IN THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION] Case Nos 39 & 40 of 2014

BETWEEN	Hon. KIEREN KEKE, Hon. ROLAND KUN, Hon. MATHEW BATSIUA, Hon. SPRENT DABWIDO and Hon. SQUIRE JEREMIAH	**PLAINTIFFS**
And	Hon. LUDWIG SCOTTY	**DEFENDANT**

Before: Madraiwiwi CJ, Hamilton-White J & Khan J

For the Plaintiffs: V Clodumar
For the Defendant: GE Leung

Date of Hearing: 30 October 2014

Date of Judgment: 11 December 2014

CATCHWORDS:

Constitution – Parliamentary Privilege – Voting of Parliamentary Motions – Parliamentary Powers Privileges Act – Standing Orders – Legality of Suspension of Members of Parliament – Withdrawal of MP's privileges and entitlements – Right of Parliament to determine its own procedure – Parliamentary Privilege upheld

CASES CITED
Bradlaugh v Gossett (1884) 12 QBD 271
British Railways Board v Picken (1974) A.C. 765
Constitutional Reference No 1 of 2008 [2008] NRSC 19
Cormack v Cope (1974) 121 CLR 432
Edinburgh and Dalkeith Railway Co. v Wauchope (142) CL at 10; J Bell 252
Harris v Adeang [1998] NRSC 1
Hon Moana Carcasses and Ors v Hon Philip Boedoro and Anr Constitutional Case No 10 of 2014

In the Matter of Article 36 of the Constitution Reference to the Supreme Court by Bobby Boe [1988] NRSC 1
In the Matter of the Constitution and in the Matter of the Dissolution of the Eighteenth Parliament [2010] NRSC 16
In re Article 36 of the National Constitution [2008] NRSC 13
Keke v Scotty (2) [2013] NRSC 3
Natapei v Tari [2001] VUSC 113
Rediffusion (Hong Kong) Ltd v Attorney General of Hong Kong [1970] AC 1136
The Queen v Richards ex parte Fitzpatrick and Browne [1955] 92 CLR 157

LEGISLATION
Constitution of Nauru
Parliamentary Powers, Privileges and Immunities Act
Parliamentary Salaries and Allowances Act
Standing Orders of the Parliament of Nauru

REFERENCES
MacSporran, Peter H., *Nauru-The Constitution*, Seaview Press 2007
Blackburn, R., and Kennon, *A., Parliament, Functions, Practice and Procedures*. Griffith and Ryle 2nd Ed.

JUDGMENT

MADRAIWIWI CJ and KHAN J:

1. In Civil Action No 39 of 2014 the Plaintiffs are Hon Kieren Keke, Hon Ronald Kun and Hon Matthew Batsuia. They represent respectively the Districts of Yaren, Bauda and Boe in the Parliament of Nauru.

2. In Civil Action No 40 of 2014, the Plaintiffs are Hon Sprent Dabwido and Hon Squire Jeremiah whom together represent the District of Meneng.

3. Both actions have been filed against the Speaker of the Parliament of Nauru, Hon Ludwig Scotty.

4. Prior to the hearing, the two proceedings were consolidated and heard together as they concerned identical issues relating to the prerogative of Parliament to regulate its own procedures and the powers of review of this Court in relation thereto.

5. In Civil Action No 39 of 2014 the Plaintiffs in their statement of claim are seeking the following reliefs:
   (i) That their suspension from Parliament is beyond the powers of Parliament and void;
   (ii) That Parliament acted in breach of the Constitution;
   (iii) That the suspension of the Plaintiffs is unlawful and without effect;

(iv) That they are entitled to attend in Parliament without hindrance;
(v) That the suspension has unlawfully deprived their electors of representation in the Parliament;
(vi) That the withholding of their salaries and allowances is unlawful;
(vii) That they are entitled to be paid their unpaid salaries and allowances and to be paid interest thereon until payment.

6. In Civil Action No 40 of 2014 the Plaintiffs in their statement of claim are seeking the following relief:
(i) That their indefinite suspension from Parliament is beyond the powers of Parliament and void;
(ii) That the suspension of the plaintiffs is unlawful and without effect.
(II) That the procedure of the Privileges Committee is unlawful;
(iv) That they are entitled to attend in Parliament without hindrance;
(v) That the suspension has unlawfully deprived their electors of representation in Parliament;
(vi) That the withholding of their salaries and allowances is unlawful;
(vii) That they are entitled to be paid their unpaid salaries and allowances and to be paid interest thereon until payment.

7. In both actions the parties have filed agreed facts. The agreed facts in Civil Action No 39 of 2014 are as follows:

1968 – Constitution of Nauru adopted. The Constitution is the Supreme Law of Nauru (Art 2).

1976 – The Parliament enacted the Parliamentary Powers, Privileges and Immunities Act 1976 pursuant to Art 90 of the Constitution. Art 37 provides "The powers, privileges and immunities of Parliament and of its members and Committees are such as are declared by Parliament". And in s21 of the Act "In addition to the powers, privileges and immunities expressly provided for the Act, the Parliament shall have all the powers, privileges and immunities which the House of Common of the Parliament of the United Kingdom and its members have for the time being except any of such powers, privileges and immunities as are inconsistent with or repugnant to the Constitution or the express provisions of this Act".

