

In the Supreme Court of Nauru

Miscellaneous Cause No. 2/2003

In the matter of Article 42  
of the Constitution

BETWEEN : HON. LUDWIG SCOTTY & ORS PLAINTIFF  
AND : SECRETARY FOR JUSTICE DEFENDANT

In Chambers 9.30 a.m. 8 October 2003

Mr. L. Scotty for Plaintiffs  
Mr. W. Togamae with Mrs. Wynter for Defendant

Preliminary Questions

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DECISION

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The defendant in his Defence had raised two issues as to the fact that he should not have been served as defendant.

The matter arose when a number of members of Parliament in accordance with Article 42 (2) of the Constitution made a request to the Speaker of Parliament to call the Parliament under Article 42 (1). The speaker refused the request on the ground that the request did not meet the conditions contained in Article 42 (1). The plaintiffs dispute this refusal and sought from the Supreme Court a declaration on the meaning and operation of Article 42.

The plaintiffs took action in Miscellaneous Cause No. 2/2003 against the Secretary for Justice as the person named under the Republic Proceedings Act 1972, section 11 (2), to represent the Republic in proceedings taken against the Republic.

The question that arises is whether in proceedings involving the Parliament this can be construed as proceedings against the Republic. The Interpretation Act 1971 is not of great assistance in this regard as it simply

defines 'Republic' to mean the Republic of Nauru, and 'Speaker' to mean the Speaker of Parliament elected under Article 34.

One must turn to the Republic Proceedings Act itself. It is that Act which consolidate the persons who will be represented by the Secretary for Justice under Section 11 (1) and (2). Nowhere in that Act does the name of the Speaker or the institution of Parliament appear. The Republic refers there to the President, Ministers and executive, together with instrumentalities of the Republic. The definition of "instrumentality of the Republic" does not have a meaning that includes either the Parliament or Speaker.

Furthermore, such a claim, as is sought here, namely for a declaration directed to the Speaker, would be out of place as a 'claim against the Republic' under Section 3 of the Act, and which would require the leave of Cabinet to take such proceedings. That, above all, indicates most clearly that the present proceedings against the Secretary of Justice are misconstrued.

If action were to be taken, then the Speaker is the appropriate person.

However, at the hearing in Chambers and in the Defence itself, the Secretary of Defence went further and stated in paragraph 6 that the Speaker cannot be represented by the Secretary for Justice. This argument was based on a separation of powers doctrine stemming in part from Article 17 of the Constitution and division of the Constitution between Part III The President and the Executive, Part IV the Legislature, and Part V the Judicature. Under the Westminster system, this separation is not as specific as within the United States system. Article 17 (2) states, for example, that Cabinet is responsible collectively to Parliament. Also under the Constitution the Chief Justice sits as Chairman of the Public Service Appeals Board and the Police Service Board both administrative tribunals.

As Mr. Scotty for the Plaintiffs stated there has been some practice in the past where the Speaker has been represented in Court by the Secretary of Justice. There is, as I see it, nothing to prevent such a course but it does not fall within the Republic Proceedings Act. It would or should occur when the government, having been approached by the Speaker to request legal assistance, instructs the Secretary of Justice to provide such assistance. In such an instance the Government, no doubt, would consider its own interests whether it wished to seek leave to intervene or not, to present submissions of its own. It is that sort of consideration, I would imagine, that would determine whether the Speaker was to seek other representation than the Secretary of Justice. My point simply is that there is nothing inherent in the constitutional system that would prevent, if so instructed, the Secretary for Justice representing the Speaker.

The other matter raised was whether there was now any matter arising which was justiciable seeing that since proceedings were filed the Parliament

had met. The Court made no decision on this question but drew attention of the Plaintiffs to the question. As the Court had struck out the defendant, the plaintiffs, if they wished to pursue the matter, would, no doubt, consider the course of action necessary to have the matter ventilated taking into account, inter alia, the appropriate constitutional provisions.

The Registrar should make arrangements for the parties to appear before me in Chambers for the drafting of the Order.

  
BARRY CONNELL 8/19/03  
CHIEF JUSTICE