IN THE SUPREME COURT OF NAURU
CIVIL ACTION NO. 13/97

BETWEEN:

HONS. L.G.N. HARRIS, CLINTON BENJAMIN,
NIMROD BOTELANGA, REMY NAMADUK,
DOGABE JEREMIAH, RUBEN KUN AND
ANTHONY AUDOA

PLAINTIFFS

AND

HON. KENNAN ADEANG, MP, SPEAKER

FIRST DEFENDANT

AND

H.E. KINZA CLODUMAR, MP, PRESIDENT

SECOND DEFENDANT

AND

HON. VASSAL GADOENGIN, MP, MINISTER FOR JUSTICE

THIRD DEFENDANT'

AND

SECRETARY FOR JUSTICE

FOURTH DEFENDANT

CORAM:
DONNE,
C.J. DILLON, J.

Date of Hearing: 14; 15; 16 January, 1998

Date of Judgment: 27th Feb. 1998'
Audoa for Plaintiffs
No appearance of First Defendant
Hulme and Connell for Fourth Defendant

JUDGMENT OF DONNE, C.J.

This is an action in which the Plaintiffs pray that "appropriate orders be made to nullify the business enacted in the House (of Parliament) at the meeting held on the 12th June 1997".

The second and third Defendants, against whom no orders or relief were sought in the action, were dismissed from the suit on the 4th September 1997, and the fourth Defendant as nominee of the Republic of Nauru under section 11(2) of the Republic Proceedings Act 1972 was added pursuant to Order 13 Rule 13 of the Civil Procedure Rules as amended. The first Defendant has not entered an appearance in the suit.

The case was referred to the Full Court by an order made under the Courts Act 1972. It was set down for consideration in mid November 1997. However, due to the illness of one of the judges, it was not then considered. The Court was next able to be convened at Auckland on the 14th 15th and 16th January 1998.

The facts upon which the action is founded arise from the meeting of Parliament of the 12th June 1997 to which the Plaintiffs, as Members, were summoned. For reasons, which are not here relevant, they and one other Member, in all 8, did not attend the sitting. Parliament consists of 18 Members including the Speaker. Eight members and the Speaker attended the sitting. One other Member, who had been granted leave of absence on the ground of illness, was also absent. The business of Parliament that day, according to the Plaintiffs, consisted of, a statement by the Speaker complaining about their actions, a resolution to refer the complaint to the Privileges Committee of Parliament and the introduction of and subsequent enactment of 18 Bills which on the 13th June 1997 were certified by the Speaker pursuant to Article 47 of the Constitution and in consequence thereof are now laws of the Republic.

The relevant issues in the cause are raised in the Statement of Claim in the following paragraphs:

1. The plaintiffs are all citizens of Nauru and Members of the 13th Parliament of Nauru;

2. That the plaintiffs represent various electorates of Aiwo, Boe, Buada, Ewa/Anetan, Meneng, Ubenide and Yarren;

3. That on the 12th May, 1997 (sic) a Parliament Meeting was held notice of which was given by the Speaker the day before;

4. That the Meeting was held without the quorum stipulated by Article 45 of the Constitution of the Republic of Nauru;

10. That the Speaker chose to ignore the need for him to ensure that the deliberations of, and the procedures followed by, Parliament are in accord with, and not in contravention of, the requirements of the Constitution of the Republic of Nauru;

11. That the Speaker's deriliction of his duties and responsibilites as stated in paragraphs 4 and 5 above led that Meeting of the 13th Parliament to deliberate in a serious state of want of quorum facilitated improper passage of important legislations (sic) without proper scrutiny by Parliament;

19. That such a state of the House as described in paragraphs 4 and 5 above, is a clear breach of Article 45 of the Constitution of Nauru, and any business transacted thereof is ultra vires and therefore null and void; and

20. For reasons set out above the plaintiffs move that the Supreme Court as final arbiter over Constitutional issues and upholder and protector of the Constitution, cannot and should not condone the commissions and/or ommissions of the Speaker, the President and the Minister for Justice with procedures stipulated in

the Constitution, and accordingly incumbent on the Honourable Court to protect and uphold the Supremacy of the Constitution by making appropriate orders to nullify the business transacted in the House at the Meeting held on 12th June, 1997.

