

Laisenia Qarase and Others v Josai Voreqe Bainimarama and Others

Fiji High Court, Suva
11th October 2007

Civil Actions
HBC60.07S
HBC398.07S

Gates, Acting CJ, Byrne, Pathik JJ

RULING NO. 5

Mr N. Perram SC, Ms Pepper, and Mr T. Fa for the Plaintiffs
Mr Gerard McCoy QC, with Mr C. Pryde Solicitor-General,
and Mr J. Sherry for the 1st, 2nd, and 4th Defendants
Mr B. Kasep for the 3rd Defendant
Dr Shameem, Ms Devi, and Ms S. Colavanua for the
Proceedings Commissioner

[1] After the case was opened by Mr Perram SC for the plaintiffs, the court adjourned to allow Senior Counsel for the parties a good deal of time to narrow down the issues and to agree facts. It had been hoped this would facilitate a shorter trial and a concentration on the real legal issues on which the decision of the court was to be sought.

~~[2] Unfortunately this process did not produce any of those benefits. During the~~
recess a statement of claim was directed by consent to be filed and served by the plaintiffs. This document which was not filed was markedly different apparently from the case shown by the original papers and affidavit evidence.

[3] Mr Perram this morning said in the interests of proceeding with the trial his clients were prepared to abandon these new claims, save one matter. That was the new claim that if the President had been right in taking the action he did on his return, there was no necessity to be applied preventing a return to the situation prior to the takeover of 5th December 2006.

[4] Mr Perram has already opened his case and this argument was not then raised, nor did he raise the allegation now levelled at the President, which he says he will pursue if this matter is adjourned.

[5] Faced with these fundamental changes to the plaintiffs' case, Mr McCoy sought an adjournment of the trial and a set of disciplined directions. A trial of such extraordinary importance could not be approached in this way. It was he said in no condition to go ahead. Mr Kasep for the 3rd Defendant joined with Mr McCoy in his submissions. He referred to the fact that three other material allegations of fact in the statement of claim had not been referred to in the opening.

[6] Mr Perram said to some extent both sides had been in default.

[7] The court had in fact directed a fixed timetable and had ordered the trial date of 2nd October 2007 as long ago as 22nd June 2007. A pre-trial conference for overseas leading counsel was also fixed for 11th September 2007. This was a crucially important date for a constitutional case of complexity such as this. But Senior Counsel did not attend for the plaintiffs. We were told by Mr Fa, Mr Gageler SC for the plaintiffs had not written an opinion on the heads of legal claim under which his clients' case could be brought. In effect it appears the basis of the argument had not then been worked out.

[8] Herein lies the origin for the present difficulties. If it were necessary to make a major recasting of the claim, September 11th was the time when this should have been raised and consent obtained. The dates for trial could still have been adhered to, and the time set aside by the court for this case not wasted.

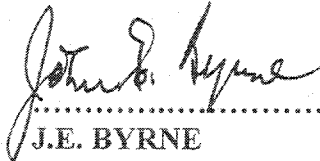
[9] It is not appropriate at this late stage when the trial has already commenced and the case opened, for the plaintiffs to seek to alter the allegations made against the other side in a major way. The courts must insist on fairness, a concept naturally related to orderliness. Knowing in a timely way what is the nature and extent of the complaint made against you, is a cornerstone of our system of justice. The enormity and gravity of the issues demand also that the judges of the court be given more orderly and measured assistance than results from this manner of proceeding.

[10] The court has always insisted on the 2nd October commencement date for the trial. In constitutional cases a good deal of latitude is permitted to the litigants to get their complaints before the courts. This has already been extended in full measure. Now there is a danger of unfairness creeping in, and the case hereafter must be more carefully managed to its conclusion.

[11] Reluctantly we conclude this trial must be postponed. We will now discuss with counsel a fresh timetable. However the court will insist on strict compliance with the directions which are shortly to be made.



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A.H.C.T. GATES
ACTING CHIEF JUSTICE



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J.E. BYRNE
JUDGE



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D. PATHIK
JUDGE

Solicitors for the Plaintiffs	:	Messrs Tevita Fa & Associates, Suva
Solicitors for the 1 st , 2 nd , and 4 th Defendants	}	Office of the Attorney-General, Suva
Solicitors for the 3 rd Defendant		
Solicitors for the Proceedings Commissioner:		Fiji Human Rights Commission, Suva

