

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL ACTION No. 297 of 2008

BETWEEN:

ISIRELI KOYAMAIBOLE of 85 Bureta Street, Suva

PLAINTIFF

AND:

THE PUBLIC SERVICE COMMISSION an interim service
commission continued in existence under section 142(c) of the
Constitution

FIRST DEFENDANT

AND:

INTERIM PRIME MINISTER in his capacity as interim Prime
Minister and chairperson of Cabinet

SECOND DEFENDANT

AND:

INTERIM MINISTER OF PUBLIC SERVICE also responsible for
the Public Service Commission

AND:

INTERIM ATTORNEY-GENERAL

FOURTH DEFENDANT

Appearances:

Mr Q. Bale for the Plaintiff

Mr E. Tuiloma with Ms S. Waqimabete and Ms S. Serulagilagi for the Defendants

Date of Hearing: 17 July 2008

Date of Judgment: 21 July 2008

JUDGMENT

1. Application for Stay & Consolidation

On 25 April 2008, this matter was listed for hearing, two days being set aside namely 17 and 18 July 2008.

1.1 On 30 June 2008 the Court received a copy letter from the Attorney-General's Chambers, whereby the Office of the Solicitor General wrote to Counsel for the Plaintiff requesting vacation of the hearing dates and advising:

We intend to make necessary applications to consolidate this Action with Action No. HBC 534/07S regarding *Joji Kotobalavu v. Public Service Commission, Interim Minister for Public Service and Attorney General* as well as Action No. HBC 535/07S regarding *Paula Uluinaceva v. Public Service Commission, Interim Prime Minister and Interim Attorney General* to have the matter heard together as the issues regarding these Actions are similar.

1.2 The letter further requested Counsel's 'consent on the matter which 'will enable us to advise the Court expeditiously'.

1.3 By copy letter dated 7 July 2008, Counsel for the Plaintiff provided the Court with the response to the Defendants' request, stating after preliminaries:

With regard to your request for vacating the dates set for the trial of the above-mentioned case we suggest that this application be made to the Court with cogent reasons in support of the application because the dates were set on the direction of the Court. We doubt that the parties can or should agree to vary Court directions without the approval of the Court.

Since we represent the Plaintiff who has been unemployed since the termination of his employment and who is naturally anxious that his case be concluded soonest we will be unable to consent to your application when it is made. We will of course be bound by the Court's ruling on your application. We can notify you now that we will be asking for costs in the event that the dates are vacated.

1.4 On 8 July 2008 a Summons was filed by the Defendants seeking an order that the present action be stayed 'pending the decision in consolidating High Court Action Numbers HBC 438/07 and HBC 406/07S and High Court Action Nos HBC 537/07S, [HBC] 488/07S and [HBC] 534/07S, whichever is the later'.

1.5 Albeit the wording is not precisely clear, what is apparent is that the Summons expands upon the earlier letter, in proposing not only that the present action be consolidated with action No. HBC 534/07S, *Joji Kotobalavu v. Public Service Commission, Interim Minister for Public Service and Attorney General* and action No. HBC 535/07S, *Paula Uluinaceva v. Public Service Commission, Interim Prime Minister and Interim Attorney General*, but with three further actions, namely High Court Action Numbers HBC 438/07 and HBC 406/07S and HBC 537/07S, HBC 488/07S.

1.6 An Affidavit filed in support effectively sets out three bases for the request for vacation of the dates set for trial of the present proceeding, and consolidation of the (now) six matters

(including the present proceeding) so that they may be heard together, or seriatim, by the same Judge. These are stated as follows:

- the present proceeding ‘has issues closely connected and are similar to other proceedings before this Honourable Court before different judges’: para 3
- the present proceeding and the other five matters referred to are ‘similar actions on the same issues with similar remedies’: para 4
- some of the matters in this and other connected actions raise serious constitutional issues as well as judicial interpretation of these issues. The issues extend to the legality of the current Interim Government and the powers of His Excellency, the President and executive actions by him following the events of 5th December 2006: para 3.

1.7 The Affidavit says ‘given the similarities in the issues and remedies sought in the [six] actions ... it would be in the judicial administrative interest that these matters be consolidated and a failure to consolidate means that the Defendants ‘will have to file affidavits to place evidence of similar nature for the ... case [for] proper determination of the same issues’: paras 5, 6

1.8 The Affidavit further raises the public interest in that it is ‘not in the public interest that costs be expended in duplicitous proceedings on same or similar issues’, observing that the State ‘has expended a considerable sum of money and resources in moving’ all six actions: para 7

1.9 The Affidavit then goes on to conclude that the present proceeding is a ‘test case’ as the first of the many pending ‘where the hearing and closing addresses have been completed’. That is, says the Affidavit, the decision in the present proceeding ‘could well determine the other similar actions’: para 8

1.10 One may consider that if the present proceeding is a ‘test case’ the determination of which may determine the five other actions, it would be preferable to go ahead with the hearing with all due speed, so that the outcome could (if the ‘test’ nature proved correct) obviate the need for extended hearings on the other matters. Indeed, in oral submissions Counsel for the Plaintiff/Respondent (who represents the Plaintiffs in the five additional matters) suggested precisely this.

2. Parties’ Submissions

Oral submissions were made by Counsel for both Plaintiff and Defendants, Counsel for the Defendants also handing up written submissions on the day, to which there was no objection.

2.1 (a) *Plaintiff’s Initial Submission:* Counsel for the Plaintiff said that he sent the letter of 7 July 2008 because he wished to affirm his client’s object to the adjournment sought by the Defendants and to the request for consolidation of the proceedings. As Counsel representing all Plaintiffs in the six matters (including the present proceeding) his preference was for dates to be set for those matters to proceed in a timely manner.

2.2 (b) *Applicants/Defendants’ Written Submissions:* In short compass, in written submissions Counsel for the Applicants/Defendants said that reliance for the applications for consolidation and stay was based upon grounds that:

- common questions of law and fact arise or are prevalent in all cases stipulated;

- issues of law raised in the matters are to be determined in *Laisenia Qarase, Ratu Naiqama Lalabalavu, Ro Teimumu Kepa, Ratu Suliana Matanitobua, Aid Sivia Qoro and Josefa Vosanibola*; and *Ratu Apenisa Kalokalo Loki and Peceli Kinivuwai v. Josai Voreque Bainimarama, The Republic of Fiji Military Forces, The State of the Republic of the Fiji Islands and the Attorney General of the Interim Regime* (HC Action No. 60 of 2007S) (*Qarase case*) and *Republic of the Fiji Islands and Attorney-General v. Laisenia Qarase, presently of Mavana Village, Vanuabalavu, Lau, former Prime Minister and Josefa Vosanibola, former Minister for Home Affairs* HCCA No. 398 of 2007S) (*Republic and A-G v. Qarase and Vosanibola*);

and therefore it is desirable to make the orders sought.