October 1983 – The Parliament, pursuant to Art 38 of the Constitution, made Standing Orders of the Parliament of Nauru. Standing Orders 45 to 50 deals with Disorder in the House.

13th May 2014 – Votes and Proceedings of the 21st Parliament recorded motion moved by the Hon. David Adeang to suspend the members Hon. Keiren

Keke, M.P. Hon Roland Kun, M.P. Hon Matthew Batsuia, M.P. Refer to paragraph 11 of the Statement of Claim of the Plaintiffs
13th May 2014 – Hon Kieren Keke, M.P., Hon Roland Kun, M.P. and Hon. Matthew Batsuia, M.P. were all suspended from the House. Duration of their suspension were as per the motion.
"The House further resolve that this suspension remain in effect until such time as each member submits an unequivocal apology in writing to the House; and each member publicises an unequivocal apology through the same foreign media which earlier remarks were made contrary to the national interest."

June 2014 – The Speaker withheld the payment of salaries and allowances of the suspended members.

October 2014 – The three suspended members remain suspended and without salaries and allowances.

8. The agreed facts in Civil Action No 40 of 2014 are as follows:

1968 – Constitution of Nauru adopted. The Constitution is the Supreme Law of Nauru (Art 2).

1976 – The Parliament enacted the Parliamentary Powers, Privileges and Immunities Act 1976 pursuant to Art 90 of the Constitution. Art 37 provides "The powers, privileges and immunities of Parliament and of its members and Committees are such as are declared by Parliament". And in s21 of the Act "In addition to the powers, privileges and immunities expressly provided for the Act, the Parliament shall have all the powers, privileges and immunities which the House of Common of the Parliament of the United Kingdom and its members have for the time being except any of such powers, privileges and immunities as are inconsistent with or repugnant to the Constitution or the express provisions of this Act".

October 1983 – The Parliament, pursuant to Art 38 of the Constitution, made Standing Orders of the Parliament of Nauru. Standing Orders 45 to 50 deals with Disorder in the House.

13th May 2014 – Votes and Proceedings of the 21st Parliament recorded motion moved by the Hon. David Adeang to suspend the members Hon. Keiren Keke, M.P. Hon Roland Kun, M.P. Hon Matthew Batsuia, M.P. Refer to paragraph 11 of the Statement of Claim of the Plaintiffs

13th May 2014 – Hon Kieren Keke, M.P., Hon Roland Kun, M.P. and Hon. Matthew Batsuia, M.P. were all suspended from the House. Duration of their suspension were as per the motion.

"The House further resolve that this suspension remain in effect until such time as: Each member submits an unequivocal apology in writing to the House; and each member publicizes an unequivocal apology through the same foreign media which earlier remarks were made contrary to the national interest."

June 2014 – The Speaker withheld the payment of salaries and allowances of the suspended members.

October 2014 – The three suspended members remain suspended and without salaries and allowances.

9. The agreed issues for determination in both actions are identical and are as follows:
   (i). Whether the suspension of the Plaintiffs from Parliament is lawful?
   (ii). Whether the Court can delve into the procedures of the Privileges Committee?
   (iii). If the answer to (ii) is in the affirmative, whether its procedures were lawful?
   (iv). Whether the Plaintiffs are entitled to attend the Parliament during the currency of their suspension?
   (v). Whether the Plaintiffs' suspension has unlawfully deprived their constituents of representation in Parliament?
   (vi). Whether the withholding of the Plaintiffs' salary and allowances is unlawful?

10. On 13th of May 2014 the motion in respect of suspension of the members of Parliament in action number 39 of 2014 was passed by Parliament. The motions and proceedings of the twenty first Parliament on 13th of May reads as follows:

"*1. The House met at 10.00am in accordance with the resolution made on Thursday 28th January, 2014.*
2. The Hon. Ludwig Scotty, M.P., Speaker of Parliament, took the Chair and read prayer
3. ***Motion***
Hon. David Adeang (Minister for Justice) moved to present a motion.
Hon. Valdon Dowiyogo (Minister for Health) seconded.
Question put and passed
4. ***Motion Leave sought for***
Hon. David Adeang (Minister for Justice) move to seek leave of the House to move a motion.

Hon Valdon Dowiyogo (Minister for Health) seconded.
Question put and passed.
Leave is granted

5. ***Motion – Suspension of all Standing Orders***
Hon. David Adeang moved to suspend all relevant Standing Orders to enable the motion to proceed forthwith.
Hon. Valdon Dowiyogo (Minister for Health) seconded.
Question put and passed.

6. ***Division of the House Called for***
Hon. David Adeang (Minister for Justice) and Hon. Valdon Dowiyogo called for a division.

The House divided.

