IN THE FIJI COURT OF APPEAL
AT SUVA

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0057 OF 95S
(Judicial Review No. 18 of 1995)

BETWEEN:

ATTORNEY-GENERAL OF FIJI

THE REGISTRATION OFFICER TAILEVU PROVINCIAL CONSTITUENCY — APPELLANTS

-and-

SAMUELA MATAWALU — RESPONDENT

Mr. I. Mataitoga (Solicitor General) with Mr. I. V. Tuberi for the Appellants

Mr. S. Matawalu in Person
Mr. A. Rabo for the Interested Party (by leave)

Date and Place of Hearing : 23 February 1996 Suva
Date of Delivery of Judgment : 15 May 1996

JUDGMENT OF THE COURT

On 18 September 1995 Scott J delivered a judgment in favour of the Respondent on his application for judicial review of the Registration Officer's decision dismissing his objection to the inclusion of Adi Litia Samanunu Cakobau in the electoral roll of the Suva City Fijian Urban Constituency 1995. The Attorney General was cited as the Respondent in that application. By order of 4 September 1995 Scott J directed that the Solicitor General appear on behalf of the Attorney General and for the Registration Officer and the Supervisor of Elections. Adi Samanunu was also directed to be served. In the High Court she was permitted to appear through counsel, being described as the "Interested Party". Submissions were made on her behalf by leave in this Court on the present appeal brought by the Attorney General and the Registration Officer against Scott J's decision, the effect of which was to confirm that she had lost her Fijian Citizenship and was accordingly not qualified to be on the electoral roll or to stand as a candidate in the then forthcoming

election. What follows is an extract from the Judge's helpful account of the events leading up to the judicial review application:

> *"The Applicant [i.e. the abovenamed Respondent, Mr Matawalu] is a voter who is registered on the roll of voters who are Fijians (See section 41 (3)(d) of the Constitution of Fiji 1990) and who is registered as a voter in the Suva City Fijian Urban Constituency.*
>
> *The nominal Respondent (Mr Poasa Ravea) is the Commissioner Central who is the Registration Officer for the Tailevu Fijian Constituency.*
>
> *The Interested Party is also a voter who is registered on the roll of voters who are Fijians and she is also registered as a voter in the Suva Fijian Urban Constituency.*
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> *On 8 August 1995 the Supervisor of Elections by formal notice published in the Fiji Times called for objections to the roll of voters. The Applicant objected to the inclusion of the Interested Party. That objection was rejected by the Registration Officer and on 29 August the Applicant applied for leave to seek Judicial Review of the Registration Officer's decision. Leave was granted by consent on 4 September....*
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> *The Applicant is a Barrister and Solicitor and a candidate for the Tailevu Fijian Provincial Constituency in which he unsuccessfully stood for election to Parliament on behalf of the Fijian Association in the General Election of 1994.*
>
> *The Interested Party, Adi Litia Samanunu Cakobau, is the daughter of the Late Ratu Sir George Kadavulevu Cakobau, Vunivalu and Governor-General of Fiji, who died in November 1989. She is the direct descendant of Cakobau who, together with other High Chiefs, ceded Fiji to Queen Victoria in 1874. She is a High Chief of Fiji in her own right. In February 1994 Adi Samanunu successfully stood for election to Parliament on behalf of the SVT (the Soqosoqo Ni Vakavulewa Ni Taukei) in the same constituency as the Applicant. In due course she was appointed Minister for Fijian Affairs and on one occasion acted as Prime Minister.*
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> *In March 1995 questions began to be asked about Adi Samanunu's eligibility to sit as a member of House of Representatives. It was said that when she was elected in February 1994 she held British Citizenship which, it was suggested was, in view of the Constitution, incompatable with holding that Fiji Citizenship which was a prerequisite to her registration as a voter and as a candidate in a Parliamentary Election.*

In May 1995 the Fijian Association brought proceedings (Civil Action 250/95) in the High Court at Suva seeking a number of orders including a declaration that Adi Samanunu, at the time of her return to Parliament, was not eligible for election by virtue of her possession of British Citizenship.

On 11 May 1995 Adi Samanunu lodged a declaration of renunciation of British Citizenship which was registered by the Home Office in London on 15 June 1995.

On 14 June Adi Samanunu filed an affidavit in the High Court proceedings passages of paragraphs 13, 17, 28 and 29 of which read as follows:

" 13..... I carried a British Passport..... issued in 1980.

