

IN THE HIGH COURT OF FIJI
AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO. HBM 15 OF 2006

BETWEEN:

MAHENDRA PAL CHAUDHRY

1st Plaintiff

AND:

FIJI LABOUR PARTY

2nd Plaintiff

AND:

SUPERVISOR OF ELECTIONS

1st Defendant

AND:

ELECTORAL COMMISSION OF FIJI

2nd Defendant

AND:

ATTORNEY GENERAL OF FIJI

3rd Defendant

Hearing in Court: Thursday 30th March 2006, Suva

Counsel:

Mr A Singh and Mr R Chaudhry for the Plaintiffs

Mr K Keteca for the 1st and 3rd Defendants

Mr J Apted and Ms N Basawaiya for the 2nd Defendant

Date of Judgment: Thursday 30th March 2006

**RULING UPON APPLICATIONS BY THE DEFENDANTS TO STRIKE
OUT THESE PROCEEDINGS**

- [1] This ruling is given so the parties to this case and indeed everyone in the Country is aware as quickly as possible of my decision. Brief reasons are given here. A full and complete ruling will be given by 7th of April. I necessarily point out that this ruling and the reasons for it may be clarified

or amplified in the full ruling. However, the decisions herein will not be changed in any way.

- [2] These proceedings were filed on 21st March 2006. At that time it was known that a General Election would be held between 6th and 13th of May.
- [3] At the time of the issue of these proceedings there was no Electoral Roll for the years 2002 - 2006 inclusive. The last published Electoral Roll was in 2001. That was regarded by all parties to be out of date and unreliable.
- [4] It therefore meant at the time of issue of these proceedings, as a matter of law, the only published Electoral Roll was the one from 2001.
- [5] It must however be pointed out that the Supervisor of Elections had for several months been pursuing a comprehensive programme to ensure that an Electoral Roll was ready for the Elections commencing on 6th of May. That does not alter the fact that at the time of commencement of these proceedings there was no Electoral Roll other than the one from 2001.
- [6] On 27th March Parliament was dissolved. On 28th of March HE Ratu Josefa Iloilovatu Uluivuda, the President, issued the Writs for the Elections.
- [7] The Supervisor of Elections published an Electoral Roll on 27th March.
- [8] This matter first came before the Court on Tuesday 28th March. The plaintiffs *briefly outlined their case, were given leave to amend the originating process and a timetable order was set for the filing of affidavits and any submissions.*
- [9] The 1st and 3rd Defendants filed a Summons seeking to strike out the *proceedings under Order 18 rule 18 (1) (a), (b) and (d) of the High Court Rules and under the inherent jurisdiction of the Court.* The 2nd Defendants also filed a

Summons to strike out the action under Order 18 rule 18 (1) (a), (b) and (d) and Order 62 rule 7 (b) of the High Court Rules.

[10] The matter was listed for hearing on 30th March at 10 a.m. This was fixed for the hearing of the Strike Out application and the substantive matters in this case. Having heard Counsel, I decided that the Strike Out application should be heard first and then thereafter the substantive issues.

[11] The 1st and 3rd Defendants stated this action should have been begun by originating summons. By Order 5 rule 5 that could only be done if the High Court Rules so permitted or an Act did so. Counsel for the plaintiffs did not seek to reply to this specific point. The matters in this case are of such importance and in need of speedy resolution that I utilised my powers under Order 2 to waive any defect in the originating process in this case.

[12] I consider the applications to strike out in relation to the amended notice of originating motion filed on the 29th March.

[13] The "relief or redress or orders sought" are set out in paragraphs A – E, and F Costs and G. Such further orders or relief the Court deems just. I will deal with each relief in turn.

[14] RELIEF A

The defendants say that Relief A is nothing more than a reiteration of what is present in the Constitution and in various enactments. The plaintiffs described this remedy sought was more by way of a preamble than of relief.

[15] I accept the arguments of the defendants. Relief A is a recitation of various rights which are principally set out in the Constitution and further effected by statute.

[16] **REMEDY B**

This remedy asks for a declaration that "the Supervisor of Elections must comply with the statutory provisions of sections 22 – 24 of the Electoral Act 1998". It then sets out in more detail the procedure of a person to object to the name of another on the Electoral Roll.

[17] The defendants say quite simply this is statute and as such is nothing more than to say what is required by that statute. Again the plaintiffs state that this is more by way of preamble than other relief sought.

[18] I accept the arguments of the defendants. The Supervisor of Elections is under a statutory obligation to comply with sections 22 – 24 of the Electoral Act 1998. No declaration is required to that effect.

[19] **REMEDY D**

This remedy seeks a "declaration that the Supervisor of Elections has defaulted in his statutory duty to, at least once each year to update or publish the main Electoral Roll or the Supplementary Roll for each Constituency since 2002 – 2005 inclusive".

[20] The defendants do not dispute this fact. The thrust of the objection is that a declaration is sought of a fact which is known to every one, accepted by the defendants and has no further effect than making the declaration itself. They state that the Courts will not entertain applications for declarations which produce no practical result or enunciate or enforce any right. Or seek the enforcement of any right.

