MILTON TALASASA -v- **UNITED CHURCH OF PAPUA NEW GUINEA and SOLOMON ISLANDS**

High Court of Solomon Islands
(Muria ACJ)
Civil Case No. 10 of 1993
Hearing: 16 February 1993
Judgment: 26 February 1993

A. Radclyffe for the Applicant
Bishop Philemon Riti & Luke Pitakoe for the United Church

MURIA ACJ: The Applicant is a Minister of religion in the United Church. Following reports on allegations of his having affairs with a girl by the name of Maonalyn (who worked with the Applicant in the Church's office at Vuraqo) the Respondent disciplined the Applicant by terminating his scholarship and suspending him for one year from his pastoral appointment. He now comes to this Court seeking an Order of Certiorari to have the decision disciplining him quashed.

The Applicant was posted to Vuraqo in the North Choiseul Circuit of the United Church, Solomon Islands Region from 1989 to 1991. Working with him in the Church's office at Vuraqo was a female, named Maonalyn. It was toward the end of 1991 that a rumour had started that the Applicant was having an extra marital relationship with Maonalyn who was his office secretary as well as performing the work of a treasurer.

In 1991, the Applicant was granted a scholarship by the Church to do a Master of Theology degree for two years in Fiji. He left for Fiji in early 1992.

On 15 August 1992, the Respondent was informed of the rumour that the Applicant had an affair with his office secretary, Maonalyn while at Vuraqo. By then the Applicant was already in Fiji. The allegation against the Applicant was again relayed to the Respondent at its Synod at Sasamunqa between 16th and 30th August 1992. It was then that complaint was referred to be dealt with by the Regional Executive Committee ("the REC") of the Respondent.

The matter was then investigated. Reverend Edison Kodo, a Minister of the Church then stationed at Vuraqo wrote to the Bishop of the United Church on 7

September 1992 informing the Bishop of his findings obtained during his investigations. Included in his findings was a letter dated 3 January 1991 written by the Applicant to Maonalyn. That letter was found in the office at Vuraqo. In addition to that letter, Reverend Kodo actually interviewed Maonalyn who admitted having special relationship with the Applicant, although she denied committing any "**wrong**".

Another finding by Reverend Kodo was that one Mr Tanuqu eye-witnessed an incident at about 3 a.m. one morning when the Applicant and Maonalyn were seen together by Mr Tanuqu at the back of a canoe paddling very slowly to a place called Mamarana. When Mr Tanuqu shone a torch at them, and shouted at them, they tried to prevent him from doing so. Mr Tanuqu's shout brought attention to one Mr Mose who saw them as well. The Applicant gave $2.00 to Mr Tanuqu who accepted it.

It was also found by Reverend Kodo that the Applicant and Maonalyn were together in the Minister's house without lights on until they left for Mamarana that early morning. That was witnessed by Mary Rore and Vilaka. Further one Vaqalo who lived near the Minister's house occupied by the Applicant witnessed Maonalyn coming out of that house early one morning. Reverend Kodo further found that Mr Leadley Pitasua witnessed the Applicant and Maonalyn together by themselves in the mangroves collecting mangroves sticks.

A second letter was also found written by the Applicant to Maonalyn dated 31 January 1992.

In the Applicant's letter dated 3 January 1991, the following was stated:-

"We are all fine here, except myself missing you so much. Your love expressed through our good working relationship was so much to me that I find it very hard to forget. I am also the same, Maonalyn, I could not forget you. Everyday I walk and talk, my mind is always at North Choiseul but in particular, my thoughts are on you. I know very well to leave such a good special friend is not easy for both of us.

Some weeks ago I was surprised on for three nights I dreamt about us sleeping together ..... my goodness, this was even worse for me. Mi Kros, I ting iu Maona spoilem me ..... ha!

.....

.....

My special sweet love to Maonalyn, always thinking of you and dreaming of you too. 'But' is the problem."

.....

.....

Milton Talasasa (mi sore alway)".

Following the receipt of the findings from Reverend Kodo, the Bishop of the United Church, Reverend Philemon Riti wrote to the Applicant on 15 October 1992 putting all the allegations as found by Reverend Kodo to him.

