

## Travis v. Kingdom of Tonga

Supreme Court  
Martin C.J.  
29 February 1988

*Pleading and practice—judgment debt—interest on judgment debt—whether interest accrues on a judgment and if so from what date and at what rate—whether a different rule applies to judgments against the Crown.*

*Sovereign immunity—Crown Proceedings Act—whether judgment against Kingdom attracts interest.*

<sup>10</sup> Travis secured a judgment against the Kingdom of Tonga. (See *Tonga Flying Fish Co. Ltd. and Others v. Kingdom of Tonga and Travis* [1987] S.P.L.R. 372). Travis applied to the Supreme Court for a ruling on whether interest accrues on a judgment debt, and if so from what date, and at what rate. A further question arose concerning the applicability of any general principle against the Crown.

### Held:

- (1) Interest accrues on a judgment debt from the date of judgment and on costs from the date of the taxing officer's certificate.
- (2) The Court will determine a "prudent investment" rate, no higher than 10% (Contracts Act (cap. 113) section 13).
- <sup>20</sup> (3) The above principles apply to the Crown, as well as private litigants (Crown Proceedings Act, section 7).

### Cases referred to in judgment:

*K. v. K.* [1977] 1 All E.R. 576

*Parsons v. Mather and Platt Ltd.* [1977] 2 All E.R. 715

### Legislation referred to in judgment:

Civil Law Act, sections 3 and 4

Contracts Act, cap. 113, section 13

Crown Proceedings Act, cap. 10, sections 8 and 9

Judgments Act 1838, section 17 (U.K.)

<sup>30</sup> Public Revenues Act (No. 21 of 1983), section 4

## MARTIN C.J.

### Judgment:

I am required to rule whether interest accrues on a judgment debt and judgment costs and, if so, from what date and at what rate.

Tongan law is silent on this matter. Under sections 3 and 4 of the Civil Law Act,

English law therefore applies. Section 7 of the Judgments Act 1838 provides that every judgment debt carries interest at the statutory rate from the time judgment is entered. That time has been defined as the date when judgment is pronounced in Court (*Parsons v. Mather and Platt Ltd.* [1977] 2 All E.R. 715). The Court may if it thinks fit order payment on a later date. Interest on costs awarded does not run from the date of judgment because the amount of costs is not then ascertained. It accrues from the date of the certificate of taxation or on such other date as the Court may order (*K. v. K.* [1977] 1 All E.R. 576).

In England the rate of interest on judgment debts is prescribed from time to time by statutory instrument. There is no such provision in Tonga. Until there is, the Court must therefore determine the rate of interest. In so doing it must have regard to the rate of interest which the money could earn if prudently invested (not necessarily in Tonga), subject always to the rate not exceeding the maximum allowed by section 13 of the Contracts Act (cap. 113)—at present 10%.

Those are the general principles which must apply in this Court. Mr. Martin however refers me to section 4 of the Public Revenues Act (21 of 1983), and argues that special consideration apply to a judgment against the Crown. The section reads:

All disbursements of public money by the Minister and his authorised officers will be made under authority of Cabinet. The authority for expenditure consists of an Act of Legislative Assembly or a decision of the Privy Council. The Minister is prohibited from making any payments or accepting any charge against public money unless authorised so to do by any of the following:

- (1) General Warrant signed by the Prime Minister after approval by the Legislative Assembly.
- (2) Special Warrant signed by the Prime Minister after approval by the Privy Council.
- (3) Requisition to Incur Expenditure approved by the Prime Minister.
- (4) Virement approved by the Prime Minister.

Section 8 and 9 of the Crown Proceedings Act (cap. 10) state:

When any judgment is given against the Kingdom of Tonga, the Registrar of the Supreme Court shall give to the party in whose favour a judgment is given a certificate in the form in the schedule of this Act.

On receipt of the certificate of a judgment against the Kingdom of Tonga, the Minister of Finance shall satisfy the judgment out of the moneys legally available.

Section 9 gives the Minister of Finance authority to pay—but only out of “moneys legally available”. Money is not legally available until one of the authorities listed in section 4 of the Public Revenues Act has been obtained.

I am told that the practice is this. The Court issues a certificate of judgment, or a certificate of taxed costs, which is passed to the Ministry of Finance. Authority is then sought from the Privy Council; if granted (as in practice always occurs) the Prime Minister signs a special warrant which authorizes payment. This procedure may take two or three weeks.

I do not think that the procedural delays inherent in the present system can affect the basic principle that (unless otherwise ordered) interest runs from the date when judgment is pronounced. I bear in mind section 7 of the Crown Proceedings Act.

In any suits to which the Kingdom of Tonga is a party, the rights of parties shall as nearly as possible be the same, judgment may be given and costs awarded on either side, as in a suit between subject and subject.

There are no qualifications which local circumstances render necessary. English law applies in full.

<sup>90</sup> I therefore hold that within this jurisdiction:

1. interest accrues on judgment debts and costs;
2. unless otherwise ordered, interest on a judgment debt runs from the date when judgment was pronounced;
3. unless otherwise ordered, interest on costs runs from the date of the taxing officer's certificate;
4. the rate of interest in each case is at the discretion of the Court, but cannot exceed the maximum permitted under section 13 of the Contracts Act;
5. the above principles apply to the Crown as well as to private litigants.

<sup>90</sup> In practice there is always a short delay between judgment and payment while the paying party makes funds available. Provided this is reasonable, litigants do not seek interest for that short period. If asked, the court may fix a date for payment to allow time for those arrangements to be made, so that interest will not begin to run until that period has expired.