

**WARREN PAIA AND FOUR OTHERS -v- CHRISTOPHER ABE AND ATTORNEY
GENERAL**

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 30 of 1993

Hearing: **16 February 1994**

Ruling: **17 February 1994**

T. Kama for Plaintiffs

P. Afeau for Attorney General

PALMER J: On or about the 29th of January 1993, the Plaintiffs, who were then the Directors of the Central Bank of Solomon Islands, a creature of statute, set up under the Central Bank of Solomon Islands Act, were suspended by the then Minister of Finance, the then Honourable, Mr Columbus Abe. An application by way of an Originating Summons was subsequently lodged and filed with the High court Registry on the 31st of March 1993, seeking two declarations from the court: (i) That the suspension of the Plaintiffs by the Minister of Finance from their Offices as Directors of the Central Bank of Solomon Islands was ultra vires and therefore void and of no effect; (ii) In the alternative, that the Minister acted unreasonably and unfairly in suspending the Plaintiffs from their offices as Directors of the Central Bank of Solomon Islands.

Towards the middle of last year 1993, there was a change of Government, which resulted in the displacement of the former Minister of Finance, Mr Columbus Abe and his replacement, by the Honourable Andrew Nori. Mr Nori was the Solicitor for the Plaintiffs prior to the change of Government. Naturally, the order of suspension issued by Mr Abe was revoked and the Directors re-instated. It would seem that that would finally be the end of the matter. However, the Plaintiffs wish to have the declarations sought ruled upon by the Court in any case.

The learned Solicitor General, Mr Afeau, for the Attorney General, objects the further continuation of this case.

I accept that Order 58 of the High Court (Civil Procedure) Rules, 1964 governs the issue of Originating Summons. Rule 2 of Order 58 states:

"Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of any provision of a written law, may apply by originating summons for the determination of such question of construction, and for a declaration as to the right claimed."

Mr Afeau submits that no right is now claimed and accordingly no action lies under Order 58. What the Plaintiffs are now seeking from the court is nothing more than an advisory opinion. The Court has no jurisdiction to give opinions on legal issues raised without proper a cause of action founded. He cited the opinion of Kapi J. in the case ***TRI-ED ASSOCIATION -v- S.I. COLLEGE OF HIGHER EDUCATION 1985/86 SILR 173*** at page 189 and 190.

Section 77(1) of the Constitution of Solomon Islands states:

"There shall be a High Court for Solomon Islands which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Constitution or by Parliament."

Any civil proceedings is commenced when there is a cause of action. If there is no cause of action then there is nothing for the High Court to determine.

Order 58 Rule 2 in turn can be used only when there is a claim of right in issue, and that the determination of such right is dependent on a question of construction of any provision of a written law. If there is no claim of right then no cause of action lies. A claim of right can only arise when there is a dispute between the parties as to that right. It does not arise in vacua.

Accordingly, when there is no dispute as to the rights of the Central Bank of Solomon Islands Directors, then no cause of action arises under Order 58 Rule 2.

Although the judgment of Kapi J. in the Tri-Ed case can be distinguished, on the facts, the general principle is applicable. The High Court does not deal with hypothetical cases. In such instances, the High Court's judgement would be nothing more than an advisory opinion. It is not binding on any of the parties and if there is any value, it would be merely of persuasive authority.

I am satisfied this court has no jurisdiction to have this case continued and accordingly the originating summons filed on the 31st of March 1993 is dismissed.

(A.R. Palmer)

JUDGE