2.3 Further, as to the stay application, the written submissions placed reliance upon the following:

- there is a serious question to be tried;
- grant or refusal of a stay is within the court's discretion on the balance of convenience in the public interest;
- as the decision in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* is pending, 'which addresses the powers of the President or Acting President to make laws, it is in the public interest' that the hearing of the present action and the related actions applied for consolidation be stayed: Written Submissions, para 1.4

2.4 As to consolidation, Counsel's written submissions advanced the following considerations for the Court:

- some common question of law or fact arises in both or all of the actions proposed to be consolidated;
- the rights to relief claimed in them are in respect of or arise out of the same transaction or series of transactions; or
- for some other reason it is desirable to make an order for consolidation.

2.5 The following matters of law arising in the actions proposed for consolidation were said to comply with such considerations:

- whether the Commander/President or Acting President or Prime Minister acted within their powers to terminate the employment/service of the Plaintiffs/Respondents;
- whether the Public Service Commission acted unlawfully in not advising the President not to usurp their powers to appoint and terminate employment/service of the Plaintiffs/Respondents;
- whether termination of the Plaintiffs/Respondents contracts of employment can be done unilaterally by the Defendants under the situation pertaining at the time;
- whether the issue of compensation arises under the termination of the contracts;
- whether the advice of the Prime Minister to and the repeal of the Public Service (Senior Executive Service) Regulations 2003 and the Promulgation No. 4 of 2007 were unlawful and unconstitutional;
- whether the Attorney General acted negligently in not advising the First, Second and Third Defendants;
- whether termination of the Plaintiffs/Respondents' contracts was illegal, unconstitutional and invalid;

- whether reliance on Promulgation 4 of 2007 was contrary to law;
- damages and costs: Written Submissions, para 3.4

2.6 As to common or similar issues of fact in all the actions, it was said:

- the Plaintiffs/Respondents each had her/his contract of employment terminated by the Defendants/Applicants;
- each of the Plaintiffs/Respondents was contractually employed on the same or similar terms and conditions as Chief Executive Officers for respective Ministries of the Government;
- their respective contracts were terminated at the same or similar dates in 2007;
- the Plaintiffs/Respondents seek relief and make claims in respect of the termination of their employment: Written Submissions, para 3.5

2.7 The Defendants/Applicants say therefore that it would be 'in the interest of the Court to ensure that matters or the trial be consolidated so as not to duplicate proceedings' and 'given the similarities in the law and issues involved, evidence to be obtained in all trials will more or less be similar': Written Submissions, para 5.7

2.8 The Defendants/Applicants acknowledge that the 'quantification of damages 'will have to differ according to the individual claims made': Written Submissions, para 3.7

2.9 Further reasons put forward are as to 'issues of law that will be determined in the *Qarase case* [and *Republic and A-G v. Qarase and Vosanibola* which] will also be considered' in the cases proposed for consolidation. This includes Constitutional and legal issues relating to the President's executive powers after 5 December 2006.

2.10 The Defendants/Applicants submit further that consolidation:

- will not engender confusion by consolidation of all actions, or consolidation in to two groups of three with common features as to the party determining upon the termination of each contract;
- 'will not lengthen the time and further complicate the legal issues and different rights and remedies that may accrue from facts and issues' arising in the present action and the other five actions so that the application for consolidation should be granted;
- will require 'no additional work and time ... through readings, additional preparation for rebuttals for additional grounds and remedies sought';
- will require no additional case management documentations;
- will mean that any 'relative expense' to the Defendants/Applicants and Plaintiffs/Respondents is 'therefore ... negligible and hence consolidation will not in any way be prejudicial to them': Written Submissions, paras 3.18-21

2.11 As to the stay application, the written submissions cite *Cooper v. Williams* [1963] 2 QB 397 (CA) for the proposition that stays are granted under 'many different circumstances and may be removed if proper grounds are shown'. A stay is applied for in the present proceeding so that 'the following matters are first dealt with':

- consolidation of actions per the grounds set out earlier;
- resolution of the 'test case' namely the *Qarase case* (and *Republic and A-G v. Qarase and Vosanibola*), citing *Woods v. Duncan* [1946] AC 401 (HL).

2.12 Amongst other matters, the Defendants/Applicants' written submissions say that the public interest of 'controlling of state economic activity through unwarranted expenses of allowing same issues of law and facts in five other similar cases that arose out of the same activity should supersede any irreparable harm that may be suffered by the Plaintiff/Respondent' in the grant of a stay: at 4.5, citing *Manitoba (AG) v. Metropolitan Stores Ltd* (1987) CanLii 79 (SCC), paras [55][57]

2.13 Further, if there is any irreparable harm to the Plaintiff/Respondent in staying the proceeding 'spending consolidation', it remains that 'there is a test case already being litigated to which a decision is still being awaited', namely *Qarase and Republic and A-G v. Qarase and Vosanibola*.

2.14 Amongst other matters the Defendants/Applicants say that in the Plaintiff/Respondent's Writ of Summons a claim is made in respect of termination of contract but also 'seeks declaration for the validity of the President or Acting President's executive powers after the 5th December 2006': Written Submissions, para 5.2

2.15 These matters have already been litigated in *Qarase and Republic and A-G v. Qarase and Vosanibola* (heard in March 2008), and are the subject of the current litigation and the actions sought to be consolidated. The Defendants/Applicants further say that there will be no 'injury or long term damage suffered by [the Plaintiff/Respondent] in the event that the matter is stayed pending trial'.

