

**GIDEON MOSES -v-**  
**THE SPEAKER OF THE GUADALCANAL PROVINCIAL ASSEMBLY AND**  
**THE CLERK OF THE GUADALCANAL PROVINCIAL ASSEMBLY**

**HIGH COURT OF SOLOMON ISLANDS**  
**(PALMER J)**

**Civil Case No. 91 of 1996**  
**Hearing: 28 March 1996**  
**Judgment: 4 April 1996**

***A. Nori for the Plaintiff***  
***A. Radclyffe for the Defendants***

**PALMER J:** The Plaintiff was the duly elected Premier of the Guadalcanal Province. On 21st March, 1996, in a sitting of the Guadalcanal Provincial Assembly, (GPA) a motion of no-confidence was moved and passed by an absolute majority of the members of the Assembly (eleven in all), against the Plaintiff as Premier. The Premier and nine of his executives were not present at that sitting. The Defendants took the view that the Plaintiff had been validly ousted from office and that accordingly the post of Premier for Guadalcanal Province had become vacant. Immediately after the purported passage of that motion, the Second Defendant (SD) called for nominations of candidates. According to the notice issued by the Second Defendant, the election for a new Premier was to be held on Monday 25 March, 1996 at 9 a.m. (*see affidavit of Gideon Moses filed on 22 March, 1996*). The plaintiff on the other hand was of the contrary view, alleging a number of irregularities which he says are fatal to the validity of the moving and passing of that motion of no-confidence in him. These are contained in the originating summons filed on 22nd March, 1996, in which a number of declarations are sought from this Court:

- "1. That the First Defendant and or the Second Defendant acted ultra vires the provisions of section 21(5) of the Provincial Government Act, 1981, as amended, in accepting a motion of no confidence ("the motion") in the Premier, lodged on 4th March, 1996.
2. That the First Defendant acted ultra vires order 22A of the Standing Orders of the Provincial Assembly of Guadalcanal ("Standing Orders") when he:-
  - (a) allowed the motion to be moved contrary to the requirements of order 22A (3) of the Standing Orders;

- (b) included the motion on the Order Paper of the Assembly for 21st March, 1996 contrary to order 14 of the Standing Orders.
3. That the Honourable Gideon Moses, MPA, is still the duly elected Premier of the Guadalcanal Province.
  4. That the First and Second Defendant pay the costs of this application."

On the same date (22nd March 1996), the Plaintiff filed an application by summons, ex parte, for orders to restrain the Defendants from calling for nominations for candidates for election of a new Premier of the Guadalcanal Province and from doing any acts that will lead to or effect the election of a new Premier. That summons was heard on the same day and granted by this court. The matter was then listed for 28 March 1996 for an inter partes hearing. At that hearing it was conceded by Counsel for the defendants, that there was an irregularity in the way the motion of no-confidence had been voted on, which in his opinion would have rendered the voting invalid. However, he clarified that the irregularity did not relate to the issues raised in the originating summons and therefore asked the court to rule on them nevertheless.

It is pertinent at this point to turn aside and consider the concession made by Counsel for the Defendants and its effects. The irregularity referred to was that the voting on the motion of no-confidence was not done by secret ballot as required by Order 22.(A)(4) of the Standing Orders of the Provincial Assembly of Guadalcanal ("*Standing Orders*"). Counsel for the Defendants concedes and rightly so, that that omission or irregularity was fatal to the validity of that voting. He had therefore instructed the Defendants that the whole process would have to be started afresh. That however, may not be necessary depending on how this court would rule on paragraphs 1 and 2 of the declarations sought by the Plaintiff. If the court should rule against those two declarations, then it seems that the only irregularity committed was in respect of the voting. The whole process would not then need to be re-commenced afresh. Only the voting would have to be conducted afresh.

### The First declaration.

The Plaintiff asserts that the provisions of section 21(5) of the Provincial Government Act, 1981, as amended, had been contravened by the Defendants, in accepting a motion of no confidence, lodged on 4th March, 1996. Section 21(5) reads:

"A new Provincial Executive shall be formed if -

- (a) the Provincial Assembly passes a motion of no confidence in the Premier, so however that, a motion of no confidence shall not be moved until the expiry of a period of twelve months from the date of the Premier being elected to office and any notice of a motion of no confidence given thereafter shall not be entertained by the Speaker unless a period of twelve months has lapsed since the last motion of no confidence was determined; and
- (b) where a motion is supported by an absolute majority of the members of the Assembly;"

It is not in issue that the last motion of no confidence had been moved against him on 13th March, 1995 (*see affidavit of Gideon Moses filed on 26 March, 1996*).

