

**S. P. AFUHA'AMANGO v. THE HON. G. GOODACRE  
(TREASURER AND MINISTER OF FINANCE.)**

(Mandamus. Hunter J. Nuku'alofa, 30th July, 1954).

Mandamus — Remedy by Mandamus available in Tonga — Refusal by Treasurer to pay on voucher signed by Speaker — Duties of Treasurer — When mandamus will issue — Civil Service Regulations 97 - 101 - 115. This was an application for a rule nisi for a writ of mandamus directed to the Treasurer calling on him to show cause why he should not pay in full forthwith the allowances to the members of the Legislative Assembly for the year 1954. The defendant (Treasurer) appeared in person to oppose the application.

The matter arose in this way :

The allowance for members for the year 1954 provided by the estimates was £50 per member. The Parliament met in June, 1954 but before the business was completed the House adjourned until January, 1955.

Before the adjournment a resolution was put to the House and carried that member's allowances be paid forthwith.

The vouchers for the individual payments for £50 were made out and signed by the speaker and forwarded to the Treasurer. The Treasurer referred the vouchers to the Premier who directed that fresh vouchers be prepared for £25 each. This was done.

The Premier signed these fresh vouchers and forwarded them to the Treasurer with instructions to pay them and not to pay the previous vouchers (i.e. those for £50 each).

The applicant — a member of the Legislative Assembly requested the Treasurer to pay him £50 in accordance with the voucher signed by the Speaker. This the Treasurer refused to do. The applicant then applied for a rule nisi for mandamus.

The Treasurer who give evidence, said that he was absent from the House when the resolution in question was carried and that he had received no official notification of the resolution nor had he received any instruction to pay other than that contained in the vouchers signed by the speaker, which he had referred to the Premier. He said he was not sure but he thought that in the past vouchers for the members' salaries had been signed by the Premier.

The applicant submitted that as the speaker is in charge of the house he is the head of the Department within the meaning of clause 101 of the Civil Service Regulations and that therefore on a receipt of a voucher for a member's salary signed by the Speaker the Treasurer is bound to pay, and that he had no authority to refer these vouchers back to the Premier.

HELD. There was no duty on the part of the Treasurer to pay amounts specified in the vouchers signed by the speaker.

Rule Nisi refused.

QUAERE: Does mandamus lie against a Member of the Government in Tonga.

Tu'akoi (with him Pousima) appeared for the applicant.

The Respondent appeared in person.

HUNTER J. : I assume for purposes of this application that the respondent is proceeded against in his capacity as Treasurer and not in his personal capacity. Although the point was not raised it seems clear that if the actions were against Mr. Goodacre personally then this Court would have no jurisdiction in view of the provisions of the Treaty of Friendship. It was not submitted that proceedings by way of mandamus cannot be taken in Tonga against a member of the Government, and in the view I have taken of this application a decision on this question is unnecessary. It may be that such a mandamus does lie; if not there appears to be no way in which a citizen may obtain redress in such a case as this.

It has certainly been assumed by former Chief Justices that a remedy by way of mandamus generally, is available in Tonga.

Blackstone has defined a writ of mandamus as being in general a command issuing in the King's name from the Court of King's Bench and directed to any person, corporation or inferior Court of Judicature within the King's dominions, requiring them to do some particular thing therein specified which appertains to their office or duty and which the Court of King's Bench has previously determined or at least supposes to be consonant to right and justice.

The writ is discretionary. The existence of a legal specific right or obligation to the performance of a legal duty in favour of the party seeking the remedy is the foundation of every writ of mandamus.

The application must be bona fide and not made for some indirect purpose. There must be (a) a refusal to act, (b) the applicant must not delay in coming to the Court, (c) the duty must be a public one and (d) the duty must be obligatory and not one merely exercised at discretion.

In the present case the application is perfectly bona fide and I am satisfied that the elements contained in (a), (b) and (c) above have been proved but I am not satisfied that the Respondent had a duty to pay on the vouchers for £50 signed by the Speaker and submitted to him.

Clause 97 of the Civil Servants Regulations under the heading "Expenditure" provides "all disbursements will be made by the Treasurer or Sub-Treasurer under authority of the Premier". Clause 101 provides that "vouchers for all salaries and allowances will be delivered duly certified by the Heads of Departments to the Treasurer .....". See also Clause 115 which sets out the duty of the Treasurer before paying a claim; he must amongst other things satisfy himself that the expenditure has been duly authorised and that the certificate is signed by the proper officer.

Whether the Speaker is the Head of a Department and so entitled to sign vouchers within the meaning of Clause 101 I very much doubt. Even if he be so entitled it seems to me that the Treasurer was acting properly in referring these vouchers to the Premier. The practice is for the salaries of members to be paid at the end of the session. In this case the session had not ended, the House had been adjourned to a future date to complete its business. The resolution of the House regarding the payment had not been brought to the notice of the Treasurer.

Having referred the vouchers to the Premier — the head of the Government — and having received the Premier's direction to pay only £25 together with the necessary vouchers signed by the Premier, then in my view it was the Treasurer's duty to follow this direction.

I am not satisfied on the evidence that the Treasurer had a duty to pay on the first vouchers and therefore refuse to grant a rule nisi for mandamus.

Application dismissed.