2.16 In conclusion, it is 'in the public interest that there is no duplication of proceedings or [un]necessary duplication of proceedings with consequent outlay and unnecessary economic expenses by the Court with costs. Matters should 'be dealt with efficiently and expeditiously without prejudicing the parties further after consolidation': Written Submissions, paras 7.1, 7.2

2.17 **(b) Defendants/Applicants' Oral Submissions:** Counsel for the Defendants/Applicants referred to the written submissions, observing that the application to consolidate all matters and to stay the hearing was based upon, first (as to consolidation), that all the actions involve similar law and facts. The Court, Counsel said, had inherent power to consolidate: this could be done by consolidating all six actions, or dividing them into two lots of three, upon the basis that Plaintiffs in three of the actions had their contracts terminated by the President, whilst three had them terminated by the Interim Prime Minister; further the Plaintiffs in three of the actions had their positions terminated simultaneously in January 2007 (including the Plaintiff/Respondent), whilst the Plaintiffs in the other three actions had their contracts of employment, as noted, terminated in accordance a process common to those three Plaintiffs.

2.18 As to the stay (and further as to consolidation) Counsel for the Defendants/Applicants addressed briefly the matters set out in the written submissions and as identified above.

2.19 **(c) Plaintiff/Respondent's Oral Submissions:** Counsel for the Plaintiff/Respondent emphasised that he did not suggest any ulterior motive in the making of the application (such as unpreparedness for trial on the day), however observed that he was prepared for trial and that his client had been unemployed since January 2007, and had a proper expectation of a speedy conclusion to his case.

2.20 Procedurally, the present matter is ready for trial, said Counsel, and the onus was upon the Defendants/Applicants to persuade the Court that the proceeding not go ahead on the dates set

some time ago (25 April 2008) and known to the Defendants/Applicants from that date. The Plaintiff/Respondent's 'team has spent a great deal of time in preparation for trial' and the making of the application by the Defendants/Applicants on the first day of the trial was 'difficult to accept'.

2.21 There were, Counsel said, cost implications. He stated a strong objection to vacating of the trial dates. Further, contrary to the submissions of the Defendants/Applicants, he said, it was a wrong perception that there was a need to await the judgment in *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola* before hearing the present matter.

2.22 Great care had been taken, said Counsel, in the drafting of the pleadings to avoid the raising of the very issues the Defendants/Applicants now put forward as embedded in the present action (and the other actions sought to be consolidated), and those issues did not need to be addressed in, nor did they have a bearing upon, the present proceeding. The pleadings were drafted to 'avoid the issue of illegality or otherwise of the present regime'. Contracts 'ought not to be breached whether there is a legal or illegal regime' and it was breach of contract that was at the heart of this proceeding and the other five actions.

2.23 As Counsel acting in all the cases sought to be consolidated, he had 'no difficulty' with consolidation and 'no difficulty' in all being heard by the one Judge. He noted also, that the State Law Office represents the Defendants in all cases. He 'would not oppose' consolidation as there are common features of law and fact in determining the issue of liability alone; quantification of damages, particular to each claim, could be determined later for each individual claim.

2.24 The 'core issue' in each case is 'who has the power to terminate' the contract of each of the Plaintiffs and of the Plaintiff/Respondent in the instant proceeding. Counsel agreed it would not matter if the contract of each Plaintiff had been terminated by the present Interim Government or the Government in power prior to 5 December 2006: the question in issue went to breach of contract, not to the legality of the particular government.

2.25 Albeit maintaining his position that the present proceeding should continue as scheduled, and that although he did not oppose the Defendants/Applicants' application he did not consent to it, Counsel for the Plaintiff/Respondent observed that if the actions were consolidated, the 'three-three' consolidation may be appropriate, in (as noted) the first three cases the terminating authority being the President – whilst the Public Service Commission was 'sitting there', still in existence under the Constitution which was itself still in existence; and in the second three cases the terminating authority being the Commodore (Interim Prime Minister) – again whilst the Public Service Commission and Constitution were in place.

2.26 In summary, Counsel for the Plaintiff/Respondent stated there was 'not strong opposition to consolidation' and it was 'agreed that the essential elements were there'. However there remained the issue of the right to a speedy trial, with cost implications as the Plaintiff/Respondent's case had been prepared for trial, with witnesses ready. Additionally, the possibility of mediation or settlement out of court 'should not be ignored' as it 'could affect the quantum of damages': the question needed to be addressed between the parties as to whether mediation could be agreed to.

2.27 (d) *Reply by Defendants/Applicants:* Counsel for the Defendants/Applicants welcomed Counsel's not opposing the consolidation of the actions, and confirmed also the need for a speedy trial, proposing that this could be effected by all matters being consolidated and dealt with together rather than some returning to the Master for finalisation of pre-trial processes.

2.28 As for the stay application, Counsel for the Defendants/Applicants 'totally disagreed' with the proposition that the actions did not raise the Constitutional questions he had posed as the basis for awaiting the outcome of the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*

2.29 (e) *Final Response by Plaintiff/Respondent:* Counsel for the Plaintiff/Respondent noted that the President had not been named in any of the actions in issue: the President was not named, because the Plaintiffs had 'not challenged his power to make promulgations'. It was an issue of the 'wrong authority to take action' – namely the termination of the contracts of employment of each of the Plaintiffs having been terminated by the wrong party/decision-maker. No gap existed at the time that required filling in that way, for as earlier noted the Public Service Commission was 'still in existence under the Constitution' and the Constitution was 'still in place'.

2.30 An estimate of 'three months' for the other matters to be brought to the stage of trial (estimated by the Defendants/Applicants) was a cause of concern to Counsel for the Plaintiff/Respondent, responding that the present proceeding should go to trial as a 'test case', so assisting in resolution or at least hearing of the other actions which could be consolidated.

2.31 If the present proceeding was to be consolidated with the other actions and there was a stay granted pending the outcome of the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*, in the interests of a speedy process Counsel favoured adjournment to a date the week commencing 21 July 2008 for a review of all steps outstanding in all the matters.

