

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

C.P. 188/96

BETWEEN: ROSA STOWERS of Apia and EDMUND
HEIDERBRANDT of Sydney,
Australia, Trustees

Plaintiffs

A N D: VAITOGI PENI of Alamagoto,
Planter

Defendant

Counsel: A Pereira in support of motion
T K Enari for plaintiffs
Defendant no appearance

Hearing: 6 December 1996

Judgment: 14 January 1997

JUDGMENT OF SAPOLU, CJ

The plaintiffs, as administrators of the estate of the late Edmund Duffy of Togafuafua near Apia, had brought an action for the eviction of the defendant from land belonging to the said estate which he is presently occupying. After the case was called twice and the defendant failed to file a statement of defence as ordered, the Court further adjourned the case for the plaintiffs to proceed with formal proof of their claim. However before the plaintiffs adduced affidavit evidence for formal proof of their claim, the applicant, Edmund Andrew Duffy of Brisbane, Australia, had filed a motion seeking several orders from the Court including an order to stay further proceedings by the plaintiffs against

the defendant who is claimed to be a nephew of the applicant. It is the motion for a stay of proceedings that the Court is dealing with now.

Essentially what the applicant is saying is that the appointment of the plaintiffs as administrators of his deceased father, Edmund Duffy's estate was irregular and should therefore be revoked. I need not now go into the reasons for he gives for that requested revocation. He further says that the Public Trustee should be appointed as sole administrator of his deceased father's estate. Apparently the plaintiffs are a niece and a nephew of the applicant.

Counsel for the plaintiffs on the other hand submitted that the motion to stay should be denied as the proceedings for several orders including an order to stay which the applicant has brought against the plaintiffs, are separate from the proceedings between the plaintiff and the defendant. And the applicant is not a party to the proceedings between the plaintiff and the defendant.

The ordinary rule is that only a party to proceedings may make application for a stay of those proceedings : see *37 Halsbury's Laws of England 4th edition, para 439*. It was not argued that the circumstances of this case warrant a departure from the ordinary rule. I am therefore of the view that the ordinary rule applies here. However, given the special circumstances of this case, it appears to me that if what the applicant alleges is right, then that could have a material hearing on the proceedings between the plaintiff and the defendant, in particular the capacity of the plaintiffs to bring that proceedings. As it is not clear whether what the applicant says is right in the absence of any affidavit in reply from the plaintiffs, I have decided that the proper course to

take is as follows.

Instead of the Court joining the applicant as a party to the proceedings between the plaintiffs and the defendant, the applicant is ordered to file by 20 January 1997 a proper application to be joined as a party in those proceedings. This would give the plaintiffs the opportunity to be heard on that issue. If I may add here, it is perhaps unfortunate that the defendant did not see fit to apply for third party notice proceedings so that the applicant may be joined as a third party given the issues and other orders he now seeks to raise and obtain against the plaintiffs.

After the application to be joined as a party has been filed, the plaintiffs will be given seven days to file an affidavit or affidavits in reply.

The application for joinder as a party will then be heard on 29 January at 12.00 noon.

All further proceedings between the plaintiffs and the defendant are deferred to that date.

Question of costs is reserved.

T. F. M. Sapulu
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CHIEF JUSTICE