

**IN THE EMPLOYMENT RELATIONS COURT**

**AT SUVA**

**APPELLATE JURISDICTION**

**CASE NUMBER:** ERCM 01 of 2015

**BETWEEN:** **FIJI PUBLIC SERVICE ASSOCIATION**  
**APPLICANT**

**AND:** **FIJI TRADE UNION CONGRESS**  
**RESPONDENT**

**AND:** **THE REGISTRAR OF TRADE UNIONS**  
**INTERESTED PARTY**

**Appearances:** ***Mr. D. Nair for the Applicant.***  
***Mr. A. R. Singh for the Respondent.***  
***Ms. Sharma for the Interested Party.***

**Date/Place of Hearing:** ***Thursday 2 April 2015 at Suva.***

**Date/Place of Judgment:** ***Friday 10 April 2015 at Suva.***

**Coram:** ***Hon. Madam Justice A. Wati.***

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## **JUDGMENT**

**Catchwords:**

***Employment Relations Court – Establishment and Jurisdiction.***

**Legislation:**

1. 2013 Constitution of the Republic of Fiji Islands: ***s. 57(1) and 3(g).***
2. The Employment Relations Promulgation 2007 (“ERP”): ***ss. 119 (1), 124, 211 (1) (n), 219, 220 (1), 238 (2) (b).***
3. Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014: ***s. 4***

### **Cause and Background**

1. On 2 February 2015 the applicant filled a motion seeking a declaratory order that the nomination of Mr. Felix Anthony and Mr. Daniel Urai for the position of National Secretary and President respectively of Fiji Trade Union Congress ("**FTUC**") is invalid and in breach of s.4 of the Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014 and s.57 (1) and (3) (g) of the 2013 Constitution of the Republic of Fiji Islands. It was also sought that the election of the office bearers of FTUC scheduled for 7 February 2015 be stopped until the determination of the action.
2. When the matter was called in Court on 17 February 2015 Mr. Nair informed the Court that the election had taken place and so the reliefs sought must be amended. He sought leave to amend his motion. Mr. Singh argued that the motion and the affidavit were defective and that the current application was to be withdrawn and a fresh one filed.
3. On the same day I had ruled that the motion be amended and a fresh affidavit be filed. 7 days was granted for that exercise and 7 days was granted to file an affidavit in reply to the affidavit in support. A further 7 days was granted to the applicant to file an affidavit in response to the reply. The matter was then set for hearing on 2 April 2015 at 2.30pm to 4.30pm.
4. On 23 February 2015 Mr. Nair filed an originating summons and an amended notice of motion seeking the following orders:-
  - a. ***A declaration that the election process for the position of National Secretary and National President of Fiji Trades Union Congress conducted on 7 February 2015 was contrary to law and/ or in breach of the principles of conducting free, fair and democratic elections.***
  - b. ***A declaration that the verification process by the National Executive Board of the Fiji Trades Union Congress that endorsed the nomination of Mr. Felix Anthony and Daniel Urai as candidates for the position of National Secretary and National Present of Fiji Trades Union Congress was tainted with bias, lacked transparency and impartiality.***

- c. *A declaration that the election of Mr. Felix Anthony and Daniel Urai for the post of National Secretary and National Present of the Fiji Trades Union Congress held on 7 February, 2015 is null and void.*
  - d. *A declaration that the nomination and subsequent election of Mr. Felix Anthony as National Secretary of Fiji Trades Union Congress was in breach of s. 57 (1) of the 2013 Constitution of the Republic of Fiji Islands and s. 4 of the Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014.*
  - e. *An order that the nomination of Mr. Rajeshwar Singh as National Secretary of the Fiji Trades Union Congress to prevail as unopposed.*
  - f. *An order for the respondent to desist from breaching the provisions of s.57 (1) of the 2013 Constitution of the Republic of Fiji Islands and s. 4 of the Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014.*
5. On 3 March 2015 the respondent FTUC file a motion to strike out the appellants application on the grounds that this Court does not have jurisdiction to hear the claim.
  6. When the application was placed before me I directed the Registry that an application of this nature should be heard first and that instead of hearing the substantive cause on 2 April 2015 the current application would be heard and so on 2 April 2015 the matter was heard.