In the First affidavit of Gideon Moses filed on 22nd March, 1996, he deposed to a letter (*marked "GM1"*), in which it was stated by the Clerk to the Guadalcanal Provincial Assembly (*Second Defendant*), that a motion of no-confidence had been delivered to the Speaker of the Provincial Assembly (*First Defendant*), and accepted by him on 4th March, 1996. That letter also stated that the Assembly will resume on 14 March 1996, and will debate the motion of no-confidence. The letter was addressed to all the Provincial Assembly members, including the Plaintiff. The motion of no-confidence however, was not debated until the Assembly sitting on 21 March, 1996.

The Plaintiff argues that the period of 12 months as calculated from the 13th March, 1995, had not yet lapsed when the Speaker sought to accept delivery of the notice of motion of no-confidence on 4th March, 1996. That acceptance of the notice of motion of no-confidence on the Plaintiff contravened section 21(5)(a) and accordingly rendered the subsequent proceedings null and void.

Counsel for the Defendants, however argues, that the phrase "... *shall not be entertained by the Speaker unless a period of twelve months has lapsed ...*", is not clear and therefore capable of an alternative meaning to be given to it. He pointed out that although the notice

of a motion for no-confidence had been received on 4th of March, 1996, it was not debated until 21st March, 1996; well after the twelve months statutory period had lapsed on the 13th March, 1996. He argued therefore that the word "*entertain*" should be given its plain and ordinary meaning, and in the context of this case, it should be interpreted as meaning the date on which the motion was debated, not the date on which it was received. This he argues, would mean that the Defendants had not contravened section 21(5)(a) of the Provincial Government Act.

The word "*entertain*", as correctly pointed out by Mr Radclyffe, is not defined in the Act or the Standing Orders. I agree that the plain and ordinary meaning should be given to it, but it must be read within the context of the Act and the Standing Orders. The Australian Little Oxford Dictionary, defines "*entertain*" inter alia, as, "*admit (idea) to consideration*". The Oxford Advanced Learner's Dictionary define the word as "*be ready and willing to consider (something); hold (something) in the mind or feelings*". In common parlance, it simply means to think about or consider, and make a decision on. So what happens when a notice of a motion of no-confidence is given? How is it done, or when is it deemed to have been given? It is important right at the outset to bear in mind that a motion of no-confidence is but one of the types of motions that may be given. It is a kind of special motion and so some special treatment is given to it. There are also substantive motions, motions for amendments, and motions for dissolution of the Assembly. All these however are "*motions*" and have been dealt with specifically in Part F of the Standing Orders of the Provincial Assembly of Guadalcanal. It is only proper therefore to have recourse to those provisions, in particular with reference to the question of notice. Standing Order 22.(A)(1) provides that:

*"A motion of no-confidence in the Premier ... shall not be debated for seven clear days **after written notice** of the motion has been given to the Speaker." (Emphasis added).*

The above provision makes it quite clear that not only must written notice be given to the Speaker but there must be a gap of seven clear days before the notice of the motion of no-confidence can be debated. It is my respectful view that the determining point, is when written notice has been given to the Speaker. Order 22(4) sets out how notice is given and this in my respectful view should also apply to notices of a motion of no-confidence.

*"Notice of a motion or an amendment shall be given by delivering a copy of same in writing signed by the movant, to the Clerk who shall submit a copy to the Speaker."*

What is important to bear in mind is **the point when notice is given to the Speaker**. So, when a copy of the notice of a motion of no-confidence has been submitted to the Speaker

by the Clerk, it is at that point, when the Speaker is required to make a decision, whether to accept the notice and have it processed, or reject it.

It is also important to bear in mind, that the "*thing or matter*" which the Speaker shall not entertain, is "*any notice of a motion of no-confidence given thereafter*". It does not say whether he can allow the motion to be moved or not, or be debated or not. When the notice of a motion of no-confidence has been given to the Speaker [*as stipulated in Standing Order 22(4)*], it is at that point of time that the Speaker must exercise the responsibility given to him under section 21(5)(b); that is, that he shall not entertain that notice unless a period of twelve months had lapsed since the last motion of no-confidence was determined. What does that mean or how does it operate in practice? It simply means that he shall not consider it. All that he has to do is reject it.