17. I sincerely believe that I have remained a Fiji Citizen throughout, since birth. That I have held a valid Fiji Passport, initially for 10 years to 1983, thereafter for another 5 years to 1988 and renewed in December 1989 in Suva to 16 May 1993.

28. Recently I have taken steps to have my British Passport cancelled including renouncing relevant British Citizenship.

29. In addition I have also caused to have to commenced formal process to acquire Fiji Citizenship."

On 3 July the Permanent Secretary for Home Affairs and Immigration wrote to Adi Samununu in the following terms:

"Dear Madam,

Application for Fiji Citizenship

I am pleased to advise you that in accordance with the powers vested in him under the provisions of Section 15(2) of the Fiji Citizenship Act, Cap. 87, the Minister responsible for Immigration has approved your application to resume Citizenship of Fiji. You are therefore advised that you are a Fiji Citizen from 9 June 1995 with to all the rights privileges etc. attendant thereto.

It is noted that the British Government has registered your declaration of renunciation of British Dependent Territories Citizenship as per renunciation No. 080496.

Yours faithfully

Meli Bainimarama
Permanent Secretary for Home Affairs and Immigration"

The Minister responsible for Immigration was, on 3 July 1995, the Hon. Col Paul Manueli (See Legal Notice 2/1995) and it was confirmed from the Bar and subsequently by his affidavit filed on 15 September that it was he who approved Adi Samanunu's application for citizenship.

On 26 June 1995 the High Court (Hon. Mr Justice D. Fatiaki) struck out the proceedings, 250/95 on the ground that a challenge of the kind brought by the Association could only be brought by way of election petition but that the time for bringing such a petition had passed. In accepting that the grounds for the dismissal of the proceedings might be considered to be technical the learned Judge was as pains to emphasise in his Judgment that he expressed no opinion on the merits of the Association's substantive case or the various reliefs sought.

On 3 July 1995 Adi Samanunu resigned from Parliament. In paragraph 23 of her affidavit she states:

"I resigned in order to clear the air, particularly in respect of the allegations brought against me in Civil Action No. 250 of 1995 wherein it was alleged that I am not a Fiji Citizen."

On 17 July 1995 H.E. the President issued a writ for the election of one member of the House of Representatives for the Tailevu Fijian Provincial Constituency to fill the vacancy caused by Adi Samanunu's resignation.

On 8 August 1995, as has already been seen, the Applicant's objection to the inclusion of Adi Samanunu on the roll of Fijian voters, the basis of which objection was that Adi Samanunu was not a Fiji Citizen and was therefore not eligible for inclusion in the roll of voters who are Fijians, was rejected by the Commissioner Central.

Following the rejection of the Applicant's objection Adi Samanunu was nominated to contest the forthcoming by - election on behalf of the SVT. There was a further objection by the Applicant to her eligibility to stand but this further objection was also rejected. In accordance with the President's writ polling is due to take place between 28 and 30 September next." [i.e. 1995]

The basic question for determination in the judicial review and in this appeal was whether Adi Samanunu was a Fijian citizen, it being

accepted that she had fulfilled all the requirements other than citizenship entitling her to be on the roll and to be an electoral candidate. Nevertheless for the sake of record and completeness we quote here in full the 4 grounds of appeal as amended:-

