

THE STATE

v.

THE REGISTRATION OFFICER,  
TAILEVU FIJIAN PROVINCIAL CONSTITUENCY

*ex parte*

SAMUELA MATAWALU

[HIGH COURT, 1995 (Scott J), 18 September]

Revisional Jurisdiction

*Constitution-Fiji Citizenship-whether lost-whether resumed-Constitution 1990  
Chapter III.*

The interested party obtained registration as a voter. On a motion to review the dismissal by the Registration Officer of the Applicant's objection to the registration HELD: the Interested Party had lost her citizenship by operation of law and had not resumed it.

Cases cited:

*James Michael Ah Koy v. Registration Officer* (FCA Repts 93/244)  
*Minister of Home Affairs v. Fisher* [1979] 3 All ER 20

Motion for judicial review in the High Court.

Applicant in Person

*I. Mataitoga* (Solicitor-General) with *D. Tuiqereqere* for the Respondent  
*R. Matebalavu* with *Ms. Waqavonovono* for the Interested Party

Scott J:

The Applicant is a voter who is registered on the roll of voters who are Fijians (See section 41 (3)(d) of the Constitution of Fiji 1990) and who is registered as a voter in the Suva City Fijian Urban Constituency.

The nominal Respondent (Mr Poasa Ravea) is the Commissioner Central who is the Registration Officer for the Tailevu Fijian Constituency.

The Interested Party is also a voter who is registered on the roll of voters who are Fijians and she is also registered as a voter in the Suva Fijian Urban Constituency.

On 8 August 1995 the Supervisor of Elections by formal notice published in the Fiji Times called for objections to the roll of voters. The Applicant objected to the inclusion of the Interested Party. That objection was rejected by the

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A Registration Officer and on 29 August the Applicant applied for leave to seek Judicial Review of the Registration Officer's decision. Leave was granted by consent on 4 September.

B I have called the Registration Officer the nominal Respondent because on 4 September all parties agreed, given the long drawn out history of the matter, that the fundamental questions at issue should be tried. It is for that reason that the Solicitor-General appears not only on behalf of the Registration Officer but also on behalf of the Supervisor of Elections and the Attorney-General.

The following affidavits were filed:

- (i) Applicant, 29 August
- C (ii) Registration Officer, 31 August
- (iii) Dane Tuiqereqere, Attorney-General's Chambers, 11 September
- (iv) Applicant, 11 September
- (v) Interested Party, 11 September
- (vi) Director of Immigration, 11 September
- (vii) Applicant, 13 September
- D (viii) Col Paul Manueli, Minister for Home Affairs and Immigration, 15 September

The following written submissions were filed:

- (i) Applicant, 11 September
- (ii) Respondent, 11 September
- E (iii) Interested Party, 11 September
- (iv) Interested Party, 13 September

A very full and undisputed chronology of events can be compiled from the affidavits and the written submissions. While it is not necessary to repeat that chronology now in its entirety a brief precis is necessary.

F The Applicant is a Barrister and Solicitor and a candidate for the Tailevu Fijian Provincial Constituency in which he unsuccessfully stood for election to Parliament on behalf of the Fijian Association in the General Election of 1994.

G The Interested Party, Adi Litia Samanunu Cakobau, is the daughter of the Late Ratu Sir George Kadavulevu Cakobau, Vunivalu and Governor-General of Fiji, who died in November 1989. She is the direct descendant of Cakobau who, together with other High Chiefs, ceded Fiji to Queen Victoria in 1874. She is a High Chief of Fiji in her own right. In February 1994 Adi Samanunu successfully stood for election to Parliament on behalf of the SVT (the Soqosoqo Ni Vakavulewa Ni Taukei) in the same constituency as the Applicant. In due course she was appointed Minister for Fijian Affairs and on one occasion acted as Prime Minister.

