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(502)

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

BETWEEN: DRAKE & CO. a  
partnership practising  
as Solicitor, Barristers  
and Notaries at Level 2,  
Chandra House, Apia

Plaintiff

A N D: TOETA TOAFA  
AFEMATA  
Commissioner of  
Inland Revenue

Defendant

Counsel: R Drake for first plaintiff  
T K Enari for second plaintiff  
The Attorney, B P Heather, for defendant

Hearing: 14 July 1997

Decision: 17 July 1997

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DECISION OF SAPOLU, CJ

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This is an interim decision as there are issues I would like counsel to make further submissions on. I will refer to those issues later in this decision.

Now while I agree with the Attorney-General that an injunction may not be granted against the Government in this case because of the provisions of section 12 (1) of the Government Proceedings Act 1974, I have also decided to accept the

submission by counsel for the first plaintiff that the present defendant is not the "Government" so that section 12 (1) of the Act does not apply.

The expression "Government" is defined in section 2 (1) of the Act to mean "the Government of the Independent State of Samoa", and I do not think anyone would accept that the defendant as Commissioner of Inland Revenue is the Government of the Independent State of Samoa. If one is then to turn to the definition of the expression "servant" in the same provision of the Act, it says " 'servant' in relation to the Government means any servant of the Government and includes a "Minister of the Government". That must mean that a Minister is a servant of the Government which is defined as the Government of the Independent State of Samoa. If one is, therefore, to treat the Commissioner of Inland Revenue as meaning the same thing as the Government, then it follows that a Minister who is a servant of the Government would necessarily also be a servant of the Commissioner of Inland Revenue. I also do not think that anyone would accept that a Minister should be a servant of the Commissioner of Inland Revenue. And when one considers that Article 111 of the Constitution defines the expression "Minister" to include the Prime Minister, I am left in no doubt that the Commissioner of Inland Revenue cannot mean the same thing as "Government". I am therefore in agreement with counsel for the first plaintiff that the defendant as Commissioner of Inland Revenue is not the "Government" and section 12(1) of the Government Proceedings Act 1974 does not apply.

That still leaves open the question whether section 12(2) of the Act applies.

That section provides:

“The Court shall not in any civil proceedings grant any injunction or  
“make any order against an officer of the Government if the effect of  
“granting the injunction or making the order would be to give any  
“relief against the Government which could not have been obtained  
“in proceedings against the Government”

As that particular provision was not addressed by counsel, I have decided not to make any decision on its applicability to this case without first allowing counsel the opportunity to make submissions on it.

Counsel may wish to consider in preparing their submissions whether the proceedings in this case fall within the meaning of the expression “civil proceedings” as defined in section 2 of the Act; they may also wish to consider whether the Commissioner of Inland Revenue is an “officer of the Government”; and whether the effect of granting an injunction against the Commissioner in this case would be to give relief against the Government in terms of section 12(2).

Those questions and perhaps others require submissions from counsel regarding the applicability or otherwise of section 12(2) to this case.

I would also like counsel to make submissions on the question whether the present proceedings constitute “civil proceedings *under this Act*”. The reason for this is that under section 9(1) of the Act it is only “civil proceedings *under this Act*” which must be instituted against the Attorney-General as defendant.

I will adjourn this matter to 12 noon on 24 July 1997 to hear further submissions from counsel before I give my final judgment on the preliminary issues that have been raised.

*T F M Sapshe*  
CHIEF JUSTICE