

IN THE COURT OF APPEAL OF SAMOA

HELD AT MULINUU

C.A. 18/09

BETWEEN: **DORA LETELE, MARIA SHECK, THERESA LEAU, JOSEPHINE HUNT, MARY HICKS** and **EMELIA COLLINS**

Appellants

AND: **RASELA MOLI FILIA, PISAINA FILIA, POVITA HICKS, TUIVALE HICKS**
and **SILIA HICKS**

Respondents

Coram: Honourable Justice Baragwanath
Honourable Justice Fisher
Honourable Justice Hammond

Counsel: S Ponifasio for the appellant
O Woodroffe for the respondent

Judgment: 13 May 2011

JUDGMENT OF THE COURT

1. The appellants having filed a discontinuance the respondents seek costs on the abandoned appeal against a decision of the Chief Justice ordering that possession of land formerly owned by the appellant be given to the respondents on the

ground of a limitation bar in their favour.

2. They assert that their costs and disbursements amount to ST\$5,166.97 and claim that full amount as indemnity costs. No particulars of that sum are provided.
3. For the reasons given in *Bradbury v Westpac Banking Corporation* [2009] NZCA 234, [2009] 3 NZLR 400 indemnity costs are appropriate only if the case advanced is hopeless or is pursued for improper purposes. They must also be shown to be reasonable. The respondents' bare assertion of what has been charged does not establish reasonableness.
4. Certainly without argument from the appellants on the issue there appears to be much force in the Chief Justice's reasons for decision in law. We are in no position to make any assessment of whether there could be any significant issue of fact.
5. The principal judgment was delivered on 28 July 2009 and the notice of appeal is dated 28 August 2009. The respondents filed a notice of opposition to an application for stay of the judgment. The court file contains no other record of conduct by the respondents. Nor have they supplied particulars of significant work.
6. In these circumstances we must make a very rough assessment of our own. There will have been some appraisal of the prospects of a successful appeal as well as of

the merits of the application for stay. But since the materials before us do not suggest that the appellants took any steps to file the case on appeal or otherwise to pursue it, reasonable preparation by the respondents cannot have been considerable.

7. We award costs of ST\$2,000 to the respondents against the appellants jointly and severally.

Honourable Justice Baragwanath

Honourable Justice Fisher

Honourable Justice Hammond