In March 1995 questions began to be asked about Adi Samanunu's eligibility to sit as a member of House of Representatives. It was said that when she was elected in February 1994 she held British Citizenship which, it was suggested A was, in view of the Constitution, incompatible with holding that Fiji Citizenship which was a prerequisite to her registration as a voter and as a candidate in a Parliamentary Election.

In May 1995 the Fijian Association brought proceedings (Civil Action 250/95) in the High Court at Suva seeking a number of orders including a declaration that B Adi Samanunu, at the time of her return to Parliament, was not eligible for election by virtue of her possession of British Citizenship.

On 11 May 1995 Adi Samanunu lodged a declaration of renunciation of British Citizenship which was registered by the Home Office in London on 15 June 1995. (See Ex. 4 to her affidavit).

On 14 June Adi Samanunu filed an affidavit in the High Court proceedings C (See Ex. F of the Applicant's first affidavit) passages of paragraphs 13, 17, 28 and 29 of which read as follows:

"13 I carried a British Passport..... issued in 1980.

17. I sincerely believe that I have remained a Fiji Citizen throughout, since D birth. That I have held a valid Fiji Passport, initially for 10 years to 1983, thereafter for another 5 years to 1988 and renewed in December 1989 in Suva to 16 May 1993.

28. Recently I have taken steps to have my British Passport cancelled including E renouncing relevant British Citizenship.

29. In addition I have also caused to have to commenced formal process to acquire Fiji Citizenship."

On 3 July the Permanent Secretary for Home Affairs and Immigration wrote to Adi Samununu in the following terms: (See Ex. 3 to her Affidavit).

"Dear Madam,

Application for Fiji Citizenship

I am pleased to advise you that in accordance with the powers vested in G him under the provisions of Section 15(2) of the Fiji Citizenship Act, Cap. 87, the Minister responsible for Immigration has approved your application to resume Citizenship of Fiji. You are therefore advised that you are a Fiji Citizen from 9 June 1995 with to all the rights privileges etc. attendant thereto.

It is noted that the British Government has registered your declaration of renunciation of British Dependent Territories Citizenship as per

renunciation No. 080496.

A Yours faithfully

Meli Bainimarama  
Permanent Secretary for Home Affairs and Immigration

B The Minister responsible for Immigration was, on 3 July 1995, the Hon. Col Paul Manuéli (See Legal Notice 2/1995) and it was confirmed from the Bar and subsequently by his affidavit filed on 15 September that it was he who approved Adi Samanunu's application for citizenship.

C On 26 June 1995 the High Court (Hon. Mr Justice D. Fatiaki) struck out the proceedings, 250/95 on the ground that a challenge of the kind brought by the Association could only be brought by way of election petition but that the time for bringing such a petition had passed. In accepting that the grounds for the dismissal of the proceedings might be considered to be technical the learned Judge was as pains to emphasise in his Judgment that he expressed no opinion on the merits of the Association's substantive case or the various reliefs sought.

D On 3 July 1995 Adi Samanunu resigned from Parliament. In paragraph 23 of her affidavit she states:

"I resigned in order to clear the air, particularly in respect of the allegations brought against me in Civil Action No. 250 of 1995 wherein it was alleged that I am not a Fiji Citizen."

E On 17 July 1995 H.E. the President issued a writ for the election of one member of the House of Representatives for the Tailevu Fijian Provincial Constituency to fill the vacancy caused by Adi Samanunu's resignation (See Gazette Notice 1214 of 1995).

F On 8 August 1995, as has already been seen, the Applicant objected to the inclusion of Adi Samanunu on the roll of Fijian voters, the basis of the objection being that Adi Samanunu was not a Fiji Citizen and was therefore not eligible for inclusion in the roll of voters who are Fijians. This objection was rejected by the Commissioner Central.

G Following the rejection of the Applicant's objection Adi Samanunu was nominated to contest the forthcoming by-election on behalf of the SVT. There was a further objection by the Applicant to her eligibility to stand but this further objection was also rejected. In accordance with the President's writ polling is due to take place between 28 and 30 September next.

