

1M THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION



CIVIL ACTION NO.: HBC 505 OF 2004

BETWEEN:

MARJORY GAY THOMAS t/a LIGHTHOUSE RESTAURANT

PLAINTIFF

AND: THE COMMISSIONER OF POLICE

1ST DEFENDANT

THE ATTORNEY-GENERAL OF FIJI

2ND DEFENDANT

Mr. G. O'Driscoll for the Plaintiff

Ms IX Buresova for the 1st and 2nd Defendants

RULING

There is hardly any factual dispute in this case. The plaintiff owns well known premises called the Lighthouse Restaurant on Queen Elizabeth Drive, Suva. In the year 2000 during the civilian coup, the premises were burnt down. The premises were rebuilt in the year 2004 with the intention of resumption of the restaurant business.

It appears from affidavits and what I was told across the bar table by counsels that the plaintiff applied for a temporary licence to the Central Division Liquor Tribunal. Under Section 26(1) of the Liquor Act Cap 192 temporary licenses may be granted, it reads :

"26. - (1) If the licensed premises, or vessel, in the case of a packet licence, of any licensee shall, in the course of any alteration or repair, or by fire, tempest or other calamity be or become liable to be rendered unfit for carrying on his business, a Tribunal may, upon an application being made by such licensee in writing, by order in writing under the hand of the chairman, authorize such licensee to carry on his business in any part of the licensed premises or in any neighbouring premises (notwithstanding, in the case of a publican's licence, that such part of the licensed premises or the neighbouring premises may not possess the accommodation specified in this Act), or in any other vessel, in the case of a packet licence, for any period not exceeding twelve months.

(2) Notwithstanding the provisions of subsection (1), a Tribunal may, in its discretion but subject to the prior consent in writing of the Board, upon an application by the licensee, extend the period of an order made under subsection (1) by a further period of periods not exceeding twelve months on any one occasion."

it appears that acting under the above section a letter was written to the plaintiff on 28th October 2004 which reads :

"CCD.16/6/147

28/10/2004

TOWHOMITMAYCONCERN

This is to certify that Ms Marjorie Lavaki, Licencee for the premises known as LIGHTHOUSE RESTAURANT situated at Nasese, Suva has formally applied to the Central Division Liquor Tribunal for a Licence.

While the application is in process Ms Lavaki has been approved to operate from tonight, 28/10/2004 until the Central Division Liquor Tribunal makes a ruling on her application for ORDINARY RESTAURANT LICENCE.

Dated this 28th day of October 2004.

(Sgd) Inoke B. Devo

Acting Commissioner Central Division"

On 11th November 2004 the police pursuant to a search entered and removed from the premises substantial amount of Liquor as per the search list contained in plaintiffs affidavit. The justification for this course of action according to an affidavit sworn by Jese Ulacake, Acting Inspector, is that the permission granted by Inoke Devo was only confined to 28th October 2004.

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That interpretation of the letter is hard to justify when one looks at the words **"from tonight ... until the Central Division Liquor Tribunal makes a ruling"**. Ms Buresova quite correctly made this concession. However she submitted that the plaintiff is seeking a mandatory injunction against the State which is not possible pursuant to Section 15 of the State Proceedings Act Cap 24. I agree but the court in lieu of an injunction can make declaratory orders. So far no charges have been laid against the plaintiff. This is not a complicated case - either the plaintiff had licence or did not have a licence so any prosecution ought to have been conducted expeditiously.

It is obvious from what I have said that the police misconstrued the letter dated 28/10/04 given to the plaintiff. The liquor ought not to have been seized from the plaintiff.

However I am mindful of one other difficulty that is interlocutory proceedings of the type before me are generally not suitable for a declaration of a right - see Ocean Holdings Limited v. Olympic Fiji Ltd. & Another - ABU 28 of 2003 Court of Appeal

However the legality of the initial seizure appears to be a separate definable issue which can be dealt now and my ruling would assist the parties in resolving the other issues or issues of damage.

Accordingly I make a declaration that the liquor was unlawfully seized from the plaintiffs premises on 11th November 2004. I also order costs of \$200.00 against the defendants.



[Jiten Singh]

JUDGE

At Suva

1st February 2005