The defence admits the sitting of Parliament of which the Plaintiffs are Members but denies that there was no quorum. The main defence is the plea that the issue is not justiciable since to consider it would require the Court to inquire into the practice and procedure of Parliament which is, solely within the province of Parliament. There was in addition put in issue the question as to who summoned Parliament, an issue 'which I consider of little consequence. Nothing turns on it and I have no hesitation in holding that Parliament was lawfully convened.

From this defence, it was obvious that thefirst task of the Court was to consider the defence of justiciability since if that were sustained the Court would have no jurisdiction to proceed further into the cause. At my suggestion, it was agreed that the matter, because of this important constitutional question, should be referred to the Full Court and that at this stage no evidence be taken. For the convenience of counsel, it was also agreed that submissions on the law could be made in writing to the Court for its consideration and ruling.

On the question of jurisdiction there arise three issues.

Firstly, if this Court is required in this case, to examine and question the proceedings of Parliament of Nauru on the 12th June 1997, would such inquiry be prohibited as a breach of parliamentary privilege;

Secondly, if after lawful inquiry into those proceedings, the Court finds there has been non compliance by Parliament of Article 45 of the Constitution as to the quorum of Members thereat, can the Court by order nullify the business there transacted, in particular, the Bills enacted and subsequently certified by the Speaker of Parliament under Article 47 as law;

Thirdly, have the Plaintiffs as Members of Parliament the locus standi to institute this action.

1. The Parliamentary Privilege of Non-impeachment.

The foundation of this claim rests Parliament at its sitting on the 12th June on an alleged breach by 1997 of ArtiCle 45 of the Constitution which reads:

> "45. No business shall be transacted at a sitting of Parliament if the number of its members present, other than the person presiding at the sitting, is less than one-half of the total number of members of Parliament."

As above stated, the Defendant contends that to determine this allegation, the Court must necessarily inquire into the parliamentary proceedings in question which the privilege of non-impeachment enjoyed by Parliament prohibits it from doing. Consequently, that privilege must be upheld. The Plaintiffs, while conceding the privilege is a lawful one, argue that notwithstanding, the Constitution being the supreme law, in cases where Parliament acts in contravention of its provisions, the Court can intervene to judicially review the unlawful action. Alternatively, they submit, that the said proceedings by reason of their being conducted without a quorum, did not constitute a proceeding of Parliament; they were only a meeting of those Members present. This, they say, means there is no privilege available for assertion and there is no bar to a judicial review of that proceeding.

The Origin of the Privilege.

The privilege of non-impeachment of Parliament originating 300 years ago, is enjoyed by the Parliament of the United Kingdom as a common law right and, unfettered, it guarantees the sovereignty and independence of the legislature. Nauru, on the other hand, in its constitution creating its Parliament, adopting the Westminster model, also conferred on the legislature the power to declare its own privileges and immunities (Articles 37 and 38). Thus, it has done by enactment to be referred later in this decision.

The Application of the Privilege.

It is well established that, in the common law, the Court will not interfere with proceedings in Parliament since to do so would constitute a breach of this parliamentary privilege of

freedom from impeachment or question. As Lord Reid said in British Railways Board v Picken (1974) A.C. 765 at p. 786:

"For a century or more both Parliament and the courts have been careful not to act so as to cause conflict between them. Any such investigations as the respondent seeks could easily lead to such a conflict .... The whole trend of authority for over a century is clearly against permitting any such investigation."

Erskine May on Parliamentary Practice (21st Edn) refers to Bradlaugh v Gossett (1884) 12 Q.B.D.371 which the learned Author says is "an unqualified recognition by the courts of their incompetence to inquire into internal proceedings of Parliament". In that case, Bradlaugh sought an injunction to restrain the Sergeant-at-Arms of the House ofCommons from excluding him from the House following a resolution that he has been prevented from taking the oath of office. The House of Lords unanimously ruled that there was no jurisdiction in a Court to interfere with the order as the House could regulate its own internal proceedings. Lord Coleridge C.J. in his decision at p. 275 said:

> "What is said or done within the walls of Parliament cannot be enquired into in a Court of Law."

