

IN THE SUPREME COURT OF SAMOA

HELD AT APIA

MISC. 23086

BETWEEN: THE BOARD OF TRUSTEES
OF THE EXECUTIVE
BOARD OF THE GENERAL
COUNCIL OF THE GOOD
SAMARITAN CHURCH OF
JESUS CHRIST INCORPO-
RATED

Appellant

A N D: OLINDA WOODROFFE,
GLORIA HANIF, ROGER
MOTU, DEBBIE FUIMAONO,
CHRISTINE (MEREDITH)
MOTU, LILIENI MOTU,
SUSANA MOTU as the descen-
dants of OLIVA MOTU

First Respondent

A N D: THE EXECUTOR/ADMINIS-
TRATOR OF THE ESTATE
OF MICHAEL LOLESI
MOTU, Deceased

Second Respondent

Counsel: A Pereira for appellant
O Woodroffe for first respondent
Second Respondent, no appearance

Hearing: 15 May 1998

Ruling: 12 June 1998

RULING OF SAPOLU, CJ

This is a motion for leave to appeal a decision of this Court on 12 February 1998 and for a stay of execution of that decision.

Under section 51 of the Judicature Ordinance 1961, an appeal as of right lies in a civil case when the matter in dispute amounts to or is of the value of \$400 or upwards. The value of the buildings involved in this case are well over \$400. Thus, the appellant is entitled to appeal as of right. In terms of section 54 of the Judicature Ordinance 1961, this Court shall also grant leave to appeal in every case where the appellant is entitled to appeal as of right subject to any condition or conditions imposed for security of costs.

There was dispute whether the motion for leave to appeal was filed within time. I am satisfied that it was. Rule 18 of the Court of Appeal Rules 1961 provides :

“No appeal to the Court of Appeal from any decision of the Court shall be brought after the expiration of 30 days from the time when the appellant first had notice thereof unless the Supreme Court or the Court of Appeal shall enlarge the time for giving notice of appeal”.

The circumstances of this case satisfy me that in terms of rule 18 the notice for leave to appeal was filed within time.

As for the motion to stay execution of this Court's decision of 12 February 1998, I must say I am not impressed with the merits of the appeal. It has been clear all along in this case, and again in the motion for leave to appeal, that the appellant is relying on the alleged consent of the late Michael Motu that the appellant built its

church on the land belonging to his late mother's estate. But Michael Motu was only one of the many beneficiaries of his mother's estate. His brothers and sisters are also beneficiaries of their mother's estate and they did not agree to the appellant building their church on the aforesaid land. However, after hearing both counsel, I have, with some reluctance, decided to grant a stay of the Court's decision of 12 February 1998 until further order of this Court or of the Court of Appeal because of the substantial value of the buildings on the disputed land.

There is one other matter. The appellant has joined in these proceedings the executor/administrator of the estate of Michael Moth, deceased, as second respondent. Whoever is that person, he or she was not a party to the original proceedings. There has been no proper motion to join that person as a party to present proceedings. I would therefore accept the objection from counsel for the first respondent and remove the second respondent from these proceedings.

Counsel for the appellant indicated in his written memorandum that the appellant is prepared to deposit the amount of \$9,800 with the Registrar by way of damages depending on how the appeal turns out. Counsel, especially counsel for the first respondent, may file further submissions on that issue if they wish to do so.

I now make the following orders :

- (a) Subject to (c) below, leave to appeal is granted to the appellant.
- (b) Subject to (c) below, this Court's decision of 12 February 1998 is stayed until further order of this Court or of the Court of Appeal.

(c) The appellant to pay to the Registrar within 7 days the sum of \$200 for security for costs.

(d) The order granting leave to appeal shall not be sealed until security for costs has been paid.

Counsel will be advised by the Registrar as to the hearing date of the appeal.

Tim Sapsa
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CHIEF JUSTICE