On 28 October 1992, the Applicant responded to the allegations in a letter to Bishop Philemon Riti. The Applicant's denials were general rather than responding to each of the allegations put to him. He simply stated that "***the rumours raised against me by certain people of Vuraqo are total liars, very wrong and never true.***"

As a consequence of the allegations put to him in Reverend Philemon Riti's letter, the Applicant wrote on 30 October 1992 to the Director of Public Prosecutions, copied to Reverend Philemon Riti querying the possibility of taking legal action in respect of the allegations which he termed "***Rumours of a scandalous Nature.***"

The matter was again put before the REC of the Respondent at its meeting on 19 November 1992. The REC took into account the Applicant's letter of response to the testimonies from the members of Vuraqo Community. The REC also considered the Applicant's two letters to Maonalyn. After a serious lengthy discussion on the matter the REC decided that the Applicant be disciplined. The decision to discipline the Applicant was communicated to him on 2 December 1992 by letter written by Reverend Philemon Riti.

It was not been disputed by the Applicant that the Respondent has the power to discipline him. Quite apart from its pastoral functions, which do not concern us here, the Respondent's REC is the administrative body which is empowered to determine matters which may very often affect the rights of its members. Hence, the Court will consider this matter on the basis that the Respondent has the power to take disciplinary actions against the Applicant.

In any case, Mr Radclyffe argued the Applicant's case on two grounds, namely, that the Respondent had taken the disciplinary action against the Applicant in breach of the rule of natural justices, and secondly, that the Respondent had no grounds for disciplining the Applicant.

It is appropriate, I think, to deal with the second ground first. Mr Radclyffe submitted that the Respondent merely acted on hearsay evidence when it disciplined the Applicant. As the evidence, particularly, Reverend Kodo's report, was hearsay, counsel

argued that it should not be relied upon and so there was nothing to warrant disciplining the Applicant.

With respect, I do not agree with counsel's argument that the evidence relied on by the Respondent was hearsay and so should not be relied upon. The appointment of Reverend Kodo to investigate into the complaint and to report to the REC of his findings was part of the procedure adopted by the REC in dealing with the Applicant's case. Reverend Kodo's report clearly contained materials supporting the allegations of extra-marital affairs between the Applicant and his office secretary. The allegations together with Reverend Kodo's findings were then put to the Applicant in the letter of 15 October 1992 to which he simply responded generally saying that the rumours were lies, very wrong and never true. One would expect that the Applicant would seize the opportunity (having been given) to respond to each of the allegations or '***rumours***', as he called them rather than a bare denial, even if those rumours were hearsay.

The REC which is the administrative body of the Respondent was given the task of deciding the complaint raised against the Applicant. To do so, the it had to enquire into the matters raised first. It did so by appointing Reverend Kodo, a Minister of the Church who succeeded the Applicant at Vuraqo. The Committee is entitled to rely on the assistance of such person as Reverend Kodo. For how else would the REC be in possession of sufficient material to found its decision upon?

As to the procedure to be taken by an administrative body in resolving disputes between parties, Viscount Haldane, LC had this to say in ***Local Government Board -v- Arlidge*** *[1915] A 120 at 133*:-

> *"I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure ..... to insist that he [the Minister] and other members of the Board should do everything personally, would be to impair his efficiency. Unlike a judge in a court, he is not only at liberty but is compelled to rely on the assistance of his staff."*

In the same case, Lord Shaw of Dunfermline also observed that although an administrative agency must reach -

> *"just ends by just means, ...it must be the master of its own procedure."*

Thus unless there are statutory directions as to how an administrative body should deal with matters of dispute coming before it, there is nothing to stop it from adopting its own procedure in dealing with such matters so long as it ensures that it

must reach "***just ends by just means.***" This was what the Regional Executive Committee did in this case.

