

**RATU VILIAME DREUNAMISIMISI & OTHERS**

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v

**MAJOR-GENERAL SITIVENI RABUKA & OTHERS**

[HIGH COURT 1994 (Fatiaki J), 12 April]

Civil Jurisdiction

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*Constitution-House of Representatives-whether purported expulsion from political party valid-whether expelled members thereby lost their seats-Constitution (1990) Section 43(1)(e).*

A political party purported to expel the Applicant Members of Parliament who were then advised by the Secretary-General to Parliament that they had lost their seats. Upon application to the High Court for declaratory judgment HELD: (i) the party did not have the power to expel the members and (ii) they had not lost their seats.

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Cases cited:

*Amalgamated Society of Railway Servants v Osborne* [1910] A.C. 87

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*Dawson v Antrobus* 17 Ch. 615

*John v Rees and Others* [1969] 2 All ER 274

*Kelly v National Society of Operative Printers and Assistants and Others* [1915] 31 T.L.R. 632

*Lee v The Showmen's Guild of Gt. Britain* [1952] 2 Q.B. 329

*McKinnon v Grogan* [1974] 1 N.S.W.L.R. 295

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*Russian Commercial and Industrial Bank v British Bank for Foreign Trade* [1921] 2 A.C. 438

*Webster v The Bread Carters Union of N.S.W.* (1930) 30 S.R. N.S.W. 269

Action for declaratory judgment in the High Court.

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*M. Narsey* for Plaintiffs

*J. Udit* for 2nd Defendant

No appearance by the other Defendants

**Fatiaki J:**

Following a decision of the Bose Levu Vakaturaga ('BLV') in June 1990 a political party the Soqosoqo Ni Vakavulewa Ni Taukei ('SVT') was formed with the following objects:

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- (a) To build a peaceful, stable and prosperous nation.
- (b) To promote the interests of the indigenous Fijians,

A their advancement, the protection of their rights and interests and to provide means of social, economic and political development in association with other ethnic communities in Fiji.

(c) To afford its members all the usual privileges, advantages and convenience of a political association, and

B (d) To do all such other lawful things as are incidental to or conducive to the attainment of the above objects.”

C Membership of the SVT was open to all indigenous Fijians upon payment of an annual membership fee of \$2.00.

Under its Constitution the SVT is administered by a Management Board which comprises a President, 2 Vice-President, a Secretary, a Treasurer, an organising Secretary, 1 representative from each of 14 provinces in which the party had a branch and the Chairman of the 5 urban constituency councils which oversaw the various urban branches of the party. In all a total of 26 board members.

D I interpose here to record that the 1st defendants are sued as the current holders of the offices of President and Secretary respectively of the SVT and who are ex-officio members of the Management Board of the party.

E The supreme governing body of the SVT however is the National Council or Convention which comprises all financial members of the party in attendance at an annual general meeting of the party organised by the Management Board.

The Constitution also makes specific provision for the holding of extraordinary meetings of the National Council at the discretion of the Management Board. So much then for the Constitutional provisions of the SVT party.

F If I may say so the Constitution of the SVT consisting of a mere 14 clauses of varying lengths contains the very barest essentials. Nowhere in the Constitution is there to be found any disciplinary procedures nor does it provide for the expulsion of members or the cancellation of membership nor is there any power expressly given to the Management Board to deal with the same.

G To continue then with the narrative of the relevant facts and events that gave rise to the present application. The seven plaintiffs at all material times were members of the SVT and were elected into the House of Representatives under the SVT banner and symbol as its endorsed candidates for various parliamentary seats.