At p.285, Stephen J. said:

> "The House of Commons is not a Court of Justice; but the effect of its privilege to regulate its own internal concerns practically invests it with a judicial character when it has to apply to particular cases the provisions of Acts of Parliament. We must presume that it discharges this function properly and with due regard to the laws, in the making of which it has so great a share. If its determination is not in accordance with law, this resembles the case of an error by a Judge whose decision is not subject to appeal."

In Picken's case (supra) almost a century later the House of Lords, overruling the Court of Appeal (which held that the question whether a court was competent to go behind a private, but not a public Act to investigate whether it had properly obtained, was a triable issue)

upheld and strongly affirmed the privilege of Parliament of its exclusive right to regulate its own proceedings. Lord Reid at p.787 quoted from Edinburgh and Dalkeith Railway Co. v Wauchope (1842) 8 CL at 710; 1 Bell 252 which dealt with a similar situation, the decision of Lord Campbell which reads:

> ". ..... all that a court of justice. can look to is the parliamentary roll; they see that an Act haspassed both Houses of Parliament, and that it has received the royal assent, and no court of justice can inquire into the manner in which it was introduced, or what passed in Parliament during the various stages of its progress through both Houses of Parliament. I therefore trust that no such inquiry. will hereafter be entered into in Scotland, and that due effect wil be given to every Act of Parliament, both private as well as public, upon the just construction which appears to arise upon it."

His Lordship observed that as far as he was aware, no one since 1842 has doubted that Lord Campbell's statement of the constitutional position was a correct one. Under its constitutional authority to declare its privileges and immunities and prescribe the mode of their application, Parliament enacted the Parliamentary Privileges,Powers and Immunities Act 1976. Section 21 thereof provides:

> "In addition to the powers, privileges and immunities expressly provided for in this Act, the Parliament and members shall have all the powers, privileges and immunities which the
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> House of Commons of the Parliament of the United Kingdom and its members have for the time being, except any of such powers, privileges or immunities as are inconsistent with or repugnant to the Constitution or the express provisions of this Act."

The common law privilege of non-impeachment was thereby inherited as a privilege of Nauru's Parliament- there is nothing in the Constitution with which it is inconsistent. There is, in consequence, no impediment to it being asserted by Parliament and upheld by the

Court. This was a matter which concerned this Court in the case of In re Article 36 of the Constitution and in re Bobby Eoe (1988) 3 SPLR 225 which at page 228 there is stated:

> "The sovereignty of Parliament is reinforced in the Constitution. It confers on Parliament the right to declare its powers, privileges and immunities (Article 30) and under the authority of that article, Parliament enacted the Parliamentary Powers, Privileges and Immunities Act 1976 Section 21 thereof declared that Parliament's powers, privileges and immunities and those of its members and officers are identical to those of the United Kingdom House of Commons.

It also provides in Section 26 as follows:

> 26. Neither the Speaker nor any officer of the Parliament shall be subject to the jurisdiction of any Court in respect of the lawful exercise of any power conferred on or vested in the Speaker or the officer by or under this Act.

This effectively answers any argument that this Court has jurisdiction to correct any rulings of the Speaker of the Parliament of Nauru. There is no question that in this case the Speaker was lawfully exercising his power in ruling on the motion for leave. He is the interpreter of the rules' and procedures of the House (34 Halsbury (4th edn.) paragraph 1143, page 455). It is contended he made an error in ruling If he did there is no appeal in this Court against the ruling.

Furthermore it is an ancient privilege of Parliament embodied in the claim in article 9 of the Bill of Rights 1689 that "freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court of law or place outside Parliament."

Apart from this case, the question of the sovereignty and privileges of Parliament have not hitherto required judicial consideration by this Court and there is a dearth of authority on these questions. Nevertheless, from the Pacific and elsewhere in countries with similar constitutions and Parliaments useful guidelines can be found in cases involving similar questions.

