

IN THE SUPREME COURT OF SAMOA

HELD AT MULINUU

BETWEEN: **SALA FILI LAUANO and**
others, matai of Leauva'a for
and on behalf of **ALII MA**
FAIPULE OF LEAUVA'A

Applicants

AND: **MAULOLO TAVITA**
AMOS and **others**, matai of
Afega for and on behalf of **ALII**
MA FAIPULE OF AFEGA

Respondents

Court: Honourable Chief Justice Perese

Counsel: Sala J. Stowers for the Applicants
T. Toailoa and Mauga P. Chang for the Respondents
Letoafaiga D.J. Fong and V. T. Leilua for Attorney General
Leiataualesa J Brunt for Ututaaloga Charlie Ulia and Leu Ken Ulia – (Mr Brunt granted
leave to withdraw)

Date: 19 December 2024

Decision: 23 December 2024

RESERVED JUDGMENT OF THE CHIEF JUSTICE
THE HONOURABLE SATIU LEATIGAGAEONO SIMATIVA PERESE

[1] The backdrop of this case arises from a historic dispute over land. The facts are as set out in this court’s decision dated 11 October 2024: *Lauano & Ors v President of the Land and Titles Court & Ors*¹ (“the substantive decision”), and I adopt the findings of fact, as if they were set out in this decision. In this interlocutory hearing, there were two preliminary matters:

- (a) A motion by the Respondents for my recusal; and
- (b) An 11th hour application by the Applicants to join Ututaaloga Charlie Ulia and Leu Ken Ulia.

Motion for Recusal

[2] The Respondents filed a motion seeking that I be recused dated 11 December 2024. In other words the Respondents say that I should not hear the Applicants’ motion seeking orders for contempt of court. The Respondents motion for recusal was filed after the motion for contempt was set down on 5 December 2024, to be heard on 19 December 2024 at midday. No reference to the motion for recusal was made at the 5 December 2024 mention.

[3] The recusal pleads:

- (a) There is a conflict of interest with apparent bias or a perception of bias. This is because I, together with Justices Tuatagaloa and Sir William Young, in the substantive decision, found that the Respondents had breached the interim injunction granted on 4 April 2024;
- (b) That I have not delivered a decision on the earlier allegations of contempt of the interim injunction against the Respondents;
- (c) That therefore the 11 October 2024 decision is an indication of bias against the Respondents as that decision *states conclusively that a breach has occurred*; and
- (d) Therefore it would not be in the interests of justice for me to hear this application for contempt of court.

[4] The application was supported by an affidavit of Maulolo Tavita Uelese who claims that I have pre-determined the matter in relation to the first contempt proceeding, and have demonstrated bias.

¹ *Lauano & Ors v President of the Land and Titles Court & Ors* [2024] WSSC 97.

[5] Ms Chang in her written submissions relied on *Land and Titles Court v Lautogia*² and *Reupena v Senara*.³ These authorities refer to the test for establishing apparent bias. Counsel also referred to the Supreme Court decision of *Tu'isila v Attorney General*,⁴ which appears to refer to and rely on *Apia Construction & Engineering Ltd v National Provident Fund*,⁵ a Court of Appeal decision that cited with approval a New Zealand Court of Appeal decision in *Muir v Commissioner of Inland Revenue*.⁶ In relation to the *Muir* decision, Ms Chang focused this court on paragraph 62, which refers to a two stage inquiry for apparent bias, which according to Ms Chang His Honour Nelson J in *Tu'isila* suggested had “*finally put the conflicting authorities to rest.*”

[6] Ms Toailoa in her oral submissions said the substantive decision of this court disqualifies me, or either of the other judges who sat on the substantive decision, from hearing the contempt issue involving her clients. I understand the argument to be that I and the other Judges are apparently biased or perceived to be biased because we have already found against her clients in the substantive decision – that they breached the interim injunction. The argument fails to take into account the relevant legal principles:⁷

“...It is well established that a basis for recusal does not arise merely because a judge has ruled against a party in the past, including if a previous decision was adverse to that party.”

