

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

**Application No: CV2022-00072**

**IN THE MATTER OF** Section 107, Niue Act 1988

**BETWEEN** NIUE LAWN BOWLS  
ASSOCIATION  
INCORPORATED  
**Applicants**

**AND** NIUE ISLAND SPORTS  
AND COMMONWEALTH  
GAMES ASSOCIATION  
**Respondent**

**Date:** 30 June 2022 (NZ Time)

---

**JUDGMENT OF CHIEF JUSTICE C T COXHEAD**

---

**Introduction**

[1] The Commonwealth Games, Birmingham 2022 commences on 28 July 2022. Sadly the Court has before it an application concerning the Niue Island Sports and Commonwealth Games Association (NISCGA) and some of their actions, inactions, processes, procedures and decisions relating to matters relevant to Niue athletes competing at Birmingham 2022 and the Niue Lawn Bowls Association.

[2] This is an application of some urgency. The ramifications of the decision are wide ranging. Unfortunately, a number of athletes who have been training and are anticipating on going to the forthcoming Commonwealth Games, are the innocent parties who could potentially be effected by this decision.

[3] The applicant is the Niue Lawn Bowls Association Incorporated who seeks declarations pursuant to s 107 of the Niue Act 1966 that:

- (a) a declaration that the suspension of the applicant by Niue Island Sports and Commonwealth Games Association (NISCGA) violated the rules of natural justice and is therefore null and void;
- (b) a declaration that the applicant's suspension was irrational and unfair;
- (c) a declaration that NISCGA had acted ultra-varies Articles 3H and 4B of the NISCGA Constitution and therefore its unilateral selection of the Niue Lawn Bowling team for the Commonwealth Games 2022 to be null and void;
- (d) an order for costs;
- (e) such further or other relief as the Honourable Court deems just.

[4] In considering the evidence and submissions that has been presented, it appears that underlying this application are issues of: funding; team selection; athlete eligibility; relationships between individuals involved in sports in Niue and NISCGA and issues of communication between parties. There are clearly issues of fairness, fairness of process and natural justice.

**A declaration that the suspension of the applicant by NISCGA violates the rules of natural justice and therefore is null and void**

[5] Simply put, it is claimed that the suspension of the applicant was made in violation of the rules of natural justice in that the decision was made without giving the applicant any notice of any allegations against it, as well as the applicant not being given the opportunity to be heard.

[6] The applicants rely on part of Article 15 of the NISCGA Constitution as to why this Court can hear the matter. Article 15 states:

Any disciplinary action of the NISCGA Executive Committee shall be referred to the High Court of Niue for a review provided that is done within 21 days after a decision is notified.

[7] The suspension letter signed by all the Executive of NISCGA to the applicants was a clear and definitive decision of the Executive of NISCGA. Article 15 of the Constitution applies.

[8] I disagree with Mr Talagi that now is the time for the applicants to respond to the suspension decision and then parties can seek to resolve the matter through a dispute resolution process and then as a last resort come before the Court. The third paragraph of Article 15 is clear. The suspension of the applicant by NISCGA is a disciplinary action and so can be referred to the High Court. For completeness I note that the applicant's application was filed within the 21 day timeframe.

[9] In my view, the suspension appears to be in retaliation to a petition from a meeting of 6 May 2022. At that meeting some 71 people, mainly sports reps of different codes agreed to send a petition to the respondent. The petition requested that the President, Maru Talagi, Tony Edwards and Sidney Lui stand down. It was a request – nothing more. As the respondents had noted in its letter of 29 May, the petition had no legal authority. The respondents did not have to comply with the petition. It was a request. What it did do, was show major concerns from the Niue sporting community with the Executives actions.

[10] As Mr Hipa notes, the petition simply indicated a community agreement in asking NISCGA executives to resign.

[11] As I see it, given all the background information and where matters have got to, the request was that the executive think about what was best for sports of Niue.

[12] As I say, the suspension appears to be in retaliation to this petition. However, there is a longer history of issues which culminated in the 6 May 2022 meeting and the petition which flowed from that meeting.

[13] The applicants do not appear to wish to argue the rights or wrongs of what has happened up until the petition, what their concern is – is that natural justice, in terms of their suspension has not been followed.

[14] I ask myself was natural justice observed in the major decision to suspend the applicants from NISCGA.

[15] Were the applicants given notice that suspension may happen? When I read the letter of 29 May 2022, it appears that while not given notice that specifically stated that the applicants may be suspended and the reasons why suspension may happen, the NISCGA letter of 29 May in response to the petition, does indicate words stating - “we advise that should it continue; the option of suspension is constitutionally imminent.”

[16] However, only two days later NISCGA wrote a letter to the applicants informing them that they had been suspended. As I say, while the applicants could be seen to be on some warning that suspension may be constitutionally imminent, there is no specific notice that they were going to be suspended and the reasons why that was going to be done.

[17] Were the applicants told of the claims and allegations against them? Clearly no. Were the applicants between 29 May and 31 May given evidence and reasons why they may be suspended? No. Were the applicants given a chance to respond to allegations? No. Were the applicants given a chance to be heard? No. Were the applicants given a chance to question and respond to NISCGA’s evidence that they relied on? No. Were they given a chance to provide rebuttal evidence? No.