The Supreme Court of Tonga in Sanft v Fotofili and Ors (1987) L.R.C. (Const) 247; (1987)

S.P.L.R. 354 considered the validity of a certain enactment passed by the Legislative Assembly of Tonga on the grounds that several steps of irregular procedure in Parliament had occurred which rendered the enactment invalid. In striking the action out, Martin J. at page 249 (lines a5-1ine d4)[S.P.L.R. 356] said:

> "For the reasons given in my previous judgment, which I will not repeat here, I hold that this Court does have the power to decide whether a constitutional or statutory requirement has been observed. If not, any act of the Legislative Assembly in contravention of that condition would be invalid. But this Court has no power to pronounce on the validity of the "internal proceedings" of the House. That, in my view, includes the procedure adopted within the House to conduct its business."

In Edward Huniehu v Attorney-General and the Speaker of, the National Parliament of the Solomon Islands, a decision of the Court of Appeal of the Solomon Islands delivered on the 24th April 1997 on an appeal against the refusal of the High Court to grant declarations impugning and declaring as unconstitutional an act by the Speaker of Parliament and the business of Parliament resulting therefrom, the Court considered issues such as we are called upon here to consider. The action arose as the result of the Speaker non-complying with the requirements of that country's constitution (s.67) which provided that if there were a lack of quorum in the House, a Member must raise the question in which case the Speaker must suspend and adjourn the sitting for a specified interval to enable the Members to make up the required quorum. If after that interval, the quorum was not established, then the Speaker must adjourn Parliament to another day. At the sitting in question, on the matter being raised by a Member and the Speaker finding there not to be a quorum, the House was adjourned by him for 15 minutes. On resumption of the proceedings, he found there was still no quorum. Notwithstanding that, the Speaker refused further to adjourn and. allowed the House to continue its business. The declarations sought by the plaintiff, the Member who raised with the Speaker the matter, (as amended by the Court of Appeal) were:

> "(a) The sitting of the National Parliament on 21st day of December 1995 lacked a quorum.
>
> (b) The action of the second defendant in refusing to adjourn Parliament as

required by section 67 of the Constitution was unconstitutional.

(c) The meeting of Parliament held on 21 December 1'996 (sic) subsequent to the Second Defendant's refusal to adjourn Parliament was unlawful, unconstitutional and lacked the powers to enact laws for "the peace order and good government of Solomon islands.

(d) The passage of the Ma~ara-Tasivarongo-Mavo Development Agreement Bill 1995 was unconstitutional and void."

As to whether the Court had jurisdiction to entertain the suit, it was found by the judges .that there was specifically set out in the Constitution the requirements for jurisdiction in section 83(1) and (2) which reads:

> "83. (1) Subject to the provisions of sections 31(3) and 98(1) of, and paragraph 10 of Schedule 2 to, this Constitution, if any person alleges that any provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for a declaration and for relief under this section.
>
> (2) The High Court shall have jurisdiction, in any application made by any person in pursuance of the preceding subsection or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly: ..... "

The Court agreed that these requirements were met in this case. There was, however, disagreement as to whether all the declarations sought could be made.

The majority of the Court (Kapi P, McPherson J) considered that section allowed the Court to make all declarations sought. Casey J declined to approve the declaration that the "the sitting on the 12th day of December 1995 lacked a quorum". He was of the view that "it was inappropriate for the Court to make it because the determination on that matter is the task of

the Speaker to make as part of Parliament's internal procedure" (p.44). In my respectful view, Casey J's approach to the declaration as to the quorum and his refusal to condone it was correct. His view recognises the supremacy of the National Parliament conferred on it by the privilege of non-impeachment, the right for it to be asserted and the necessity for it to be upheld by the Court. The subject matter of the other declarations clearly did not require consideration of this privilege. The refusal of the Speaker to adjourn, ipso facto, was a contravention of the requirements of the relevant Article. It required no ruling or determination by him. To establish it required no inquiry into parliamentary proceedings. The "parliamentary roll" recorded it.

A like situation arose in the Cook Islands. Pupuke Robati v The Privileges Committee and the Speaker of Parliament, a decision of the Court of Appeal of the Cook Islands (C/A 156/93) delivered on the 17th December 1993 which involved an action of the Privileges Committee of Parliament in suspending a Member (the plaintiff) from Parliament for a period of more than seven days for failing to apologise for certain statements made in Parliament about another member. It was claimed there was no power in the Committee to make such an order to enure beyond 7 days. The action came before the Appellate Court by way of a motion to strike out the plaintiff's' action on the ground that the jurisdiction of the High Court conferred on it by the Constitution did not extend to the right to hear and determine it. The main argument before the Court was the extent, if any, that jurisdiction allowed the Court to review and pronounce upon the proceedings of Parliament.