[7] The issue was also discussed in *Muir* the authority Ms Chang relied on. However, Ms Chang did not refer to the following paragraph in *Muir*. She should have done so. As an officer of the court, Ms Chang has a duty to point out arguments that are adverse to her clients’ case, especially when those arguments arise in an authority that is relied on. But she did not. Had she done so, she would have realised the basis of the application for recusal was doomed to fail. The Court in *Muir* at paragraph 101 observed:

“We know of no common law jurisdiction which accepts that a Judge’s adverse rulings are disqualifying per se. The problem is rather whether an aggrieved litigant should be permitted to seek recusal on the basis of rulings that are either so patently erroneous or so disproportionate as to suggest that something untoward must have motivated them.”⁸

[8] The Respondents did not challenge the findings made in the substantive decision as patently erroneous or being motivated by something untoward. Perhaps the Respondents might raise them at

² *Land and Titles Court v Lautogia* [2018] WSCA 4.

³ *Reupena v Senara* [2017] WSCA 1.

⁴ *Tu'isila v Attorney General* [2023] WSSC 23.

⁵ *Apia Construction & Engineering Ltd v National Provident Fund* [2017] WSCA 6.

⁶ *Muir v Commissioner of Inland Revenue* [2007] NZCA 334.

⁷ *Mailley v Shaw* [2021] NZHC 841 at [8].

⁸ *Muir v Commissioner of Inland Revenue*, at [101].

the appeal of the substantive decision, but they have not done so in their application for recusal before the Court. It follows the Respondents motion for recusal is misconceived and must be dismissed.

[9] Costs are appropriate. The application for recusal had no merit. Counsel are officers of this court and obliged to not bring vexatious applications in abuse of the court's process. I am minded to award costs against Ms Toailoa and Ms Chang personally and give leave to Ms Toailoa and Ms Chang to be heard.

Motion for Joinder

[10] Ms Stowers brought a motion to join Ututaaloga Charlie Ulia and Leu Ken Ulia.

[11] I summarily dismissed the motion:

- (a) At the 5 December 2024 mention, Ms Stowers urged the court to give an urgent fixture to the hearing of the contempt of court application, filed just the day before on 4 December 2024. Its motion for contempt of court orders replaced an earlier, but a wholly misconceived without notice motion seeking attachment orders. The motion for an attachment order was made on 7 November 2024.
- (b) At the 5 December 2024 mention of the Applicants' motion for orders of contempt of court, a hearing date was set for 19 December 2024, by consent. The two weeks gave the Respondents time to respond to the Applicants motion, and it took into account Ms Toailoa's involvement in a District Court matter with overseas counsel.
- (c) Ms Stowers indicated at the mention she was considering making an application to join Ututaaloga Charlie Ulia and Leu Ken Ulia. I said to her that if she did that, it would mean that the hearing of the motion for contempt on 19 December 2024 could not proceed as parties joined would need time to consider their positions. Ms Toailoa seemed to think that this meant that the mere filing of the motion for joinder meant the substantive hearing scheduled for the 19th December 2024 was abandoned. She was wrong. Once a matter is allocated a fixture, the fixture remains on foot until the Court makes an order abandoning or adjourning the fixture to the next mention date. No such order had been made, and Ms Toailoa took liberties she was not entitled to take.
- (d) When parties file late applications for joinder before the hearing, it is for the Judge to decide whether the hearing can proceed whilst maintaining parties Constitutional rights to be heard. It was not necessary for the two proposed parties be joined or that their presence necessary to enable the Court to effectually and completely adjudicate upon and settle the questions of fact involved in the contempt proceeding.

- (e) Further, the Applicant had had long enough to file the application for joinder – as early as 7 November 2024 when it filed its misconceived application for attachment orders. To be fair on Ms Toailoa, had I granted the motion for joinder – or given the proposed joinder parties the opportunity to be heard, then I would have adjourned the hearing to a mentions date. She is correct on that account. But, I had not granted the application, it had not even been made at the time of the mention on 5 December 2024. In the end, I determined that there was no need to hear from the proposed third parties as the motion for joinder was premature and may prove to be misconceived.

[12] The motion for joinder is dismissed. But I do not award costs for the reasons set out in the next section, where I am satisfied that Ututaaloga Charlie Ulia has committed a contempt of court.