3. Case Management of Proceedings

Case management of proceedings is an important part of the Court's work, to ensure the best use of resources whilst advancing the right to a speedy trial. All Plaintiffs had their contracts of employment terminated (or purportedly terminated) in December 2006 or January 2007:

- Three of the Plaintiffs had their contracts of employment terminated on 11 December 2006 – by the then Acting President (now Interim Prime Minister) the Second Defendant:
 - Anare Jale, Civil Action No. 438 of 2007S – action filed 19 September 2007
 - Paula Uluinaceva, Civil Action No. 535 of 2007S – action filed 21 November 2007
 - Jioji Kotobalavu, Civil Action No. 534 of 2007S – action filed 21 November 2007

- Three of the Plaintiffs had their contracts of employment terminated in January 2007 by the Termination of Contracts of Employment (Public Service Senior Executive Service) Promulgation No. 4 of 2007, issued by the President and published as Government Gazette No. 5 on that day.
 - Isireli Koyamaibole, Civil Action No. 297 of 2007S – action filed 6 July 2007
 - Alumita Molidrau Taganesia, Civil Action No. 406 of 2007S – action filed 4 September 2007
 - Luke Vidiri Ratuvuki, Civil Action No. 468 of 2007S – action filed 4 September 2007

3.1 Two issues arise immediately for consideration. The parties are agreed that there are common issues of fact and law in all six matters that support the consolidation proposal. However, as all the matters are not at the same stage of preparation consolidation would mean those more advance - and particularly the Plaintiff/Respondent's case - being delayed, a delay that otherwise would not occur. Hence, the balance in that regard favours continuing with the Plaintiff/Respondent's case which, as suggested by his Counsel, may or is likely to assist in the more speedy resolution of the issues in the other five cases. That is one consideration. The second is, however, that all the cases - the present proceeding included - may be advantaged by awaiting the outcome of *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola* . . .

3.2 The parties are in direct conflict on this aspect. The Defendants/Applicants say that issues in the present and other five proceedings directly raise matters already litigated in March 2008 in the High Court in *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola*, and awaiting the Court's pending judgment. The Plaintiff/Respondent says that none of the issues in *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola* are germane to the present proceeding or to the other five actions: rather, the actions were framed to avoid raising matters going to the legality or illegality of the Interim Government or arising out of events of 5 December 2006.

3.3 To determine this question, I have taken into account the Statement of Claim and Defence in each action. I have also paid due regard, in particular to the Minutes of Pre-Trial Conference in the present proceeding. These are also relevant to consolidation.

4. Consolidation of Proceedings

The parties acknowledge the Court's power to consolidate proceedings. The principal bases upon which the question of to consolidate or not has been considered in this and the other six matters are whether:

- some common question of law or fact arises in both or all of the actions proposed to be consolidated;
- the rights to relief claimed in them are in respect of or arise out of the same transaction or series of transactions; or
- for some other reason it is desirable to make an order for consolidation.

4.1 Amongst other matters, the following issues of fact/law are common to all six proceedings:

- The Defendants named are identical;
- Each Plaintiff was at the time of termination of contract a public officer -
 - the Plaintiff/Respondent herein was Chief Executive Officer of the Ministry of Commerce, Business Development and Investment (subsequently assigned and renamed as Ministry of Commerce and Industry) upon terms and conditions contained in a contract of employment entered into on 31 December 2003 between the Plaintiff and the First Defendant, the contract for a term of 5 years commencing 1 January 2004 and scheduled for expiration 31 December 2007
 - Luke Vidiri RATUVUKI, Plaintiff in Civil Action No. 468 of 2007S was Chief Executive Officer of the Ministry of Agriculture, Sugar and Land Resettlement upon terms and conditions contained in a contract of employment entered into on 30

December 2003 between the Plaintiff and First Defendant, the contract for a term of 5 years commencing 1 January 2004 and scheduled for expiration 31 December 2008

- Alumita Molidrau TAGANESIA, Plaintiff in Civil Action No. 406 of 2007S was Chief Executive Officer of the Ministry of Education upon terms and conditions contained in an employment contract entered into on 30 December 2003 between the Plaintiff and the First Defendant, the contract being for a term of 5 years commencing 1 January 2004 and scheduled for expiration 31 December 2008
- Jioji KOTOVALAVU, Plaintiff in Civil Action No. 534 of 2007S was Chief Executive Officer in the Office of the Prime Minister upon terms and conditions contained in an employment contract entered into on 30 December 2003 between the Plaintiff and the First Defendant, the contract being for a term of 5 years commencing 1 January 2004 and scheduled for expiration 31 December 2008
- Anare JALE, Plaintiff in Civil Action No. 438 of 2007S was Chief Executive Officer to the Public Service Commission upon terms and conditions contained in an employment contract entered into on 30 December 2003 between the Plaintiff and the First Defendant, the contract being for a term of 5 years commencing 1 January 2004 and scheduled for expiration 31 December 2008
- Paula ULUINACEVA, Plaintiff in Civil Action No. 535 of 2007S was Chief Executive Officer to the Ministry of Finance and National Planning upon terms and conditions contained in an employment contract entered into on 16 January 2006 between the Plaintiff and the First Defendant, the contract being for a term of 5 years commencing 1 January 2006 and scheduled for expiration on 31 December 2011
- The First Defendant is observed in each Statement of Claim as having the following powers:
 - Under section 147(1)(a), subject to section 148 of the Constitution to make appointments to public offices;
 - Under section 147(1)(b) and (c) of the Constitution to remove persons from public offices, and to take disciplinary actions against holders of public offices;
 - Under section 11 of the Public Service Act of 1999 to perform the statutory functions and duties described in the Act in addition to its constitutional functions; and
 - Under section 173(1) of the Constitution and section 15 of the Public Service Act 1999 to make regulations for performance of its constitutional and statutory functions
- The Second Defendant is not described identically in all Statements of Claim, albeit there is consistency as follows:
 - Commander of the Republic of Fiji Military Forces, in three actions - Civil Action No. 535 of 2007S (Paula Uluinaceva); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 534 of 2007S (Jioji Kotobalavu);

- Interim Prime Minister responsible under section 15 of the Public Service Act 1999 for approving regulations made by the First Defendant, in all six actions; and
- Chairperson of the Interim Cabinet of Government required under the Constitution to advise the President on the proper exercise by the President of his powers, in all six actions;
- The Third Defendant is describe in each Statement of Claim as being at all material times the Interim Minister Responsible, amongst other matters, for the Public Service and Public Service Commission with powers of direction pursuant to section 12 of the Public Service Act of 1999 over the First Defendant in relation to exercise of the First Defendant's statutory powers and functions;
- The Fourth Defendant is described in each Statement of Claim as being sued in his capacity as principal legal adviser to the Interim Government and its Cabinet, and in his representative capacity pursuant to the provisions of the State Proceedings Act;
- As to events of 5 December 2005 and consequent events:
 - Three Statements of Claim refer to the events of 5 December 2006, propounding an unlawful and unconstitutional removal, by force of arms, of an elected government; purported dismissal of the President and Vice President; and purporting to assume executive authority over the Republic of the Fiji Islands: Civil Action No. 535 of 2007S (Paula Uluinaceva); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 534 of 2007S (Jioji Kotobalavu);
 - All Statements of Claim refer to the dismissal of Parliament and causing of an Interim Regime headed by the Second Defendant to be formed in which the Second Defendant ('Commander of the Fiji Military Forces') was appointed Interim Prime Minister.
- As to termination of employment contract:
 - Three Statements of Claim refer to letters dated 11 December 2006 whereby the Second Defendant, purporting to be Acting President of the Fiji Islands, terminated the respective appointments with immediate effect, albeit not specifying grounds on which the employment was being terminated but specifying it was 'by virtue of the powers vested in me as Head of State', and the respective employment contracts were terminated as from 11 December 2006: Civil Action No. 535 of 2007S (Paula Uluinaceva); Civil Action No. 438 of 2007S (Anare Jale);¹ Civil Action No. 534 of 2007S (Jioji Kotobalavu);
 - All Statements of Claim refer to 18 January 2007 whereupon the President, acting on Interim Cabinet advice, issued the Termination of Contracts of Employment (Public Service Senior Executive Service) Promulgation No. 4 of 2007, published as Government Gazette No. 5 on the same day, purporting to