The question of hearsay evidence presents no difficulty and can therefore be quickly disposed of. Before an administrative body dealing with matters such as the one we are presently concerned with, hearsay evidence is accepted. In admitting hearsay evidence, however, the rules of natural justice must be observed. In ***Miller -v- Minister of Housing and Local Government*** *[1968] 2 All E.R. 633*, a case concerning a town planning inquiry, the inspector admitted in evidence a letter from a person who did not attend the inquiry and which was not verified on oath. Lord Denning said at page 634:-

> *"Hearsay is clearly admissible before a tribunal. No doubt in admitting it, the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contracting it .....the inspector here did that."*

Thus the evidence obtained by Reverend Kodo contained in his report and submitted to Bishop Philemon Riti for the consideration by the REC were admissible and it was perfectly entitled to rely on them. It did so not without observing the rules of natural justice in the first place. Those evidence clearly contained the grounds upon which the REC based its decision.

I now turn to the argument that the Applicant had been disciplined without being given the opportunity to be heard. The oft-quoted principle is "***audi alteram partem,***" ("***hear both sides***"). This also entails that each party to a matter or dispute must be given the opportunity to state his case. As I said in ***Waroka -v- Habu and Attorney General*** *(HC) Civil Case No. 41 of 1992 (Judgment given on 11 June 1992)*:

> " .....*a person must be told what evidence has been given and what statements made against him and that he must be afforded the opportunity to respond to such evidence and statements.*"

The essence of the principle of *audi alteram partem* is thus a right to be heard including a right to be informed of the case one is to meet at the hearing.

However as it would be observed from the cases cited above, ***Local Government Board -v- Arlidge*** and ***Miller -v- Minister of Housing and Local Government,*** proceedings before an administrative body need not follow in all respects those before a court of law. So that the procedure giving effect to "***right to a hearing***" before an administrative body need not be strictly observed as in a court of law, so long as that body must not be content to consider only one side of the story before coming to a decision. This point

was clearly made by Lord Loreburn, LC in ***Board of Education -v- Rice*** *[1911] A.C. 179, at page 182* where he stated:

> *"In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to treat such a question as though it were a trial. They have no power to administer oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."*

Clearly under English law as applied in Solomon Islands, *the audi alteram partem* principle requires that the party concerned must be properly informed of the substance of the case against him and that the case must be clearly put to him and he must be given a reasonable opportunity of presenting his case, either orally or by written representations. The principle is incumbent on all decision-making bodies, including administrative bodies within the church organisations, to observe.

How does the principle fit in with the facts of the present case? I do not think it is necessary for me to go through the facts of the case again. Suffice to say that having received the complaint in mid-August 1992, the Respondent carried out a thorough investigation into the complaint with the assistance of Reverend Kodo. Details of the findings of Reverend Kodo together with the substance of the allegations against the Applicant were presented to the Bishop of the United Church on 7 September 1992. The allegation that the Applicant was having an affair with his office secretary together with the details of Reverend Kodo's findings were sufficiently put to the Applicant in a letter of 15 October 1992. Having received the details and substance of the matters raised against him, the Applicant took the opportunity to respond and did respond in writing on 28 October 1992. With all the materials including the Applicant's response, the REC met and after serious deliberation, decided on 19 November 1992 that the Applicant was to be disciplined. That decision was communicated to the Applicant in writing on 2 December 1992.

Applying the principle of audi alteram partem as I set out in this judgment, the inevitable conclusion is that the REC's decision disciplining the Applicant was made in accordance with that principle and therefore valid.

The other argument by the Applicant that because of the disciplinary action taken against him his scholarship had been jeopardised, cannot have much weight against the Respondent's decision to discipline the Applicant for his part as an ordained Minister of the Church acting contrary to his vow and the precepts of the Church, as

Reverend Philemon Riti stated. The disciplinary action, although an administrative one, was taken in accordance with the Church's policy as established by the Synod and it was for the common good of the Church and its people. Thus the scholarship argument, really hanged on the decision whether the Applicant was to be disciplined or not and so cannot be viewed in isolation. The argument cannot stand in this case.

Before I leave this matter I would just like to mention that the decision reached by this court is entirely based on law. The pastoral relationship between the Respondent and the Applicant is outside the court's ambit and so must be left entirely for the parties.

The judgment of the court is that which I have already stated above.

Application refused with costs.

(G.J.B. Muria)
ACTING CHIEF JUSTICE