

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

Application No: CV2022-00062

UNDER Section 71 of the Niue Act 1966 and
Section 23 of the Incorporated Societies
Act 1908

BETWEEN NIUE ISLAND SPORTS AND
COMMONWEALTH GAMES
ASSOCIATION
Applicant

AND BROADCASTING CORPORATION
OF NIUE
First Respondent

AND HAGEN SIOSIKEFU
Second Respondent

AND CRISTABELLA KAUKASI-TALAGI
Third Respondent

Hearing dates: (On the papers)

Decision: 3 April 2023

DECISION OF JUDGE S F REEVES

Introduction

[1] In April 2022, the Broadcasting Corporation of Niue (“BCN”) published an article on its website containing details of disputes between members of the Niue Island Sports and Commonwealth Games Association (“NISCGA”) Executive Committee, of payments to committee members, and of disagreements arising from the selection of the lawn bowls team that would compete in the 2022 Commonwealth Games 2022.¹

[2] On 5 May 2022, NISCGA applied to the Court pursuant to s 71 of the Niue Act 1966 and s 23 of the Incorporated Societies Act 1908 for orders directing that:

- (a) all three Respondents remove articles and social media posts which concern the financial affairs of NISCGA.
- (b) BCN cease broadcasting the financial affairs of NISCGA on air and TV Niue; and
- (c) all three Respondents make a public apology to the NISCGA Executive Committee, namely: Maru Talagi (President), Tony Edwards (Senior Vice President) and Sidney Lui (Vice President and Sports Administration officer of NISCGA).

[3] All Respondents oppose the application.

Procedural background

[4] On 25 July 2022, the application was called before Chief Justice Coxhead, who adjourned it to the October 2022 sitting of the High Court in Niue.

[5] At a hearing in Niue on 7 October 2022, I heard from all the parties, except Mr Siosikefu who was not present. The parties present confirmed they wanted the Court to determine the matter on the papers filed without further evidence, not wishing to pursue mediation or other form of resolution.

¹ Esther Pavahi “NISCGA under scrutiny over allegations of abuse of executive privileges” (April 2022) (Television Niue) <<http://www.tvniue.com>>.

[6] All parties, including Mr Siosikefu, have now filed written submissions.

Submissions for the Applicant

[7] Mr Talagi submitted that the application was brought because BCN posted the unaudited financial accounts of NISCGA without authorisation, and because Mr Siosikefu and Mrs Kaukasi-Talagi, who are former members of the Executive Committee of NISCGA, disclosed NISCGA's financial records and information to media outlets, without the authority to do so.

[8] Mr Talagi submitted that the article and other actions of BCN were breaches of natural justice because BCN did not check the accuracy of the information before publishing. He submitted that NISCGA are primarily seeking the remedy that BCN remove the article from their website and social media. NISCGA has not sought to make claims of libel or defamation against BCN.

[9] NISCGA also states in their submission that the reason Mr Siosikefu and Mrs Kaukasi-Talagi were removed from the NISCGA Executive was for the misdirection of funds.

Submissions of the Respondents

Broadcasting Corporation of Niue

[10] Mr Kamupala appeared for BCN at the hearing. Also present was Esther Pavihi, Manager and Editor of BCN and the author of the article.

[11] It was submitted that s 9 of the Broadcasting Act 1989 allows BCN to provide and produce programmes which inform, educate, and entertain the public of Niue. The article, and any other information regarding NISCGA, is considered newsworthy material that is factually correct and of interest to the public, and which therefore may be disclosed by BCN to inform, educate, or entertain the public.

[12] Mr Kamupala submitted that NISCGA's accounts were disclosed by other parties, and were therefore already publicly available, and it was only after this disclosure that the article was written. BCN also submit that they have also not released any publication or televised any information that attempts to defame or does defame the Applicant.

[13] BCN note that NISCGA is an incorporated society that acts as the national sports governing body of Niue and is a recipient of public funding. The information concerning NISCGA's activities have become a matter of public knowledge, either through its own actions or by the activities of its members.

Christabel Kaukasi-Talagi

[14] Ms Kaukasi-Talagi is Treasurer of the Niue Archery Association ("NAA") as well as an Assistant Accountant at the Government of Niue Department of Treasury.