MOTION FOR CONTEMPT OF COURT

[13] The motion for orders for contempt of court claims the Respondents and its agents have disobeyed and continue to disobey the orders of the Court in *Lauano & Ors v President of the Land and Titles Court & Ors*.⁹ The orders of the Court claimed to have been disobeyed are set out at paragraph [80] of the substantive decision:

“The orders of the Court are as follows:

- (a) We stay execution of the judgments of the Land and Titles Court in 2018, the Land and Titles High Court of 24 March 2023 and the Land and Titles First Court of 8 March 2024. This is pending the establishment of the Land and Titles Court of Appeal and Review and its determination of Leauva’a’s appeal.
- (b) The second Respondents are enjoined from taking any steps to evict those occupying the land in issue in these proceedings (meaning the intermediate land and lots 29 and 30 referred to in [10]); such order to subsist unless or until eviction orders are obtained in the District Court or Supreme Court.
- (c) ...
- (d) ...
- (e) ...”

[14] The Applicants submit the meaning of the orders are clear and unambiguous, and coercive in that they require the Respondents to not take any steps to evict those occupying the land in issue.

⁹ *Lauano & Ors v President of the Land and Titles Court & Ors* [2024] WSSC 97.

The legal principles

[15] As the Constitution of the Independent State of Samoa provides, the Supreme Court, is a superior court of record and has the power to commit for contempt. The fact of the dual legal system in our jurisdiction does not change that fact. This motion is not about the land dispute itself, it is about the rule of law and whether the orders made in the substantive decision have been breached.

[16] The Court in *Fa'atuatua i Le Atua ua Tasi (FAST) Incorporated v Malielegaoi*¹⁰ discussed the purpose of the law of contempt as follows at paragraph [25]:

“The purpose of the law of contempt is to preserve public confidence in an efficient and impartial system of justice and to publicly reject challenges to the fundamental supremacy of the law. Any act done, or writing published, which is calculated to bring a Court or a Judge into contempt, or to lower a Judge's authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court.”

[17] Their Honours, Justices Fisher and Asher, discussed the meaning of the concept of contempt of court by obstruction:

“The law of contempt by obstruction

It is a contempt of Court to fail to carry out an act required by a Court order within the time specified or to fail to comply with an order requiring a person to abstain from carrying out a specified act. As between the defaulting party and the state there is a penal or disciplinary jurisdiction to be exercised by the Court in the public interest.

It is also a contempt to knowingly help or encourage some other party to disobey a coercive order directed to that other party. That is sometimes referred to as “intentionally interfering with the administration of justice” or more usefully “aiding or abetting a contempt”. To be guilty of aiding or abetting a contempt, a Respondent must know that a coercive order has been made against some other person and must help or encourage that other person to disobey it.”¹¹

[18] Their Honours then provided these helpful guidelines:

- a. The refusal to comply with a declaratory order does not amount to contempt; there must be a coercive order. A coercive order is one which orders an identified individual or entity to carry out, or abstain from carrying out, a specified act.

¹⁰ *Fa'atuatua i Le Atua ua tasi (FAST) Incorporated v Malielegaoi* [2022] WSSC 7.

¹¹ *ibid.*, at [32]-[33].

Contempt by obstruction can occur only where a person has disobeyed a coercive order;¹²

- b. A coercive order can only be made against a party to the proceedings in which the order is made. Natural justice demands that a person be joined as a party so they can be heard in opposition to any coercive order proposed, although the joinder for that purpose might be made late in the proceedings;¹³
- c. Thirdly, a person cannot be guilty of aiding and abetting a contempt if no coercive order had been made against some party to the proceedings in question;¹⁴
- d. A person cannot be guilty of aiding and abetting a contempt if no coercive order had been made against some party to the proceedings in question. the requirement that there be a coercive order has important consequences where the Government is a party to litigation. As in other countries, the Courts of Samoa can make declarations which the Government must follow but cannot make coercive orders against the Government itself. The Courts can, however, make coercive orders against identified individuals acting in their capacity, or purported capacity, as public office-holders so long as they are parties to the proceedings. Contempt orders can be made against the public office which the individual holds or, in certain circumstances, against the office-holder personally. A finding of contempt against an officeholder personally requires proof of not only knowledge of the order and failure to comply, but also an intention to interfere with or impede the administration of justice;¹⁵
- e. The power to punish for civil contempt is a power to be exercised with great care. The Court will punish disobedience to a Court order only if satisfied that the terms of the order or undertaking were clear and unambiguous, that the defendant had proper notice of its terms, and that a breach of the order has been proved beyond reasonable doubt;¹⁶
- f. Where the order said to have been breached was a mandatory one which required an act to be done, a time must have been specified within which the act was to be done. Only when the time limit has expired can it be said that a contempt has been committed.¹⁷

[19] Her Honour District Court Judge Alalatoa Rosella Papalii extensively reviewed the principles of law relating to contempt of court in *Police v Wilson*.¹⁸ At paragraphs [21] and [22] Her Honour observes:

¹² *ibid.*, at [34].