On 4 September, as has already been seen, leave to seek Judicial Review was granted by consent. This was because it was realised and accepted that the dispute between the parties had gone on for far too long and needed once and for all to be resolved. As will be apparent from the press cuttings exhibited

to the Applicant's third Affidavit the subject has dominated the media for the last six months. If not resolved now there was the dismal prospect of the dispute dragging on for many months more. It was in the interests of all concerned that this be avoided and it was therefore agreed that this Judicial Review would not be confined to the narrow technical question whether the Respondent was right to reject the Applicant's objection but would proceed on the broader basis that they were two questions to be answered: first, is Adi Samanunu a Fiji Citizen? and second, does she have the required residency qualifications to stand for Election to Parliament? In the event, the Applicant did not press an objection on the grounds of residency.

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The relevant section of the Constitution (Section 49) does not specifically require residency while holding citizenship and it was not disputed that Adi Samanunu had in fact been resident in Fiji for at least 2 years before her inclusion in the electoral roll in 1995. I hold therefore, that there is no objection to her inclusion in the electoral roll on the basis of lack of the residency alone. The question of citizenship is accordingly all that remains at issue.

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The detailed written submissions filed by the Applicant and Counsel for the other Parties, for which I am grateful, need not now be rehearsed. A summary of the main points will suffice.

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The Applicant says that the only law now governing Fiji Citizenship is the Constitution 1990 and in particular Part IV thereof. He says that under the Constitution dual citizenship is forbidden and that therefore Adi Samanunu has lost her Fiji Citizenship. Furthermore, on the facts as revealed by the affidavits Adi Samanunu is not now entitled to resume Fiji Citizenship and will not become so entitled to until 5 years after renouncing her British Citizenship. The purported grant of Fiji Citizenship to her by Col. Manueli in July 1995 is bad in law and void.

E

On behalf of the Respondent, the Solicitor-General, while accepting that the 1990 Constitution is of some relevance argues that it does not apply to the special facts of this case since Adi Samanunu was and is entitled to Fiji Citizenship both by reason of her place of birth and by her descent. In these circumstances the only relevant legislation is section 15 of the Fiji Citizenship Act - Cap 87.

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Mr Matabalavu who filed two written submissions on behalf of Adi Samununu took a rather different approach. While endorsing the July 1995 grant of citizenship to his client, he suggests that a broad and generous construction should be placed upon the 1990 Constitution and says that if this is done than it can be seen that Adi Samanunu satisfies the requirement for registration as a Fiji Citizen which citizenship he says she has in fact retained throughout.

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It is not disputed that there are four principal pieces of legislation which must be considered. They are:

- A
- (i) The Constitution 1970 - (Cap 1 - 1978 Edition).
  - (ii) The Fiji Citizenship Act - Cap 87
  - (iii) The Fiji Citizenship Decree - 14/87
  - (iv) The Fiji Constitution 1990.

I will consider them in turn.

- B
- (1) The Constitution 1970  
The relevant part of the Constitution 1970 is Chapter III.

By Section 19 (1):-

C

“Every person who, having been born in Fiji is on 9th October 1970 a citizen of the United Kingdom and Colonies shall become a citizen of Fiji on 10th October 1970.”

Taking together paragraphs 2 and 10 of her Affidavit filed herein I find that Adi Samanunu was, by virtue of her birth in Fiji on 27 July 1939, a citizen of the United Kingdom and Colonies who by operation of Section 19(1) of the 1970 Constitution became, on 10th October 1970 a Fiji Citizen.

