

IN THE COURT OF APPEAL, FIJI ISLANDS

Miscellaneous Application No. 11 of 2006
(High Court Civil Action No. HBC 296 of 2006S)

BETWEEN:

DANIEL URAI

Applicant

AND

PUBLIC EMPLOYEES UNION

First Respondent

AND

THE ATTORNEY-GENERAL

Second Respondent

H.K. Nagin for the Application

S. Kofe for the First Respondent

Ms. V. Qionibaravi for the Second Respondent

DECISION

[1] On 7 July 2006 the first Respondent (the Union) filed an Originating Summons in the Suva High Court. Eight declarations were sought including:

- "(i) A declaration that Section 31 (1) of the Trade Unions Act prevents an officer of one union from contesting or

applying for a position in another union without first resigning their current position as it may result in that person holding two official positions in the separate unions simultaneously if they are successful.” and

(viii) A declaration and/or Order that Mr. Daniel Urai cannot currently contest the position of general secretary with the Plaintiff whilst he still holds an official position with another union and/or whilst holding another full time employment or position.”

[2] The Originating Summons was supported by an affidavit by the Union’s National President, Mr. Kautoga. In paragraphs one to eight of his affidavit Mr. Kautoga explained that the Applicant had been nominated for the position of the Union’s General Secretary. The Union’s Executive Committee took the view that since the Applicant was already the General Secretary of the Fiji Electricity Authority Union and was also a President of the Fiji Trade Union Congress, Section 31 (1) of the Trade Unions Act (Cap. 96 – the Act) prevented him from standing for the position for which he had been nominated.

[3] Section 31 (1) of the Act reads as follows:

“All the officers of every trade union shall be persons who have been and still are engaged or occupied for a period of no less than one year in an industry, trade or occupation with which the union is directly concerned *and no officer of any such union shall be an officer of any other union.*

Provided that –

- (a) the office of secretary may be filled by a person not actually engaged or employed in an industry, trade or occupation with which the union is directly concerned.” (emphasis added)

[4] Section 32 (2) of the Act may also be relevant:

“No person shall be a voting member in more than one trade union.”

[5] The Registrar of Trade Unions (represented in these proceedings by the Attorney-General) did not agree with the Union’s interpretation of the Act. On 5 June 2006 the Registrar wrote to the Union in the following terms:

“Though Section 31 (1) prohibits an officer from holding office in another trade union, the Act does not prohibit a person who is an officer of another trade union from contesting an official post in another trade union. Therefore an officer is at liberty to contest the post of secretary in another trade union. However, if the officer does succeed, then he or she must resign immediately before taking up the post in the other trade union.”

[6] Although an affidavit in answer to that filed by the Union was filed by Attorney-General, no papers were filed by the Applicant who had not been joined as a party.

[7] Arrangements had already been made for the Union's Annual General Meeting to be held on 25 August. With commendable despatch the High Court heard the Originating Summons on 14 July 2006 and delivered the judgment on the 17th. The High Court found for the Union and declared that:

"the rejection of Mr. Daniel Urai's name by the Executive Committee is in conformity with the requirement of Section 31 (1) of the Act".

[8] On 8 August 2006 the present application was filed. The Applicant seeks leave to intervene in the proceedings and to be joined as the Appellant. The Draft Notice of Appeal contains two grounds:

"1 - the learned Judge erred in law and in fact in not directing that Daniel Urai be made a party to the proceedings to be heard.

2 - the learned Judge erred in law and in fact in not properly interpreting Section 31 of the Trade Unions Act."

[9] In support of his application, Mr. Nagin referred to paragraph 59/3/2 of the 1988 White Book:

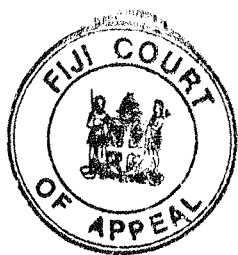
"Any party to the action may appeal ... and also any person served with notice of the judgment or order. But in addition, in accordance with the old Chancery practice any person may appeal by leave ... if he could possibly have been made a party to the action by

service (per Jessel M.R. in Crawcour v. Salter (1882) 30 W.R. 329 ...). It does not require much to obtain leave : a person making out a prima facie case that he is a person interested, aggrieved or prejudicially affected by the judgment or order and should be given leave will obtain it."

- [10] Mr. Nagin submitted that the High Court should (acting under the powers conferred upon it by RHC O. 15 r 6 (2) (b)) have at least given consideration to ordering that the Applicant who was clearly affected by the proceedings, be joined as a party. The omission to do so gives rise to the proposed first ground of appeal.
- [11] Ms. Qionibaravi did not object to the application, in fact she supported it : the Registrar of Trade Unions would welcome a definite decision of the Court of Appeal on the meaning and effect of Section 31 (1) of the Act.
- [12] Mr. Kofe opposed the application. He suggested that the proceedings were commenced in the High Court because of a dispute between the Union and the Registrar. Therefore, Mr. Urai was not directly but only consequentially affected. Mr. Kofe submitted that the proper course now was for the Applicant to initiate proceedings by way of judicial review.
- [13] In my opinion there is nothing to be said for commencing entirely fresh proceedings when there are already well advanced proceedings afoot which may easily and swiftly yield a definitive result. By permitting the Applicant to join the proceedings at

this stage expense and time will be saved. I am satisfied that the Applicant has a legal interest in the outcome of the appeal and that in the absence of any appeal by the second Respondent to this application the important legal matter at issue would not otherwise be resolved on appeal.

[14] There will order in terms of paragraphs (i), (ii) and (iv) of the Notice of Motion. Paragraph (iii) has been overtaken by events.



A handwritten signature in black ink, appearing to read "M.D. Scott", is written above the printed name.

M.D. Scott
Resident Justice of Appeal

14 September 2006.