¹³ *ibid.*, at [35].

¹⁴ *ibid.*, at [36].

¹⁵ *ibid.*, at [37].

¹⁶ *ibid.*, at [38].

¹⁷ *ibid.*, at [39].

¹⁸ *Police v Wilson* [2017] WSDC 27.

“21. Contempt of Court is originally a common law offence. Historically it was classified as either criminal or civil. McLachlin J in the Canadian Supreme Court matter of *United Nurses of Alberta v Alberta* explained the distinction as follows:

“A person who simply breaches a court order, for example by failing to abide by visiting hours stipulated in a child custody order, is viewed as having committed civil contempt. However, when the element of public defiance of the court’s process in a way calculated to lessen societal respect for the courts is added to the breach, it becomes criminal.”

22. According to Arlidge, Eady and Smith in their book *Contempt*:

“...A criminal contempt is an act which so threatens the administration of justice that it requires punishment from the public’s point of view; whereas, by contrast, a civil contempt involves disobedience of a court order or undertaking by a person involved in litigation.”

[20] Ultimately, Judge Papalii concluded there was no real distinction between a civil and criminal contempt. That position seems to have been affirmed by the more recent authority of this court in *Fa'atuatua i Le Atua ua tasi (FAST) Incorporated v Malielegaoi* at [18]e above, where the standard of proof for civil contempt is beyond a reasonable doubt. I adopt the approach in this matter that the Applicants are required to meet the standard of beyond reasonable doubt. This is a case that involves the rule of law and the administration of justice. These are matters of high public interest, and a breach should not be judged by the lower standard of the balance of probabilities, but on the higher and more elusive standard of proof beyond a reasonable doubt.

The Applicants’ evidence

[21] The Applicants’ relied on the evidence of 9 witnesses, with one providing a supplementary affidavit. The Respondents elected not to call any evidence. Many of the affidavits exhibited photographs of the alleged damage, and one affidavit exhibited a memory stick containing a video of an interview given by Maulolo Tavita Amosa. The affidavits were read out in court and the video interview played.

[22] The witnesses evidence:

Exhibit A1 - Sala Komitiano

[23] Sala Komitiano is a 63 year old Matai of Leauvaa. Sala filed a one page affidavit, excepting the jurat (the swearing and signing section), dated 29 November 2024.

[24] On Thursday 28 November 2024 around midday, he saw about 4 cars coming from the seaside of the main road and turned around near his house. The vehicles were a white Land Cruiser with tinted windows, without a licence plate. In it were two men who looked like teenagers standing at the back. The second vehicle was a black double cab truck with about two men inside with their heads covered except for their eyes; another car was grey car with two people inside, their heads were covered as well except for their eyes. There were other cars as well. These cars were followed by a digger machine and several men walking behind those cars with knives and he heard them calling out to start their work.

[25] The cars then turned and parked near his house. The digger machine started to destroy their garden next to the road and their fence. They continued towards the seaside area and destroyed fences and gardens along both sides of the road.

[26] His daughter started video recording and taking photographs of what was going on. Someone was overhead calling out to stop recording, and this command was followed by a gunshot from behind the white Land Cruiser.

[27] Sala Komitiano says the people who were involved represented Afega. He recognised the white Land Cruiser as belonging to Ututaaloga Charlie Ulia and driven by his son Ken Ulia.

[28] As he headed back to the coast, he overhead more gunshots. He came upon a land clearance in front of the Catholic Church, which is not far from his house. There he saw Maulolo Tavita inside the Afega fale next to the Catholic Church. There were some other men or Matai from Afega as well. Their men were walking around with knives clearing the land with the machine.

[29] Sala Komitiano reported the matter to the Police.

Exhibit A2 - Sala Beauty Polesi

[30] Sala Polesi is a 46 year old Businesswoman and Matai of Leauva'a. Sala Polesi filed a one page affidavit, excepting the jurat, plus one page of photos, dated 6 December 2024.