- D
- Ten years later, in 1980, as has been seen, Adi Samanunu for the first time acquired a British Passport. Unfortunately, none of the Affidavits reveals when exactly Adi Samanunu took out British Citizenship and I was not addressed on the precise legal relationship between the possession of a British Passport and the entitlement to British Citizenship. I think, however, that it is safe to assume that the citizenship which Adi Samanunu renounced in May 1995 was the same as that citizenship which enabled her to obtain a British Passport in 1980.
- E

- F
- Taking together the relevant paragraphs in her affidavit filed herein and her affidavit filed in Court on 14 June I find that during the period following the grant of her British Citizenship in 1980 through to 6 October 1987, Adi Samanunu held dual citizenship in that she was a citizen of Fiji and also a British Citizen.

Section 25 of the 1970 Constitution is also important. The relevant parts read:

- G
- “Parliament may make provision -
- (a) for the acquisition of citizenship of Fiji by persons who are not eligible or who are no longer eligible to become citizens of Fiji by virtue of the provisions of the Chapter.
  - (b) for depriving..... citizenship of Fiji...
  - (c) for the renunciation by any person of his citizenship of Fiji.

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- (d) for the maintenance of a Register of citizens of Fiji who are also citizens of other countries, or A
- (e) for depriving...citizenship of Fiji of any citizen of Fiji who has attained the age of 21...." A

(2) The Fiji Citizenship Act - Cap 87

In 1971 Parliament did in fact make provision for the matters listed in section 25 of the Constitution, set out above. B

On 28 May 1971 the Fiji Citizenship Act became law. It was an Act "to provide for the acquisition, deprivation and renunciation of the citizenship of Fiji and for matters connected therewith and incidental thereto."

The Act is particularly relevant to this case since, as has been seen, it was in the purported exercise of his powers under Section 15(2) of the Act that the Minister for Home Affairs and Immigration approved Adi Samanunu's resumption of citizenship on 3 July 1995. C

The three questions which must be asked in relation to this Act of (1) Is it still part of the law of Fiji? (2) Does Adi Samanunu comes within its provisions? and (3) was the permission to resume citizenship granted by the Minister to Adi Samanunu on 3 July a legitimate exercise of the powers conferred upon him? D

Questions (1) and (3) cannot be answered without considering the relationship between the Act and the other two relevant pieces of legislation which followed them namely the Decree and the 1990 Constitution. Question (2) can however be answered, at least in part, without recourse to other legislation. E

The relevant parts of Section 15 read as follows:

- "15 - (1) if any citizen of Fiji of full age and capacity who is also - F
- (a) a national of a foreign country; or
- (b) a commonwealth citizen other than a citizen of Fiji,
- makes a declaration of renunciation of his citizenship of Fiji in the prescribed manner, the Minister shall cause such declaration to be registered and thereupon that person shall cease to be a citizen of Fiji; (proviso - not relevant). G

- (2) A person to whom subsection (1) applies may at any time apply in the prescribed manner to the Minister to permit him to resume the citizenship of Fiji and the Minister if satisfied

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as to the circumstances of the case may, in his absolute discretion, permit such person to resume such citizenship.

- A In answer to my questions, Mr Matabalavu told me that Adi Samanunu at no stage had ever renounced her Fiji Citizenship and while there is no direct evidence on this point the Fiji Passports which Adi Samanunu has deposed that she has throughout held provide confirmation of what I was told from the Bar. But, if Adi Samanunu never renounced her Fiji Citizenship then she cannot be a person to whom section 15(1) of the Act applies and therefore it was not open to her to make an application for resumption of Fiji Citizenship under Section 15(2) and it was not open to the Minister to grant a resumption of citizenship under the Act. The Act, in short, offers resumption of citizenship following renunciation and not following loss of citizenship under any other circumstance such as loss by operation of law.
- B
- C We will have to return to this Act in due course but it will be convenient next to consider the Decree.