### **Submissions**

7. Mr. Singh argued that the application is purportedly brought under s.220 (1) (n) and s. 238 (2) (b) of the ERP. S.220 of the ERP outlines the jurisdiction of the Court. None of the subsections under s.220 gives the Court powers to deal with the matter brought to the Court.
8. Mr. Singh further argued that s.220 (1) (n) does give the ERC jurisdiction to exercise other functions and powers as are conferred on it by any other written law but the applicant has not shown to this Court any other written law pursuant to which this Court can entertain this application.

9. FTUC is not a registered trade union under the ERP so ss. 119 and 124 of the ERP is not applicable to FTUC.
10. S. 238 (2) (b) of the ERP only provides that ERC can apply High Courts Rules but that does not grant jurisdiction to this Court to hear this case.
11. By virtue of s. 100 (3) of the 2013 Constitution of the Republic of the Fiji Islands the **“High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under the Constitution or any written law”**. Mr. Singh argued that ERC is not specifically mentioned under s. 100 (3) and therefore it does not have the same powers that are specifically grant to the Civil High Court.
12. ERC is a specialized Court and it derives its jurisdiction under s. 220 (1) (a) to (n). If the intention of s.100 (3) was to confer unlimited and exclusive jurisdiction to ERC then it would have clearly stated so. There would then not be a need for a specialized ERC if it was to have unlimited original civil jurisdiction.
13. S.102 of the 2013 Constitution of the Republic of the Fiji Islands under the title **“Other Courts”** reads:  
  
**“A written law may establish and determine the authority of other courts, tribunals or commissions, which may have a status similar to the High Court, the Magistrate Courts, or other subordinate courts”**  
  
This section clears any confusion and doubt over the jurisdiction of the ERC by clearly stating that this Court falls under the category of **“Other Courts”**. S. 102 states that **“a written law may establish and determine the authority of other Courts ...”** ERP established the ERC and its jurisdiction is confined to s. 220.
14. The ERC does not have powers to deal with interpretation of the 2013 Constitution of the Republic of the Fiji Islands.

15. Mr. Nair argued that FTUC is a body formed by the trade unions. The trade unions are registered under s. 119 (1) of the ERP so the argument that s. 119 and s. 124 does not apply to FTUC is incorrect.
16. The ERC is established under s.219 of the ERP and is a division of the High Court so by virtue of s.100 (3) of the 2013 Constitution of the Republic of the Fiji Islands, this Court has unlimited and exclusive jurisdiction to hear any civil and criminal proceeding.
17. The jurisdiction of ERC cannot be limited to s.220 as s. 220 (1) (n) states that ERC can derive its jurisdiction from other written law. The Constitution gives this Court powers to hear a claim of this nature.
18. Mr. Nair argued that simply the issue before the Courts is whether the appointment of Mr. Felix Anthony and Daniel Urai as officials of FTUC is proper under s. 57 (1) and (3) (g) of the 2013 Constitution of the Republic of Fiji Islands and s. 4 the Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014. This issue will affect the interest of a lot of workers and in fairness to them the ERC which looks after their affairs must hear the case.

### ***Law and Analysis***

19. The crux of the substantive matter is whether Mr. Felix Anthony's and Daniel Urai's appointment to FTUC is contrary to s. 57 (1) and (3) (g) of the 2013 Constitution of the Republic of the Fiji Islands and s. 4 of the Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014.
20. The current issue is whether the ERC has jurisdiction to hear the substantive matter.
21. The ERC is established by s. 219 of the ERP:-

***“The section establishes the Employment Relations Courts, as a Division of the High Court, consisting of not more than 3 Judges appointed under section 132 (2) of the Constitution to exercise the Jurisdiction of the Employment Court”***