> *"1. THAT the Learned Trial Judge erred in law in holding that the doctrine of Implied Repeal applied on the facts with regard to the Fiji Citizenship Act 1971 (the 1971 Act), the Fiji Citizenship Decree 1987 (1987 Decree) when read in conjunction with the 1990 Constitution. This is especially so when there is existence the Existing Law Decree of 1987 and the decision of this Honourable Court in Mo Xing Bo v. The Principal Immigration Officer and The Minister for Home Affairs (Civil Appeal No. ABU 0013 of 1995) in which section 16 of the 1971 Act was applied therefore the Learned Trial Judge was barred from holding thus because of the doctrine of stare rationibus decidendis (stare decisis).*
>
> *2. THAT the Learned Trial Judge erred in law and acted contrary to well established principles of law and custom in holding that the Implied Repeal principle applied. The doctrine does not apply to any act of Parliament which can only be repealed by an express Act of Parliament.*
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> *3. THAT the Learned Trial Judge erred in law and fact in holding that Chapter IV, Sections 22-29 of the 1990 Constitution was intended to be an independent code in itself for determining the issue of Citizenship of Fiji. The Learned Trial Judge has failed to recognise that the Constitution of a Country only provides for the general legal framework on the operation of the Government of that country. The detail operations and mechanisms of the general legal framework are delegated to Parliament and the Minister in the forms of Acts and Regulations respectively. The Learned Trial Judge should not have relied solely on the operation of the 1990 Constitution to decide on citizenship. He should have explored other Statutes, Treaties and Conventions which are applicable, especially the Special Protocol Concerning Statelessness 1930 and the Convention on the Nationality of Married Women, 1958 both of which have been ratified by the Government of Fiji when it attained independence on 10th October, 1970.*
>
> *4. THAT the Learned Trial Judge erred in law and in fact in holding that the Fiji Citizenship Act 1971 was impliedly repealed by the Fiji Citizenship Decree of 1987 and further that the 1987 Section 2 thereof. The decision in Mo Xing Bo (supra) and the doctrine of stare decisis bar the Learned Trial Judge from holding thus."*

The Respondent's argument in the High Court and in this Court was straightforward: he said the law governing Fiji citizenship is contained in chapter IV of the Constitution of 25 July 1990; under it dual citizenship is forbidden and as a result Adi Samanunu lost her Fiji citizenship and cannot resume it. He maintained that the purported resumption of it in 1995 was void. These submissions were upheld by Scott J in his extensive and closely reasoned judgment in which he rejected arguments that ameliorating provisions of the Fiji Citizenship Act 1971 (Cap. 87 Rev 1985) survived the Fiji Citizenship Decree of 1987 and the Constitution.

Chapter IV of the Constitution deals with citizenship commencing with S.22 reading:-

> *"Persons who are citizens on 6 October, 1987*
>
> *22. Any person who was a citizen of Fiji on 6 October, 1987 shall remain a citizen of Fiji on the commencement of this Constitution."*

Section 23 deals with acquisition of citizenship by birth, descent, naturalisation or registration and the following Sections 24 to 27 elaborate on those methods, Sections 24 and 25 dealing with persons born after 6 October 1987, while Sections 26 and 27 specify how citizenship is acquired by naturalisation or registration. Both the latter sections are expressed to be subject to S.28 reading:-

> *"Avoidance of dual citizenship*
>
> *28.-(1) Subject to the other provisions of this section a person shall forfeit forthwith his Fiji citizenship if he acquires or retains the citizenship or nationality of a country other than Fiji.*
>
> *(2) Any registration of a person as a citizen of Fiji or the grant of a certificate of naturalisation to a person who is a citizen of a country other than Fiji at the time of such registration or grant shall be conditional upon effective renunciation of the citizenship or*

nationality of that other country within a period of not more than 12 months from the date of such registration or grant.

(3) A citizen of Fiji by birth shall not forfeit his Fiji citizenship if, within twelve months of the commencement of this Constitution or within twelve months after he attains the age of 21 years (whichever is the later) he renounces the citizenship or nationality of any other country which he may possess."

It was under S.28(1) that Adi Samanunu was held by the Judge to have forfeited the Fiji citizenship which he found she had previously held by virtue her birth in Fiji in 1939 and the operation of S.19(1) of the 1970 Constitution, and S.22 of the present Constitution. There was no challenge to his finding that she possessed dual British citizenship at the commencement of the Constitution, and did not comply with S.28(3) by renouncing it within 12 months. There is no Constitutional provision for extension of that period or for re-instatement of citizenship once forfeited.

As recounted by the Judge, Adi Samanunu attempted to rectify the situation by invoking S.15(2) of the Fiji Citizenship Act of 1971 which was passed to give effect to S.25 of the 1970 Constitution authorising Parliament to make provision for the acquisition of citizenship by persons who were not otherwise eligible; and for the deprivation or renunciation of citizenship. (The 1970 Constitution conferred automatic citizenship on all person born in Fiji who on 9 October 1970 were citizens of the United Kingdom and Colonies). Section 15(1) of the 1971 Act allowed a Fiji citizen to renounce that citizenship if he was a national of a foreign country or a citizen of a commonwealth country. Subsection (2) thereof stated:-

"(2) A person to whom subsection (1) applies may at any time apply in the prescribed manner to the Minister to permit him to resume the citizenship of Fiji and Minister if satisfied as to the circumstances of the case may, in his absolute

discretion, permit such person to resume such citizenship."