(3) The Fiji Citizenship Decree 14/1987

- This Decree became law on 7 October 1987. The two questions which now arise for consideration are (1) What effect, if any, did the Decree have on the legal status of the Act? and (2) What was the legal effect, if any, of the Decree on the citizenship status of Adi Samanunu?
- D

For present purposes the most important sections of the Decree are as follows:

- E “2(1) - Every person who having been born on 6th October 1987 shall become a citizen of the Republic of Fiji on 7th October 1987 (sic).
- 9(1) - There shall be on and from 7th October 1987 a status known as a citizen of the Republic of Fiji.
- F (2) - The status of a citizen of the Republic of Fiji may be acquired -
- (a) by birth
  - (b) by descent
  - (c) by registration or, before 7 October 1987 by enrolment.”

- G These sections are followed by a number of other sections which deal with deprivation of citizenship either by operation of law, or the Government, or the citizen.

Section 23 of the Decree in particular and the whole scheme of the Decree in general has the effect of prohibiting dual citizenship and of terminating Fiji Citizenship where dual citizenship occurs.



As has been seen it is central to the arguments advanced by both Mr Matabalavu and by the Solicitor-General that the Fiji Citizenship Act survived the promulgation of the Decree or, in other words, that section 15 of the Act remained and remains part of the law of Fiji and available for use as and when required.

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In law, a later statute may repeal an earlier one either expressly or by implication, but repeal by implication is not favoured by the Courts and if possible the Courts will construe the later statute in such a way that both can be given effect to.

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Bearing these principles in mind while closely examining and comparing the Act with the Decree, I have nevertheless been driven to the conclusion that the clear intention of the Decree was to introduce an entirely new law governing the citizenship of the inhabitants of Fiji to replace the former law comprised in the 1970 Constitution and the Fiji citizenship Act and that consequently no part of the Act survived its promulgation.

C

In addition to the contradictions or inconsistencies between the two sets of rules governing the same subject matter which detailed examination reveal and which are too numerous to list here now, there are two other main reasons why I have reached my conclusion. The first is that the Act, as has already been seen, was made pursuant to and in amplification of the 1970 Constitution which Constitution was, of course, abrogated on 25 September 1987.

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Second, it is obvious to me that the Decree holds itself out as being a comprehensive code covering all aspects of the acquisition or loss of Fiji Citizenship and is intended to replace all previous legislation which had covered the same ground. The fact that sections 2(1) and 9(1) specifically create an entirely new status of citizenship namely "Citizen of the Republic of Fiji" had, in my view, the effect of totally superseding not only the earlier species of citizenship created by the 1970 Constitution but also the legislation governing that citizenship namely 1970 Constitution itself and the Act.

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The answer to the first question recently posed must in my view be that the Decree repealed the Act. The second question, it will be remembered, is what the effect, if any, did the Decree have on Adi Samanunu's citizenship status? The answer is, I think, simple. In view of the distinction drawn in the Decree

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between foreign countries and Britain, Adi Samanunu's new status as a citizen of the Republic of Fiji which she acquired on 7 October 1987 did not automatically cease merely by virtue of the fact that she already held British Citizenship (see section 19 of the Decree) and as it has not been suggested that the Fiji Government ever took any steps against her under sections 20 or 23 of the Decree it seems clear that her Fiji Citizenship survived its promulgation.

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A I have earlier found that Adi Samanunu held dual citizenship up until 6 October 1987. That date may now be advanced forward until at least 24 July 1990, that date being the eve of the promulgation of the 1990 Constitution which is the last piece of legislation which must now be considered.

(4) The 1990 Constitution

B I have already noted that the Solicitor-General advanced the view that the 1990 Constitution was only of very limited relevance to the circumstances of this case and Mr Matabalavu invited me not to emphasise its individual sections.

