

LORD CHIEF JUSTICE

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19/02/16

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SUPREME COURT,
P.O. Box 11,
NUKU'ALOFA,
KINGDOM OF TONGA

OUR REF : C.47/83/2016.
Date : 17 February, 2016.

To: All Law Practitioners
Tonga

Case Management in Civil and Land Cases and Civil Appeals

Following consultation with Senior Law Practitioners and my presentation at the Tonga Law Conference last year, the Court now intends to introduce a new case management system for Civil and Land actions and Civil Appeals from the Magistrates' Court. The new system will be introduced on a trial basis but it is expected that in time it will largely replace the Friday list.

Over the next six months the Court will monitor the new system and also seek feedback from Law Practitioners as to how the system is working and how it may be improved.

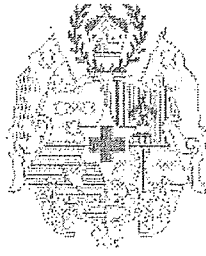
Attached are the trial case management procedures.

The main feature of the new procedures is that cases will be managed at individual case management conferences. Counsel will be required for the first and each subsequent case management conference to have prepared and filed a memorandum addressing matters that are likely to arise at the conference.

For the benefit of Counsel a precedent memorandum has been prepared. It is **attached** and can be created as a template and adapted for use in particular cases.

O G Paulsen
Lord Chief Justice

rec'd 19/02/16



Supreme Court,
P.O. Box 11,
Nuku'alofa,
KINGDOM OF TONGA

Trial of case management procedures

New case management procedures will be introduced in Supreme Court Civil cases, Land Court cases and Civil Appeals from the Magistrates' Court for a trial period from February 2016.

The new case management procedures are intended to promote the just, efficient, and inexpensive determination of proceedings.

The main feature of the new procedures is the introduction of individual case management conferences to enable the Judge to assist the parties to –

- (a) Identify, define and refine the issues requiring judicial resolution; and
- (b) Determine what steps need to be taken in order to prepare the proceeding for hearing; and
- (c) Decide how best to facilitate the conduct of the hearing; and
- (d) Ensure that the costs of the proceeding are proportionate to the subject matter of the proceeding.

Supreme Court Civil and Land Court Jurisdictions

Actions in the Supreme Court Civil jurisdiction and the Land Court jurisdiction –

- (a) Shall be subject to a first case management conference; and
- (b) May be the subject of one or more further case management conferences; and
- (c) May be the subject of a pre-trial conference.

Trial of case management procedures

First case management conferences

A first case management conference will be held no more than 28 days from the date that the first statement of defence is filed in the proceeding.

In all cases, Counsel are expected to have discussed the case at least 14 days before the first case management conference to try to reach agreement on the matters to be discussed at the conference.

In addition, the Judge will expect the parties to have carefully considered the pleadings and the principal documents prior to the first case management conference.

The agenda for the conference will be the matters set out in the attached Schedule A, and –

- (a) The identification, and if practicable the disposal, of any interlocutory applications; and
- (b) The fixing of a hearing date and the making of appropriate directions; and
- (c) The making of appropriate arrangements for any further case management conference; and
- (d) Any other appropriate matters that have been identified and discussed between the parties.

Each party must file a memorandum addressing the matters in Schedule A no fewer than seven days before the conference.

Further case management conferences

A further case management conference may be ordered by the Judge at the first case management conference or at any other time, either on the Judge's own initiative or on application by one or more of the parties. The agenda for any further conference will be set out in the Order directing the conference.

Each party must file a memorandum addressing the matters that the Judge has directed are to be discussed at the conference no fewer than seven days before the conference.

Trial of case management procedures

At any case management conference, the Judge will give directions to secure the just, efficient, and inexpensive determination of the proceedings, including fixing timetables and providing directions as to how the hearing is to be conducted.

Allocation of key dates

If it appears to the Judge at the first case management conference that a proceeding can be readied for hearing, the Judge may immediately allocate a date for the hearing.

If a proceeding has not been allocated a hearing date at the first case management conference, the Judge will allocate a date for its hearing when the Judge is satisfied that it can be readied for hearing.

A proceeding can be readied for hearing if it is reasonably anticipated that it will be able to proceed to hearing without the need for –

- (a) Significant amendment of the pleadings; or
- (b) Significant interlocutory applications; or
- (c) Significant refinement of the issues in the proceeding.

It is the duty of Counsel in a proceeding for which a date of hearing has been allocated to notify the Registrar, without delay, if the proceeding is settled.

Pre-trial conferences

In cases where a Judge has ordered a pre-trial conference the issues to be considered at the pre-trial conference may include –

- (a) Whether background facts can be agreed to avoid hearing uncontested evidence; and
- (b) Whether issues of law to be determined at the hearing can be identified and agreed; and
- (c) Whether a chronology of facts should be filed; and
- (d) Whether an appropriate translator is available (if necessary); and
- (e) Whether legal submissions should be filed in writing and when; and
- (f) Whether it will be helpful to direct the provision of lists of enactments and cases likely to be referred to; and
- (g) The size, contents, and format of the agreed bundle of documents; and
- (h) Any other matter.

Trial of case management procedures

Civil Appeals from the Magistrates' Court

In Civil Appeals from the Magistrates' Court, a case management conference will be held on the first available date no more than 28 days from receipt of the appeal by the Supreme Court.

