from excluding the Plaintiff
and his family from his own land and buildings.

CASES CITED:

- Rookes v Barnard [1964] A.C. 1129

LEGISLATION:

- Constitution of Western Samoa; Art 11

T K Enari for Plaintiff
A S Epati for Defendants

The Plaintiff Tariu Tuivaiti is an untitled man formerly of Matautu Falelatai. The Four defendants are elderly chiefs of that village. In January 1979, the Defendants made a decision in the village council to banish the Plaintiff from the village but after some weeks and an apology by the Plaintiff he was allowed to return to the village. On the 12th May 1979, the four Defendants again made a decision to banish the Plaintiff from the village and on the evidence I hold that the only reason for such banishment was the Plaintiff's failure to attend church. On the 9th June 1979, the Defendants banished from the village the whole of the Plaintiff's family. A few days later, the Defendants decided that all members of the village were prohibited from riding on the Plaintiff's buses and decided upon penalties for so doing and also threatened banishment as a consequence of so riding. One witness, whose evidence I accept, was banished from the village for that reason.

The Plaintiff sues the Defendants relying on a number of causes of action. They are as follows:

1. Trespass to the land
This cause of action is based upon exclusion from the land to which he had a right to possession, which right was conceded by the Defendant's counsel
2. Assault,
based upon a threat made to him that if he did not peacefully remove himself after the banishment order, he would be tied up and placed on the road
3. Civil conspiracy,
based upon agreement between the Defendants to banish the Plaintiff for the reason that he did not attend church, in breach of Article 11 of the Constitution of Western Samoa wherein religious freedom is guaranteed as a fundamental right
4. Intimidation,
based upon the prohibition against the villagers riding in the Plaintiff's buses, as expounded in Rookes v Barnard [1964] A.C. 1129
5. Negligence,
in failing to protect the Plaintiff's house, the goods therein, his garage and workshop and tools therein with the result that there was damage to those buildings and goods were stolen therefrom.

This last cause of action I reject, as not being available on the evidence. In any event damages would not be increased by its acceptance. As to the other four causes of action counsel for the Defendants did not submit that they have not been made out on the evidence and contented himself with submissions in relation to damages.

Coming now to the question of damages I make the preliminary remarks that the Plaintiff's evidence as to damages was sketchy, lacking in detail, and in many cases unsupported by any other evidence particularly when other evidence would be available. I will deal with the various claims for damages under various headings:

Loss of Use of One Bus:

I accept counsel for the Defendant's submission that the removal of the bus could have been arranged by obtaining police protection to avoid a breach of the peace during the removal.

Loss of Earnings from Bus Business:

The Plaintiff's books of accounts tendered in evidence show a significant drop in net earning, in June 1979 and thereafter. Many months show an excess of expenditure over income but it should be noted that at least some of these losses are due to the fact that only two buses were running after the 14th May 1979 and I have already held that the Plaintiff could have mitigated these losses by retrieving that bus. There is also to be taken into account the prohibition of villagers riding in his buses about which I am satisfied that his earnings were reduced by such prohibition but I have difficulty in assessing by what amount. No deduction has been made for depreciation of vehicles. Doing the best I can having regard to the sketchy evidence before me and, bearing in mind that the onus of proving damages lies on the Plaintiff, I propose to allow a figure of \$150 per month from the month of June 1979 to the month of October 1980 inclusive a total of \$2,550. Included in this amount is damages for loss of business from intimidation.

Loss of Spare Parts and Tools:

Evidence in support of this aspect of the Plaintiff's claim is from him alone and he placed a value on his tools both mechanical and wood-working at \$3,000 and the spare parts at \$5,000. No details were given. Nothing but the general description of both items is given. Further there is a real problem that all his tools and all his spare parts may not have been lost to him. There is no evidence that all these tools and spare parts that were in his house have been lost. In respect of tools and spare parts I do not accept counsel for the Defendants contention that they could have been removed under police protection as I doubt whether police would be available to spend the amount of time necessary to be present during such an operation which would be lengthy in time. The question arises whether the loss of tools and spare parts is a loss attributable to the causes of action referred to. I am satisfied that it is reasonably foreseeable that the Plaintiff's premises will be subject to the depredations of thieves and vandals. The best I can do on the evidence is to hold that the Plaintiff recovers under this heading the sum of \$1,500. This figure includes damage to the premises.