[31] On 28 November 2024, in the afternoon, she was at home with her children and she overheard gunshots. She did not know where the gunshots came from, but when she went to the front of her house she saw a digger machine on top of the hill, and she saw the machine damaging the front of other houses. She saw people from Afega standing by her fence. She spoke to them. Whilst she was outside and with the men from Afega she again heard more gun shots from the direction of the top of the hill where she could see the machine and the white Land Cruiser which was driven by Ken Ulia. One of the boys standing at the back of a Land Cruiser told her not to interfere and leave because they would damage

the fence, presumably her fence. Sala Pouesi left to avoid further threats to her. She feels saddened by their treatment and feels unsafe, especially for her children.

[32] Sala Pouesi went to the Poice but was told it would take a long time to complete an investigation and she decided not to lay a complaint.

Exhibit A3 - Savalia Seelua

[33] Savalia Seelua is a 48 year old of Leauvaa, residing at Tasi Va'apu'u. Savalia swore a one page affidavit, excepting the jurat, dated 6 December 2024.

[34] On Friday 8 November 2024 she was at home with her family. They were weeding their gardens in front of their house when she saw some men from Afega led by Ken Ulia walking over with machetes and cutting down everything in their path next to both sides of the road. She also saw Ututaaloga Charlie Ulia and Maulolo Tavita accompanying the men doing the slashing. Another of the group she saw was Fata Voi, the Taitai Aumaga or leader of the untitled men of Afega. A verbal altercation took place, which included threats of physical violence being made to Savalia Seelua by one of the men. This man then damaged a niece's house by slashing the walls with his knife. A physical confrontation took place, which was averted by Fata Voi's intervention that led the men elsewhere to do the land clearing.

Exhibit A4 - Molimau Mikaele

[35] Molimau Mikaele is a 50 year old of Leauvaa, living on the land in dispute. Molimau swore a one page affidavit, excepting the jurat, dated 6 December 2024.

[36] On Thursday 28 November 2024, Molimau was at home in the afternoon when she saw a digger machine damaging Sala Komitiano's garden and fence, and the digger was moving towards her road frontage.

[37] Molimau heard gunshots in front of Sala's house being discharged by two young boys standing on the back of Ken Ulia's white Land Cruiser truck.

[38] Further land clearance by the digger was carried out to Tuala Sosefina's house which damaged their fence and plantation.

[39] A week earlier, people from Afega came on to her land and damaged her plantation of vegetables. The pumpkins were ready to be harvested and they took them all leaving them with nothing to survive.

Exhibit A5 - Etevisē Mikaele

[40] Etevisē Mikaele is a 43 year old of Leauvaa who resides on land in dispute. Etevisē swore a one page affidavit dated 6 December 2024.

[41] On Friday 15 November 2024 people from Afega came and slashed and destroyed her family's vegetable garden, including taking the harvest of pumpkins relied on for survival.

Exhibit A6 - Tanoai Alisi Polu

[42] Tanoai Alisi is a 63 year old Matai of Leauva'a. Tanoai swore a one page affidavit, excepting the jurat, plus photo exhibits, dated 7 November 2024.

[43] Tanoai Alisi confirms the land clearances have again commenced by the village of Afega using machetes and a bulldozer that has damaged his tobacco plantation and vegetable garden. It has also damaged his water pipes.

[44] Although not aware of their names, she says men have been uttering threats towards her and her children.

Exhibit A7 - Lauano Akenese Aualiitia

[45] Lauano Akenese is a 52 year old Matai of Leauvaa. Lauano filed a one page affidavit, excepting the jurat and photos, dated 7 November 2024.

[46] Lauano Akenese says the land clearance at Tanoai Alisi's land occurred soon after what looked like a meeting of representatives of the village of Afega, attended by Ututaaloga Charlie Ulia and other men both young and old from Afega. The meeting was held on Wednesday 6 November 2024 in their *fale*, located in the disputed land area. It was the first time Lauano Akenese had seen the villagers of Afega at this *fale* since July 2024.

[47] The land clearance included uttering of threatening words.

Exhibit A8 - Lauano Akenese Auali'itia (supplementary)

[48] Lauano Akenese filed a supplementary 2 page affidavit and photos, dated 26 November 2024. This affidavit confirms that two *fale Samoa* have been built over land occupied by Filipino Siva. The *fale* are almost complete. Lauano Akenese has seen Ututaaloga Charlie Ulia and Ken Ulia on site, looking as if they were overseeing the construction.

Exhibit A9 - Faapiano Vena Lemoe

[49] Faapiano Vena Lemoe is a 28 year old of Leauvaa residing on the land in dispute. Faapiano swore a two page affidavit, dated 9 December 2024.