The undisputed evidence filed in this Court (*see annexure "GM1", in the affidavit of Gideon Moses filed on 22 March, 1996*), was that written notice of the motion of no-confidence had been given to the Speaker on 4 March, 1996. That is clearly less than the statutory period of 12 months. The Speaker should have simply rejected that notice. There is no discretion involved; especially the suggestion made that the Speaker could accept the notice of motion of no-confidence given, but not allow debate on it until after expiry of the twelve months period, as had occurred in this case. As already pointed out in this judgment, the phrase "*shall not be entertained by the Speaker*" relates directly to any notice of a motion of no-confidence given. It does not relate to the question whether the Speaker can allow the motion to be moved or not, or whether it can be debated or not. Those questions arise after the Speaker had "*entertained*" the notice of a motion of no-confidence.

By way of a contrast, what happens when the Speaker entertains a notice of a motion of no-confidence? On receipt of the written notice of motion of no-confidence, the Speaker checks to see if the period of twelve months since the last motion of no-confidence was determined, had lapsed (*section 21(5)(a) of the Provincial Government Act*). In my respectful view, he should also check to see that the matters set out in Standing Order 22.(A)(3) have been complied with. Once those matters have been cleared, the period of seven days notice then should start to run (*Standing Order 22.(A)(1)*). The Speaker then informs the Clerk, who in turn makes an entry in the Order Book to the effect that a notice of a motion of no-confidence had been delivered and accepted by the Speaker and that it would be available to be moved and debated upon seven days thereafter (*Standing Order 6(3)*). The Clerk then prepares a Notice Paper for distribution (*Standing Order 6.(4)(b)*). By the time the notice of motion comes for debate before the Assembly, that notice of motion would have already been considered, accepted and processed by the Speaker, and the Clerk, so that it can be moved and debated upon. In other words, it had been "*entertained*" by the Speaker. For the

Speaker not to entertain that notice of motion therefore, would simply entail doing the opposite of above. In other words, that notice of motion should not be accepted and processed for debate seven clear days after.

### **Application to the facts.**

The notice of motion of no-confidence was delivered to the Speaker on 4th March, 1996, and accepted by him. It was then processed for debate on 14th March, 1996. Notices of that sitting of the Assembly it seems was sent out by the Clerk to all the Provincial Assembly Members by memorandum dated 11 March 1996. The Assembly, however, did not sit until 21st March, 1996. I am satisfied that the actions of the Speaker clearly contravened section 21(5)(a) of the Provincial Government Act. He had no power to accept delivery of that notice of motion of no-confidence and have it processed by the Clerk. The only power given to him in those circumstances was not to entertain that notice. His actions therefore were ultra vires and consequently invalid.

There is no evidence to suggest that any notice of a motion of no-confidence had been given to the Speaker **after** 13th March, 1996. This simply meant that there was no motion of no-confidence to be moved and debated on the 21st March, 1996. What occurred on that day therefore was invalid. I am satisfied that the declaration sought in paragraph 1 of the originating summons should be granted.

### **Second declaration.**

Part (a) of the second declaration sought, alleged that the First Defendant had contravened the requirements of Order 22.A(3) of the Standing Orders. In the hearing before this Court however, Counsel for the Plaintiff conceded that the Speaker may find that there was sufficient content in the motion to satisfy Order 22.(A)(3)(d) - "*Any other grounds which the Speaker deems appropriate*"; to wit that the Plaintiff lacked the numerical strength to sustain his Executive.

A copy of the written notice of motion of no-confidence however had been submitted to the Court as an exhibit at the hearing, and on perusal, I am satisfied that had it been delivered at the right time, it would have complied with Order 22.(A)(3). The declaration sought in paragraph 2.(a) therefore must be denied.

### **Paragraph 2.(b) of the declaration sought.**

The Plaintiff alleges here that the Speaker had acted ultra vires his powers when he included the motion of no-confidence on the Order Paper of the Assembly for 21st March, 1996, contrary to Order 14, 15 and 16 of the Standing Orders.

Order 14.(1) states that:

*"There shall be a Business Committee of the Speaker, the Premier, the Clerk and two members of the Assembly appointed by the Premier. The Premier shall act as chairman."*

The Plaintiff claims that he was not consulted at all about the Order of business for the sitting of the Assembly on 21st March, 1996. According to the above provision, he was supposed to chair any meeting of the Business Committee.

Further, Order 14(2) states:

*"The Business Committee shall, subject to these Orders, decide what business shall be conducted at each sitting and may issue daily and weekly Order papers for the information of members"*.

The Plaintiff claims that the above provision requires that the Business Committee shall decide what business should be conducted at each sitting. As a member and chairman of the Business Committee he was not involved in deciding what business should be discussed on 21st March, 1996.