22. The jurisdiction of the ERC is established by s. 220 (1) of the ERP to be as follow:-

***“The Employment Relations Courts has jurisdiction –***

- a) to hear and determine appeals conferred upon it under this Promulgation or any other written law;***
- b) to hear and determine offences against this Promulgation;***
- c) to hear and determine all actions for the recovery of penalties under this Promulgation;***
- d) to hear and determine questions of law referred to it by the Tribunal;***
- e) to hear and determine matters transferred to it under section 218 (2);***
- f) to hear and determine applications for leave to have matters before the Tribunal transferred to it under section 218 (3);***
- g) to hear and determine a question connected with an employment contract which arises in the course of proceedings properly brought before it;***
- h) to hear and determine an action founded on an employment contract;***
- i) subject to subsection (2) and in proceedings founded on an employment contract to make any order that the tribunal may make under any written law or the law relating to contracts;***
- j) to hear and determine a question connected with the construction of this Promulgation or of any other law, being a question that arises in the course of proceedings properly brought before the Court, notwithstanding that the question concerns the meaning of the Promulgation under which the Court is constituted or under which it operates in a particular case;***
- k) to order compliance with this Promulgation;***
- l) to hear and determine an application for a discontinuance of an order in respect of an unlawful strike or lockout under this Promulgation;***
- m) to hear and determine proceedings founded on tort relating to this Promulgation; or***
- n) to exercise other functions and powers as are conferred on it by this or any other written law.***

23. The application is said to be brought firstly under s.220 (1) (n) of the ERP. S.220 (1) (n) of the ERP states that ERC has jurisdiction to exercise other functions and powers as are conferred on it by the ERP or any other written law.
24. Mr. Singh is correct in saying that none of the subsections gives the ERC powers to hear whether the nominations and appointments of Mr. Felix Anthony and Mr. Daniel Urai to their respective positions are proper under the 2013 Constitution of the Republic of the Fiji Islands and the Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014.
25. Further the applicant has not shown to this Court that there exists a power in the Constitution or the Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Decree 2014 or any other written law which grants this Court jurisdiction to hear whether the appointments of Mr. Felix Anthony and Daniel Urai are proper under those legislation.
26. If this Court has jurisdiction to hear a case it will definitely observe the rights and principles enunciated under the 2013 Constitution of the Republic of the Fiji Islands and apply its provisions but s. 220 (1) (n) does not give this Court powers to hear this case.
27. The second section that is argued to give rise to jurisdiction is s. 100 (3) of the 2013 Constitution of the Republic of the Fiji Islands. S. 100 (3) does not include the ERC which indeed is a Court created by the ERP and not by the Constitution.
28. S.102 of the 2013 Constitution of the Republic of the Fiji Islands states that:-

***“A written law may establish and determine the authority of other courts, tribunals or commissions, which may have a status similar to the High Court, the Magistrates Court, or other subordinate courts.”***

29. Flowing from s. 102 above, I find that only the ERP which created the ERC can determine the authority of the ERC. Under s. 220 (1) I cannot find any authority to hear this matter for the reliefs sought. Nor can I find any other written law which vests the ERC with such jurisdiction.

30. The other provisions which were relied on were ss. 119, 124 and 238 (2) (b) of the ERP. S. 119 states how a trade union can be registered. S. 124 is a provision on affiliation to federation of trade union. S. 238 (2) (b) states that in absence of rules on practice and procedure in the ERP, the High Court Rules apply to the proceedings before the ERC. These three sections are not in any way whatsoever of assistance in determining the jurisdiction of the ERC. The last section of 238 (2) (b) cannot be used to borrow jurisdiction of the Civil High Court.
31. It is agreed that the FTUC is not a registered trade union. If it was, even then the power to adjudicate any matter relating to trade unions or their members, originally vests in the Employment Relations Tribunal: **s 211 (1) (n)**. Notably, that original jurisdiction is not provided to the ERC by s. 220 (1).

**Final Orders**

32. I strike out the application for want of jurisdiction.
33. The proper court in which this application shall be filed is the High Court Civil Division.
34. I will hear the parties on the aspect of cost.

  
Anjala Wati

Judge

10.04.2015



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**To:**

1. *Mr. Damodar Nair for the Applicant.*
2. *Mr. A. R. Singh for the Respondent.*
3. *Ms. Sharma for the Interested Party.*
4. *File: Suva ERCM 01 of 2015.*