[50] About mid-morning on 28 November 2024, he was at home with his wife and younger brother. After their morning tea he walked to the front of his house and saw a group of cars which he said he knew belonged to people from Afega. Ken Ulia's white Land Cruiser was part of this group with two youth standing at the back. The vehicles and a digger went up the hill damaging everything in front of Sala Komitiano's house. He also overheard gunshots, about 5 times, and it sounded to him like a machine gun.

Exhibit A10 - Sala Fili Lauano

[51] Sala Fili is a 77 year old Matai of Leauvaa, the first named Applicant in this matter. His one page affidavit is dated 9 December 2024, and exhibited a memory stick.

[52] Sala Fili watched TV1 news on 2 December 2024 where Maulolo Tavita was interviewed about the ongoing litigation. He claimed that during the TV1 news item Maulolo Tavita admitted to non-compliance by the Respondents of the Supreme Court orders.

[53] A copy of the news report referred to a video that was shown on social media the week before concerning the use of a yellow front end loader to damage a front fence and other property of people of Leauvaa. Maulolo Tavita was interviewed and told the reporter:

“Faamasinoga mulimuli la ia a le LTC i a Mati a mavae le aso 5 o Apelila, ia oga avanoa lea ua mafai loa na faatulai ese faamalosi ia Leuvaa mai eleele ia. Ae fa'alava loa le faamasinoga lea o Supreme Court a ia silafia uma foi le faaiuga o ia mea. Pau a la lea o le finagalo o aiga ma le nuu nei lea e faaauau a matou galuega e tusa ma faaiuga o faamasinoga o Fanua ma Suafa. O gisi mea e faapea ua feteenai, la le o'o se matou upu, lafo pea le faamasinoga ma loia e finau le mea lena.”

[54] In essence Maulolo says the families and village of Afega intended to give effect to the LTC decision made in March; that if the people of Leauvaa had not moved off the land by 5 April, that Afega could forcibly evict the people of Leauvaa off the land. Maulolo Tavita further says that matters in the Supreme Court are matters for that Court and lawyers to discuss. I take this to mean that Maulolo Tavita and the people he represents do not consider themselves bound by the directions of the Supreme Court.

The Respondents evidence

[55] The Respondents elected not to lead any evidence. Nor did they give notice for any of the Applicants' witnesses to be called for the purposes of cross-examination. Ms Toailoa submitted that the Court could consider whether the Applicants' evidence can be relied on. That must of course be the case. Evidence which is inherently unreliable will be treated as such.

[56] Ms Toailoa complained that she understood the Court had ordered that if the Applicant made an application for joinder that the hearing would not proceed. The argument has no merit. First, the Court had not made an order to adjourn the fixture. Using a sporting analogy, any sports person knows that you play until the referee blows the whistle. Ms Toailoa was obliged to prepare for the hearing; it was not her call to treat the hearing as abandoned when the Applicant filed its motion for joinder. There was a real possibility the parties who were sought to be joined (who she does not act for), might well have wanted to be joined so they could participate in the hearing, and especially the right to be heard and clear their names from the serious allegations against them.

[57] One further matter to note is the lack of affidavits filed by the Respondents to counter the Applicants' affidavits. Most of the Applicants' affidavits are short, as in one or two pages, with photos. Despite their brevity, the Respondents offered no counter-narrative.

Submissions

[58] Ms Stowers provided written submissions, Ms Toailoa oral submissions.

[59] The essence of Ms Toailoa's submissions were:

- (a) The Applicant did not sufficiently identify the particulars of the contempt.
- (b) There was no direct link between a proposed "charge" set out in Ms Stower's answers a request for further particulars, and the wording of the court's order.
- (c) There was no evidence that anyone had been evicted.
- (d) The evidence was not capable of meeting the burden of beyond reasonable doubt.

- (e) There was no link between the actions complained about and the legal entity of the Alii & Faipule o Afega. Ms Toailoa did not expand on this point.

[60] Regrettably, Ms Toailoa seems to have misunderstood the order of the court – the Respondents were enjoined from “taking any steps to evict” those occupying the land in issue. It was not necessary for the Applicants to show anyone had been evicted, but that steps were being taken to evict them. The Applicants allege that these steps included evidence of bullying, intimidation, and the deliberate ransacking and theft of their produce which served as their daily sustenance and source of income. The people from Afega, young and old, carried machetes, uttered threats, and used heavy machinery to damage their property. Gun shots were heard. A vehicle was identified – the white Land Cruiser allegedly belonging to Ken Ulia. Other people identified included Maulolo Tavita, Ututaaloga Charlie Ulia, Ken Ulia and Fata Voi.