The official "roll" of Parliament recorded the suspension order. The law did not permit the order. The Committee did not have the power to make it (although Parliament the day after it was made, enacted legislation to give retrospective validation to the order), No. inquiry into the parliamentary process' to establish the suspension order or the reasons for it was necessary. The Court consequently held there was no bar to the jurisdiction of the High Court to entertain the suit.

The circumstances in Robati's were similar to those in the Zimbabwe case of Smith v Mutasa and Anor (1990) I LRC (Const.) 87 which concerned a former Prime Minister of Zimbabwe who was a member of the House of Assemblyof the new country. He had while visiting the United Kingdom, made remarks derogatory of the black people and their representatives in

Zimbabwe. He was found guilty of a contempt of Parliament. He subsequently made further remarks of a similar kind and was then suspended by theHouse of Assembly for a year and deprived of his salary and allowances. He applied to the High Court for an order restoring his salary and allowances. The Speaker gave a certificate that the matter was one of privilege and the High Court held the proceedings should thereupon be stayed on the basis that they had been finally determined by Parliament. On appeal from that decision, the Supreme Court allowed the appeal on the ground there was no authority in law for the suspension of his remuneration. While the Supreme Court was prepared to uphold the right of Parliament to deal with matters of privilege without scrutiny of the Courts Parliament, unlawfully. respect of and so upheld the principle of the supremacy of it drew a distinction in the case of Parliament acting Parliament had the exclusive power to deal with Smith in his remarks as debate and decide on the a matter of privilege, and could properly contempt matter. It, however, had no power in law to initiate proceedings which resulted in the suspension 'of salary.

The proceedings were bad, ab initio. No inquiry into them was necessary. It was for that reason, the Court accepted jurisdiction.

I have had much assistance from the decision of the Full Court of the High Court of Australia in Cormack v Cope (1974) 131 CLR 432, a case where a proclamation made pursuant to section 57 of its Constitution for the double dissolution of both Houses of the Australian Parliament were challenged as being invalid. The Court, without reaching a final conclusion on the validity question, ruled

(inter alia) that an application by the plaintiff for an interlocutory injunction to restrain the joint sitting of Parliament convened by the Proclamation, from dealing in any way with a certain Bill presented to it thereat, should not be made even if it were found that section in the authorising enactment under which the proclamation had been made, had not been complied with. In the course of argument, it was contended that the provision in .the Constitution authorising the proclamation dealt with proceedings in Parliament; the convening, dissolving and proroguing of Parliament were all matters concerned with the parliamentary process and as such were covered by parliamentary privilege and not subject to judicial review. Four of the 'six judges dealt extensively with that branch of the argument. Barwick C.J. at page 454 says:

" .... it is not the case in Australia, as it is in the United Kingdom, that the judiciary will restrain itself from interference in any part of the lawmaking process of the Parliament. Whilst the Court will not interfere in what I have called the intra-mural deliberative activities of the House, including what Isaacs J. called in Osborne v the Commonwealth (1911) 12 CLR. 321,363, "intermediate procedure" and the "order of events between the Houses" (1911) 12 C.L.R. at page 363, there is no parliamentary privilege which can stand in the way of this Court's right and duty to ensure that the constitutionally provided methods of law-making are observed.