C Having referred to the broad and generous approach to the construction of Constitutions approved by the Privy Council in Minister of Home Affairs v. Fisher [1979] 3 All ER 20 and followed by the Fiji Court of Appeal in James Michael Ah Koy v. Registration Officer FCA 23/92 - FCA Reps 93/244 Mr Matabalavu concluded his second written submission with the following words:-

D "It is submitted that in the totality of the circumstances pertaining to the present proceedings particularly the fact that Adi Litia is a High Chief in Fiji whose social and traditional status is unquestioned, further is registered in the Vola Ni Kawa Bula and, until promulgation of the 1990 Constitution and the recent series of proceedings before the Courts in Fiji and also held a Fiji Passport it is not necessary to resort to any other law or enactment other than the Constitution in order for the Court to establish her Fiji citizenship. It is suggested, with respect, that read together the plain result of the provisions of sections 22, 26, and 28 is that Adi Litia either never lost her Fiji Citizenship or has validly resumed such citizenship by registration in any event."

F I have set out that passage of Mr Matabalavu's written submission in full in this Judgment because I accept that the broad legal approach to the construction of the 1990 Constitution advanced by him is correct and because I also accept the relevance of the "totality of the circumstances" of this case.

G Having already ruled that the Fiji Citizenship Act, Cap 87, did not survive the promulgation of the Citizenship Decree and having found that the Decree did not adversely affect Adi Samanunu's Fiji Citizenship it is clear that the construction of the 1990 Constitution will be determinative of the issues before me.

Before considering the Constitution it should briefly be noted that the mere fact of possession of a Fiji Passport does not of course help determine citizenship since a Fiji Passport can only legally be given to a person who has established that he is a Fiji Citizen (Section 3(1) of the Passport Act - Cap. 89).

The obvious importance of the Constitution can immediately be discovered by consulting the Constitution itself. The Constitution is the supreme law of Fiji. Section 2 of the Constitution reads as follows:

“2. This Constitution is the supreme law of Fiji and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.”

A

The part of the Constitution which is particularly relevant to Citizenship is Chapter IV. Under section 22:

“Any person who was a citizen of Fiji on 6 October 1987 shall remain a citizen of Fiji on the commencement of this Constitution.”

B

As has been seen, Adi Samanunu became a citizen of Fiji on 10 October 1970 and retained that citizenship despite the promulgation of the Citizenship Decree. Therefore on 25 July 1990 she “remained” a citizen of Fiji. (As a matter of interest it may be noted that apparently the status of “Citizen of the Republic of Fiji” created by the Decree was abolished by the Constitution but whether the Decree itself was repealed by implication by the Constitution is not now necessary to decide).

C

The next section which must be considered is crucial. It is section 28. The relevant parts read as follows:

D

“(1) Subject to the other provisions of this section a person shall forfeit forthwith his Fiji Citizenship if he acquires or retains the citizenship or the nationality of a country other than Fiji.”

E

Section 28 (3) reads as follows:-

“(3) - A citizen of Fiji by birth shall not forfeit his Fiji Citizenship if within 12 months of the commencement of this Constitution or within 12 months after he attains the age of 21 years (whichever is the later) he renounces the citizenship or nationality of any other country which he may possess.”

F

Construing these subsections as liberally and generously as I can I cannot see how Adi Samanunu can avoid them. Taking together subsections (1) and (3) it is absolutely clear to me that a Fiji Citizen by birth who on 25 July 1990 had a second citizenship had 12 months, that is, until 25 July 1991 to renounce that

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second citizenship if he wished to avoid the loss of his Fiji Citizenship. Unfortunately, Adi Samanunu did not renounce her British Citizenship until 1995 which was, as I find, 4 years after she had already lost her Fiji Citizenship by operation of the Constitution.

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The final question must be: having lost her citizenship by operation of the Constitution has she regained it?

A In answering this question it is important to distinguish not only between entitlement to citizenship and possession of citizenship but also between membership of a race or people and citizenship of a nation of that race or people.

B A person who is born a Fijian remains a Fijian all his life whatever governments may do. But a person who may have citizenship under one government may lose it under another. Furthermore, a person may have an entitlement to something which, because he has not claimed it or cannot claim it, he does not yet possess.

