

**STATE v ARBITRATION TRIBUNAL and 2 Ors; Ex parte PAFCO EMPLOYEES' UNION**

HIGH COURT — CIVIL JURISDICTION

5 PATHIK J

6 August 2003

10 [2003] FJHC 315

**Administrative law — judicial review — application — whether non-solicitor allowed to appear and conduct hearing for Union — High Court Rules 1998 O 5, r 6(2) — Legal Practitioners Act (No 19 of 1997) s 52 — Trade Unions Act (Cap 96) s 17.**

15 Respondents objected to Applicant Union's General Secretary, who is a non-solicitor, to appear in open Court on the hearing of the judicial review and to conduct such hearing.

Application dismissed.

**Cases referred to**

20 *Engineers' & Managers' Association v Advisory, Conciliation & Arbitration Service* [1979] 3 All ER 223; [1979] 1 WLR 1113, considered.

*Frinton & Walton Urban District Council v Walton & District Sand & Mineral Co Ltd* [1938] 1 All ER 649, cited.

25 *T. Tokalauvere* for the Applicants.

*E. Tuiloma* for the 1st Respondent.

*H. Nagin* for the 2nd Respondent.

30 **Pathik J.** In this judicial review application made under O 53 of the High Court Rules 1988, counsel appearing for the Respondents have raised objections to Mr T Tokalauvere as General Secretary of PAFCO Employees' Union appearing in open court to conduct the hearing when he is not a legal practitioner. This is a ruling on the objection.

35 Further to leave granted herein to apply for judicial review affidavits in reply were filed by the 2nd Respondent on 24 September 2002 and the tribunal's (1st Respondent's) record of proceedings were filed on 27 May 2003.

40 The hearing of the judicial review commenced in open court on 4 June 2003. The Applicant union was represented by the General Secretary Mr Tomasi Tokalauvere (Tokalauvere) who is not a solicitor. The Respondents' counsels objected to Mr Tokalauvere appearing to conduct the hearing for the union. The union's representative said he can appear and made his submission. Both counsel also made submissions opposing Tokalauvere who is not a legal practitioner appearing for the union.

45 **The issue**

The issue for court's determination is whether Tokalauvere is allowed in law to appear for the union.

**Consideration of the issue**

50 On the issue the court was referred to The High Court Rules 1988 and to the Trade Unions Act, Cap 96 (the Act).

Order 5 r 6(2) of the High Court Rules provides that:

- (2) Except as *expressly provided* by or under any enactment, a body corporate may not begin or carry on any such proceedings otherwise than by a barrister and solicitor. [Emphasis added.]

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A “trade union” is a “body corporate”, for under s 17 of the Act it is provided:

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17. The registration of a Trade union *shall* render it a *body corporate* by the name under which it was registered, and, subject to the provisions of this Act with perpetual succession and with power to hold property real or personal and to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution. [Emphasis added.]

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In view of the above provisions in s 17 and O 5 r 6(2), because the union (the applicant) is a body corporate it has to “carry on” these proceedings by a “barrister or solicitor”. Hence Mr Tokalauvere by virtue of him being the General Secretary of the Union cannot appear to conduct the hearing of this judicial review in open court.

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Mr Tuiloma referred the court to s 52 of the Legal Practitioners Act (No 19 of 1997) which provides, inter alia, that “no person shall practice or act as a legal practitioner of Fiji or as a Notary Public without being the holder of a current practising certificate”. He says that Mr Tokalauvere is not a “legal practitioner” and therefore cannot appear in court conducting the case for the Applicant.

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In the Notes to 1995 White Book, under the caption “a body corporate” it is stated:

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A trade union, which is not a body corporate, does not come under para (2) of this rule, and it may therefore be represented by a secretary or other officer duly authorised on its behalf, although in the ordinary way, especially in the case of a trade union with ample funds and faced with a complicated matter, the trade union as a legal entity would think it right and proper to employ a solicitor and counsel to conduct proceedings on its behalf in the High Court (*Engineers’ and Managers’ Association v Advisory, Conciliation and Arbitration Service (No 1)* [1979] 1 WLR 1113; [1979] 1 All ER 227, CA)

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Bearing in mind the above note, it is to be noted that in the present case the applicant is a body corporate and to use the words of O 5 r 6(2) it is “expressly provided” under the said s 17 what the requirements as to representation are.

On the need for trade unions to be represented by counsel, I refer to the Court of Appeal case of *Engineers’ and Managers’ Association v Advisory, Conciliation and Arbitration Service (No 1)* [1979] 3 All ER 223 where it was held:

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As a general rule trade unions should be represented by counsel in the High Court and Court of Appeal because the issues involved in proceedings concerning trade unions were normally complicated. The court had, however, a discretion to make exceptions to that rule and would exercise that discretion in favour of UKAPE because it was a small union with limited resources and H merely wanted to put forward a *simple point* on its behalf. [Emphasis added.]

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There at 224 Lord Denning M R said that:

If the trade union had been a body corporate then under RSC Ord 5, r 6(2) and RSC Ord 12, r 1 it could not appear or carry on proceedings except through a solicitor.

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But he said that if it was not a body corporate it will not come within the prohibition.

In this case it is not a “simple point” which the Applicant union wants to put before the court hence it is not within the discretion of the court to allow the Applicant to be represented by the Secretary of the Union or any other officer duly authorised on its behalf.

5 In Halsbury’s Law of England, 4th ed, vol 3, at [1155] it is stated that “a corporate litigant cannot appear in person” and in the Notes to this statement it is stated:

10 Whilst a corporation may be represented in chambers by a solicitor he can be represented in Open Court only by counsel: *Frinton and Walton UDC v Walton District Sand and Mineral Co Lt* [1938] 1 All ER 649.

### Conclusion

15 To conclude, for the above reasons, considering the provisions of s 17 of the Trade Unions Act, O 5 r 6(2) of the High Court Rules 1988 and the authorities, Mr Tokalauvere the General Secretary of the Applicant/Union cannot be permitted to appear in open court on the hearing of the judicial review and to conduct the hearing.

It therefore follows that the Applicant has to engage a barrister and solicitor to appear in this case on the hearing of the judicial review.

20 The objection is allowed, and once the Applicant engages counsel hearing date could be assigned.

*Application dismissed.*

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