

IN THE SUPREME COURT OF WESTERN SAMOAHELD AT APIAC.P. 244/93BETWEEN: FRED PETERSEN and LUCIA
PETERSEN of Apia, FishermanPlaintiffsA N D: TUIGAMALA SUA FEUU of Vailoa,
Faleata, Director and WEST END
CONTRACTOR also known as
WEST END DAIRY LTD., an incor-
porated company having its
registered office at ApiaDefendantsCounsel: T. Malifa for plaintiffs
C.J. Nelson for defendantsADDENDUM

As indicated in my judgment delivered on 6 May 1994, an addendum will be added on the quantum of damages in this case when the parties have adduced evidence on that issue.

In dealing with that issue, it must be made clear that the claim for damages in this case is restricted to the value of the plaintiff's alia boat which was converted by the defendant. The plaintiff's evidence was that when the boat was gifted to him by his cousins, the previous owners, it was very old. He says it was a wreck. There is no evidence as to the value of the boat in that condition, but the plaintiff did make repairs worth \$4,000 to the boat. That was in 1989. According to the evidence of the boatbuilder who used to do repairs to the plaintiff's boat, the last time he did repairs to the

boat was towards the end of 1992; and his estimated value of the aluminium hull alone of the boat at that time was \$6,800.

The evidence by the plaintiff also shows that at the time his boat was taken by the defendant's employees, it was almost totally submerged in seawater on the shoreline in front of Margaritas Nite Club at Matautu-tai having been lodged there on rocks and debris by strong winds and waves from the storm Lina which struck on Saturday night, 30 January 1993. The plaintiff also says that there was some damage to the shelter and bow of his boat but otherwise the boat was intact.

The evidence for the defendant on this issue came from the owner of a boat building operation which included the building of alia boats. His estimated value of the plaintiff's boat in the condition it was in on the shoreline in front of the Margaritas Nite Club was \$3,000 to \$4,000. He based that estimated value on the value of a similar but undamaged alia boat, which he says was sitting near the seawall in front of the HRPP building at Mulinuu, and which they had been trying to sell for some time at \$5,000.

The evidence is not without some difficulty, not the least because of its conflicting nature. However if the maxim restitutio in integrum is to be applied as a general principle which would mean that such monetary compensation should be awarded as will put the plaintiff into the position he would have been in if the tort had not been committed, then that will facilitate the assessment of the quantum of damages in this case. Some arbitrary element will, however, still be inevitable because of the nature of the evidence on the present issue.

In the first place the plaintiff spent \$4,000 on repairs to the boat when it was first gifted to him as an old boat and wreck. This wreck was a twin aluminium hull alia boat. There is no evidence as to its value in that condition but I am satisfied that it was not totally valueless; it must have had some value given that it was aluminium and was subsequently used as a boat again by the plaintiff for about three(3) years until destroyed by the defendant. I will assess that value at \$1,200.

I have also considered the question of depreciation for the use of the boat by the plaintiff between 1989 and when it was washed away by the storm on 30 January 1993. The evidence as to the use of the boat is at best obscure so that it is difficult to be absolutely confident as to the exact amount to be allowed for depreciation. However there were echoes from the evidence that the boat was not lying idle but used by the plaintiff. Counterbalancing the question of depreciation is the evidence by the boatbuilder who used to do repairs to the plaintiff's boat that the last time he did repairs to the boat was towards the end of 1992. In those circumstances I will allow \$300 for depreciation up to the time the boat was washed away by the storm. As for the damage to the shelter and the bow and the general condition the boat was in at the shoreline I will allow \$500 in reduction of damages.

Now there is no evidence whether the plaintiff wants to have the remains of his boat returned to him. I assumed he does not; but if the contrary is the case, then counsel for the plaintiff is to advise the Court and there will be some deduction from the award of damages for the scrap value of the remains of the boat to be returned to the plaintiff.

In all then, judgment is given for the plaintiff in the sum of \$4,400 plus costs to be fixed by the Registrar.

J. F. M. G. G. G.

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CHIEF JUSTICE

15.9.1994