It is expected that a date of hearing for a Civil Appeal will be allocated at its first case management conference and that there should, in most cases, be just one case management conference. A Judge may, either on his own initiative or on the application of one or more of the parties, order a further case management conference but it is expected that this will be reserved for exceptional cases.

No fewer than seven days before the first case management conference, the parties must file memoranda that –

- (a) Address the matters set out in Schedule B; and
- (b) Specify any matters in Schedule B that should be deleted or modified, and explain why such deletions or modifications are necessary; and
- (c) Set out any additional directions sought, and explain why such additional directions are necessary; and
- (d) Set out the issues raised by the appeal if they are not fully set out, or are different from those set out, in the notice of appeal.

Directions for conduct of appeal

At a case management conference held in respect of a Civil Appeal from the Magistrates' Court, the Judge will give directions for the conduct of the appeal on any matter for the purpose of best securing the just, efficient, and inexpensive determination of the appeal.

Schedule A

Matters for consideration at first case management conference for Civil and Land Cases

Issues

- (a) Possible resolution and/or refinement of the issues, and whether the pleadings require amendment; and
- (b) Whether the case is suitable for mediation or other alternative dispute resolution processes.
- (c) Whether additional parties should be joined.

Discovery and other interlocutory applications

- (a) The scope, terms, and timetable for any discovery; and
- (b) Whether any interlocutory applications that have been or will be filed can be heard and disposed of at the case management conference.

Readiness for trial

- (a) Whether the case is sufficiently ready for a hearing date to be allocated; or
- (b) Whether a further case management conference should be timetabled if there are still outstanding issues.

Fixture or hearing

- (a) If the proceeding is ready to go to a hearing –
 - i. When the close of pleadings date should be; and
 - ii. Whether a pre-trial conference is required; and
 - iii. What the estimated length of the trial is; and
 - iv. What timetable is required for the exchange of written briefs; and
 - v. Whether expert evidence is required and, if so, what the proposals for that evidence (including prior exchange and how the witnesses are to be heard) are; and
 - vi. Whether any special resources or requirements are needed for the hearing; and
 - vii. Whether the proceeding can be set down as a back-up fixture; and
 - viii. Whether alternative dispute resolution may be suitable to try to facilitate settlement prior to trial.

Other

Any other matters Counsel or the Court wish to raise in the circumstances of the particular case.

Schedule B

Standard directions for civil appeals in the Supreme Court

The estimate of time for the hearing.

Unless detailed and specific points on appeal have been included in the notice of appeal, the appellant must file and serve, not later than 14 days after the conference, points on appeal that clearly state the issues on appeal.

The appellant must file and serve, not later than 28 days after the conference –

- (a) The appellant's submissions; and
- (b) A chronology (if relevant).

The respondent must file and serve, not later than 42 days after the conference –

- (a) The respondent's submissions; and
- (b) If the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.

The appellant must prepare a bundle of any authorities referred to in the submissions that the appellant or the respondent considers ought to be produced to the Court. The bundle may be produced at the hearing of the appeal or filed before the appeal is heard.

**IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY**

CV [/]

BETWEEN

Plaintiff

AND

Defendant

**MEMORANDUM OF COUSEL FOR CASE MANAGEMENT
CONFERENCE ON [DATE]**

May it please the Court:

Issues

1. The disputed issues of fact that arise in this case are as follows:
 - 1.1.
 - 1.2. etc
2. The disputed issues of law that arise in this case are as follows:
 - 2.1.
 - 2.2. etc

Additional parties

3. No additional parties will be joined.
or

3. The [Plaintiff/ Defendant] intends to apply to join the following additional parties.

3.1.

3.2. etc

Discovery and other interlocutory applications.

4. Discovery of documents is not required in this case.

or

4. Discovery of documents is required in this case and an appropriate timetable for discovery and inspection is as follows:

4.1.

4.2. etc

5. The [Plaintiff/ Defendant] intends to make the following interlocutory applications

5.1.

5.2. etc

6. A proposed timetable for the filing and disposal of these interlocutory applications is as follows:

6.1.

6.2. etc

Readiness for trial

7. This case is sufficiently ready for a trial date to be allocated. The [Plaintiff's/ Defendant's] estimate of

time for the trial is [] days. The [Plaintiff/ Defendant] intends to call [] witnesses.

or

7. This case is not sufficiently ready for a trial date to be allocated and a further case management conference should be allocated.

Fixture or hearing [In cases where a case is ready for trial]

8. The [Plaintiff/ Defendant] considers the close pleading date should be [].

9. The [Plaintiff/ Defendant] considers there [should/ should not] be a pre-trial conference.

10. The [Plaintiff/ Defendant] proposes the following timetable for the filing of briefs of evidence, bundles of documents and legal submissions:

10.1.

10.2. etc

11. Expect evidence [will/ will not] be called by the [Plaintiff/ Defendant]. The [Plaintiff/ Defendant] proposes that the expert's brief of evidence be exchanged by [].

12. The following special resources/requirements are required for the trial.

12.1.

12.2. etc.

13. This case [can/cannot] be set down as a backup fixture.

14. This case [is/is not] suitable for alternative disputes resolution or mediation for the following reasons.

14.1.

14.2. etc

15. Counsel wishes to draw the Court's attention the following further matters.

15.1.

15.2. etc

Date

[Name of Counsel]
Counsel for the [Plaintiff/Defendant]