

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CIVIL DIVISION)

PLAINT NO. 64/01,56/01

132/00,302/01,

CA 01 / 02, OA/2002,

MISC 31/02,22/02,39/02

BETWEEN **COOK ISLANDS DEVELOPMENT**

BANK a trading bank having its
office at Avarua

Plaintiff

AND **NORMAN MITCHELL** of Aitutaki,

Cook Islands, Retired

First Defendant

AND **TERRY MITCHELL** of Aitutaki,

Cook Islands, Occupation unknown

Second Defendant

**Minute of Greig CJ
Dated the 23rd April 2003.**

1. The Registrar has referred to me the application made by Mr Ka on behalf of the First Defendant for costs. The application is made in purported accordance with my judgement in these proceedings delivered on 26 November 2002. Mr Ka and Mr Mc Donell for the Plaintiff made written submissions but the Registrar felt unable to reach a conclusion on them. It was agreed that I should deal with the reference without further submissions. I have read the submissions and considered the matter but I am unable to reach a final conclusion for the reasons I am about to set out in this Minute.
2. The matter came before me for hearing on 26 November 2003. I delivered an oral judgement the result of which was stated as follows:

There will therefore be judgement for the Plaintiff against the Second defendant in the sum of \$1270. There will be judgement for the First Defendant against the Plaintiff. The Plaintiff is entitled to costs as against the Second Defendant. The First Defendant is entitled to costs

against the Plaintiff. The amount of the costs disbursements and other necessary expenses of each side is to be fixed by the Registrar.

3. Mr Ka presented his claim in the sum of \$19582.95 which was subsequently raised to \$19752.95. It included airfares \$7387.00, accommodation in Rarotonga \$3620.00, rental car costs in Rarotonga \$2915.00, meals \$4410.00 and phone costs, photocopying and Court fees \$1250.00. These items related to Mr Ka, Elizabeth Taporu, Daniel, Norman, Terry and Moeana Mitchell. Mr Ka appears to refer to himself as Counsel but the record of the hearing indicates that Mr McFadzien appeared as Counsel for both Defendants. The latter has not made any claim.
4. The claim now made is it appears incomplete as there is no claim for Counsel. Mr Ka could only be entitled to claim as a witness called for the First defendant. The Court cannot deal with this claim in the absence of some claim by Counsel. Mr Ka has no real standing in the matter.
5. The claim is in effect for witness expenses and allowances. The claim can be made for the witness or witnesses called for the First Defendant. It does not include the First defendant himself unless it is sought to argue his claim under Rule 301. It certainly cannot include claims for those who did not take part as witnesses at the hearing. It will be necessary to ascertain which witness or witnesses were called for the First defendant as distinct from the Second Defendant.
6. This question is affected by the case that the First defendant presented; namely that he did not take part in the removal of the items. It was acknowledged that the items were taken by the Second defendant. It may be appropriate to limit the claim to those witnesses strictly who assisted that limited case. The witnesses as to value and the original ownership of the items may be outside the proper ambit of the First defendant's claim.
7. The claim is to be settled under the Third Schedule to the High Court Fees Costs and Allowances Regulations 1981. That provides a limited amount for overnight absences. Such absences are those strictly required. Airfares may be allowed but again that will be only such as is strictly necessary. It is not easy to understand how it was necessary to incur airfares to and from New Zealand. Similar considerations apply to car rental for a case which lasted one day. Again it is only necessary transport costs that could be considered.
8. It was submitted that this was a case for a Sanderson order (*Sanderson v Blyth Theatre Co* [1930] 2 KB 533). The facts here as to the joinder of the First Plaintiff and the progress of the action against him are quite different from the English case. In this case the Plaintiff began the proceedings against the First defendant and continued them after it was asserted that the Second Defendant had taken the items. In the end the Plaintiff failed to prove the participation of the First Defendant and judgement was given in his favour. The distinction is clear in my view and the Sanderson order is not appropriate.
9. This is not a case for full costs. The First Defendant is entitled to some costs but limited as I have indicated to the case he presented and to the witnesses called on his behalf in support of

that case. There is a further difficulty in this matter since there was one Counsel acting for both defendants. This may result in some apportionment of costs and expenses.

10. The matter is referred back to the parties for reconsideration and the presentation of a new claim made by the Counsel or on his instructions on the basis of the Rules and with appropriate documents and information which support the claimed amounts.

Amended