

CLEMENT KAKANO -v- ATTORNEY GENERAL

High Court of Solomon Islands

(Ward C.J.)

Civil Case No. 214 of 1991

Hearing: 24 January 1992

Judgment: 29 January 1992

M. Samuel for the Applicant

P. Afeau for the Respondent

WARD CJ: This is an application for certiorari and mandamus. The applicant was a student at King George VI School and, on 28th January 1991 was suspended over an allegation of drunkenness. His case came before the School Disciplinary Committee and on 19th February 1991 he was informed he was to be expelled. On 28th March 1991 he wrote a detailed appeal and on 10th June he was informed his appeal had been unsuccessful.

His basic complaint is that the sole evidence before the various adjudicating bodies was a written report by the School Captain. That report referred to the applicant being "*caught in an alcoholic state*" and that he claimed to have been forced to drink by his cousin brother but consumed no more than a tin of Foster.

The applicant was given no chance to address the Disciplinary Committee nor was he asked if he admitted or disputed any of the facts.

The minute of the Disciplinary Committee records the applicant as having been "*found drunk by the school captain in his room in Bougainville House (mouth foaming)*." It went on to describe the account of being forced to drink and concluded - "*The committee felt strongly that the story was fabricated*".

By the time the Deputy Principal reported the finding of the Disciplinary Committee to the Principal, the applicant was described as being found "*obviously drunk*".

The matter then came before the Advisory Board Disciplinary Sub-committee and the minute records that they endorsed his expulsion "*as it felt that Clement must*

have consumed more than one can of beer to make him drunk," they agreed with the conclusion that his story was fabricated.

The applicant appealed and it was heard by the Appeals Committee of the Ministry of Education. The Court has been given no minutes or, indeed, any evidence of how that Committee reached its decision but a letter was sent to the applicant saying his appeal was "*carefully considered*" but was unsuccessful.

At no stage was the applicant given an opportunity to present his side of the case. At each stage of the case, it was accepted he was drunk although that was not stated by the school captain. Even if he had stated that fact it would have been a statement entirely of opinion and would have had no value without the evidence on which it was based. The assessment of whether or not the applicant's story was true was based always on the conclusion he was drunk.

Bodies concerned with disciplinary matters are empowered to make decisions of wide and serious effect on students. Cases brought before them must be dealt with properly and carefully. The careless, superficial and cavalier way in which they reached their conclusions here based on an allegation of drunkenness that had never been proved in the first place is little short of appalling.

Mr Afeau for the Attorney General quite properly concedes this was a clear and total breach of the most elementary rules of natural justice. He simply asks the Court to consider whether this is a proper case to exercise its discretion to order a prerogative remedy. I have no doubt it is.

Had the matter been more recent, I would have considered an order of mandamus for the authorities to re-hear the matter properly from the beginning. However, this young man has already lost a year's schooling. Even now he has missed the beginning of the next year. A re-hearing would take time and it is likely the evidence would be stale if there is any at all.

Mr Afeau has told me and I am grateful for the effort he has made to ascertain the point, that there is room for this applicant in the proper level both at King George VI and Waimapuru Secondary Schools.

I grant the application for certiorari. I remove the decision from the School and Ministry Disciplinary Committees into this Court and quash it. I substitute an order that the allegation against Clement Kakano is not proved and his expulsion is invalid. I direct that he be given a place immediately either at King George VI or Waimapuru.

In view of the background to the case, I feel it would be better that he be given the chance to start at another school and so I recommend that he go to Waimapuru. However I do not feel that can be part of the order and I put it in as a recommendation only. Wherever it is, he should be sent to school as soon as possible.

Costs to the applicant.

(F.G.R. Ward)  
CHIEF JUSTICE