[15] She was appointed Treasurer of NISCGA in 2019 and held this position until she received a cessation of position email from the NISCGA Executive Committee on 18 April 2022.

[16] Ms Kaukasi-Talagi rejects the accusations made by NISCGA about the release of financial records to any media outlets.

[17] Ms Kaukasi-Talagi submits that her reputation has been besmirched by the release of NISCGA's sensitive matters via BCN and through social media.

[18] She also alleges in her submission that she was wrongfully and unjustifiably dismissed by NISCGA.

Hagen Siosikefu

[19] Mr Siosikefu was, and in his submission still is, the Secretary General of NISCGA. He received a cessation of position email on 25 April 2022 from the NISCGA Executive Committee but rejects the validity of this communication.

[20] Mr Siosikefu is accused of releasing confidential financial information to BCN. He denies that he has committed any personal attacks on any person. However, he submits that exposing matters of corruption, bullying and misconduct are enshrined in the policy of the Commonwealth Games Federation. Therefore, he says that the Niuean public have a right to be aware of any conduct of NISCGA which falls short of required standards.

[21] The majority of his submission is concerned with his dismissal, and how the actions of NISCGA's current Executive is outside the powers of the NISCGA's Constitution.

Law

[22] Section 71 of the Niue Act 1966 states:

71. Procedure so far as not governed by rules of Court - Subject to the provisions of this Act and of rules of Court, the practice and procedure of the High Court in the exercise of its civil and criminal jurisdiction shall be such as the Court thinks in each case to be most consistent with natural justice and convenience.

[23] Section 23 of the Incorporated Societies Act 1908 provides:

23. Annual financial statement – (1) Every society shall deliver annually to the Registrar, in such form and at such time as he requires, a statement containing the following particulars:

- (a) The income and expenditure of the society during the society's last financial year:
 - (b) The assets and liabilities of the society at the close of the said year:
 - (c) All mortgages, charges, and securities of any description affecting any of the property of the society at the close of the said year.
- (2) The said statement shall be accompanied by certificate signed by some officer of the society to the effect that the statement has been submitted to and approved by the members of the society at a general meeting.
- (3) If any default is made by a society in the observance of the provisions of this section, every officer of the society shall be liable to a fine not exceeding one shilling for every day during which the default continues.

[24] Section 71 of the Niue Act 1966 concerns the requirement of the High Court to conduct its practice and procedure consistent with natural justice and convenience, and section 23 of the Incorporated Societies Act 1908 sets out the obligations of incorporated societies in relation to annual financial statements.

Decision

[25] This application fails for the reasons set out below.

[26] The Applicant submitted that BCN had natural justice obligations in relation to its decision to publish the information concerning the NISCGA's financial affairs and other disputes. However, the Applicant has completely failed to set out any basis upon which the Court could consider this proposition.

[27] The legislative provisions relied on are irrelevant to the issue that the Applicant has put before the Court. Neither provision provides grounds nor basis for any cause of action on which the Applicant might rely to support its assertion that BCN has acted contrary to natural justice.

[28] The Applicant appears to have confused their own obligations as a decision-maker to act fairly and with due process, as recently found by the High Court,² with the role of the news media to inform, educate, or entertain the public in relation to matters of public interest. Editorial decisions for these purposes are clearly not subject to the procedural requirements of natural justice. If the article raises issues of possible defamatory statements or use of confidential information, then there were other remedies available to the Applicant.

[29] A matter of concern is that while the Applicant made a number of serious allegations concerning the Second and Third Respondents the grounds pleaded did not disclose any cause of action to support those allegations.

[30] The application is dismissed in its entirety.

[31] I reserve the issue of costs. If the Respondents seek costs then they should file memoranda within 10 working days and the Applicant will have 10 working days to respond.

Dated at Wellington, Aotearoa/New Zealand on this 3rd day of April 2023.

S F Reeves

JUDGE

² *Niue Lawn Bowls Association Incorporated v Niue Island Sports and Commonwealth Games Association* [2023] NUHC; Application CV2022-00084 (20 March 2023); *Niue Lawn Bowls Association Incorporated v Niue Island Sports and Commonwealth* [2022] NUHC; Application CV2022-00072 (30 June 2022).