

GAGAJ KAUSIRIAF

v.

GAGAJ SAUTIAK, AISEA ATALIFO & EMOTAMA
MISAU FESAITU

[HIGH COURT, 1990 (Byrne J) 14 December]

Civil Jurisdiction

Customary law- Rotuma- whether the removal of a District Chief is governed by customary law or by statute- Rotuma Act (Cap 122) Section 18.

The Plaintiff who was a District Chief was removed from office following a meeting of his chiefly clan. The High Court HELD: a duly elected District Chief in Rotuma may only be lawfully removed by the Prime Minister acting under the provisions of Section 18 of the Rotuma Act.

No case was cited.

J.R. Howard for the Plaintiff
K. Bulewa for the Defendants

Action for declaratory Judgment in the High Court.

Byrne J:

The Plaintiff claims to be the District Chief of Oinafa District and a member of the Council of Rotuma. He states that in October 1961 he was installed as District Chief of Oinafa according to Rotuman customs in accordance with section 18 of the Rotuma Act (Cap. 122).

On the 4th of July 1990 the Defendants purported to hold a meeting of the chiefly clan of Oinafa District as a result of which the Plaintiff was purportedly dismissed as District Chief and a new chief, one Gagaj Poar, was appointed in his place.

On the 10th of August 1990 I granted the Plaintiff an interim injunction restraining them from unlawfully removing the Plaintiff as District Chief of Oinafa and a member of the Council of Rotuma until further order. I then adjourned the hearing for argument until the 20th of August. On that day there had then been filed affidavits sworn by the Plaintiff and by the following persons on his behalf:

- (i) Setaleki Rigamoto, retired civil servant and member of the chiefly clans of Noatau and Motusa Districts of Rotuma;
- (ii) Akanisi Matainairai of Valelevu;
- (iii) Marseu Sefeti of Rotuma holder of the chiefly title of

“Gagaj Tokaniua” of Oinafa District;

- (iv) Gagaj Titofag, District Chief of Juju District of Rotuma;
and

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on behalf of the Defendants, Aisea Atalifo of Oinafa Village, district representative on the Rotuma Council of Leaders.

The Defendants do not deny that the Plaintiff was dismissed but they say this was done in accordance with Rotuman custom and practice. I shall refer in more detail to the defence to the Plaintiff’s claim as stated in the affidavit of Aisea Atalifo later.

B

The Plaintiff’s claim to have been wrongfully dismissed is based on section 18(2) of the Rotuma Act. He says that by this subsection only the Prime Minister may by notice in the Gazette remove him as District Chief. Here it will be useful to set out in full section 18 of the Rotuma Act. It is as follows:

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“ Election of District Chiefs .

18. (1) District Chiefs shall continue to be elected in accordance with Rotuman custom as heretofore.
- (2) The Minister may in his discretion by notice in the Gazette remove from office any District Chief.
- (3) Where the Minister has removed from office the chief of any Rotuman district, a new election in accordance with Rotuman custom of a chief for such district shall be held as soon as possible.
- (4) A person removed from office by the Minister shall not be eligible for re-election as District Chief without the consent of the Minister.”

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After hearing oral submissions by counsel for the parties on the 20th of August I reserved for further written submissions the question of whether any Rotuman custom was relevant to the matter before me. This was because although it seemed to me that section 18, subsection (2) was on the face of it conclusive against the Defendants, Mr. Vuetaki who then appeared for them submitted that custom was also important to the resolution of the matter. He submitted that there was an alternative method provided by local custom for the removal of the District Chief, namely that taken by the Defendants on the 4th of July.

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I accordingly continued the interim injunction until further order.

I have now considered the further submissions by the parties and in my view section 18(2) is decisive of the question. Its language is in my judgment abundantly clear. I hold that it can mean only that the Prime Minister may in his discretion

by notice in the Gazette remove from office any District Chief of Rotuma.

A Counsel for the Defendants submits that the use of the word "continue" in section 18(1) suggests strongly that when the Rotuma Act was passed in 1927, it was the Rotuman custom before and at that time to elect District Chiefs. Therefore, it is argued, it must have been intended by the legislature that the same electoral procedure based on custom was also to be used for their removal from office. Thus it is said the section must mean that because a District Chief is elected into office he may be voted out of office. The question of who participates in this electoral process, the time of such elections, the quorum and other procedures to be followed will be determined by custom.

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C In his affidavit on behalf of the Defendants Aisea Atalifo states in paragraph 5, "that the administrative and legal machinery for appointing the new chief Gagaj Poar has been set in motion as evident from the publication of notice in the Fiji Republic Gazette of Friday 3rd of August 1990, Item 1290". Exhibited to Mr. Atalifo's affidavit is a photocopy of an extract from the Fiji Republic Gazette which so far as relevant reads:

"ROTUMA ACT
(Cap. 122)

D
ELECTION OF DISTRICT CHIEF

In accordance with the provisions of Part III Section 18(1) of the Rotuma Act, I hereby notify that Gagaj Poar has been appointed District Chief of the District of Oinafa with effect from 18.7.90.

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F.M. SUSAU
District Officer, Rotuma"

F I cannot accept that this Notice is of any effect in this case. There is nothing in the Rotuma Act which requires a District Officer to publish any notice in the Gazette of the appointment of a new District chief. In my judgment the submission on behalf of the Defendants ignores the clear words of section 18 which I consider makes an obvious distinction between the *election* of District Chiefs and their removal. Section 18(1) states the District Chiefs shall continue to be elected in accordance with Rotuman custom as in the past. Subsections (2), (3) and (4) set out the manner by which and the person who, namely the Prime Minister, may remove from office any District Chief duly elected under local custom. If the interpretation of section 18(2) for which the Defendants contend were correct then one would expect the section also to contain words after the expression "District Chief" such as the following:

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"Or he may be removed in accordance with Rotuman custom as theretobefore."

There are no such words in subsection (2). Furthermore subsections (3) and (4)

refer to the removal by the Minister of any District Chief and not to his removal in accordance with local customs.

Section 100 of the new Fiji Constitution allows the new Parliament to make provision for the application of laws, including customary laws. By subsection (8) until such time as an Act of Parliament otherwise provides, Fijian customary law shall be part of the law of Fiji but then there is an important proviso, namely that subsection (3) shall not apply in respect of any custom, tradition, usage or values that is inconsistent with a provision of the Constitution or a statute, or repugnant to the general principles of humanity. The last-mentioned does not concern us here but in my view if such a custom as the Defendants claim does exist, and the evidence so far does not satisfy me as to this, then I would hold that such custom would be repugnant to Section 18(2), (3) and (4) of the Rotuma Act.

For the reasons which I have attempted to give in this judgment it is not necessary for me to express any opinion as to the allegations about custom made in the various affidavits filed in this case. I therefore hold that the Plaintiff is still the District Chief of Oinafa District, Rotuma, and that he can only be removed from such position by the Prime Minister of Fiji in accordance with the procedure set out in section 18(2) of the Rotuma Act. As a consequence of this I now dissolve the interim injunction which I have previously granted in this case against the Defendants and order them to pay the Plaintiff's costs of the application to be taxed if not agreed.

Before parting with this matter I must express my concern that the issue between the parties could not have been resolved without them having recourse to the Courts, which, it seems to me, are really not the ideal forum for the resolution of disputes over chiefly titles. I am not unmindful of the fact that the present dispute has caused rifts in the district of Oinafa which I would have thought by the exercise of a spirit of goodwill and reconciliation, particularly at this time of the year, could have been avoided.

(Judgment for the Plaintiff.)