JOSEFA RUSAQOLI

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v

THE ATTORNEY-GENERAL

[HIGH COURT 1994 (Scott J), 6 June]

B Civil Jurisdiction

Elections-whether the conduct of an election may be challenged by writ-Electoral Decree 25/1991-Electoral (Election Petition) Regulations 1992.

After the time for presenting an electoral petition had expired the Plaintiff commenced proceedings by writ challenging the conduct of the election. On
C application being made to strike out the statement of claim the High Court HELD: the only procedure for challenging elections is by way of election petition.

Cases cited:

D *Iliesa Duvuloco and Others v The Attorney-General* (Suva Civ. HBC 0014/94)
R v Birmingham J.J. Ex.p. Ferrero [1993] 1 All ER 530
Thorne Rural D.C. v Bunting [1972] Ch 470; [1971] 1 All ER 439

Interlocutory application in the High Court.

E *K. Vuetaki* for the Plaintiff
D. Singh with *J. Apted* for the Defendant

Scott J:

This is an Application by the Defendants to strike out a Statement of Claim brought under the provisions of Order 18 Rule 19 of the High Court Rules
F and the inherent jurisdiction of the Court.

There are 3 affidavits filed, all on the same date:-

(i) Supervisor of Elections
(ii) Returning Officer
G (iii) Chairman, Native Lands Commission

A written submission was also filed by Mr. Singh on the day of the hearing.

The Statement of Claim was drafted by the Plaintiff himself. From it and from the affidavits the following facts emerge.

The Plaintiff wished to stand as a candidate in the General Election held over

18 to 26 February this year. On 28 January, nomination day, he presented himself to the Returning Officer for the Macuata Fijian Provincial Constituency. Attached to his nomination paper was a certificate provided by the Acting Roko Tui Macuata on Macuata Provincial Council headed notepaper to the effect that the Plaintiff was registered on the Vola ni Kawa Bula (VKB). The Returning Officer refused to accept the certificate taking the view that it was not a certificate provided by the Native Lands Commission as required by Regulation 15 (11) of the Electoral (Conduct of Elections) Regulations 1992 (LN 27/92) and section 42 (3) of the Constitution.

In due course the Plaintiff was in fact able to produce a certificate from the Commission but by that time 4.00 p.m. had passed and nominations had been closed. The Plaintiff was not able to stand as a candidate in the General Election.

In his submissions Mr. Vuetaki explained that the Plaintiff was essentially seeking declarations to the effect:

> (a) that the procedure requiring the production of a certificate of registration or eligibility to be registered on the VKB was discriminatory on the grounds of race;
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> (b) alternatively, that section 43 (2) and Regulation 15 (11) properly construed did not operate to prevent a candidate from providing the required certificate subsequent to the close of nomination;
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> (c) in the further alternatively that the certificate actually produced by the Plaintiff before the close of nomination complied with requirements of the section and the Regulation.

Mr. Vuetaki stressed that his client had a genuine grievance about what had occurred: it was fair and proper that he should be allowed to proceed with his action. If necessary leave could be given to amend the Statement of Claim. He however conceded that the pleadings revealed no cause of action against the Second Defendant and accordingly the proceedings against the Second Defendant were by consent struck out.

Mr. Apted in reply endorsed the written submissions filed by Mr. Singh. Additionally, he argued that the Statement of Claim was vague and imprecise. The Defendant would have great difficulty in discovering the nature of the Plaintiffs case which it appeared from Mr. Vuetaki's submissions was not at all the same as that originally pleaded. He pointed out that the High Court had only recently rejected an identical allegation of discrimination in the case of Iliesa Duvuloco and Others v. The Attorney-General (Suva Civil Action HBC 0014/94). It was, he suggested, improper and an abuse of the Court to raise

such an argument again. Furthermore, it was not at all clear what the Plaintiff was seeking. Even if the prayer for relief could be regarded as seeking declarations, such declarations would be refused if they did not afford to the Plaintiff any actual relief (see Thorne Rural D.C. v. Bunting [1972] Ch 470; [1971] 1 All ER 439.

I found considerable force in all these submissions but consider that the Respondents strongest and indeed decisive argument in favour of striking out the Plaintiff's claim was that the Plaintiff was in effect attempting to present an election petition out of time.

In England and Wales the position is slightly clearer than it is in Fiji since by section 107 (1) of the Representation of the People Act 1949 an election may only be challenged by way of an election petition. In Fiji the relevant legislation is the Electoral Decree 25/1991 which does not mention election petitions except to allow the Electoral Commissioner to make regulations governing them (see section 3 (e)). The relevant regulations are the Electoral (Election Petitions) Regulations 1992 (L/N 39/92). These regulations permit election petitions to be presented in certain circumstances and subject to certain requisites. Thus, inter alia, petitions must be presented within 21 days of the declaration of the result of the election, in this case 26 February and therefore 21 March (Regulation 3 (1); where the conduct of the Returning Officer, is as in this case, being questioned he must be made a Respondent (Regulation 4) and the petition must be accompanied by a payment of $100 as security for costs (Regulation 6).

In the present case the writ was issued on 24 March, the Returning Officer was not joined and of course no deposit of $100 was paid. The question therefore is: can matters which should properly have been the subject of an election petition be brought before the Court by way of writ with the possible consequence that the requisites of the Regulations will thereby be avoided? In other words in Fiji must be questioning of elections exclusively be by petition, as is the position in England and Wales?

I am satisfied that it must. In my opinion the clear intention of the Decree was to provide an exclusive mechanism, to be laid down by Regulation, through which election matters could be questioned. Were this not the case then the restrictions and requisites of the Regulations could simply be circumvented.

Furthermore, it is a general principle of our system of law that where a specific method for questioning a particular activity is provided by law then that specific method should be adopted and not, without exceptional cause, any other (see eg. R v. Birmingham J.J. Ex.p. Ferrero [1993] 1 All ER 530). The hitherto accepted procedure for challenging the decision of a Returning Officer or the Electoral Commission has been to proceed by way of election petition. In my view that procedure should remain the path to follow.

In my opinion the Plaintiff's attempt, out of time, to present a petition under the guise of a writ amounts to an abuse of the mechanisms of the Court. For that reason alone I would order the Statement of Claim be struck out. I should however add that I would also decline to exercise my discretion to grant declaratory judgments on the meaning and interpretation of section 43 and regulation 15 (11) merely because, to quote Mr. Vuetaki, it would be "useful".

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The Application succeeds and I order the Statement of Claim to be struck out.

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(Application granted

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