Thirdly, Order 16(2) states:

*"The Business Committee shall determine the motions or ordinances that will be considered on any sitting day and the Order in which they shall be set down upon the Order Paper."*

The Plaintiff also claims that as a member and Chairman of the Business Committee he was not involved in determining the motions or ordinances to be considered that day. Counsel for the Defendants on the other hand argues that to construe the above provisions in the manner suggested by the Plaintiff could lead to an absurd situation where the Premier may refuse to allow a motion of no-confidence to be debated. He argues that the Premier plus two members of the Assembly appointed by the Premier, would mean that the Premier could easily dictate to the Business Committee the Order of business on each sitting and thereby frustrate any private person's motion of no-confidence to be debated in the Assembly. There would be a conflict therefore between a members right to move a motion of no-confidence on one hand, and on the other hand, the actions of the Premier not to allow such a motion to be included in the business in any sitting. In such situations, he submits that Order 41.(1) should be referred to for assistance. Learned Counsel points out that this was what occurred in this case, and the procedure set out therein followed. Accordingly, the actions of the Speaker were not ultra vires.

With respect, that argument was flawed from the beginning. There was never a meeting by the Business Committee. It would seem that the business decided for the 21st March, 1996 was made by the Speaker and Clerk alone, without the presence of the Premier and two other members. It was not a case where a matter had arisen which was not provided for in the Orders, or that there was doubt. It was simply a clear case of a breach of Orders 14, 15 and 16 of the Standing Orders. The situation described by Counsel for the Defendants where there may appear to be a conflict and thereby resulting in an absurdity, in my respectful view would not necessarily arise. There are safeguards built into the Standing Orders itself which would prevent such absurd situations from arising. First, Order 14.(4) requires that the Business Committee "... shall set aside a day for private members' motions". The Business Committee therefore would have been obliged to take into account the fact that a notice of no-confidence had been delivered by a private member, and set aside a suitable day for that. To act otherwise may be ultra vires its powers and responsibilities. Secondly, Order 15.(5) does give the Business Committee power to "...allow business not appearing on the Order Paper to be discussed in an emergency or in view of its importance". Thirdly, sheer pressure on the Business Committee alone to have such an important motion debated in that meeting of the Assembly would be more than sufficient in my respectful view to keep the Business Committee in line. If all else fails, then Order 41 may be considered or legal action embarked on.

In view of this court's ruling on paragraph 1 of the originating summons, it is not necessary to rule on paragraph 2(b). However, to make things clear, the Speaker had no power in the circumstances of this case to decide on what business and motions to be conducted on 21st March, 1996. The Business Committee therefore would have to be convened to decide on those matters.

### **Paragraph 3 of the Originating Summons.**

Finally, the declaration sought in paragraph 3 of the originating summons was that Honourable Gideon Moses, MPA, is still the duly elected Premier of the Guadalcanal Province. In view of this Court's ruling under paragraph 1 of the originating summons, the whole procedure, beginning with the delivery of the notice of motion of no-confidence on the Premier will have to be re-commenced afresh. Counsel for the Defendants had indicated at the hearing that he had instructed his clients to re-start the whole process afresh. That is now confirmed as correct. Not only was the voting invalid as conceded by Counsel for the Defendants at the outset of the hearing, but that the actions of the Speaker in "*entertaining*" that notice were ultra vires. I am satisfied that the declaration sought in paragraph 3 should be granted.

## ORDERS OF THE COURT

- 1.1 DECLARED that the First Defendant and Second Defendant had *acted ultra vires* the provisions of section 21.(5) of the Provincial Government Act 1981, as amended, in accepting a motion of no-confidence in the Premier, delivered on 4th March, 1996, and *consequentially* their actions were *invalid*.
- 1.2 Consequentially, DECLARED, that there was no motion of no-confidence to be moved and debated upon on 21st March, 1996, and therefore the proceedings relating to the motion of no-confidence was a *nullity*.
2. The declaration sought in paragraph 2(a) of the originating summons had been conceded by Counsel for the Plaintiff to be *intra vires* the powers of the First Defendant, but even if not conceded would have been denied any way.
3. It is not necessary to make a ruling on paragraph 2(b) of the originating summons in view of the declarations made in paragraphs 1.1 and 1.2 above. However, to make it clear, the First Defendant had acted *ultra vires* Orders 14 and 16 of the Standing Orders of the Provincial Assembly of Guadalcanal and therefore the business and the motion of no-confidence conducted in that sitting, were *invalid*.

4. DECLARED that the Honourable Gideon Moses, MPA, is still the duly elected Premier of the Guadalcanal Province.
  
5. Costs of the Plaintiff to be borne by the First and Second Defendants.

**ALBERT R. PALMER**

**A. R. PALMER**  
**JUDGE**