

SIONE POHAHAU (Appellant, defendant)  
v.  
LATU FUKA (Respondent, plaintiff)

In this case the Supreme Court (Hunter J.) gave a verdict for the plaintiff (respondent) in a claim for a motor truck and damages. The defendant appealed. During the appeal the defendant argued that a certain agreement had been wrongly admitted in evidence because no witness to prove its execution was called. The Court of appeal agreed with this. but in considering this agreement held that it was not one requiring registration according to the Contract Act.

On the 25th of January, 1957 the Privy Council (Hammett C.J.) varied the judgment of the lower Court and gave the following judgment:

This is an appeal from the decision of the Supreme Court of Tonga dated 23rd April, 1956 whereby judgment was entered for the Respondent for the return of Motor Vehicle No. 162 or its value £450 together with £165 damages and costs assessed at £70/19/6.

The Respondents claim in the Court below was for:

1. The return of Motor Vehicle No. 162.
2. £800 damages for loss of use of the vehicle and for the wrongful detention thereof.

The learned trial Judge in his judgment stated that he accepted the evidence of the Respondent and rejected that of the Appellant save where it was corroborated. He saw the witnesses and heard them as they gave their testimony and he is in the best position to assess their credibility, and we see no reason for interfering with the view he took of their evidence.

The Respondent's evidence may be summarised briefly as follows:—

In July, 1953 one Huni brought Lorry Number 162 to his workshop to be repaired. After some discussion the Respondent agreed to buy the lorry from Huni for £450 and the lorry was left with Respondent to use to raise this money. The Respondent did £50 worth of work on the truck and paid £110 to Huni on account.

In May, 1954 the Appellant came with Huni to see the Respondent. After discussion it was agreed that the Appellant would buy the lorry from Huni instead of the Respondent and that the Appellant would repay £160 due to the Respondent and pay £340 to Huni.

In pursuance of this arrangement the lorry was handed to the Appellant to use and to earn the money with which to pay these sums. This case only concerns the sum of £160 due to the Respondent. These facts are not disputed by the Appellant.

It is the case for the Respondent that the Appellant has never paid him this £160 and has wrongfully kept the lorry from the Respondent thereby depriving him of the opportunity of earning money from it.

The Appellant on the other hand, whilst admitting that he did owe the Respondent the sum of £160, maintains that he has repaid £82 of it to the Respondent on account and now only owes him £78. His evidence that he had paid £82 was not accepted by the learned trial Judge and we see no reason for interfering with his findings of fact in this matter.

The decision of the learned trial Judge was based largely upon Registered Agreement No. 53 of 1954 between the Respondent and Huni. One of the grounds of appeal is that this agreement was not admissible in evidence because the attesting witness, M. Finau, although he gave evidence, did not give evidence to prove its execution as is required by the Evidence Act Cap. 9 Section 71. With this rather technical point we feel obliged somewhat reluctantly to agree after carefully perusing the record of evidence.

The Appellant did not however object to the evidence of the Respondent concerning this Agreement whereby the Respondent gave up his lien on lorry No. 162 and handed it over to the Appellant in consideration of the Appellant's promise to repay the Respondent the £160 due to him. In our view such an agreement was neither a contract for the sale of goods, nor one for goods to be supplied nor for money to be lent nor for services to be rendered. It was not therefore one of those contracts which require to be attested and registered under the provisions of the Contract Act Cap. 66.

In our opinion the Respondent was entitled to succeed in his claim against the Appellant to the extent of £160 but no more and to this extent therefore the Appellant is entitled to succeed in this appeal.

The judgment of the Court below is set aside and in lieu thereof judgment is entered for the Plaintiff Respondent for the sum of £160 with costs which we assess at £25, in addition to the Court fees.

The Defendant Appellant is entitled to the costs of this appeal which we assess at £5/5/0.