Ordinarily, the Court's interference to ensure a due observance of the Constitution in connexion with the making of laws is effected by declaring void what purports to be an Act of Parliament, after it has been passed by the Parliament and received the Royal assent. In general, this is a sufficient means of ensuring that the processes of law-making which the Constitution requires are properly followed, and in practice so far the Court has confined itself to dealing with laws which have resulted from the parliamentary process .... "

Menzies J. at page 465 says:

"Closely associated with these principles is another principle of great constitutional importance, namely that the Court will not interfere with the proceedings of Parliament or the Houses of Parliament. The validity of the law that follows from what Parliament has done is one thing. The proceedings of Parliament that lead to a valid or an invalid law are another. It is not for this Court to prevent Parliament from doing what, in the opinion of this Court, will result in an' invalid law. The Supreme Court of New South Wales in Trethowan v Peden (1930) 31 S.R. (N.S.W.) 183, did restrain the presentation for assent of a bill which it decided had not been passed as required by the Constitution of New South Wales. In McDonald v Cain (1953) V.L.R. 411, the Supreme Court of Victoria decided it had jurisdiction to declare that it was contrary to law to present

a bill if it had not been passed by the majority required by the Victorian Constitution. But these cases are not authority for the proposition that a court can dictate to the the members of Houses of Parliament what they can or cannot deliberate and vote upon in a parliamentary proceeding. The correct general principle was clearly stated by this Court in Osborne v the Commonwealth (1911) 12 C.L.R. 321, and reference may be made to what was said by Griffith C.J. (1911) 12 C.L.R. at pp. 336-337, by Barton J. (1911) 12 C.L.R. at pp. 351-354, and by O'Connor J. (1911) 12 C.L.R. at p. 355."

Gibbs J. at page 467 says:

" ..... It has been emphatically laid down that the settled practice of this Court is to refuse to grant relief in respect of proceedings within Parliament which may result in the enactment of an invalid law and that the proper time for the Court to intervene is after the completion of the law-making process - Hughes & Vale Pty. Ltd v. Gair (1954) 90 C.L.R.203, Clayton v. Heffron (1960) 105 C.L.R. at p. 235. The same considerations apply where the proceedings which may result in invalidity are taken in purported pursuance of s.57. It is after the proposed law has been affirmed that the Court should declare it to be invalid, if the grounds for such a declaration exist ..... "

Finally, at page 472, Stephen J. says:

" ..... It follows from What I have said above that I am of the view that this Court does not intervene in matters involving the lawmaking process. As early in its history as 1911 members of this Court expressed such a view- Osborne v. the Commonwealth - and in Hughes & Vale Pry. Ltd v. Gair and Clayton v. Heffron, this was affirmed. There may be exceptions to this rule in cases in which, if such cases there be, the product of any irregularity in legislative procedure is other than a statute which is capable of challenge in this Court by those affected by its terms upon the ground that it is not a true product of the

constitutionally appointed legislative process.

I may add that in my view this limitation of intervention by the Court depends not upon discretionary but jurisdictional grounds; this emerges I think, clearly enough from the authorities to which I have referred ..... "

As those cases show, the sovereignty of Parliament is little affected by the constraints of Westminster model Constitutions and the approach by the Courts to the applicability of the non-impeachment privilege enjoyed by the legislature is, in general, the same in those jurisdictions as in those of the common law. Nauru's Constitution, as explained above, confers on its Parliament the power to declare its powers, privileges and immunities and to prescribe its procedures. It thus, in my view, abdicates its right to control the legislature to the extent of these privileges and immunities and only if it can be shown that to assert them would. be inconsistent with the provisions of the Constitution, could a Court refuse to uphold them. The privilege of non-impeachment guarantees to the Parliament that its proceedings are sacrosanct and as such cannot be impeached. There is nothing in the Constitution of Nauru which fetters that privilege and, undoubtedly, the Court must uphold it.

That, in my opinion, does not mean that Parliament is able, with impunity, to act unlawfully and while the proceedings in which the unlawful action takes place cannot be impugned, the consequences of the unlawfulness can be judicially reviewed as was done in the cases of Solomon Islands, the Cook Islands and Zimbabwe referred to above.

Nevertheless, there is no enforceable duty owed by the Parliament or its members to act constitutionally, Rediffusion (Hongkong) Ltd v. Attorney-General (Hongkong) (1970) A.C. 1136. The legislature cannot be restrained from passing an unconstitutional Act Hughes v. Vale Pty. Ltd v. Gair (1950) 90 C.L.R. 203,205. These decisions underline that it is the business of Parliament not of the Court to review any irregularity in the proceedings of its House. Parliament has the sovereign power to regulate its affairs.

Jurisdiction.