Although the Constitution of the SVT imposed no positive duties of loyalty or obedience upon its members nevertheless it may be properly implied that by virtue of their membership of the SVT party the plaintiffs agreed that they

would obey and comply with the rules of the party and on the part of the SVT party its agreement that, so long as the plaintiffs complied with the rules and made their contributions according to the rules, and so long as they did not do anything in violation of the rules, they would remain members of the SVT party. The question then arises : Did the plaintiffs do anything in violation of the rules of the SVT party? A

During the vote on the Budget presented in parliament by the ruling SVT party the 7 plaintiffs, contrary to a joint-caucus resolution, voted against the Budget. B

By letter dated the 30th November 1993 the Chairman of the SVT Disciplinary Committee required each of the 7 plaintiffs to appear before the committee and explain why he had voted against the Budget, and failing which a decision to expel him from the party would be recommended to the Management Board. C

The plaintiffs consulted a firm of solicitors and a reply was sent on the 1st of December 1993 to the Chairman of the Disciplinary Committee. In it, the plaintiffs alluded to the absence in the Constitution of the SVT of any properly constituted provisions relating to disciplinary procedures and advised that the committee could not proceed against them in the circumstances. D

Undeterred the Management Board of the SVT met and decided that the membership of the 7 plaintiffs be terminated with effect from 3 December 1993.

It is not entirely clear from the affidavits what or who comprises the joint-caucus nor is such a committee or body mentioned anywhere in the Constitution of the SVT. In the absence of such reference it is even more unclear how the resolutions or directives of such a body can become binding on the membership of the SVT such that any disobedience of a joint-caucus resolution or directive would constitute a disciplinary violation sufficient to warrant expulsion from the SVT party. E  
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There is no evidence of any resolution passed by the National Council of the SVT adopting the joint-caucus directive nor is it at all clear under what rule or provisions the Disciplinary Committee or Management Board of the SVT acquired the necessary authority or power to enforce the resolutions of the joint-caucus. G

Even if the defendants could surmount the above difficulties, the fact that the 7 plaintiffs are elected representatives in the House of Representatives would in my opinion, render such a directive or resolution void as being contrary to public policy.

In Amalgamated Society of Railway Servants v. Osborne [1910] A.C. 87, Lord Shaw of Dunfermline in striking down various rules of the Society which required a member of Parliament to vote in a particular manner said at p.111:

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“My lords I do not think that such a subjection is compatible either with the spirit of our parliamentary constitution or with that independence and freedom which have hitherto been held to lie at the basis of representative government ...

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It is no doubt true that a member, although party to such a contract of subjection would in point of law enter Parliament a free man, because the law would treat as non-enforceable and void the contract which purported to bind him ... But when the law is appealed to to lend its authority to the recognition and enforcement of a contract to procure

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subjection of the character described ... the law will decline such recognition or enforcement because the contract appealed to is contrary to sound public policy.”

Then at p.113 in discussing the fundamental idea that Parliament is to be free in its elections and also in its advice, Lord Shaw said :

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“... the protections which were thrown around freedom were largely in the shape of securing the safety of electors and constituencies in the exercise ... of the franchises they enjoyed. But all this would have been a mockery, if, after purity and freedom had been enjoined amongst electors and constituencies, the representatives so elected was not himself to be in the possession of his freedom in vote, advice and action ...”

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Finally at p.115 Lord Shaw spoke of the freedom of a member of Parliament when he said :

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“... in regard to the member of Parliament himself, he too is to be free, he is not to be the paid mandatory of any man, or organisation of men, nor is he entitled to bind himself to subordinate his opinions on public questions to others, for wages or at the peril of pecuniary loss, and any contract of this character would not be recognised by a Court of law,

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either for its enforcement or in respect of its breach.”

In this latter regard the resolution of the joint- caucus directed the plaintiffs to vote in a particular way irrespective of their conscience, views, personal opinions or beliefs and although the plaintiffs actions were in clear breach of the resolution, this Court will not recognise such a breach as furnishing good

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cause or a sufficient ground for the expulsion of the plaintiffs or the termination of their membership of the SVT.

Be that as it may the Management Board decision terminating the membership of the plaintiffs in the SVT was formally conveyed to the Secretary-General to

Parliament who in turn wrote on the 9th of December 1993, to each of the plaintiffs advising him that in accordance with paragraph 43(1)(e) of the Constitution their respective seats in the House of Representatives had become vacant and therefore their salaries and other benefits would cease with effect from 3 December 1993.

Section 43(1)(e) of the Constitution reads :

“43.- (1) A member of the House of Representatives shall vacate his seat therein -

(e) if he ceases to be a member of the political group or party in the House whose symbol he used for the purpose of his election to be a member of the House.”

and Section 46 specifically empowers the High Court to hear and determine any question whether any member of the House of Representatives has vacated his seat.

