

IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CIVIL DIVISION)

OA NO: 3/2009

<u>IN THE MATTER</u>	Of an Application for Declaratory Orders pursuant Section 3, Declaratory Judgment Act 1908 And an Interim Injunction pursuant To Rule 193, Code of Civil Procedure 1981
<u>BETWEEN</u>	<u>NGATANGIIA-MATAVERA RUGBY LEAGUE ASSOCIATION</u>  <u>Applicant</u>
<u>AND</u>	<u>COOK ISLANDS RUGBY LEAGUE ASSOCIATION</u>  <u>Respondent</u>

Mr Paul Lynch for Applicant  
Mr Navy Epati for Respondent

Telephone Hearing: 22 May 2009 (Cook Islands time)

Revised Oral Judgment of David Williams CJ

**Introduction – Background Facts**

[1] This application for an interim injunction was made by means of an Original Summons for Declaratory Orders and an Interim Injunction filed on Friday the 22<sup>nd</sup> of May. I heard it by means of a telephone hearing on the same day and gave an oral judgment. I reserved the right to amplify my reasons when my judgment was subsequently reduced to writing and issued.

[2] The undisputed facts are that on Saturday 16<sup>th</sup> of May the Tupapa Maraerenga Rugby League Club ("Tupapa") played a Semi-final Premier Grade game against the Ngatangiiia Matavera Rugby League Club ("Matavera"). Tupapa won 22-18.

[3] In that game Mr Eddie Rea played in the Tupapa team. The application alleges at paragraph 1 that Mr Rea had not taken the field and played a game in the Premier Grade for Tupapa during the rounds in 2009. Because of that fact Mr Rea and Tupapa breached the Competition Rules of the Cook Islands Rugby League Association, particularly Rules 20 and 21 relating specifically to "Eligibility for Finals Play". Those provisions include the following statement:

"Subject to Rule 21, to be eligible for finals play in a grade, players must have played a minimum of one game in the round competition in the grade for which they wish to qualify for, with the exception of overseas players..."

I am not concerned with overseas players but as a matter of interest they have to play four (4) games in the grade they wish to qualify for.

[4] Rule 20 provides that subject to Rule 21(a) age-restricted grade players may move freely between grades during finals play. However, Reserve grade players may move between premier grade and reserve grade only. A premier grade player who wishes to play in the reserve grade finals must have played in the reserve grade not less than four (4) games before the finals.

[5] The Applicant contends that Mr Rea had not played in a premier grade match this season. Therefore he was not qualified to be on the field for Tupapa on 16th May. That is so, it is said by Mr Lynch, notwithstanding the language that reserve grade players may move between premier grade and reserve grade only. The contention of the Applicant is that though this man did not play one game in the premier league this season he was ineligible to play in the semi finals.

[6] That is the substantive complaint but there is then an alleged breach of the Constitution, and in particular Rule 34, by the Executive Committee in not referring this complaint to the standing Judicial Committee. The reason given for the non-referral given by the Respondent was that there was no compliance with Rule 34 which contains a time limit for filing complaints. That provision comes in a section headed Matters referred to the Judiciary and Rule 31 provides that the judiciary may consider any one of the matters specified in the Rule. One of the matters is Rule 31(2) which refers to cases where a player is cited by any club for a breach of the Rules. That is what had happened here that in the letter of the 18th of May from the Applicant Ngatangia Matavera Rugby Club it was said that

both Mr Rea and the Club had breached the rules. In particular Mr Eddie Rea had not played the necessary games for the Tupapa in the round competition and therefore had not fulfilled the necessary criteria for playing in the game on 16th May.

[7] The position taken by the Respondent is that for such a complaint to go to the Judiciary there needed to be filed under Rule 34, a written notice of citation of the complainant by 9am on the Monday following the game. It is acknowledged by the applicant through Mr Lynch that that was not done with respect to the complaint concerning Mr Rea. It was for that reason that the matter was not referred to the Judicial Committee and instead was dealt with by the Executive Committee.

#### **The J.P.'s Ruling**

[8] The matter came before a Justice of the Peace earlier today. He refused to grant the Interim Injunction on the basis of the fact that the Association had been deregistered on the 2nd of February 2009 due to non compliance with Section 23 of the Cook Islands Incorporation Society Act 1908 which requires payment of annual registration fees. That was the advice that he was given by the Solicitor General. He therefore held that he had no jurisdiction over the Respondent.

[9] It is perfectly understandable that the Justice declined jurisdiction having received such advice from the Senior Law Officer of the Crown. However, in my view the advice of the Solicitor General was plainly incorrect. The true position in law is that the registration does not in any way affect in contract which exists between the players, the Clubs, and the Respondent Association.

[10] There are many cases which support the proposition that there exists either an express or implied contractual relationship between those three parties, the players, the Clubs and the Executive Associations: see the authorities cited in Lewis and Taylor Sport: Law and Practice (2007) at pp 159-169 and in particular *Modahl v British Athletics Federation* [2002] 1 WLR 1192 (CA). I strongly suspect, although I have not had time to check, that such is in fact what is stated on the card that the players file when they register as players, as they must do, pursuant to Rule 8 of the Competition Rules of the Respondent.

[11] The Justice did not address the alternative application for a declaratory order, finding that he had no jurisdiction to deal with it. He said the applicant should file a separate application to the High Court if it wished to pursue the claim for a declaration.

#### **Discussion**

[12] My only duty tonight is to consider whether an Interim Injunction should be granted in the terms set out at paragraph 11 of the application.

"[If] the respondent does not comply with Constitution and competition rules and forfeit the Premier League Grade Semifinal game result against Tupapa, then for the Applicant we have to request an Interim Injunction preventing the Respondent, its agents or any other person, holding the Cook Islands Rugby Grand final on the 23<sup>rd</sup> of May 2009 until the Court is able fully to hearing determine the applicants application."

