

STRINGER v. TONGA MA'A TONGA KAUTAHA Ltd.

(Civil Appeal. Skeen C. J. Nuku'alofa, 24th June, 1st July, 1914).

Limited company — Contract of service — Appointment of investigator of company's affairs — No instructions by Directors — Authority of General Manager — Duties of Directors and Secretary.

This was an appeal by the Defendant (Tonga Ma'a Tonga Kautaha Limited) from the Magistrate's decision awarding the Plaintiff £32/6/0 and costs the balance of fees for services rendered to the Company. The facts sufficiently appear in the judgment.

HELD. Company bound by the acts of its General Manager. Appeal dismissed.

Stringer in person.

Harte (Secretary of the Company) for the Tonga Ma'a Tonga Kautaha Ltd.

C. A. V.

SKEEN C. J. This is an appeal against judgment of Magistrate Ata given in the Police Court at Nuku'alofa.

Stringer sued for the sum of £32/6/0 being balance claimed by him as due to him by the company for services rendered at Vava'u in October, 1913.

The evidence showed that Stringer performed the services upon the written request and order of the then general manager (Cameron) and judgment was given for amount claimed with costs.

The defendant Company appealed upon the grounds that it had not authorised through its Director the employment of Stringer, and that they knew nothing of his employment or of the services he rendered, in other words that the Company was not bound by the actions or orders of the General Manager but only by the express authority of the Directors. The articles of the Company were produced in evidence by the appellants. In them there are no express powers given to the General Manager. (Clause 92 of articles read by Court).

Cameron gave evidences in the Court below that he as General Manager had asked the Directors to define his powers and express them in writing but that they either refused or neglected to do so. This was not denied. It appeared to the General Manager that the affairs of the Company were in such a state that an investigation was required by some competent person outside of the Company, and this investigation included auditing, writing up Books, adjusting accounts etc. — This work was done by Stringer according to the letter of instruction from the General Manager.

The General Manager had asked for his duties to be defined by the Directors but such had not been done. There was no duly appointed auditor by the Company as required by Law, and the General Manager gave what he considered proper and necessary instructions in the interest of his Company.

The contract a letter under which Stringer claims is in writing signed by the General Manager of the Company and its terms are clear and explicit. This I consider was a sufficient authority for Stringer to act under. The Company are bound by the acts of its accredited agents and servants, and clause 112 of the Articles reads as follows.

The General law is "It is sufficient if the contract be made by some person acting under the express or implied authority of the Company, and it is sufficient if it is made by word of mouth provided that the person who makes it has authority to make it on behalf of the Company".

The Company has before this as is shown by evidence allowed Mr. Cameron its General Manager to supply outsiders to work for the Company and also to engage labour. Cameron had been appointed General Manager under the articles and he had asked for his powers to be defined. This was not done and there was no auditor duly appointed according to law.

The Minute Book of the Directors shows that they were aware that Stringer had been employed by the General Manager as they first directed that the Secretary write to the Vava'u Director complaining of Cameron's action in engaging Stringer and also to Stringer denying the Company's liability (This was in November, 1913) but they finally agreed that the Chairman write to Vava'u directors and that the Secretary do not write to Stringer but his claim be ignored, they did not write to Cameron or appear to have questioned him in the matter.

In the appeal the further point was raised that Stringer could recover from Cameron personally, on that point there is no need for me to make a ruling. Stringer has elected to sue the Company and I consider the Company primarily liable, and the judgment of the Lower Court is against the Company. Neither do I in any way express an opinion as to the liability of Cameron to his Company for any money already paid or to be paid under this judgment to Stringer, and I understand there is at present an action pending in Her Britannic Majesty's Court between the Company and Cameron in which these moneys may or may not be part subject of the claim.

In conclusion I would point out that the Company is a limited Company, and has to comply strictly with the Company Law and this does not appear to have been done in the past. No auditor was appointed as required by Law. The Secretary by the articles has to attend all meetings of the company, and of the Directors and keep a record of all such meetings. This he does not appear to have done. The minutes of the Directors and of General meetings are kept in the Minute Book, but not by the Secretary neither are they signed by him, they are in Tongan and signed sometimes by the Chairman, and sometimes they agree with the Tongan version and sometimes they do not. Again the minutes are too vague, it

is noted that letters have been read or received but there is nothing beyond names of parties to identify the correspondence, no dates or subject matter mentioned. It is the duty of the Directors to "cause" minutes to be duly retained in a Book provided for that purpose (clause 8 of articles read), but it is the duty of the Secretary and is imperative that he shall keep such book. (Clause 86 Articles) This he does not do. There are other matters I might refer to but I think this will be sufficient to show the Directors whose chairman appeared in this appeal and the Secretary that the Law is not complied with in the past and that greater care must be taken in future.

The judgment of the Lower Court is upheld, and the appeal is dismissed.