On the question of jurisdiction the thrust of Mr. Audoa's argument is that by its wording the Constitution gives the Supreme Court jurisdiction to intervene in and judicially review the commission, of the alleged breach of its provisions by Parliament. He relies on Article 54 thereof which reads:

> "54. - (1). The Supreme Court shall, to the exclusion of any other court, have original jurisdiction to determine any question arising under or involving the interpretation or effect of any provision of this Constitution.
>
> (2) Without prejudice to any appellate jurisdiction of the Supreme Court, where in any proceedings before another court a question arises involving the interpretation or effect of any provision of this Constitution, the cause shall be removed into the Supreme Court, which shall determine that question and either dispose of the case or remit it to that other court to be disposed of in accordance with the determination."

As I read it, the Article purports to ensure that no Court, other than this Court, can make a ruling on any question concerning the Constitution whatever may be the purpose of the question. Courts of lesser jurisdiction must refer such questions to the Supreme Court. Unlike section 83 of the Solomon Islands Constitution where there is specific right for an application to be made to the High Court given to a person affected by a constitutional breach for relief, in my opinion, Article 54 confers no such right. The Constitution confers specific jurisdiction on the Court in only two cases. Article 36 gives it jurisdiction to determine any question that arises concerning the right of a person to remain a Member of Parliament. Article 55 gives it power to opine on any constitutional question referred to it by Cabinet. There is no express power for the Court to entertain applications of the kind here made. But, even if there were a specific right given for the Court to intervene, I am satisfied that the absolute privilege of non-impeachment must be upheld in cases such as this and the Court would be barred from inquiring and questioning the proceedings in Parliament on the 12th June 1997.

Mr. Audoa quotes the often quoted case of the United States Supreme Court Marbury v. Madison (1803) 1 Cranch 103 in support of his contention as to the supremacy of the

Constitution over Parliament. In my view the case does not assist him. Marshall C.J. in his opinion said (at p. 177) that it was "emphatically the province of and duty of the judicial department of government to say what the law is". That is what the case was about- the right of judicial review of legislation. As I have stated above, this right is available in Nauru, but, the procedure for such review does not involve the impugning of the proceedings in which the legislation was enacted.

As an alternative argument, counsel submits that there was no quorum at the meeting on the 12th June, that meeting was not a ,sitting of Parliament. The meeting, he contends, was no more than a meeting of the Members present and what was done thereat was not parliamentary business. That argument, in my view, has no substance. The effect of a lack of quorum is stated in Article 45. In short, without a quorum, no business of Parliament can be transacted. Proceedings of Parliament involve more than the transaction of business. In Eoe's case (supra) at page 230 it is said:

> "What is sought here by the petitioner is an investigation into what undoubtedly was "a proceeding in Parliament". The term, while never having been expressly defined by the courts, has been the subject of oblique references from time to time. An American judge, Parsons C.J. in Coffin v. Coffin 4 Mass. 1 (a judgment of the Supreme Court of Massachusets) said:
>
> '1 will not confine it to delivering an opinion, uttering a speech or haranguing in debate, but will extend it to giving a vote to the making of a written report and to every other act resulting from the nature and in the execution of the office. Erskine May on Parliamentary Practice (20th edn.) quotes at page 83 the 1938-39 Parliament Select Committee of the House of Commons on the Official Secrets Act which states the term included "everything said or done in the House in the transaction of Parliamentary business'"

As Parson C.J. pointed out in Coffin's case, there are debates, reports received and many occasions in parliamentary proceedings which may or may not be concerned with business to be "transacted". It is the transaction of business without a quorum which is prohibited by

Article 45. Any other business of the House can go on without a quorum of Members present. There is no suggestion here that this sitting was not properly convened and consequently I find that the proceedings of the 12th June 1997 were a sitting of Parliament.

