

VAI SEFO 'OLIE (Appellant, Defendant)

v.

SIONE VALU AND 11 OTHERS Respondents, Plaintiffs)

This case arose out of a dispute among members of a Women's Society. Money had been subscribed by the members of the Society for the purpose of building a Society house. Trouble arose over the site for the house. It was built on the land of the Appellant's husband. According to the Plaintiff's (respondents to the appeal) this was contrary to the wishes of the majority of the members and they asked that the Court order Vai Sefo 'Olie, the secretary of the Society with whom the moneys had been deposited, to return their contributions. The Court (Hunter J.) gave a verdict for the Plaintiffs (Respondents) for £166/18/0 -- the total of their contributions.

On the 25th January, 1957 the Privy Council (Hammett C.J.) set this verdict aside and delivered the following judgment :

This is an appeal from the decision of the Supreme Court of Tonga dated 7th January, 1955 whereby the Plaintiff Respondents were given judgment for £166/18/0 and costs assessed at £102 13/6.

In the Court below the Plaintiff Respondents claimed the return of monies amounting to £166/18/0 handed to the Defendant Respondent in 1951 and 1952 for the purpose of building a house for their Society and £50 damages.

Many of the facts in this case are not in dispute and they were held by the learned trial Judge to be as follows :—

The Parties to the action were all members of a Women's Society of which the founder or chairman was Sione Valu. No rules for the Society have yet been formally adopted.

In 1951 and 1952 the members of the Society collected and subscribed money towards the erection of a Society House. The Plaintiffs between them subscribed the sum of £166/18/0. Up to the 9th May, 1952 there was a general understanding that the Society House would be erected on or near the site of the old Tongan House that the Society then occupied.

On the 9th May, 1952 the Society held an inspection of the members work. That evening without any previous adequate notice the Defendant Appellant proposed that the new house for the Society should be erected on part of the land of her husband Sefo. It is quite clear that there was considerable confusion when this matter was raised since four ballots by show of hands were taken. The ballots were taken late at night without any adequate previous notice to the members of the Society.

There were present at the meeting a number of persons who were not members of the Society and some members of the Society were absent.

In the absence of any Society rules, we are of the opinion that proper regard should be paid to custom in determining the

issue of whether or not this was a properly constituted meeting of the Society. In our opinion the learned trial Judge was correct when he held that it was not a properly constituted meeting to decide upon any alteration of the previously understood site for the erection of the new Society House.

By the 9th May, 1952 the Defendant Appellant had, with the consent and approval of all the members of the Society purchased materials for the erection of the new Society House. There is no evidence to suggest that she had converted any of the Society funds to her own use. In fact the trial Court held that she had been strictly honest in her handling of the Society's money.

It had previously been agreed that on the following Monday the new house would be erected. This the Defendant Appellant with her friends proceeded to do. The one point of controversy is that she did so on her husband's land without being properly authorised to do so and in direct conflict with the wishes of all the Plaintiff Respondents who form a majority in the Society.

For the Appellant it is contended that since the claim is for return of the Respondents contributions it must fail, because at the time the action was commenced this money had with approval of the Respondents already been converted into building materials. The learned trial Judge considered but rejected this contention. He held that the Appellant was either a trustee of this money, or was liable to the Respondents for breach of contract, in the course of his very clear and concise judgment.

We have given the most careful consideration to this aspect of the case. With respect to the learned trial Judge we regret we are however unable to agree with him. In our opinion the house erected by the Appellant was erected by her with materials purchased, with the authority of the Society, with money entrusted to her for that purpose. She erected the house on behalf of and for the use of the Society.

She acknowledges that it is the property of the Society. In our opinion it is the property of the Society.

We are fortified in this belief by the fact that Counsel for the Respondents in the Court below asked for leave to amend the summons by adding an alternative claim that the house be moved to the correct site.

For these reasons we regret we are unable to support the judgment given in favour of the Plaintiff Respondents for the return of their contributions and to this extent the appeal must be allowed.

In our opinion the house erected by the Appellant is the property of the Society. It is now for the members of the Society to convene a properly constituted meeting in accordance with local custom to decide where it shall be sited.

The only evidence before us of the cost of removing the house is that of Aisea Langi, the Carpenter, who stated that the cost would be £25. In our opinion the Appellant is liable in damages for the cost of removing the Society's House to the site to be decided upon by a properly convened and constituted meeting of the members of the Society. Having regard to this cost, and of the depreciation which will result from this removal we consider that the sum of £50 damages claimed is not excessive.

We therefore set aside the judgment of the Court below and instead enter judgment for the Plaintiff Respondents on behalf of the Society for the sum of £50 damages. We wish to record that we do so on the understanding that the present house is the property of the Society and may be moved to whichever site may be decided upon.

We have considered the question of costs. In our view the costs awarded in the trial Court, namely £102/13/6 are somewhat on the high side, but having regard to the expenses of the 12 Plaintiffs and their witnesses in travelling to and from the Court for the 20 days of the hearing we do not intend to vary them. In this Court however the Appellant has been partially successful and we feel that both sides should therefore bear their own costs of the appeal.

There will be judgment for the Plaintiff Respondents for £50 with costs in the Court below assessed at £102/13/6 and no order for costs on the appeal.