Loss of Use of Workshop:

The Plaintiff gave evidence that because of the unavailability of his workshop at the village he had to employ a mechanic to do work which were otherwise he would have done himself had the facilities of his tools and workshop been available. He has tendered in evidence accounts totalling \$4,118 and the Mechanic who did the work has corroborated to some extent the Plaintiff's evidence that he the Plaintiff otherwise would have done the work. However, there is no expert evidence that the charges

contained on the various accounts are fair and reasonable sums for the work done. The accounts contained in themselves no formula by which the charges for labour are computed and gave no indication of the length of time to do the various items of work. In these circumstances I propose to award the sum of \$2,000.

Loss of Residence:

On banishment of the Plaintiff's family, he had to provide accommodation for his wife and children at school and have her reside in a village where a school was available. Much of the food consumed by his family when at his village was grown on the land and I accept that it has cost him \$100 per week to keep his wife and family in the village where the children are going to school. Of this amount some would be attributable to items other than produce grown at the village and I hold that the sum of \$70 per week making a total of \$1,120 is payable by the Defendant.

Loss of Profits from the Plantation:

There are various estimates of the value of taros, taamu and yams, the produce of the plantation, given. They range from \$200 to \$500 per week. I am of the opinion that these figures for produce are grossly exaggerated and I allow approximately \$50 per week in respect of this claim, making a figure of \$3000. In settling upon this figure I took into account that the proceeds of sale would be shared by some other family members or expended for their maintenance.

Pigs:

I reject the Plaintiff's evidence that he owned 200 pigs as a gross exaggeration and hold that the loss is the value of 10 pigs at \$40 each, a total of \$400. The compensatory damages, therefore, total \$10,570.

The Plaintiff also claims punitive damages in respect to the trespass, assault, conspiracy and intimidation causes of action found against the Defendants.

Of the four Defendants one gave evidence for the defence. That was Misa Nanai Faitala, whose evidence I regard as completely trustworthy in every respect. He says that in respect of his part in the decisions complained of, he agreed to vote with the other three elderly chiefs after attempting to persuade them that the banishment was contrary to the constitution of Western Samoa. He says and I accept, that he voted for the banishment order only because the other three were implacably in favour and could not be persuaded otherwise. Having regard to these efforts, I accept that he bore no ill-will nor malice against the Plaintiff. I do not propose to award punitive damages against him. As to the

other three Defendants one of them, Anae Taeali'i was called in the Plaintiff's case. I do not accept him as a truthful witness, and, from the minutes of the meetings of the village Council, a translation of which was supplied to me, it is apparent that the action of the other three Defendants in making the decisions was a high-handed demonstration of power based upon ill-will towards the Plaintiff. Against those three Defendants I award the Plaintiff the sum of \$1,000 by way of punitive damages. Before formally entering judgment I think it appropriate that I comment on the provisions of Article 11 and its effect on the village affairs. The freedom expressed in Article 11 is the freedom not to have any religion at all, the freedom to practise a religion in such manner as the individual thinks fit and the freedom to change both his religion and his practices in relation to it. Practice of religion includes every manifestation of religious life. It includes wearing of insignia, mode of dress, and every activity generated by religious observance such as choir practice, contributions towards church projects or contributions towards any project which is connected with the practice of any religion or observance of religious rites. Since independence, the village council has no power to enforce attendance at church or choir practice, or to compel contribution towards any church project and any punishment of any member of the village for failing to do any of those things is prohibited by the Constitution. If those in power in a village agree to punish in those circumstances it may amount to a civil conspiracy and they can be liable therefore and can have damages awarded against them.

There will be judgment for the Plaintiff against the four Defendants in the sum of \$10,570. There will also be judgment against the three Defendants other than Misa Nanai Faitala in the sum of \$1,000.

I also order that the Defendants and each of them refrain from excluding the Plaintiff and his family from possession of the land and buildings in the said village occupied by them before 12th May 1979.

The Defendants are ordered to pay the Plaintiff's costs.