[13] There is as an affidavit in support of the Application which provides the basic evidentiary material to which I have referred. Because of the time factor it has not been possible for the Association to file affidavits but their position has been explained by Mr Navy Epati who is the Vice President of the Association and authorized by the President to speak in this matter.

#### **Discussion**

[14] In considering whether to grant an Interim Injunction, a number of matters must be considered. First, whether the Association has established arguable or prima facie case that its legal contentions are correct and the overall strength of that case. Then I have to look at the balance of convenience which is the guiding principle in the granting of an injunction.

[15] The balance of convenience matters are connected to the question of the risk of doing an injustice by granting an injunction. If I grant the injunction and, when this matter is considered in detail at the substantive hearing, I find that the applicant's case was defective, what can be done then if I have already by injunction stopped the Final being played?

[16] As to the question of whether there is an arguable case and, if so, the strength of the case I propose first to deal with the question of whether the failure to comply with the time limit, which has been acknowledged, should be given any weight.

[17] In my view it is a very important that the rules of sporting competitions be structured and properly enforced so that they may be relied on and that all participants know where they stand. The players need to know at the earliest available time, what is the consequence of any misdeed they may have committed, for example, the consequence of any player having been on the field when he or she should not have been there, and whether any team is going to forfeit or be disqualified. It is for that reason that the Judiciary is required to meet the following Monday after weekend games and promptly decide the cases that have been put before them.

[18] There is an obligation on the referees and the Association to submit reports on the complaints filed by 9.00am, by 12 noon. Bearing in mind the needs for speedy decisions in sporting matters I am not prepared to disregard the rule requiring notice of complaint to be filed by 9am the Monday following the game in question. I find the evidence of non-compliance is clear. It has in fact been conceded. In my view the Judiciary did not have jurisdiction because there was no valid complaint before it. The complaint was filed out of time.

[19] To the extent that there was intervention of the Executive Committee that can be regarded as a reasonable approach. In other words, even though they could have walked away and said we will do nothing they decided to let the Executive Committee hold a hearing because the Judiciary Committee had no jurisdiction.

[20] So even before one considers whether there is an arguable case on the interpretation of the rules, there is a significant procedural weakness in the Applicant's case because the claimant has not come to the Court in compliance with the rules.

[21] I have now considered the question of the claimant's interpretation of the rules. I would accept that the outset that there is a degree of ambiguity in Rules 20 and 21. Each interpretation that has been offered by the opposing sides today is at least arguable. I am inclined provisionally to the view that, since Rule 20 begins by saying its subject to Rule 21, there the case for the Association has considerable strength because of the unqualified

statement that Reserve Grade players may move between Premier Grade in Reserve Grade only. That is the dominant provision because Rule 20 says subject to Rule 21.

[22] Although I have not had confirmatory evidence there is some evidence to suggest that the player did play a couple of games in the Reserve Grade. The conclusion I reach is that the case for the Applicant may be arguable. However, overall I am inclined to the view that the opposing argument is of equal or greater strength.

### **Discretionary Factors**

[23] Looking at the two legal issues affecting the Applicant's case, my conclusion is that the Applicant's case is perhaps arguable but not a strong case.

[24] The factors which have to be considered include the consequences to the third parties. Third parties in this case would include the players who are prepared to play in the Final tomorrow and the public who will be attending the Final. There will be numerous other finals tomorrow. However, the Premier Final will be the conclusion of the day so it is an important public occasion.

[25] I find that granting the injunction will likely create significant adverse consequences for the public and the Association. I had evidence from Mr Epati that it would be disruptive of the programme of the Association not just through the fact that all Finals are supposed to be played tomorrow. There is also the question of disruption of other later competitions which have been set up for the rest of the season, such as the Golden Oldies competition.

[26] In addition, I find it important that a few days before the game in question the Tupapa Club sought a ruling from the Secretary of the Association, who was in charge of Team Sheets. He gave them the "all clear". Therefore, it cannot be said that the Tupapa Club went about playing Mr Rea in a reckless manner. That seems to me to be quite an important point.

[27] The final discretionary matter which is relevant here is the fact that we are in the sports law field. While the Court will always try to ensure that the procedures of sporting bodies are complied with, it will be reluctant to interfere with the decision of Officials who are acting in good faith. While this applies particularly to "field of play decisions", it is also of general relevance. The Courts should not rush into deciding sports issues which are really for the sports bodies.

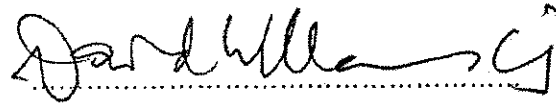
**Concluding Comments – Decision**

[28] Standing back and looking at the matter overall I find that there is an arguable case for the applicant as to the interpretation of the Rules but it is not a strong case. There are good arguments on the interpretation issue available to the respondent. Moreover, the failure to file the Application on time is, in this case at least, a major impediment to the granting of the injunction.

[29] In terms of the balance of convenience, I find that there would be very great disruption to the Cook Islands Rugby League competitions if the injunction was granted. The sporting public would undoubtedly suffer. I hold that it is not right for the Court to intervene. I am inclined of the view that the Association did not act in breach of its rules. Even if it did, it at least called some kind of a hearing by the Executive Committee instead of turning the applicant club away on the basis that it was disqualified from any hearing because it did not file its application in time.

[30] I thank Mr Lynch for his submissions, Mr Epati for his assistance, and Madam Registrar for facilitating the hearing.

[31] Costs reserved.



David Williams GJ

Date: 1 September 2009