Without in anyway seeking to criticise the actions of the Secretary-General to Parliament in writing to the plaintiffs it is unfortunate that he did not see fit to consult the plaintiffs to ascertain whether or not they were or would be challenging the decision terminating their membership of the SVT.

Needless to say if he had done so he would have learnt that the plaintiffs were challenging the legality of the decision and prudence would have dictated that he stay any action pending the outcome of their challenge in Court.

I also note that the letter incorrectly treats the termination of the plaintiffs membership of the SVT as automatically vacating their seats in the House of Representatives. With respect it is not necessarily so but in any event the jurisdiction to determine the question is constitutionally vested in the High Court alone.

Be that as it may the plaintiffs issued on the 25th of January 1994 an Originating Summons seeking the following 4 declarations:

“(a) that the 1st defendants at the material times did not have the necessary powers under the SVT constitution to take disciplinary actions against the Plaintiffs;

- A (b) that the decision of the 1st defendants to dismiss the plaintiffs from the party was ultra vires ;
- (c) that the dismissal by the 1st defendants of the plaintiffs from the party was therefore unlawful and therefore null and void ; and
- B (d) that the plaintiffs at all material times had not ceased to be members of the Parliament of Fiji under Section 43(1)(e) of the Constitution of the Sovereign Democratic Republic of Fiji 1990 until the dissolution of the Parliament on 19th January 1994.”

C On the 1st of February 1994 the relevant papers were served at the registered office of the SVT at 41 Gladstone Road and it is unfortunate that the 1st defendants for reasons best known to themselves have seen fit neither to enter an appearance to the action nor have they filed any affidavit opposing the plaintiffs’ claim for declaratory relief.

D There is not the slightest doubt in my mind that in terms of Section 46 of the Constitution and Order 15 rule 18 of the High Court Rules this Court has the necessary power and jurisdiction to deal with the various issues raised in these proceedings provided that the three matters or features enumerated by Lord Dunedin in Russian Commercial and Industrial Bank v. British Bank for Foreign Trade [1921] 2 A.C. 438, 447-8, are present, namely :

E “The question must be a real and not a theoretical question ; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought.”

F In this case the various questions raised by the declarations sought by the plaintiffs are undoubtedly real and substantial arising as they do from the claimed deficiencies and inadequacies in the SVT party Constitution; secondly, the plaintiffs are persons who were and are personally and financially affected by the decision of the Management Board of the SVT and therefore have a more than fleeting or academic interest in bringing this action and finally, despite the 1st defendants apparent reluctance to participate in these proceedings,

G I am satisfied that the named officials are not only sufficiently representative of the SVT party for the purposes of the action but, more particularly, as participants in the actual decision being challenged, they have a true interest in opposing the various declarations sought.

I am satisfied that the plaintiffs are not only entitled to challenge in this Court the decision of the Management Board terminating their membership of the

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SVT party but also by virtue of the special damage that each of them has undoubtedly suffered as a direct result of the termination of their membership, namely, the loss of their parliamentary seats, their salary and other privileges and benefits. A

Although I am mindful of the traditional reluctance of the Courts to involve themselves in the internal affairs of clubs, churches and other unincorporated associations, I am nevertheless satisfied that the better and more modern view is that expressed by Megarry J. in John v. Rees and Others [1969] 2 All ER 274 when he said in dealing with the internal struggles of an unincorporated political party at p.281: B

“I must make explicit what all lawyers will recognise as implicit, but which those who are not lawyers may not fully appreciate. I am not in the least concerned in this case with the rightness or wrongness or the desirability or undesirability of any political views or policies that there may be. This is so whether the views or policies are political in the ordinary external sense ... or whether they are internal politics within the confines of any political or other unit. My concern is merely to see that those concerned in these proceedings obtain justice according to law, irrespective of politics.” C D

In similar vein Wootten J. discussed the Court's role in McKinnon v. Grogan [1974] 1 N.S.W.L.R. 295 in a case involving a football club when he said at p. 298-9: E