¹ The Statement of Claim in this action does not specifically state (as do the other two) that the contract of employment was as a consequence terminated on 11 December 2006, however, for the purposes of this application I infer this is implied, whilst noting that if it were not, this would make no material difference to my determination on consolidation.

terminate the contract of employment of every Chief Executive Officer in the Public Service –

- Including the Plaintiff – Civil Action No. 297 of 2007S (Plaintiff/Respondent); Civil Action No. 406 of 2007S (Alumita Molidrau Taganesia), Civil Action No. 468 of 2007S (Luke Vidiri Ratuvuiki)
- Presumably including the Plaintiff – Civil Action No. 535 of 2007S (Paula Uluinaceva); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 534 of 2007S (Jioji Kotobalavu);

by expressly repudiating and terminating the Contract of Employment of every such officer;

- Three Statements of Claim say that up until 11 December 2006, the holder of the respective offices had not planned or notified the First Defendant of any intention to resign from the Public Service and was not aware or had not been notified by the First Defendant of any allegation of misconduct, incompetence or substandard performance of her/his work and responsibilities under her/his contract of employment: Civil Action No. 535 of 2007S (Paula Uluinaceva); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 534 of 2007S (Jioji Kotobalavu);
- Three Statements of Claim say similarly, albeit the relevant date is 19 January 2007: Civil Action No. 297 of 2007S (Plaintiff/Respondent); Civil Action No. 406 of 2007S (Alumita Molidrau Taganesia), Civil Action No. 468 of 2007S (Luke Vidiri Ratuvuiki)
- Three Statements of Claim say that the holder of the respective offices attend a meeting convened by the First Defendant on 19 January 2007 at which the Chairman of the First Defendant accompanied by the Third Defendant informed the Chief Executive Officers in the Public Service attending that their services were being terminated with immediate effect pursuant to Promulgation No. 4 issued by the President: Civil Action No. 297 of 2007S (Plaintiff/Respondent); Civil Action No. 406 of 2007S (Alumita Molidrau Taganesia), Civil Action No. 468 of 2007S (Luke Vidiri Ratuvuiki)

4.2 Causes of action are common in the respective proceedings, except that three of the Plaintiffs have stipulated their First Cause of Action as founded in the Second Defendant's termination of the employment contract in December 2006 as being unlawful and unconstitutional on the grounds as set out in the respective Statements of Claim: Civil Action No. 535 of 2007S (Paula Uluinaceva); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 534 of 2007S (Jioji Kotobalavu).

4.3 The Statements of Claim then go on to set out generally common causes of action, albeit differently numbered due to the matter referred to in paragraph 4.2 hereof.

4.4 As to losses, each Plaintiff's losses as listed are personal or peculiar to her/him by reason of the particular employment and salary level, level of allowances and benefits, etc, although they are common as in generally covering:

- Loss of base salary;
- Loss of allowances including car and housing allowance;
- Loss of benefits being insurance premiums and FNPF entitlements

4.5 As to monetary relief claimed, again the claims are personal or peculiar to each Plaintiff by reason of the particular employment and salary level, etc but there are commonalities in respect to the foundation for the claim and relief sought, such as general damages for trauma to be assessed, compensation for loss of salary, allowances, benefits, etc and interest, costs on a client/solicitor basis.

4.6 As to declarations sought, these include one common to all actions, and two additional declarations common to three actions:

- A declaration that the Second Defendant acted unlawfully and unconstitutionally in terminating the Plaintiff's employment contract as and when he did: Civil Action No. 534 of 2007S (Jioji Kotobalavu); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 535 of 2007S (Paula Uluinaceva)
- A declaration that the First Defendant's reliance on Promulgation No. 4 of 2007 was contrary to law and the Constitution, and the repudiation and termination of the Plaintiff's contract of employment as a result of it is legally invalid, unconstitutional, null and void, and of no effect: Plaintiff/Respondent – Civil Action 297 of 2007S (Isireli Koyamaibole); Civil Action No. 534 of 2007S (Jioji Kotobalavu); Civil Action No. 406 of 2007S (Alumita Molidrau Taganesia); Civil Action No. 468 of 2007S (Luke Vidiri Raturvuki); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 535 of 2007S (Paula Uluinaceva).
- A declaration that the Defendants have breached the Plaintiff's employment contract in the various ways pleaded in the respective Statements of Claim Civil Action No. 534 of 2007S (Jioji Kotobalavu); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 535 of 2007S (Paula Uluinaceva)

4.7 This brief recitation of (some of) the matters set out in the individual Statements of Claim persuades me that the three bases put forward by the Defendants/Applicants as founding a consolidation are met. A substantial number of common questions of law or fact arise in all actions proposed to be consolidated. Further, the rights to relief claimed are in respect of or arise out of the same transaction or series of transactions. Further, in the interests of the orderly progression of the actions, the cost of preparation on the part of the parties, and the costs to the public purse in terms of Court resources, consolidation is the proper course.

4.8 It remains then only to determine whether consolidation will be of the whole six actions together, or on the three-three basis proposed by the Defendants/Applicants and the Plaintiff/Respondent as an alternative approach.

