

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**  
**CIVIL ACTION NO. HBC 01 2 OF 2007L**

**NO. 59/2007**

**BETWEEN: JAGANNATH SAMI**

*Plaintiff*

**AND: ARMY COMMANDER COMMODORE VOREQE  
BAINIMARAMA**

*First Defendant*

**AND: THE ROYAL FIJI MILITARY FORCES**

*Second Defendant*

**AND: MINISTRY OF HOME AFFAIRS AND  
IMMIGRATION**

*Third Defendant*

**AND: THE INTERIM ATTORNEY GENERAL OF FIJI**

*Fourth Defendant*

**AND: RATU JOSEFA ILOILO ULUIVUDA,  
HONOURABLE PRESIDENT OF THE REPUBLIC  
OF THE FIJI ISLANDS**

*Fifth Defendant*

Mr. S. Krishna for the applicant

Ms. A. Rokomokoti with Mr. R. Green for the defendants

Date of Hearing: 27 April 2007

Date of Ruling: 18 May 2007

**RULING ON SUMMONS FOR EXPEDITED HEARING**

- [1] The plaintiff by summons dated the 19<sup>th</sup> March 2007 seeks an order that this action be assigned an early trial date and/or that a question of law

be tried before trial. The question of law is set out in the summons and is as follows:

***"Whether all the Decrees, Regulations, Promulgations and Proclamations issued and/or released and/or published in the Government Gazette at all material times by all the Defendants are unlawful, breach of the 1997 Constitution, breach of legislations of the Republic of Fiji Islands, ultra vires the Acts and Constitution and void and of no legal effect."***

- [2] In addition, the plaintiff seeks an order that all pre-trial proceedings and/or steps be completed by all parties prior to the hearing of the matter.
- [3] The Court heard concurrently with this summons a summons filed on behalf of the defendants wherein the defendants sought a further 21 days from the date of hearing of the summons to file their list of documents. An order was made in terms of the defendants' summons on the date of hearing.
- [4] The plaintiff's summons is supported by an affidavit of Jagannath Sami sworn on the 2<sup>nd</sup> March 2007. The summons is opposed and the defendants rely upon the affidavit of Esala Teleni sworn on the 30<sup>th</sup> March 2007.
- [5] The defendant does not oppose the trial being dealt with expeditiously and in fact submits that this should occur. However the defendant objects to their being any "shortcuts" and indicates that the matter

should be prepared for trial in the normal manner. The defendants further submit that it is their intention to join the Sugar Cane Growers Council as a third party and that this should occur prior to the matter proceeding to trial.

- [6] The defendant opposes the question of law being dealt with as a preliminary point and in doing so says that there are numerous factual disputes which bear upon the determination of the issue of law.
- [7] The plaintiff submits that the facts are not substantially in dispute and that if necessary the question of law can be reframed to meet any requirements of the defendants and the Court.
- [8] Order 33 Rule 3 of the High Court Rules provides:

***"The court may order any question or issue arising in the course or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the course or matter, and may give directions as to the manner in which the question or issue shall be stated."***

- [9] The proceedings herein have been commenced by writ of summons and pursuant to prior orders of the court the plaintiff filed an amended writ of summons and statement claim on the 31<sup>st</sup> January 2007. To this, the defendants have filed a statement of defence and the plaintiff has filed

a reply to that defence. The summons for directions was dealt with by the Court on the 21<sup>st</sup> March 2007 and orders were made, following which the plaintiff has filed a verified list of documents and the defendants have sought more time in which to comply.

[10] The plaintiff in his amended statement of claim pleads five causes of action and seeks orders to restrain the defendants in various ways and declarations as to the validity of the defendants' actions. The plaintiff also seeks an injunction to restrain the Government Printer from printing decrees, regulations, promulgations and proclamations and in addition seeks general, aggravated, exemplary and punitive damages.

[11] In part the orders sought would see the plaintiff reinstated to his prior employment and make the claim appear to be one of wrongful dismissal.

[12] In all other respects the claim has the appearance of seeking orders and declarations of a general nature with respect to the validity of the activities of the defendants on and after the 5<sup>th</sup> December 2006.

[13] The plaintiff in his affidavit in support of the application says that he is currently unemployed and surviving on his savings and his wife's income. The only other issue relevant to expedition is in paragraph 7 of the affidavit where the plaintiff says:

*"...must be dealt with some urgency because of grave public importance for the reasons aforesaid."*

[14] This would indicate that the relief sought is relief of a very general nature in the main and not personal to the plaintiff, apart from that directly relating to his dismissal from his employment and the consequences that flow to him from that.

[15] Order 33 Rule 3 provides for the Court to exercise its discretion as to whether any issue of fact or law should be tried before a trial of the substantive claim.

