

IN THE HIGH COURT OF SOLOMON ISLANDS Civil Case No. 614 of 2021

(Civil Jurisdiction)

Speaker of Western Provincial Assembly

The Claimants

-V-

The Attorney-General (Representing Minister of Provincial Government and Institutional Strengthening).

The Defendant

Hearing: 3rd December 2021

Judgement: 3rd December 2021

Mrs A. N. Tongarutu for the Applicant/ Claimant.

Mr. S. Banuve Solicitor General, and Mr. N. Ofanakwai, for the Respondent/ Defendant.

Palmer CJ:

1. This is an interlocutory application *inter alia* for the following orders:

(1) An Order to vary paragraph 1 of the Order of the Court issued on 9th of November 2021;

(2) An Order that the Applicant Speaker is by virtue of Standing Order 62 of the Western Provincial Assembly Standing Order No. 7 of 1997 is empowered to adjourn the meeting scheduled for 29th November 2021 due to unforeseen circumstances;

and subsequent consequential and related orders as set out in the "Amended Urgent Application for Stay and Interim Orders" filed on the 30th November 2021.

2. The application is premised on a judicial review claim filed on or about the 22nd October 2021, further amended on three occasions, the 9th and 30th November and the most recent one on 3rd December 2021.

3. In essence the Judicial Review Claim ("the JR Claim") challenges the validity of the Ministers power to make orders directing the Speaker and the Western Provincial Assembly to convene meeting on a particular date. The purported exercise of that power being under section 47 of the Provincial Government Act 1997 ("the PGA").

4. The facts of the JR Claim relate to two ministerial orders issued by the Minister on the 14 October 2021 and 5th November 2021. In the first order the Minister of Provincial Government and Institutional Strengthening ("the Minister") directed that the Western Provincial Assembly ("the Assembly") to convene on the 25th October 2021. The second Ministerial Order directed that the Assembly to convene on the 11th November 2021.

5. When the matter came before the Court for interim interlocutory orders on the 9th November 2021, the Court granted the orders *inter alia* for stay and directed that the adjournment initially made by the Speaker of the WPA for the Assembly to convene on the 29th November 2021 to proceed.
6. On or about the 12th November the Minister filed an application *inter alia* to set aside the orders of the Court of the 9th November 2021 “so as to allow the Respondent Minister to issue new Ministerial Order of a new date for the Assembly Meeting”. That was heard by the Court on the 18th November and judgement delivered on the 24th November 2021 dismissing the application of the Minister to set aside the orders *inter alia* of the 9th November 2021. The ultimate effect of this was to allow the meeting scheduled for the 29th November 2021 to proceed unhindered.
7. On or about the 27th November 2021, the Speaker issued a notice to adjourn the meeting further in the light of the pending decision from the Court. He then adjourned the meeting to the 10th December 2021.
8. The 18 members of the Provincial Government in opposition however, refused to comply with the adjournment and proceeded to convene the Assembly meeting as scheduled on the 29th November 2021.
9. This is the brief background setting of events and proceedings that had transpired and resulting in the filing of this application for stay orders.

The Principles for granting of Interlocutory Orders/ Injunctions.

10. The application for stay and interim orders of the Claimant must be considered against the backdrop of the well-established principles governing the grant of an interlocutory injunction. These have been amply set out in numerous cases including the Court of Appeal case in *Allardyce Lumber Company Ltd v Anjo*¹, which endorsed the leading authority on the general principles in the House of Lords decision in *American Cyanamid Co v Ethicon Ltd*². These principles have been applied in the Solomon Islands in a number of cases³.
11. In order to ground a successful application for an interim or interlocutory injunction a number of matters need to be satisfied.

¹ [1997] SBCA 3; CA-CAC 8 of 1996 (15 April 1997)

² [1975] UKHL 1; [1975] 1 All ER 504.

³ *Tung Shing Development Ltd v Yim Kwok & Others* Civil Case No. 66 of 1995 dated 7 April 1995; *North New Georgia Timber Corporation & Another v Sake Hivu & Others*, Civil Case No. 387 of 19:93 dated 10 February 1995; *John Wesley Talasasa v Attorney General & Others*, Civil Case No. 43 of 1995 dated 15 May 1995

12. The first question is whether there are triable or serious issues to be determined or is the action frivolous or vexatious? Is there a real prospect that the Claimant will succeed in his claim for permanent injunction at the trial?
13. The Respondent in this case argues that there is no longer any real issue for determination which would warrant the claim for a permanent injunction in this trial. Mr. Banuve of Counsel on behalf of the Attorney-General submits that the effect of their application to set aside the orders of the 9th November 2021 being dismissed by the Court, is to render the questions for determination "*desolate and moot*".
14. He submits there is nothing to amend in the JR Claim and that a different factual matrix now exists very different from that in Civil Claim No. 614 of 2021.
15. I would agree in so far as the JR Claim relates to a permanent injunction to be issued. The urgency and relevancy of an interlocutory injunction and *a fortiori* a permanent injunction are more an academic exercise than anything apart from the legal question which remains outstanding for future purposes as to the limits of the powers of the Minister.
16. The directions of the Court issued on the 9th November 2021 and reiterated in the judgement of the Court dated 24th November 2021 merely restates the position that the adjournment issued by the Speaker for the Assembly to convene on the 29th November 2021 remained intact.
17. What happened thereafter raises new issues not directly related to or connected to the JR Claim sought in this claim and accordingly does not assist the claim for interlocutory orders for stay. I understand a separate claim has been filed to pursue challenges to what transpired thereafter. That is a matter which can be determined at the appropriate time by parties in that case.
18. In terms of the question of balance of convenience, that lies heavily in favour of the Respondent and against the Applicant on the question of granting or refusing the interlocutory injunction. If the Claimant succeeds in his action, would he be adequately compensated for damages for loss sustained between the application and the trial. If the answer to this inquiry is positive, no interlocutory injunction should normally be granted. I am satisfied the answer to this question, is that damages would be an adequate remedy in this action.
19. As to the question of preserving the status quo, that had been more than fulfilled by the Court confirming the decision of the Speaker to allow the meeting of the Assembly to convene on the 29th November 2021.
20. I am satisfied accordingly the application for stay and interim orders of the Applicant should be refused with costs to be taxed if not agreed.

ORDERS OF THE COURT:

1. Refuse application for stay and interim orders sought in this application filed 30 November 2021.
2. Grant costs in favour of the Respondent to be taxed if not agreed.

SIR ALBERT R. PALMER CBE
The Court.