4.9 Having had the opportunity to assess the commonalities in all and commonalities and differences on the three-three basis, it appears to me that it may well be the better approach to adopt the latter course: that is, to consolidate as follows:

- Plaintiff/Respondent – Civil Action 297 of 2007S (Isireli Koyamaibole, Civil Action No. 406 of 2007S (Alumita Molidrau Taganesia); Civil Action No. 468 of 2007S (Luke Vidiri Ratuuvuki) – these three having had their employment contracts terminated under Promulgation of the President in January 2007
- Civil Action No. 534 of 2007S (Jioji Kotobalavu); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 535 of 2007S (Paula Uluinaceva) – these three having had their employment contracts terminated by the Acting President/Interim Prime Minister in December 2006.

4.10 Consistent with the right to have matters heard speedily, and taking into account both similarities and differences, the matters should be consolidated into two sets of three as above. At the same time, because of the large number of similarities, the fairest approach consistent with the rights of the parties is for them to be heard seriatim: that is the first set of three (including the present Plaintiff/Respondent's claim) to proceed first, then the second set of three to be heard immediately after or so soon thereafter as is practicable. This means that advantage can be taken of the work done in relation to the first three actions which is relevant to the second set of three.

5. Application for Stay – Matters to be Considered

It remains, then, only to be decided whether a stay should issue as sought by the Defendants/Applicants. In an earlier proceeding involving an application for a stay pending the outcome of the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*, the application for a stay was contested on the basis that it ought to have been an application for an interim injunction: *Fijian Teachers Association v. President of the Republic of Fiji Islands* [2008] FJHC 59; CA595.2007 (31 March 2008); see also *Fijian Teachers Association v. President of the Republic of Fiji* [2008] FJHC 142; Civil Action 595.2007 (18 February 2008)

5.1 There were two competing applications: one by the Defendants to have the proceeding stayed until the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* outcome; the other by the Plaintiffs to have the Employment Relations Promulgation of 2007 stayed until their substantive claim of illegality or unconstitutionality of the Promulgation could be heard. The circumstances pertaining in that case were different from those here insofar as the question for the Plaintiffs went to whether or not the Employment Relations Promulgation should become law or should be 'stayed' or subjected to an interim injunction pending the outcome of their own substantive action.

5.2 The present application is more straightforward.

5.3 It rests solely on the competing claims for a speedy trial and in particular that the Plaintiff/Respondent came prepared for trial on 17 and 18 July 2008, those dates having been set down on 25 April 2008; prejudice to the parties or any of them; effective case management; public interest; cost and balance of convenience.

5.4 As noted, the Plaintiff/Respondent says that there is no good reason for granting a stay pending the outcome in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*, because the constitutional issues arising there are not a part of the Plaintiff's case; nor he says are they germane to the proceedings involving the other five Plaintiffs whom he represents and whose cases have been variously consolidated herein.

5.5 It seems to me that this is the central question, for if there is no overlap or no assistance will be given by the outcome in the *Qarase case* and its companion to the present proceeding or

the other five proceedings, then there can be no basis upon which a stay should be granted. Prejudice will accrue to the Plaintiff/Respondent and to the Plaintiffs in the other cases if all the cases are stayed pending judgment in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* if the issues agitated and determined therein are not issues raised here. On the other hand, there is no value to be gained for either Plaintiff/Respondent and the other Plaintiffs if their cases do involve those issues, or at some of them are crucial to what is agitated here, and their cases were to proceed. This could give rise to possible inconsistent or conflicting judgments, or inconsistencies or conflicts in some respects, with the outcome in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*. Not only would this not assist the Plaintiff/Respondent and Plaintiffs in the other five actions, it would be lacking in utility all around. Little is to be gained from even the possibility of contradictory judgments on matters raising fundamental principles of Constitutional law and the operation of the Constitution and government, which are of such importance to Fiji. Any 'benefit' in proceeding with the present cases would be outweighed by the possible negatives in this regard.

5.6 Further, the Defendants/Applicants have said that they would necessarily be duplicating material lodged in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*.

5.7 In *Fijian Teachers Association v. President of the Republic of Fiji* [2008] FJHC 142; Civil Action 595.2007 (18 February 2008) this was similarly put forward to the Court with a recitation of the materials that had been produced, including files and Affidavits, and the necessity for duplicating them were the *Fijian Teachers Association case* to proceed before judgment in the *Qarase case*.

5.8 I accept that if there are issues raised in the present and other five proceedings which raise those or crucially some of those raised in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* there would be duplication which would be extensive. This would not be in the public interest as a costs matter, a court management matter and generally.

5.9 Hence, the focus in determining whether or not to grant a stay pending the outcome in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* needs to be on whether or not issues in those cases are similarly raised in the Plaintiff/Respondent's proceeding herein, and in the five accompanying cases and, if they are, if they are so consistent with those in the *Qarase case* that it would be imprudent, inconsistent with good case management, prejudicial to the parties, against the public interest and adverse to the balance of convenience to proceed without a stay.

6. Issues to be Tried

The matters raised in the Statements of Claim filed by each of the parties to the present proceeding and its companionate proceedings have been set out earlier. I go, then, to the Statements of Defence and to the Pre-Trial Conference outcome in the Plaintiff/Respondent's case.

6.1 The Statement of Defence, filed on 24 August 2007, admits the matters set out in paragraphs 2, 3, 4 and 5 of the Statement of Claim as to the powers of the First Defendant; the Second Defendant's status as Interim Prime Minister and his responsibilities under section 15 of the Public Service Act 1999; the Third Defendant's responsibility as Interim Minister for the Public Service and Public Service Commission and his powers in relation thereto; and the Fourth Defendant's capacity as principal legal adviser to the Interim Government and Cabinet and his representative capacity pursuant to provisions of the State Proceedings Act. The Defendants also admit paragraph 6 as to events following 5 December 2006 with Parliament's being dissolved and

the Interim Regime being formed, headed by the Second Defendant with the Commander of the Fiji Military Forces appointed as Interim Prime Minister.

6.2 However, insofar as the 'First Cause of Action' is in issue, the Defendants 'categorically deny' paragraph 10 and put the Plaintiff/Respondent to strict proof of the allegations therein. It may be noted that the First Cause of Action says, amongst other matters, that the 'power to remove persons from the Public Service is vested the First Defendant and not the President' and that termination of the Plaintiff's contract of employment under the President's Promulgation No. 4 of 2007 'was made pursuant to the advice of Cabinet which also does not possess the power to make the decision resulting in its advice to the President'. As this goes to the question of powers in the President and the making of Promulgation No. 4, it seems to me that it does touch upon matters arising in *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola* or that, at minimum, the outcome therein is likely to be of relevance to the matters in issue in the present proceeding.