[21] They further state that if declarations or remedies were to be sought then this should have been done in 2002, 2003, 2004 and 2005. It is simply of no consequence in 2006 and shortly before General Elections and when an up to date Electoral Roll has been published for the plaintiff to seek such a declaration.

[22] The plaintiffs respond that the fact is that the Supervisor of Elections has failed to comply with his statutory duty. And that failure, particularly in relation to the last year 2005, has produced discernible effects in 2006, particularly with the alleged lateness of the publication of an Electoral Roll for the Elections in May.

[23] I accept the arguments of the defendants. It is accepted by them that no Electoral Rolls were published for the years in question. It must be a fact known generally at large. There is nothing of a practical nature or by way of declaration of right which could flow from this relief. In those circumstances I must strike out the application for remedy D.

[24] **RELIEFS C and E**

These reliefs sought in effect cover the same ground. Relief C seeks "declaration that the timetable stipulated by the Supervisor of Elections in a Circular dated 9th March 2006 (Circular No. 06/2006) is in breach of the rights of a person whose name appears on an Electoral Roll to object to the name of any other person on that Roll and to complete the process of settling the objections within the confines of the time frames stipulated in sections 23 and 24 Electoral Act 1998 prior to the General Elections

[25] Remedy E seeks an order directing the Supervisor of Elections to issue an amended Circular to that of the 9th of March 2006 to "contain the dates for the continuation of the registration process and the factoring in of a time frame for the settling of the objections.....".

[26] *The dates set out by the Supervisor of Elections in that notice were decided by others or by the Constitution or statute. The plaintiffs complaint appears to be that there is insufficient time for any voter to take objection to another name on the roll before the date of the elections.*

[27] The defendants say that the relief at remedy E seeks a coercive injunction against the State and this cannot be made. Further, the 2nd defendant particularly relied on the fact that sections 22 – 24 of the Electoral Act are

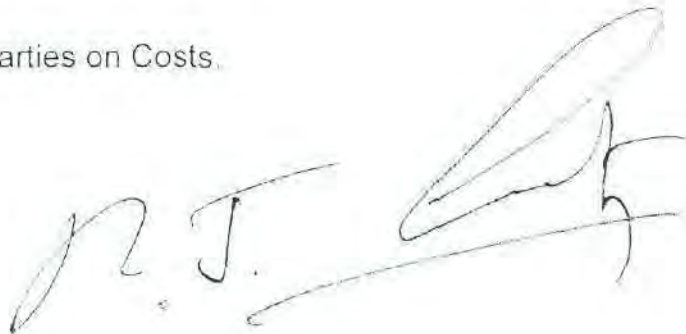
applicable at any time and do not as a time table have to be completed before the date of any poll. Counsel stated the remedy would be to bring an Election Petition and if there were successful objections to any voters and the number thereof would have made the difference then the Courts could make Orders remedying this upon the petition.

[28] The plaintiffs replied that it was a voter's right to have the time to mount objections before the date of polling when a new roll had been published shortly before the Elections.

[29] The simple fact is that allowing the full committed time for a voter to object and make any appeal, the Supervisor of Elections and the Election Commission could deal with any objections before the start of polling. The registration officer must uphold or dismiss an objection "within 14 days" and the Election Commission must review and give a decision "within 14 days" if the objector is not satisfied with the decision by the Registration officer. Although the Registration officer and the election commission would not have a full 14 days to make a decision, there would be a reasonable if expedited time in which they could do so and still deal with the objections before the start of the poll date.

[30] However, in my judgment such a date counting exercise is superfluous. There is nothing in the Constitution or the Electoral Act which in my judgment means that a roll must be published in sufficient time before an election for the procedures of sections 22- 24 to be completed. An Electoral Roll might be published months before an election and a voter take objection only a week or two before the election itself. There is no time limit set in Section 22 and the very wording of other subsections (for example section 22 subsection 9) clearly contemplates the circumstance that an election voter objection might be under investigation at the time an election takes place.

- [31] In these circumstances I do not need to make any finding as to whether an injunction would be available in this kind of circumstance against the Supervisor of Elections.
- [32] Accordingly I must strike out Reliefs C and E. In those circumstances no remaining relief is sought by the plaintiffs and the proceedings are struck out.
- [33] It is pertinent to point out that on the face of the affidavits before me the Supervisor of Election was and is faced with an immense and difficult task. Many concerns were raised with him by the plaintiffs in the months before the publication of the electoral roll. Many of these concerns were accepted, some were rejected and some the Supervisor found were without substance. The net effect however is that an electoral roll was published on 27th of March. That is what must be looked to. The evidence before me does not go to any suggested defects in that roll.
- [34] I will therefore hear the parties on Costs.

A handwritten signature in black ink, appearing to read 'R. J. Coventry', with a large, stylized flourish extending to the right.

[R .J. Coventry]
JUDGE