

Taelangi v Fukofuka & Others

Privy Council

Appeal No 9/1990

19, 30 March 1990

Appeal – grounds for appeal – omission of court to deal with relevant issue

¹⁰ *Procedure – pleading – effect*

The appellant brought proceedings in the Supreme Court for damages in respect of wrongful dismissal by the first respondent from his employment with the third respondent.

The trial judge held at the conclusion of the plaintiff's case that his claim must be dismissed because he was employed only by the day, and so could be dismissed at any time. The respondents however in their statement of defence had accepted that the appellant's employment was for a fixed term, and alleged that he had been dismissed for unsatisfactory performance.

HELD:

The Supreme Court had failed to deal with the issue that was raised by the pleadings and the decision should be reversed with a direction that the hearing of the action continue.

³⁰ Counsel for the appellant : Mr S. F. Hoha
Counsel for the respondent : Mrs F. Vaihu

Judgment of the Privy Council

In this case the Appellant, as Plaintiff in the Court below, alleged that he had been wrongfully dismissed from his employment with the Respondent company and sought judgment for 30 weeks wages plus overtime. It appears that the Respondent Fukofuka was employed as the employing agency for the company and Yokoyama the company's project manager.

⁴⁰ At the conclusion of the Plaintiff's case Counsel for the Defendant submitted that there was no case to answer and Martin J accepted that submission and dismissed the claim with costs. This is an appeal against the decision.

According to the Appellant's evidence he was employed as a truck driver on the Respondent company's foreshore project at Nuku'alofa, and commenced work sometime in September 1988. He gave up another job to take this employment. He said that he was engaged by the First Respondent Fukofuka who told him that the term of his employment would be 13 months, or until the foreshore work at Sopa and Touliki was completed. According to the Appellant the further terms of his employment were that he was not to leave the job until it was finished, or take

days off; work satisfactorily and be careful in the use of his vehicle, and must not steal, fight or swear.

50 The Sopa section of the work was completed in early March 1989 and the Touliki section was to commence on the 6th April. However, on the 1st April, when the drivers assembled, the Appellant found that he had been dismissed and Fukofuka was unable to tell him why.

In their Statement of Defence the Respondents admitted that the Appellant had been engaged for the expected duration of the foreshore work but claimed that he had been dismissed for failing to comply with the terms of his employment in that he had not carried out his duties "with due care and diligence" and in a "proper and workmanlike manner". It was never alleged that the nature of the employment
60 was such that the Appellant could be dismissed at any time without notice.

The Learned Trial Judge found it unnecessary to determine whether the Appellant's dismissal was justified because of unsatisfactory work for he concluded that the Appellant was simply a worker paid by the day who could be dismissed at any time, which was inconsistent with an agreement for a fixed term.

However, the Respondents by their statement of Defence accepted that the Appellant's employment was for a fixed term, namely the expected duration of the contract, and the whole thrust of its defence was that the Appellant was dismissed because he was an unsatisfactory employee, an allegation which was never put to
70 him before his dismissal, and which up to this point has never been resolved by the Court.

We therefore allow the appeal, set aside the judgment against the Appellant and direct that the hearing of the action continue.

The Appellant is awarded costs on this appeal to be taxed if not agreed.