

**IN THE HIGH COURT OF NIUE
(CIVIL DIVISION)**

Application No CV3/2014

IN THE MATTER OF: Articles 6(1)(b) and 6(2) of
the Constitution of Niue

BEWEEN: **TOGIA SIONEHOLO**
Member of the Niue
Legislative Assembly
(Applicant)

AND: **AHOHIVA LEVI** Speaker of
the Niue Legislative
Assembly
(Respondent)

Decision: 31 January 2014 (12:35 pm New Zealand time)

DECISION OF COXHEAD J

Introduction

[1] On 22 January 2014 an application was received from Togia Sioneholo, a member of the Niue Legislative Assembly ("NLA"), seeking an order directing the speaker of the NLA to appoint a day within the period of 26 January 2014 and 30 January 2014 for the meeting of the NLA, to debate and vote on a motion of no confidence in the Cabinet, as required by Article 6 of the Constitution of Niue.

[2] The application arises due to the indication from the speaker that he would not call a meeting until 3 February 2014, which the applicant submits is outside the time period provided for in article 6(2) of the Constitution of Niue. Article 6(2) requires that a meeting shall be held not earlier than 5 days or later than 10 days after but excluding the date of the giving of the notice.

[3] The applicant submitted that in arriving at the date of 3 February 2014, the speaker had wrongly interpreted "days" as "working days".



[4] When the application was referred to me I directed that responses were to be filed by the respondent.

Response to application

[5] The respondent, Mr Levi, the speaker of the NLA, has submitted in response that a meeting has been called for 29 January 2014 and asserts that this is in accordance with art 6(2) of the Constitution of Niue.

[6] The Court has also been provided with a notice of the special meeting pursuant to Article 6(1)(b) and (2) of the Constitution of Niue, appointing Wednesday, 29 January 2014 as the day for a special meeting to debate and vote on the motion of no confidence in the Cabinet.

Amendment to the original application

[7] The applicant in this matter has also filed a further submission where he notes, in essence, that because of the meeting being called on 29 January 2014, the order sought by him is no longer required.

[8] The applicant did however request that the Court amend the original application and now requests a declaratory judgment on the interpretation of:

- a. Article 6(2) with respect to the meaning of the word "day"; and
- b. the meaning of the reference in s 4 of the Niue Constitution Act 1974 to the Constitution of Niue that it "shall be the supreme law of Niue" in so far as it relates to the NLA standing order.

[9] The reason being, that the speaker has continued to make reference to the NLA Standing Orders even though the Constitution of Niue is clear on the procedures with respect to Article 6.

Further response

[10] The respondent has provided further submissions with regards to the applicant's most recent request for orders.



[11] Mr Levi submits that the Niue Constitution Act 1974 and the Standing Orders provide no definition of "day" and the Standing Orders uses "day" and "working day" interchangeably.

[12] Mr Levi submitted that therefore the next law to consider is the Interpretation Act 2004 which provides:

Section 5 Definitions

In any enactment and public document - ...

"day" means a calendar day;...

"working day" means a day of the week other than a Saturday or a holiday;...

[13] In my view the Interpretation Act 2004 adequately deals with the issue of clarification being sought by the applicant.

[14] In relation to the supreme law of Niue, the respondent submits that in addition to s 4 of the Niue Constitution Act 1974 this matter is also dealt with under the Interpretation Act 2004, which stipulates the sources of laws of Niue in priority as follows:

Section 4 – Sources of law

The sources of Niuean law are, in order of priority -

(a) The Constitution;

(b) Acts of Assembly;

(c) Regulations;

(d) Niue Custom;

(e) The Common law of Niue.

[15] Once again I think the Interpretation Act 2004 adequately deals with the applicant's issues of clarification. There is no ambiguity with regard to what source of law is the supreme law in Niue.

Decision

[16] The applicant, by variation of the original application, seeks a declaratory judgment in relation to the definition of "day" in article 6(2) of the Constitution of Niue, and further for the meaning of the reference in s 4 of the Niue Constitution Act 1974 to the Constitution of Niue being "the supreme law of Niue", as this relates to NLA Standing Orders.

[17] In terms of article 6(2) of the Constitution of Niue, and the meaning of the word "day", the applicant is correct in their interpretation of a "day" being a "calendar day". The respondent agrees with this interpretation.

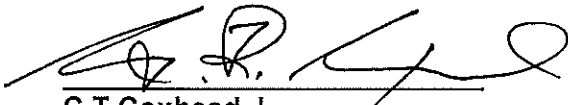


[18] In terms of the second issue of the supreme law of Niue, the applicant is correct in that the Constitution of Niue is the supreme law. The respondent agrees with this interpretation.

[19] While the respondent enters no opposition to the orders being sought, I find that the clear statements set out in the Interpretation Act 2004, with regard to the issues raised by the applicant, provide adequate guidance and I think it unnecessary to issue orders. As such a declaratory judgment is not required.

[20] The application is therefore dismissed.

Dated at Rotorua, New Zealand this 31st day of January 2014



C T Coxhead J