

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

C.P. 13/96

BETWEEN: DLEIMAR MUNZ of Vaiala, Chef:  
Plaintiff

A N D: INTERNATIONAL CUISINE LIMITED a  
duly incorporated company  
having its registered office at  
Apia and trading under the name  
Apia Inn Restaurant:  
Defendant

Counsel: P F Meredith for plaintiff  
C J Nelson for defendant

Hearing: 17 April 1996

Judgment: 24 April 1996

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JUDGMENT OF SAPOLU, CJ

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The plaintiff Dietmar Munz is originally from Germany. It appears from what he says in his statement of claim that he must have come to Western Samoa in or before July 1995, but his exact date of arrival in Western Samoa is not clear. He also says in his statement of claim that he was employed by the defendant International Cuisine Ltd as a chef from July 1995 but his employment was unlawfully terminated in September 1995. All these allegations by Munz are denied by International Cuisine Ltd in its statement of defence.

When proceedings were filed by Munz for the alleged unlawful termination

of his employment by International Cuisine Ltd there was an exchange of letters between the solicitors for the respective parties on the question of security for costs. In a letter of 22 March 1996 to the solicitor for Munz requesting from Munz security for costs, the solicitor for International Cuisine Ltd says that he has been instructed that Munz is a permanent resident of Germany but is only resident in Western Samoa on a temporary permit. To that letter, Munz's solicitor responded by letter of 27 March 1996 that his client is originally from Germany and is resident in Western Samoa under a work permit. Those two letters have been produced in these proceedings. On this same issue, Munz says in his statement of claim that although he is originally from Germany he presently resides at Vaiala in Western Samoa. International Cuisine Ltd in its statement of defence denies that allegation and says that Munz is a German resident. Munz, as the Court was informed from the bar is still in Western Samoa. How he is living and what he is doing in Western Samoa at present is not clear.

Under section 11 of the Immigration Act 1966 the Minister of Immigration may grant a permit to any person entitling him to enter and reside or remain in Western Samoa for a period of not more than six months but such permit may be extended from time to time or may be revoked at any time. It is not known how long Munz will continue to be in Western Samoa for and whether his permit will be further extended. The weight of the submissions presented in these proceedings was certainly placed on the question of how the Court should exercise its discretion as to whether or not to order security for costs against Munz as plaintiff and not on the question of 'resident'.

Now rule 30 of the Supreme Court (Civil Procedure Rules 1980) provides :

"Plaintiff not resident in Western Samoa - (1) In any civil proceeding and at any stage thereof the Supreme Court may require a plaintiff or applicant resident out of the jurisdiction of the Supreme Court to deposit any sum of money as security for costs, and may stay the proceeding pending the making of that deposit.

"(2) When any sum has been so deposited as security for costs, it shall be disposed of in such manner as the Court directs".

Clearly this rule is expressed in terms which gives the Court discretionary power to order a plaintiff resident out of the jurisdiction of the Court to make a monetary deposit as security for costs. The word 'may' as used in the rule gives that discretion.

But before the Court is required to exercise its discretion whether to order security for costs against a plaintiff, it must be shown that the plaintiff is resident out of the jurisdiction of the Court. As it appears from the exchange of letters between the solicitors for the respective parties I have already referred to in this judgment, both acknowledge that Munz is resident in Western Samoa under a work permit. And while the solicitor for International Cuisine also says that Munz is a German resident, the solicitor for Munz does not concede that issue and says that while Munz is originally from Germany he presently resides at Vaiala.

While the meaning of words used in the rules is a question of law, I think the question whether the meaning attributed to any of those words applies to a particular case is a question of fact. As there were no legal submissions addressed to what the words 'resident out of the jurisdiction of the Court' mean I am not prepared to place a definitive interpretation on those words as a matter

of law. I would only say this. It is common ground between both counsel, as they are also the solicitors for the respective parties, that Munz is 'resident' in Western Samoa for the time being. Rule 30 of the Supreme Court (Civil Procedure Rules) 1980 does not use the expression 'permanently resident', 'ordinarily resident' or 'habitually resident'. It also does not use the expression 'occasionally resident' or 'temporarily resident'. It simply uses the term 'resident' without any qualifying adverb. In my view while the term 'resident' as used in the rules must be given its natural and ordinary meaning as a matter of law, whether that meaning applies to this case is a question of fact and degree.

Given that it is common ground between counsel that Munz is resident in Western Samoa for the time being, I will accept that position for the purpose of this case. If that was all, there would have been no difficulty in this case as Munz would not then be a plaintiff resident out of the jurisdiction of this Court. The difficulty is that counsel for International Cuisine Ltd says that while Munz is temporarily resident in Western Samoa, he is also a German resident. Counsel for Munz, on the other hand, has not conceded that his client is a German resident. He merely says Munz is originally from Germany.

The first difficulty is that if Munz is a resident of Germany as well as a resident of Western Samoa at the present moment as counsel for International Cuisine Ltd says, does that mean that rule 30 apply to him as a plaintiff resident out of the jurisdiction of this Court. No submissions were directed to that question. It is of course possible in law to be a resident of more than one country. There are people here who are residents of Western Samoa as well as

residents of another country. Whether those people, if they became plaintiffs in civil proceedings in Western Samoa, do come within the parameters of rule 30 is not clear at this stage. But that is the issue which has arisen on the account given by the defendant.

The second difficulty is that Munz does not admit or concede that he is a German resident. He may be a German national or citizen but that is not synonymous with being a German resident. Whether he is in fact a German resident as the defendant alleges, would, in my view, require more evidence than an assertion in a letter and a statement of defence. The concepts of nationality, citizenship and residence as they exist in law are not synonymous or conterminous.

Given these unresolved difficulties, I have come to the view that I should not proceed further to consider how the Court's discretion with regard to security for costs should be exercised unless the threshold issue I have just discussed has been resolved. The question of whether Munz, given his present circumstances, is a plaintiff resident out of the jurisdiction of this Court did not receive the benefit of full legal submissions at the hearing as the weight of counsel's submissions was put on the question of how the Court's discretion should be exercised.

I will therefore decline the present application for security for costs but reserve leave to the defendant to reapply if necessary.

*T. F. M. Sapulua*  
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CHIEF JUSTICE