Adi Samanunu applied under this provision on 14 June 1995 to resume her Fijian citizenship and was informed on 3 July that it had been approved by the Minister of Immigration, and that she was therefore a Fiji citizen from 9 June 1995.

We agree with Scott J's conclusion that S.15(2) could not be used in this way, as it applied only where citizenship had been renounced, whereas the only way Adi Samanunu could have lost hers was by forfeiture under s.28(1) of the Constitution if it in fact applies to persons who became citizens by virtue of S.22. The Appellants submit that it does not, but before considering that submission we deal with a point argued at some length in the High Court and raised again by the Appellants in this Court namely, that contrary to the Judge's conclusion, the Fiji Citizenship Act 1971 was not impliedly repealed by the Fiji Citizenship Decree 14/1987 and by the 1990 Constitution.

The Decree, deemed to have been made on 7th October 1987 (cl.22) consists of 6 closely printed pages of detailed provisions covering the acquisition of Fiji citizenship and the ways in which a person may be deprived of it by Government order in a variety of circumstances, including failure to elect to remain a Fiji citizen while holding dual citizenship.

Counsel for Appellants referred to the Fiji Existing Laws Decree promulgated on 1 October 1987, to the effect that subject to the provisions of any subsequent Decree, the existing laws in force immediately before 25 September 1987 should continue in force and be read with such modifications etc. as might be necessary in view of the Fiji Constitution Revocation Decree. That Decree of the same date

removed the 1970 Constitution, pursuant to which the 1971 Citizenship Act was passed. The Citizenship Decree brought in a new citizenship regime apparently seen as necessary to encompass the consequences of Fiji's sudden transformation into a Republic. This may be seen in its extended provisions for close Government control over the continuance of citizenship.

We were referred to authorities dealing with the implied repeal of earlier legislation by a later enactment. It is generally accepted that where both the old and new are expressed in affirmative terms and there is no specific provision for repeal, then the Courts will be reluctant to hold that repeal has occurred. In Garnett v Bradley (1878) 3 App Cas 944, 966 Lord Blackburn asked whether, as a matter of common sense, the previous law could "well stand" with the affirmative language of a later enactment, stating that general affirmative words would not of themselves repeal the old. But in the present instance the Decree speaks with the authority of a comprehensive self-contained code establishing a status of citizens of the new Republic. It would be quite unreal, and a departure from the common sense approach mentioned by Lord Blackburn, to suppose that the 1971 Act could "well stand" alongside the Decree: "it must have been intended that the two could not stand together; the second repeals the first" (ibid). We respectfully agree with Scott J's conclusion that no part of the former Act survived the latter's promulgation.

The Appellants submitted that in any event the force of the Citizenship Decree lasted only for the duration of the Fiji Military Government, and that when it ceded power to a civilian Government matters relating to Fiji citizenship were still regulated by the 1971 Act. Neither authority nor precedent were cited for this somewhat startling proposition. We deal with it shortly by pointing out that while it was in power the Military Government was the supreme

legislative authority of the newly created Republic, and all its promulgated Decrees were declared to be regarded as law and were required to be observed and enforced (Fiji Constitution Revocation Decree 1987). Its Decrees are recognised as law by the Courts, and under Cl 8(1) of the Constitution of the Sovereign Republic of Fiji (Promulgation) Decree 1990 all existing laws are to have effect as if made in pursuance of the Constitution, to be construed with such modifications etc. as may be necessary to bring them into conformity therewith. We see nothing in this point.

Chapter IV of the Constitution deals with citizenship, again in comprehensive terms amounting to a code which leaves no room for the provisions of the Citizenship Decree of 1987 or the Act of 1971, even if it had not been impliedly repealed by the Decree. The Constitution is declared to be the supreme law of Fiji, and any other inconsistent law is void to the extent of the inconsistency (S.2). Instead of the extensive provisions of the Decree empowering the Government to make orders depriving persons of citizenship, S.29 of the Constitution now authorises Parliament to pass legislation to that effect, and to make provision for renunciation of Fiji citizenship. So far as we are aware, no legislation has been enacted pursuant to this section.