The question of jurisdiction aside, I turn to a consideration of what the Plaintiffs in this action seek from the Court. They do not seek any declaratory order. They pray for orders to "nullify the business transacted in the House at its meeting held on the 12th June 1997". The ground relied on to support the prayer and the relief sought is that this Parliamentary meeting was unlawfully allowed to proceed with the transaction of business without a quorum being present. It is these parliamentary proceedings they seek to impugn and to do so, it seems patently obvious that there must be an examination and questioning of the conduct and administration of Parliament on that day. That apart, particular investigation into the procedural question of the quorum is called for; but, as Casey J. correctly observed in Huniehu's case (supra) "the determination in that matter is the task of the Speaker to make as a part of Parliament's internal procedure". No conclusion on the correctness or otherwise of the Speaker's action in allowing the House to proceed could be reached without a scrutiny of what occurred in the proceedings. The conduct of the Speaker and his rulings are all relevant in such an examination as are other considerations of procedural rules and the law and practice of Parliament as contained in its Standing Orders and Speaker's rulings -vide Mehra on Practice and Proceedings of the Parliament of Nauru pp. 105-7.

The question of quorum is a procedural matter; it is to be decided by the Speaker who is the master of the House. The correctness or otherwise of that decision can only be reviewed by an inquiry into what went on in the House and what was the basis of the Speaker's decision to allow the proceedings to continue and to transact its business. Such an inquiry would involve the Court on what Barwick C.J. in Cormack's case (supra) called the "intra-mural deliberations of the House" which is unquestionable, being an involvement in which the Court has no jurisdiction to undertake.

2. Nullification of Bills Enacted and Certified as Law.

Dillon J., in his judgment, a draft of which I have seen, adequately covers this question and, with respect I adopt his views thereon.

3. Locus Standi.

I would again adopt what Dillon J. has said on locus standi. To institute these proceedings the Plaintiffs must have locus standi. It is not until a purported law emerges and that particular law on its face affects rights and not until a plaintiff can establish that his rights would be affected that the manner of its being passed can be raised in legal proceedings. Bribery Commissioners v. Ranasinghe (1965) A.C. at pp. 195-197. A plaintiff must show that the legal effect on him is different from that on the public generally: Anderson v. the Commonwealth (1932) 47 C.L.R. 50. That fact that a plaintiff is a Member of Parliament gives him no better right to bring proceedings to challenge laws than the public - there must be shown that his legal rights are affected. The plaintiff in Huniehu's case (supra) being the Member of Parliament who gave the required notice to the Speaker of the lack of quorum thereby had the necessary locus standi. Also in Trethowan v. Peden (1930) 3 S.R. (N.S.W.) 18, the plaintiffs, Members of Parliament, were accorded locus standi to challenge the validity of a statute which would have destroyed the Chamber in which they were members. In the present case, the Plaintiffs took no part in the proceedings they challenge. They did not attend the sitting at any stage.

CONCLUSION.

In my opinion this matter must be resolved in the forum in which it originated. This was the gist of what was said in the Queensland case of Browne v. Cowley (1895) 6 Q.L.J. 236 by Griffiths C.J.

> "The error alleged, if it be one, is in my opinion one of procedure only, of which I think the Legislative Assembly themselves are the judges, without appeal to .this court. It is hardly necessary to point out that the practice of Parliament is a branch of knowledge of itself, of which successive Speakers have been distinguished exponents. I believe this is the first instance in which the ruling of a Speaker, which is subject to appeal to the House itself, has been sought to be submitted to the review of a court of justice. I am not disposed to be the first judge to review a Speaker's decision on the construction of the

Standing Orders - a function which requires not only a consideration of the printed document, but an acquaintance with the law and practice of Parliament, with reference to which the Standing Orders themselves are framed, and without which the judge undertaking the duty would be ill-equipped for the task."

It has been emphasised in many cases, that Parliament is "the highest Court in the land" and as Griffith C.J. has said the practice of Parliament is a branch of knowledge of itself. The privilege it enjoys of non-impeachment was conferred on it and its Members to ensure that it is able to settle its internal disputes without judicial interference or questioning.

ORDER.

For the reasons above stated, I consider the order as prayed cannot be granted.

This being also the view of Dillon J., the Court orders as follows:

1. The action is dismissed.
2. The question of costs is reserved with leave given to parties to be heard thereon.

(Signed) Gaven Donne
Chief Justice

Solicitors for Plaintiffs: Audoa and Associates, Nauru
Solicitors for Fourth Defendant: Office of Secretary for Justice, Nauru.