DISCUSSION

[61] The Court does not tire of its duty to maintain the rule of law, doing so without fear or favour as was evident during this country’s challenges following the 2021 General Election. At that time, some leaders of Samoa, including the leader of the Human Rights Protection Party, wrongly thought their right to freedom of speech meant they could denigrate and scandalise the reputations of the Judges of the Supreme Court. The unprecedented attacks on the Judiciary were the subject of contempt of court proceedings with the Judges in that case delivering the leading decision in *Fa'atuatua i Le Atua ua Tasi (FAST) Incorporated v Malielegaoi*.¹⁹ Reference has already been made to this important decision and I crystallised the essential points with respect to contempt by obstruction.

[62] Respectfully, viewed on their own, the acts complained about of cutting down crops and damaging fences, even the uttering of threatening words or brandishing of knives and *sapelu* do not necessarily rise to the level of obstruction that is required to make out a contempt of court. Whilst I agree that the actions are highly irritating and frustrating, provocative vandalism I am not sure that the actions, on their own and without more, amount to contempt by obstruction.

[63] However, attracting the Court’s attention are the clearly expressed views of Maulolo Tavita, speaking for the village of Afega that they do not accept the authority of this court and will continue to be guided by a decision this court has order be stayed. In other words, they reject the order made by the court in its substantive decision. The defiance is intentional and the suggestion that they do not need to follow the order of the court lessens respect for the court.

¹⁹ *Fa'atuatua i Le Atua ua Tasi (FAST) Incorporated v Malielegaoi* [2022] WSSC 7.

[64] The defiance puts a completely different complexion on the allegations of dangerous, intimidating and ugly behaviour referred to in the uncontested affidavits filed on behalf of the Applicants. Rather than random acts of vandalism and ill-considered actions, there appears in fact a strategy or response to ignore this Court's orders. I am satisfied the people of Leauvaa have been subjected to unlawful, dangerous, distressing vigilante action, and will continue to be subject to the plan to have them removed from the disputed land.

[65] This contempt of court case is not about who owns the intermediate land or lots 29 and 30 – that decision will be finally determined by another Court. This is not a case about whether the Supreme Court may make orders in relation to a matter that is before the Land and Titles Court regime. That is because the Supreme Court has made orders in accordance with the principles of Samoa's supreme law – the Constitution. It has the power to do that. If parties are unhappy with the decision, there is a proper process to follow - they have a right of appeal to the Court of Appeal. But, and this is what the Respondents and their advisers fail to appreciate, in the meantime the Supreme Court's order represents the law, whether you agree or disagree with it and every one must obey.

[66] I am satisfied the evidence establishes beyond a reasonable doubt the Respondents led by Maulolo Tavita Amosa, Ututaaloga Charlie Ulia, Fata Roketi and Fata Vaafai Tolutasi, who have all had the chance to be heard, have committed contempt of this court's orders dated 11 October 2024. Maulolo's admission that it is his and Afega's stated intent to continue to evict the people of Leauvaa pierces any veil that the Respondents are not responsible for the actions of those who are carrying out the intimidation, threats and inflicting damage.

[67] I direct that a copy of this decision be provided to the Commissioner of Police, and invite him to consider whether a breach of the Arms Ordinance 1960 has occurred, and whether the reports of a firearm being discharged are in breach of s. 191 of the Crimes Act 2013. Under that section of the Crimes Act, a person is liable to imprisonment for a term not exceeding 3 years who with intent to intimidate or annoy any other person, by discharge of firearms, alarms or attempts to alarm any person in any dwelling house.

[68] I further direct that a copy of this judgment be forwarded to the Honourable Speaker of the House because it is a finding of contempt of court against a person who is a sitting Member of Parliament.

PENALTY

[69] The question of penalty was not the subject of submissions. I direct that the matter come back before me on Wednesday 19 February 2025, and I will deal with penalty at that point. I call for

submissions and specifically note that given the egregiousness of the breach that all penalty options, including a sentence of imprisonment remain on the table.



S. Perese

CHIEF JUSTICE