The Appellant also claimed that this Court was bound by its own decision in Mo Xing Bo v Principal Immigration Officer and Minister of Home Affairs (Civil Appeal ABU0013/1995; 11 August 1995) in which it was said to have applied S.16 of the Fiji Citizenship Act 1971, thereby recognising the continued validity of that Act. However, the judgment clearly demonstrates that the reason for the Court's decision (which dealt with dual Chinese citizenship) was the forfeiture provisions of S.28 of the Constitution: there was only a passing reference to S.16 of the 1971 Act with no consideration of its validity. This cannot justify the Appellants' reliance on the principle of "stare decisis"

to support their submission that the Act is still in force.

We have dealt at some length with the Appellants' submissions against implied repeal of the 1971 Citizenship Act in deference to the comprehensive way in which they were advanced, but even if they had succeeded, they could not have helped Adi Samanunu or any others in her position relying on the purported restoration of their citizenship under S.15(2). As indicated earlier in this judgment, we agree with Scott J that this subsection can only be invoked to restore citizenship which has been renounced under S.15(1), not that which has been forfeited by operation of law. Appellants' counsel attempted to overcome this difficulty by submitting that, whether rightly or wrongly, the way the Government had applied the provisions of S.15 in this and other cases showed it never intended to do away with them. This submission is untenable: it is elementary that whatever the Government or a Minister might have intended, they were bound by the clear meaning of S.15 and cannot use it to justify unauthorised actions. In any case the purported grant of citizenship by the Minister of Immigration the Hon. Col. Paul Manueli to Adi Samanunu was invalid because the power to grant citizenship under the Citizenship Act (Cap. 87) had been assigned to the Prime Minister.

The question of Adi Samanunu's citizenship is governed exclusively by Chapter IV of the Constitution, which Appellants' counsel submitted had to be interpreted in the light of the principle that citizenship laws and decrees must be construed in a manner "so as to avoid or disfavour any interpretation that would render a person 'stateless', where a contrary interpretation could be reasonable". We adopt this approach, which accords with Article 1(1) of the United Nations Convention on the Reduction of Statelessness, generally requiring a Contracting State to grant its nationality to a person born in its territory who would otherwise be stateless, but this may be subject to

conditions. We were informed at the bar that Fiji acceded to this Convention in 1972, as well as to that on the Nationality of Married Women which, however, does not seem particularly relevant as it deals with the consequences of a husband's actions. We also bear in mind Lord Wilberforce's classic observations about the interpretation of a Constitution in Minister of Home Affairs v Fisher [1980] AC 319, including the need to give full effect to its fundamental rights and freedoms.

Section 22 of the 1990 Constitution provides that any person who was a citizen of Fiji on 6 October 1987 shall remain a citizen on the commencement of the Constitution, and in S.23 goes on to state that citizenship may be acquired by birth, descent, naturalisation or registration. Sections 24 and 25 deal with persons born respectively in or outside the Republic after 6 October 1987. These provisions would seem to accord with the Convention, and Adi Samanunu's existing Fiji citizenship was comfirmed by S.22. Section 28 (quoted earlier in this judgment) did not automatically strip her of that citizenship as a result of her dual British citizenship (it was accepted that her possession of a British passport gave rise to or reflected that citizenship); under S.28(3) she was given 12 months from the 6 October 1987 to renounce it. It was her failure to do so which led to the forfeiture of her Fijian citizenship at the end of that 12 month period.

We cannot see in a state's policy of avoiding dual citizenship any infringement of the principle or provisions of the United Nations Convention if it leaves to its citizens the right to chose their citizenship as provided for in S.28(2) and (3). Accordingly we see no occasion to call in the Convention as an aid to the interpretation of the citizenship provisions of the Constitution, should they present any uncertainty or ambiguity. For the reasons we give hereunder we are

satisfied their meaning is quite clear, and it is well settled that in these circumstances the Court cannot substitute its own interpretation simply to give effect to Conventions or similar instruments. That is the responsibility of Parliament.