6.3 Insofar as the 'Second Cause of Action' is in issue, this raised the contention of the First Defendant's acting unlawfully 'in failing to prevent the unlawful usurpation by the President, on the advice of Cabinet, of its constitutional power prescribed under section 147(1) (b) of the Constitution'. The Statement of Defence 'categorically denies' the allegations contained in paragraph 10 'including any allegations of reliance by the First Defendant and put the Plaintiff to strict proof of the allegations contained therein'. The Statement of Defence goes on to say that the termination of the Plaintiff's contract of employment 'was done lawfully by the Public Service Commission in accordance with the Public Service Act, and with the revocation of the Public Service (Senior Executive Service) Regulations 2003 and with the abolishing of the positions of Chief Executive Officer in the public service and replacing with that of permanent secretaries'. Again it appears to me that this does touch upon issues addressed directly contiguous with those in *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola*.

6.4 In respect of both paragraphs 11 and 12 of the Statement of Claim, going to the Second and Third Cause of Action, the Defendants 'deny the allegations ... and further deny that the Public Service Commission acted unlawfully or unfairly' and put the Plaintiff to strict proof. As to the Fifth Cause of Action, set out in paragraph 14 of the Statement of Claim, which says that the Second Defendant 'acted unlawfully and unconstitutionally' resulting in the President's 'purporting to exercise through Promulgation No. 4 of 2007 a power which the President had no constitutional authority to exercise', the Defendants 'deny the allegations ... and further say that the Second Defendant had not acted arbitrarily, unlawfully or unconstitutionally in tendering any advice to the President'. This must, in my view, raise squarely issues already before the High Court in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*.

6.5 I do not traverse the Statement of Claim and Statement of Defence further, save as to say that despite Counsel for the Plaintiff/Respondent's persuasive submissions to the contrary, it is nevertheless apparent from the foregoing that the present proceeding does raise squarely issues covered in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*, and that the outcome there will be of assistance in the present proceeding: at least, to continue with the present proceeding would mean an overlap with matters already dealt with in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* and awaiting determination in the judgment to be delivered therein.

6.6 As the Statements of Claim in the other proceedings now consolidated raise the same matters (or some of them), then those proceedings are in the same position as the present proceeding as regards *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola*.

6.7 For the sake of completeness, I turn to the Minutes of Pre-Trial Conference dated 15 January 2008 ('Minutes'), which relate to the present proceeding.

6.8 There is no dispute that, for example, the Second Defendant at all material times 'purported to be Prime Minister responsible under section 15 of the Public Service Act 1999 for approving regulations made by the First Defendant and to be the Chairperson of the Interim Cabinet of Government required under the Constitution to advise the President on the proper exercise by the President of his powers': Minutes, para 4

6.9 Nor is there said to be dispute that the First Defendant 'relied on Promulgation No. 4 of 2007 as the authority for repudiating and terminating the Plaintiff's Contract': Minutes, para 12, p. 4²

6.10 However, certain facts not agreed appear to go to the questions of constitutionality and lawfulness or unlawfulness which the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* are set to answer, some directly, some in principle.

6.11 For example, there is a contest as to whether the Third Defendant gave correct advice to the Cabinet to enable Cabinet to give correct advice to the President in relation to the termination of the plaintiff's contract under Promulgation No. 4 of 2007: Minutes, para 8, p. 5 So too as to the contention: 'The Fourth Defendant did not give correct advice to the Cabinet to enable Cabinet to give correct advice to the President in relation to the Termination of the Plaintiff's contract under Promulgation No. 4 of 2007': Minutes, para 9, p. 5 These are specific to the Promulgation in question. However, going as they do to the advice of the Fourth Defendant, this appears to me to raise a question of the status of the Fourth Defendant and advice given in respect of the status of Promulgations, and the President's status and/or executive power in regard to Promulgations generally insofar as promulgated in the circumstances addressed in the *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola*.

6.12 The 'Legal issues' set out in the Minutes at least arguably appear to me to raise matters to be addressed in the outcome of *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola*. Albeit it is correct, as Counsel for the Plaintiff/Respondent submitted, the focus is upon 'breach of contract': 'was the Plaintiff/Respondent's contract of employment with the First Defendant breached by the First Defendant', this does not avoid the problem of constitutional context and 'illegality' touching upon the status of the Interim Government and its powers (or usurpation of powers – a phrase used in the material), through the status of the respective Defendants in their positions in the Interim Government.

6.13 Similarly, the question whether or not 'the Defendants jointly or severally acted contrary to law in terminating the Plaintiff's contract of employment as and when the termination occurred' albeit focused on breach of contract, inevitably again touches upon the status of the Interim Government, through the status of the respective Defendants in their positions in the Interim Government and the constitutional matters thereby arising along with the question of

² This may be contested at least to some extent in the recitation of 'Facts Not Agreed to':

3. The Plaintiff's Contract was terminated under Promulgation No. 4 of 2007': Minutes, para 3, p. 5

5. The First Defendant relied on Promulgation No. 4 of 2007 as the authority for repudiating and terminating the plaintiff's contract; Minutes, para 5, page 5.

'illegality'. These matters are again addressed in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*.

6.14 Also in the 'Legal Issues' in the Minutes as 'not agreed to' – as to:

Which of the relief sought by the Plaintiff may be granted, should liability be established?'

apart from other issues, this raises squarely questions as to that of the Declaration sought, and in respect of all actions would similarly do so.

6.15 The overlap with the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* is illustrated by reference to the commonly sought Declaration.

6.16 The Plaintiff/Respondent (as with the other five Plaintiffs) seeks:

A declaration that the First Defendant's reliance on Promulgation No. 4 of 2007 was contrary to law and the Constitution, and the repudiation and termination of the Plaintiff's contract of employment as a result of it is legally invalid, unconstitutional, null and void, and of no effect.

6.17 This was reasserted in the Reply to Statement of Defence, para (i), p. 6

7. Conclusion as to Stay of Proceedings

The Plaintiff/Respondent has been placed in an invidious position. He came to Court on 17 July 2007, having understood since 25 April 2008 that upon this day and the following, his claim would be heard. He could then anticipate an outcome by way of judgment within a reasonable time. He arrived, however, only to find that an application was on foot to have his case adjourned and indeed stayed, pending the outcome of the stay pending the outcome in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*.