[16] The issues is to be considered in the exercise of that discretion have been considered by the Fiji Court of Appeal in ***Muni Deo Bidesi & Others v Public Trustees of Fiji*** - 21 FLR 65 at 76 where the Court said:

***"Such a course can on occasions have beneficial effects in shortening litigation and a failure to avail himself of the procedure may sometimes result in a litigant facing an adverse order as to costs. An order for the trial of some issues before others should, however, only be made in "exceptional and extraordinary cases" or where the Judge has serious reason to believe that the trial of the issue will put an end to the action - per Jessel M.R. in Piercy v Young 15 Ch. D 475 at 480."***

[17] In ***Everett v Ribbands & Anr*** [1952] 2 Q.B. 198 at 206 Romer U said:

***"The point of law, if decided, as it has been, against the plaintiff, would have been decisive of the case...! should have thought this was the very class of case in which an application ought to have been made ... to***

***have the point determined before the hearing so as to save all discovery of documents, the collecting together of witnesses, and so on, and have the question decided at a very early stage, I think we have a point of law which, if decided in one way, is going to be decisive of litigation, then advantage ought to be taken of the facilities afforded by the rules of court to have it disposed of at the close of pleadings or very shortly after the close of pleadings."***

- [18] It is clear that His Lordship is referring only to those instances where there are no facts in dispute. This is apparent by his reference to alleviating the necessity for discovery of documents, the collecting together of witnesses and so on.

***"While the rule confers the useful procedure it is one that can be used only rarely. Difficulty often arises where the court is required to decide matters of law before the facts are investigated. The court will not decide a preliminary point of law if it depends on disputed questions of fact, especially if the order directing in determination of the preliminary issue fails to give directions as to the finding of any necessary facts - Jacobson v Ross [1995] 1 VR 337 at 340" - Australian Civil Procedure 4<sup>th</sup> Edition B2B9.***

- [19] It is clear from the pleadings that facts are indeed in dispute.

- [20] The Fiji Court of Appeal when considering the issues arising from the events of year 2000 in ***Rev. Akuila Yabaki & Ors v The President of the Republic of the Fiji Islands and Anor*** - Civil Appeal No. ABU0061 of 2001 said at page 20:

***"Scott J. considered that such constitutional breaches as there may have been here were excused under the doctrine of necessity. For this Court to enquire whether he was correct would involve an examination of a detailed factual situation that no longer exists and cannot be resolved."***

- [21] It has been said that the events of the 5<sup>th</sup> December 2006 relied upon the decision of Mr. Justice Scott for their legality. If this be so, then there would appear to be no reason why a decision on the question of law would not require an examination of the factual situation that existed prior to, as at and subsequent to the 5<sup>th</sup> December 2006.

- [22] This appears to be even further brought out by the submission on behalf of the defendants that the issue is in the main moot as the plaintiff was dismissed by the Sugar Cane Growers Council subsequent to the actions of the defendants. This submission appears to ignore the fact that the constitution of the Sugar Cane Growers Council was significantly altered by the dismissal and replacement of a number of councilors by the defendants. These would all appear to be factual issues that would need to be decided or considered to enable a proper consideration of the legal issue.

- [23] The defendants submit that it is necessary for the Sugar Cane Growers Council to be added as a party to the proceedings and that they are the only body that can verify the "moribound state of affairs of SCGC because of its mismanagement." This again leads to the conclusion that there are issues of fact that must be determined to enable a proper consideration of the issue of law.
- [24] I am of the opinion that this is not a case where there are no facts in dispute and accordingly the discretion given to the Court must be exercised against the orders sought in paragraph 2 of the plaintiff's summons.
- [25] That then leaves for the Court to determine whether the action should be assigned an early trial date in accordance with paragraph 1 of the plaintiff's summons. Whilst the issues that are pleaded are in the main issues of general importance to the citizens of Fiji and as such should be litigated at an early date, I am not of the opinion that these proceedings are the appropriate forum for those issues to be litigated and determined.
- [26] I note that there are proceedings on foot in the Suva Registry of the Court where the validity of the actions of the defendants on and from the 5<sup>th</sup> December 2006 will be determined. Those proceedings would appear to provide a far better forum than the present proceedings and for these reasons, it does not on that basis alone seem a matter that should be given an expedited hearing date.



[27] The issues pleaded with respect to the plaintiff's wrongful dismissal from his employment are no different from many other actions commenced before the Court and the plaintiff is in no better or worse position than other litigants before the Court from time to time. I am therefore of the opinion it is not appropriate for this matter to be given any greater priority than any other matter before the Court.

[28] The matter should however receive case management in accordance with the case management principles adopted by this registry of the Court and be ready for trial at the earliest practical date in accordance with those principles.

[29] The costs of this application should be costs in the cause.



**At Lautoka  
18 May 2007**

A handwritten signature in cursive script, appearing to read "John Connors".

**JOHN CONNORS  
JUDGE**