C Mr Matabalavu eloquently argued that even if Adi Samununu lost her Fiji Citizenship because time ran out under section 28(3) then, by virtue of Section 26, she is entitled to it in any event. I have to say, with the greatest respect and with no pleasure, that I disagree.

D Under section 26(1) the Prime Minister may authorise the registration of a person as a Fiji citizen subject to certain conditions which are not now relevant if, either the person seeking to be registered is :-

- (a) a woman who is or has been married to a citizen of Fiji; or
- (b) was born overseas.

E There are five difficulties which I cannot see how Adi Samanunu can overcome.

F First, it was never suggested that Adi Samanunu ever applied to be registered under the provisions of section 26 or that the Prime Minister had ever approved her registration under the section. Second, there was no evidence to satisfy the requirement of section 26(2)(a), although I did ask for it. Third, as Col. Manueli makes clear in his affidavit not only was the grant of citizenship made by him under the provisions of Section 15(2) of the Act but also he had no authority to approve registration under Section 26 of the Constitution.

G There is a fourth difficulty which arises from section 86 of the Constitution. Under that section His Excellency the President assigns responsibility for the conduct of government business to the various Ministers. He does so on the advice of the Prime Minister. Under Section 63 of the Interpretation Act, Cap 7, the Gazette is evidence of its contents. By assignment dated 7 December 1994 (Legal Notice 1/95) the President assigned the Fiji Citizenship Act - (Cap 87), to the Prime Minister. By another assignment (LN 2/95) he assigned the Immigration Act - (Cap 88), a totally different piece of legislation, to Col. Manueli. According to Col. Manueli's evidence there have been no subsequent assignments by the President. In those circumstances I am of the view that

even if the Fiji Citizenship Act had not been repealed as a result of the promulgation of the Fiji Citizenship Decree and even had section 15(2) been relevant to Adi Samanunu's circumstances then the wrong Minister would still have approved Adi Samanunu's application for resumption of citizenship and accordingly the approval and subsequent grant were void on that ground alone.

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The final difficulty is that although Adi Samnanunu is obviously entitled by birth and descent to claim membership of the Fijian people the provisions of the Constitution granting citizenship by virtue of birth or descent only apply to persons born after 6 October 1987 (See sections 23, 24 and 25 of the Constitution).

B

I wish to conclude by summarising what I realise is a rather long and complicated Judgment.

C

In my view, of the four pieces of relevant legislation namely The Constitution of Fiji 1970, The Fiji Citizenship Act (Cap.87), The Fiji Citizenship Decree (14/87) and the Constitution of Fiji 1990, The 1990 Constitution is alone determinative of Adi Samanunu's citizenship status. Under the provisions of that Constitution I hold that she lost her Fiji Citizenship by operation of law on 26 July 1991 and has not regained it.

D

There is every reason to think that Adi Samanunu is but one, albeit a very important one, of countless former citizens of Fiji who were born in Fiji but who have also lost their Fiji citizenship by operation of the 1990 Constitution and who at present have no sensible means of regaining it. If this case illustrates one thing it is the extreme danger of altering the citizenship laws without proper consideration for the consequences. I find that, whether by accident or design the Constitution although providing four methods for acquiring Fiji citizenship does not provide for its resumption.

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There is not a single right-thinking person in Fiji who will not deplore the fact that Adi Samanunu has lost her citizenship in these circumstances and now apparently finds herself living stateless in the land of her birth. Obviously steps must urgently be taken to repair this lacuna in our law. Whether the Constitution will have to be amended or whether an Act providing a power to grant resumption of citizenship similar to that contained in the repealed Fiji Citizenship Act would suffice is not for me to say.

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I grant the relief sought by the Applicant.

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*(Motion granted.)*

*(Editor's Note: an appeal against this Judgment was dismissed on 15 May 1996)*