In furtherance of their submissions based on the effect of the Convention, the Appellants argued that Scott J should not have made his declaration depriving Adi Samanunu of her citizenship in the light of subsection 113(2) of the Constitution. The section itself deals with the High Court's jurisdiction to entertain applications by persons claiming that their constitutional rights had been contravened. Subsection (2) authorises the Court to determine whether there has been a contravention and to make a declaration accordingly, but its proviso on which the Appellants rely is to the effect that it shall not make such a declaration unless it is satisfied that the interests of the person or party involved are being or are likely to be affected (underlining added). This is plainly a provision limiting the Court's ability to make declarations to only those cases in which the applicant or associated persons have a real interest, so that its time will not be taken up with answering theoretical constitutional questions. The Appellants would have us substitute the word "if" for the underlined "unless" cited above, to justify their submission that Scott J should not have made the declaration because of its effect on Adi Samanunu. They have misunderstood the meaning of the proviso to S.113(2).

Turning to S.28 of the Constitution, they submitted that its intent was "to provide the conditions of forfeiture of Fiji citizenship to those acquiring such status under S.24 (persons born in Fiji after 6 October 1987); S.25 (persons born outside Fiji after that date); S.26 (by registration); and S.27 (by naturalisation) and not to those who acquired Fiji citizenship under S.22" (i.e. those who were citizens at 6 October 1987). The argument is based on the opening words of S.28(1)

"Subject to the other provisions of this section" a person shall forfeit his citizenship etc. One of the matters to which subsection (1) is subject is subsection (3), giving a Fiji citizen by birth the choice of renouncing his foreign citizenship. Section 22 states that persons who were citizens on 6 October 1987 "shall remain" citizens: accordingly, if they had acquired that citizenship by birth then they too could renounce, as can those born after that date who become citizens under Sections 24 and 25.

Subsection (2) also provides a qualification to the absolute forfeiture provisions of S.28(1). It states that any registration of a person as a citizen, or the grant of naturalisation to him when he is a citizen of another country shall be conditional upon his renunciation of that citizenship within 12 months. Sections 26 and 27, which allow such registration or naturalisation are in their turn declared to be subject to the provisions of S.28. With only those exceptions in subsections (2) and (3), the provision for automatic forfeiture in subsection (1) remains otherwise fully operative, affecting all who acquire or retain citizenship or nationality outside Fiji.

Section 28 in our view clearly applies to persons who acquired citizenship under Section 22 as well as to those who acquired it under sections 24, 25, 26 and 27. Not only is the wording quite clear but if it did not, persons who acquired citizenship under Section 22 could obtain or retain dual citizenship while the rest of the population could not. It could not have been the intention of the Constitution that such a distinction should be made between those who became citizens under the constitution on 6th October 1987 and those who became citizens subsequently.

We therefore uphold the High Court's decision that Adi Samanunu lost her citizenship by operation of law on 26 July 1991 and has not regained it.

The most effective way of remedying the position facing her (and possibly others) would be by amending the citizenship provisions, as Scott J observed. However, on the last page his judgment he expressed the view that "whether by accident or design the Constitution although providing four methods for *acquiring* Fiji citizenship does not provide for its *resumption*". We thought it might be helpful to call for further submissions on whether ss.26 and 27 providing for the acquisition of citizenship could also apply to those persons who had previously lost it by forfeiture under s.28. Those submissions have now been received and considered.

The sections read:-

> *"Citizenship by registration*
>
> *26.-(1) Subject to the provisions of section 28 of this Constitution, a person to whom the provisions of this section apply may be registered as a citizen of Fiji, if the Prime Minister is satisfied that -*
>
> *(a) he is a person of good character;*
>
> *(b) he has shown a clear intention of his desire to be domiciled in Fiji; and*
>
> *(c) he has taken the Oath of Allegiance prescribed in Schedule 1 to this Constitution and such other Oath as may be prescribed.*
>
> *(2) The provisions of this section shall apply to -*
>
> *(a) any woman who is or has been married to a citizen of Fiji; or*
>
> *(b) every person of full age or capacity born outside Fiji any of whose grandparents is a citizen of Fiji:*
>
> *Provided that the right to be registered as a citizen of Fiji under this section shall be subject to such exceptions or qualifications as*

may be prescribed in the interest of national security or public policy.

(3) Notwithstanding anything contained in subsections (1) and (2) of this section, a foreign child adopted by a citizen of Fiji in accordance with procedure approved by any law in force in Fiji may by application by such citizen be registered as a citizen of Fiji.

Citizenship by naturalisation

27.-(1) Subject to the provisions of section 28 of this Constitution, any person who is qualified in accordance with the provisions of this section may apply to the Prime Minister for the grant of a certificate of naturalisation.