[18] Having considered the above issue and the questions I have just considered, it leads me to the clear view that NISCGA violated the basic rules of natural justice in coming to their decisions to suspend the applicant from NISCGA.

**Decision to take over the training and selection of the Niue Lawn Bowls Team made by NISCGA their reliance on Articles 3H and 4B of NISCGA’s Constitution**

[19] The relevant parts of the NISCGA Constitution are Article 3H and Article 4B.

[20] Article 3H states an objective of NISCGA is:

**To prepare and organise together with the sports associations** through an established selection criteria, the athletes and officials for Team Niue at any sports

competition thereby ensure that NISCGA is represented at the Commonwealth Games and the Pacific Games and the Pacific Mini Games.

[21] Article 4B states:

**Has the exclusive rights along with the affiliated sports associations** to prepare and select athletes to compete at the Regional and International sports competitions with specific emphasis and limited to the Pacific Games and Commonwealth Games.

[22] The Constitution clearly says NISCGA should work “together with Sports Associations” (Article 3H) and has rights “along with the affiliated sports associations” (Article 4B).

[23] Those Articles of the NISCGA Constitution are not surprising given sports associations will have intimate knowledge of the capabilities of their players and therefore are in an excellent position to undertake the training and selection of the best players to represent Niue.

[24] Mr Talagi submitted that on 5 April when Mr Hipa on behalf of Niue Lawn Bowls Association sent the list of athletes to Tony Edwards (Chef De Mission to Commonwealth Games) and Sidney Lui (General Manager) that by the Constitution the list should have been sent to NISCGA. I note both Mr Edwards and Mr Liu are on the Executive of NISCGA. Mr Talagi agreed that as per the Constitution NISCGA and the applicants needed to work together in the selection of athletes to attend the Commonwealth games but the applicants didn't do that in sending a list to Mr Edwards and Mr Lui. However, that same submission must run both ways and so when NISCGA forwarded their team list without working alongside the applicants, applying Mr Talagi's submission, NISCGA were not following their own Constitution.

[25] According to Articles 3H and 4B of the Constitution neither NISCGA or Sports Associations can act unilaterally and in isolation when it comes to selecting and training athletes for the Commonwealth Games.

[26] I agree with Mr Toailoa that the applicants have intimate knowledge of the capabilities of their players and therefore are in a much better position to undertake the training and selection of the best players to represent Niue. However, the NISCGA

Constitution does not support that approach. The Constitution requires a “working together” and “working alongside with” approach.

[27] For NISCGA to take over training and selection of the Niue Bowls team exclusively and impose such a unilateral decision is ultra-vires the Constitution.

[28] Not only is the selection of the bowling team and offices ultra-vires the Constitution, it appears that NISCGA has selected athletes for the bowling team that may be ineligible to compete at the Commonwealth Games.

[29] I can understand why the World Bowls does not want to be involved in this issue. Selecting people who are ineligible according to clear criteria shows very poor decision making in terms of selections and lacks some understanding of the basic selection criteria and therefore there clearly has been a lack of good process and good procedure.

## **Conclusion**

[30] From the evidence before the Court this has been an ongoing issue, not only between applicants and NISCGA but it appears that it may also be between other Sports Associations and the executive of NISCGA. This is concerning.

[31] Further, there has been a number of attempts to resolve matters. Even a meeting with the Minister of Sport. It is sad, disappointing, and frankly embarrassing that parties have not been able to resolve matters. There has been no compromise from NISCGA Executives.

[32] Basic rules of natural justice have been disregarded. Compliance with the NISCGA Constitution has been breached. Basic procedures and processes for selecting people to compete at Birmingham 2022 have been disregarded.

[33] I make the following orders pursuant to s 107 of the Niue Act 1966:

- (a) a declaration that the suspension of the applicant by Niue Island Sports and Commonwealth Games Association (NISCGA) violated the rules of natural justice and is therefore null and void;
  
- (c) a declaration that NISCGA had acted ultra-vires Articles 3H and 4B of the NISCGA Constitution and therefore its unilateral selection of the Niue Lawn Bowling team for the Commonwealth Games 2022 is null and void.

[34] I will have this decision finalised as a matter of urgency and the Court is to ensure that this judgment is forwarded to interested parties, including the Minister of Sport.

[35] I leave it for the applicants to forward the decision to the appropriate Commonwealth Games Authority and World Bowling Authority.

[36] I reserve the issue of costs. If the applicant seeks costs then they should file a memorandum within 10 working days and the respondent will then have 10 working days to respond.

[37] This leaves the parties in a position where they have to sit together urgently, to discuss the implication of this decision – not implication in terms of their positions, as presidents of their organisations but most importantly, the implications for the athletes. I wish them all the bests in those urgently needed discussions.

Dated at Rotorua, Aotearoa/New Zealand on this 30<sup>th</sup> day of June 2022.

C T Coxhead  
**CHIEF JUSTICE**