

HONIARA CITY COMPETENT AUTHORITY -v- JASON YEE AND SIRIAKO USA, MINISTER OF AGRICULTURE AND LANDS

HIGH COURT OF SOLOMON ISLANDS.
(KABUI, J.).

Civil Case NO. 414 OF 2005.

Date of Hearing: 12th September 2005.

Date of Ruling: 16th September 2005.

G. Suri for the Applicant.

A. Nori for the 1st Respondent.

R. Firigeni for the 2nd Respondent.

RULING

Kabui, J. The Minister of Home Affairs by order published in the Government Gazette dissolved the Honiara City Council on 22nd January 2004. The same Minister by publication in the same Gazette, appointed the Honiara Competent Authority (the Authority) on 22nd January 2004, consisting of a Chairperson and ten other members. The Authority is a body of persons appointed to administer the Honiara City until elections are held to form a new Honiara City Council. The head of the administration of the Authority is the Chief Executive Officer called the Clerk to the Authority. The Authority has filed an Originating Summons in Court seeking clarification of the powers of the Minister of Agriculture and Lands to approve building plans for Honiara City under the town and country planning legislation. The Clerk to the Authority has decided to be joined also as a party to the action already filed by the Authority. The first Respondent opposes the Clerk on the ground that the Clerk has no standing in the action. That is, the Clerk is incompetent to represent the Authority in the action. That is what the dispute is all about at this stage of the action filed by the Authority.

The objection by the 1st Respondent.

Counsel relies upon section 4 of the Honiara City Act, 1999 which says that there shall be established for the administration of Honiara City a body to be known as the Honiara City Council. Read with section 39 of the Interpretation and General Provisions Act, (Cap.85), it means the Honiara City Council is a corporate body with a seal. The argument is that the Authority does not have that status and therefore lacks the legal status of a corporate body. The Clerk, as the Chief Executive Officer, therefore lacks any legal status on that same basis. However, section 52(2) of the Honiara City Act states that upon the dissolution of the

Honiara City Council, the administration of the Honiara City may become the responsibility of a competent authority appointed by the Minister. That Authority is the present Authority duly appointed on 22nd January 2004 and assumed that responsibility on 22nd January 2004. That is, the Central Government through the Minister of Home Affairs took over the administration of the Honiara City and handed it over to the Authority as its agent. The Honiara City Council under section 4 above fell away into abeyance until restored at a later date by a new election process. The Honiara City is being directly ruled by the Central Government through the Ministry of Home Affairs.

Does the Clerk then have standing?

The answer lies in the provisions of the Crown Proceedings Act (Cap. 9) because that Act stipulates that the Attorney-General represents the Government in all actions by or against the Government, the Crown. This is important because section 67 of the Act declares that the functions of the City Council are not to be regarded as performed on behalf of the Crown. The fact is that the Honiara City Council as a political entity has been dissolved since 22nd January 2004 and therefore section 67 does not apply to the functions of the present Authority. The Authority is the governing body for the administration of the Honiara City and as such, the Clerk takes his instructions from it in terms of the administration of the Honiara City. The arrangement under section 52(2) of the Act is similar to section 44 of the Provincial Government Act, 1997 under which the Minister may suspend a Provincial Government and appoint another authority to discharge the functions of that suspended Provincial Government except that the Provincial Government Act does not have the equivalent of section 67 of the Act. In the **Premier of Isabel v. Earthmovers Group of Companies (Trading as Eastern Development Enterprises Limited)**, Civil Appeal No. 005 of 2005, the Court of Appeal ruled that the Attorney-General was entitled to be joined as a party representing the Crown.

Conclusion.

In this case, the Attorney-General is already a party. Now that section 67 of the Honiara City Act does not apply, the Attorney-General will represent the Authority. There is no need for the Clerk to the Authority to be a party to this action. It is simply unnecessary for him to do so. The application is therefore dismissed.

F.O. Kabui
Puisne Judge