(2) No person shall be qualified to apply for the grant of a certificate of naturalisation, unless he satisfies the Prime Minister that -

(a) he is a person of full age and capacity;

(b) he is a person of good character;

(c) he has shown a clear intention of his desire to be domiciled in Fiji;

(d) he has been assimilated into the way of life of the people of Fiji;

(e) he is a person who has made or is capable of making useful contribution to the advancement, progress and well-being of Fiji;

(f) he has taken the Oath of Allegiance prescribed in Schedule 1 to this Constitution and such other Oath as may be prescribed; and

(g) he has, immediately preceding the date of his application either -

(i) resided in Fiji for a continuous period of five years; or

(ii) resided in Fiji continuously for a period of 12 months, and during the period of ten years immediately preceding his application has resided in Fiji for an aggregate of not less than five years."

The range of persons who may apply under s.26 for citizenship by registration is limited to those falling within the appropriate category described in subs(2) and in any further qualification imposed under its proviso (Subsection (3) is not relevant here). The Prime

Minister must also be satisfied about the matters set out in subs 1(a), (b) and (c). There is nothing in these provisions, or indeed in the language of the section as a whole, indicating that it applies only to persons whose Fiji citizenship has not been forfeited. Similarly with s.27 dealing with naturalisation: so long as a person can satisfy the Prime Minister that the qualifications set out in subs(2) are met, he or she can in our opinion apply for the grant of a certificate of naturalisation.

Despite this plain language, both Mr. Matawalu and counsel for Adi Samanunu submitted that these sections must be interpreted as precluding applications by persons whose citizenship has been forfeited by the operation of ss.28(1) and (3). Mr. Matawalu suggested that s.26 was set up as a "half way house" between ss.24 and 25 on the one hand and s.27 on the other, in that the person seeking citizenship must have some connection with Fiji through relationship with other Fiji citizens. He thought the salient feature of any provision for resumption of citizenship ought to be that the applicant must of necessity have been a Fiji citizen some time previously, but that s.26 does not provide for registration of such persons. He also drew attention to the opening words of s.27 making it subject to s.28, thereby in his submission excluding those who had forfeited citizenship from being qualified to apply. But we have held above that the reference to s.28 does no more than bring into s.27 the requirement that naturalisation is conditional upon a person with dual citizenship effectively renouncing the foreign citizenship within 12 months.

For his part, counsel for Adi Samanunu submitted that having regard to its restricted categories of persons who could apply, s.26 could not include former Fiji citizens; and that naturalisation under s.27 was a method of acquiring citizenship more generally associated

with aliens, inappropriate for use by former citizens. He repeated his earlier submission that Adi Samanunu had not lost her Fijian citizenship, but we have already rejected that argument.

We have referred to the need in interpreting a constitution to give full effect to its fundamental rights and freedoms (Minister of Home Affairs v Fisher) and to the United Nations Conventions on the Reduction of Statelessness and on the Nationality of Married Women. On the ordinary meaning of their language, ss.26 and 27 do not preclude applications by those whose citizenship has been forfeited by the operation of s.28. The former states simply that "a" person meeting the requirements of the section may apply, while s.27 refers in similar terms to "any" person. We are not persuaded that we should read into these sections further restrictions which those who framed the Constitution did not see fit to impose. Nor can we see any cogent reason for refusing to qualified persons a right to apply, especially when their only fault bringing about the forfeiture may have been ignorance of s.28 or inadvertence. To hold that ss.26 and 27 must be understood as excluding those who have lost their citizenship in such a fashion would be contrary to Lord Wilberforce's observations in Ministry of Home Affairs v Fisher. Nor would such a conclusion accord with the protection of basic rights expected from states subscribing to the Conventions mentioned above.

For these reasons, which accord generally with the Solicitor General's submissions, we are of the view that ss.26 and 27 may be resorted to by qualified persons whose citizenship has been forfeited by the operation of s.28(1) and (3) of the Constitution. We emphasise that any decision required to be made about citizenship under ss.26 and 27 is one for the Prime Minister.

Notwithstanding the view we have just expressed on ss.26 and 27, the appeal having failed on the basic issue it must be and is dismissed.

Liberty is reserved to the Respondent to apply in writing for costs if he sees fit to do so.

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Sir Moti Tikaram
President Fiji Court of Appeal

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Sir Maurice Casey
Judge of Appeal

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Mr. Justice Peter Hillyer
Judge of Appeal