7.1 He had scant warning. As noted at the outset, correspondence from the Defendants was dated 30 June 2008 to the Plaintiff/Respondent's Barristers & Solicitors, received in their chambers on 2 July 2008 by facsimile and by post on 7 July 2008: Copy letter of 7 July 2008, QB Bale & Associates

7.2 The Plaintiff/Respondent's position is compelling, for as a litigant he has a right to have his claim heard promptly, with prompt determination. So do the Plaintiffs in the other five proceedings. There is authority to the effect that litigants should not have to wait for other litigants' matters to be finalised before they can exercise their right to be heard.

7.3 It was open to the Defendants/Applicants to make application long ago to have this proceeding stayed temporarily, pending stay pending *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola*. Long before that matter was heard in the period commencing 11 March 2008, it was in the process of being readied for trial. The Defendants were or ought to have been well-aware of this. It would be astonishing if they were not, for a number of the Defendants herein are named as Defendants in those matters.

7.4 The contention that a matter raising these constitutional issues and issues of legality of Promulgations should be stayed pending stay pending *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola* had already been addressed by this Court in the *Fijian Teachers*

Association case – not once, but twice: *Fijian Teachers Association v. President of the Republic of Fiji Islands* [2008] FJHC 59; CA595.2007 (31 March 2008); see also *Fijian Teachers Association v. President of the Republic of Fiji* [2008] FJHC 142; Civil Action 595.2007 (18 February 2008)

7.5 At the latest, the contention in this proceeding should have been raised on 25 April 2008, the day that the listing for trial was set as 17 and 18 July 2008.

7.6 All that having been said, however, this Court is confronted with the need to deal with the overlap in this proceeding (and its consolidated fellows) and the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*.

7.7 Taking into account all the relevant matters, including those set out earlier as to public interest, court management, prejudice to the parties or any of them, duplication of material, of proceedings and of judgments, costs and convenience, and the submissions of Counsel which were of great assistance to the Court, I am bound to grant the temporary stay sought.

7.8 As observed in the *Fijian Teachers case*, the High Court hearing the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* was comprised of three judges of this Court. In those circumstances, it would not, in my opinion, avail the parties here to go ahead to hear the substantive proceeding (or those of the other Plaintiffs) in the absence of the determination in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola*.

7.9 This stay will not, however, impede in any way the preparation of the now consolidated proceedings to ensure that they are brought speedily to a stage where they are ready to be heard, so that as soon as the judgment in *Qarase's case* and *Republic and A-G v. Qarase and Vosanibola* has been delivered and Counsel have had an opportunity to consider its relevance to and impact upon the matters in this proceeding and the associated proceedings, this and the other matters can proceed to trial. That is, unless as suggested by Counsel for the Plaintiff/Respondent, there is an outcome through mediation or conciliation and settlement between the parties.

7.10 Insofar as progressing all the consolidated proceedings to trial stage, the other five proceedings are listed for an early date in August 2008 before the Master. This Court would be assisted if the Master would ensure that the necessary steps are finalised in all the matters with the greatest expedition possible, so that they are ready to be set down before me for hearing at the earliest possible date, when the need for the stay pending the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* is obviated by delivery of that judgment.

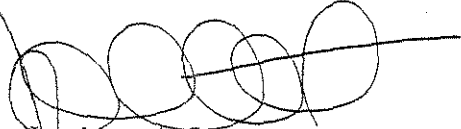
7.11 Unless the parties are able to persuade me otherwise, therefore, I shall return the files in the other proceedings to the Master for the August listings. I make an order to that effect for the sake of expedition, subject to any submissions the parties or any one of them wish to make to the contrary.

7.12 As to costs, there can be no sensible contention against the award of costs in the Plaintiff/Respondent's favour, in the nature of indemnity costs.

7.13 Finally, I have included 'liberty to apply' so that if the parties are able to agree on an expedited timetable for ensuring that all proceedings can be brought to trial at an early date – so as to proceed immediately upon deliver of the judgment in the *Qarase case* and *Republic and A-G v. Qarase and Vosanibola* – they may bring this timetable before me. However, they may equally do this through the good offices of the Master.

Orders

1. Further to grant of the Defendants/Applicants' application for consolidation made by orders in the present proceeding and the five other proceedings on 18 July 2008, this proceeding will be consolidated in accordance with Order 2.
2. Further to Order 1:
 - (A) The present proceeding, Action No. 297 of 2007S (Isireli Koyamaibole); Civil Action No. 406 of 2007S (Alumita Molidrau Taganesia); Civil Action No. 468 of 2007S (Luke Vidiri Ratuvuki) – these three having had their employment contracts terminated under Promulgation of the President in January 2007
 - (B) Civil Action No. 534 of 2007S (Jioji Kotobalavu); Civil Action No. 438 of 2007S (Anare Jale); Civil Action No. 535 of 2007S (Paula Uluinaceva) – these three having had their employment contracts terminated by the Acting President/Interim Prime Minister in December 2006.
3. Counsel are to undertake to ensure that all steps are taken expeditiously so that the six proceedings referred to in Orders 1 and 2 are prepared for trial so that they may be heard as soon as practicable after the decision in *Laisenia Qarase, Ratu Naiqama Lalabalavu, Ro Teimumu Kepa, Ratu Suliana Matanitobua, Aid Sivia Qoro and Josefa Vosanibola; and Ratu Apenisa Kalokalo Loki and Peceli Kinivuwai v. Josaia Voreque Bainimarama, The Republic of Fiji Military Forces, The State of the Republic of the Fiji Islands and the Attorney General of the Interim Regime* (HC Action No. 60 of 2007S) (*Qarase case*) and *Republic of the Fiji Islands and Attorney-General v. Laisenia Qarase, presently of Mavana Village, Vanuabalavu, Lau, former Prime Minister and Josefa Vosanibola, former Minister for Home Affairs* HCCA No. 398 of 2007S) (*Republic and A-G v. Qarase and Vosanibola*).
4. To that end, the five matters consolidated by these Orders will proceed before the Master in accordance with the timetable already set by him, namely the dates in August 2008 remain fixed as dates upon which the parties should appear before him.
5. Indemnity costs are awarded to the Plaintiff/Respondent herein, in the amount determined by the Court upon receipt of the brief schedule of costs as directed on Friday 18 July 2008.
6. Liberty to apply.


Jocelynn A. Scutt
Judge
Suva
21 July 2008