“I consider that citizens are entitled to look to the Courts for the same assistance in resolving disputes about the conduct of sporting, political and social organisations as they can expect in relation to commercial institutions. If it was not forthcoming a vast and growing sector of the lives of people ... will be a legal no-man's land, in which disputes are settled not in accordance with justice and the fulfilment of deliberately undertaken obligations but by deceit, craftiness, arrogant disregard of rights and other means which poison the institutions in which they exist, and destroy trust between members. F

In this particular case in the absence of any internal appeal procedures in the SVT Constitution, the dangers of arbitrariness and abuse of power by those in positions of authority is, if I may say so, even more pronounced. In these circumstances the Court's natural reluctance to intervene must give way to its duty to do justice according to law. G

To the suggestion that questions of membership and the actions of the

## HIGH COURT

A Management Board in that regard are merely internal affairs of the SVT and therefore outside the proper purview of the Courts, I need only say that the Constitution of the SVT constitutes an enforceable contract between the members of the party and regulates matters between its Management Board and the members and as with all contracts, is subject to the interpretation of the Court.

B Lord Denning in rejecting a similar suggestion in Lee v. The Showmen's Guild of Gt. Britain [1952] 2 Q.B. 329 where a member successfully challenged his expulsion, said at p.344 :

C "The rules are the contract between the members. The Committee cannot extend their jurisdiction by giving a wrong interpretation to the contract, no matter how honest they may be. They have only such jurisdiction as the contract on its true interpretation confers on them, not what they think it confers. The scope of their jurisdiction is a matter for the Courts, and not for the parties, let alone for one of them."

D In this case the Management Board clearly considered that it had the necessary powers to conduct disciplinary proceedings and terminate the membership of the plaintiffs in the SVT. The plaintiffs for their part clearly disagree and it is unfortunate that the 1st defendants have not sought to justify their actions or indicate where in the constitution of the SVT such powers (if any) are vested in the Management Board or ought reasonably to be inferred. For my part I confess I can find none nor in my view ought such a power to be inferred.

E It has been said that "... a power of expelling a member is a drastic power which in many cases, may affect the plaintiffs livelihood and reputation ..." and as such in my view ought not to be inferred except in the most exceptional of circumstances and even then only where a general catch-all power would permit it on a fair and liberal reading of the rules.

F As long ago as 1881 Jessel M.R. in Dawson v. Antrobus 17 Ch. 615 disavowed any inherent power in a club to pass a rule to expel a member when he said at p.621 :

G "Now that (the binding nature of the rule) does not depend on the inherent power of a club to pass a rule to expel one or more of its members, I for one am unaware of the existence of such a power, and I was surprised to hear such a proposition put forward. There is no more inherent power in the members of a club to alter their rules so as to expel one of its members against the wishes of the minority, than there is in the members of any society or partnership which is founded on a contract, that written contract of course expressing the terms on which the members associate together ; and it is intolerable to imagine

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that the majority should in such a case claim an inherent power of expelling the minority. I say that because that has been a matter pressed upon me as if capable of argument. I think it is not.”

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In similar vein Swinfen Eady L.J. said in Kelly v. National Society of Operative Printers and Assistants and Others [1915] 31 T.L.R. 632 at p.633:

“A power to expel would not be implied ; it must be found in the rules in plain and unambiguous language. Indeed there is no inherent power in any club or society to alter its rules so as to introduce such a power.”

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Finally in Webster v. The Bread Carters Union of N.S.W. [1930] 30 S.R. N.S.W. 269 Long Innes J. summed up the relevant legal principles when he said at p.272 :

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“It is also established by a long line of authorities, ... that an association such as the defendant union in this case has no common law right of expulsion, either by vote in general meeting or by action of its executive officers.”

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In light of the above dicta and given the clear absence of any express power in the Constitution of the SVT party to expel or terminate membership of the party and more particularly, in the absence of an appropriate resolution or rule passed by the supreme governing body of the SVT party establishing and delegating any such power, I hold that the Management Board of the SVT party had no power to terminate the membership of the plaintiffs and in purporting to do so acted ultra vires.

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The 4 declarations sought by the plaintiffs are accordingly granted with costs against the 1st defendants on a solicitor/client basis.

For the sake of completeness I record the undertaking of Counsel for the 2nd defendant to abide by any decision this Court might make in the matter.

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*(Declarations granted.)*

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