AYES		***NOES***	
Mr. Waqa	*Mr. Adeang*	*Dr. Keke*	*Mr. Akua*
Mr. Dowiyogo	*Mr. Cook*	*Mr. Jeremiah*	
Ms. Scotty	*Mr. Bernicke*	*Mr. Stephen*	
Mr. Ranin Akua	*Mr. Kam*	*Mr. Russ Kun*	
Mr. Buramen	*Mr. Dube*	*Mr. Dabwido*	
Total 10		***Total 6***	

Question put and passed

7. ***Motion:***
Recalling that all of Nauru did as early as 2005 commit to taking Nauru forward from an economic abyss to greater prosperity through the Community designed Nauru Sustainable Development Strategy (NSDS);

Recalling that this pledge was renewed in 2009 through the review of the said NSDS;

Noting recent comments made in the foreign media by certain Members in the Parliament in the Opposition that detract from Nauru's development Goals;

Noting also that these remarks did, and were intended to, inflict maximum damage to Nauru's reputation and to Government's effort to improve the livelihood and well being of the people of Nauru.

Therefore this August House resolves to immediately suspend from the services of this House;

(1) Hon. Matthew Batsuia (Boe)
(2) Hon. Kieren Keke (Yaren)
(3) Hon. Roland Kun (Bauda)

This House further resolves that these suspensions remain in effect until such time as;

(a) Each Member submits an unequivocal apology in writing to the House; and

(b) Each Member publicizes an unequivocal apology through the same foreign media in which earlier remarks were made contrary to the national interest.

Hon. Valdon Dowiyogo (Minister for Health) seconded the motion.

8. ***Motion***

Hon. David Adeang (Minister for Justice) moved the question on the naming of Member to be put.

Hon. Valdon (Minister for Health) seconded.

9. ***Division of the House Called for***

Hon. David Adeang (Minister for Justice) and Hon. Valdon Dowiyogo called for a division.

The House divided.

AYES		***NOES***	
Mr. Waqa	*Mr. Adeang*	*Dr. Keke*	*Mr. Akua*
Mr. Dowiyogo	*Mr. Cook*	*Mr. Jeremiah*	
Ms. Scotty	*Mr. Bernicke*	*Mr. Stephen*	
Mr. Ranin Akua	*Mr. Kam*	*Mr. Russ Kun*	
Mr. Buramen	*Me. Dube*	*Mr. Dabwido*	
Total 10		***Total 6***	

Question put and passed

1. ***Naming of Members***

The question that Mr. Batsuia (Boe), Dr. Keke (Yaren) and Mr. Kun (Bauda) be suspended until further notice.

The Chair suspended this and will resume when the bell rings.

Resumed

2. ***Disorder in the House***

After repeated outbursts and interjections by the named Member, the Chair asked Dr. Keke to withdraw himself from the Chamber, the named Member refused, the Speaker then instructed the Clerk accordingly.

The Chair, with consensus of the House suspended the Sitting until tomorrow morning at 10.00am.

3. *On the 5th of June 2014, the following motion was passed in Parliament:*

(a) *In respect of the suspension and withholding of the Plaintiffs, namely Sprent Dabwido and Squire Jeremiah.*

(b) *A separate motion withholding all the privileges, entitlements and remunerations for the Plaintiffs in action number 40 of 2014 namely Kieren Keke, Ronald Kun and Matthew Batsuia was passed by the Parliament. The motion and proceedings of 5th June 2014 reads as follows:*

1. *The House met at 10.00 a.m. in accordance with the resolution made on Wednesday 14th May, 2014.*

2. *The Hon. Ludwig Scotty, M.P., Speaker of Parliament, took the Chair and read prayer.*

3. **Ruling from the Chair**

"In the course of the last two sittings of the House, one on the 20th of January 2014 and nearing its end, there occurred grave disorders from the floor where I had to use my discretion to vacate the Chair, the final straw that compelled me to close the Sitting, was due to uncontrollable heated exchanges between the Minister for Education and Mr. Dabwido from Meneng.

It was regretful that Mr. Dabwido, a very senior Member of the House and who I have given much due respect during his terms of high office had blatantly disregarded my orders for him to desist from directing his accusations against the Minister of Education to her face. During the altercation, unparliamentary and personal words of a contemptuous nature were blurted out causing me to vacate the Chair and to abruptly adjourned the sitting to a future date.

At the sitting of the 15th of May 2014, when the adjournment debate was at the close, the Member for Meneng Mr. Dabwido again continued to disobey my order when he directly confronted the President and myself with highly improper conduct exacerbated by nasty name calling at the top of his voice with words despicable for me to mouth. He even pulled out one of the microphones afterwards and slammed it down causing damage to the item. His unparliamentary tantrums was to my surprise supported by his colleague the new Member for Meneng Mr. Jeremiah, also from the same constituency, shouting out and calling me with names too nasty for me to express whilst banging on the tabletop with both fists.

The actions and expressions from the two Members were of a highly disorderly nature and unbecoming of Members of the Parliament, especially when addressing the two highest officers in the land, that of the President and the Speaker. The petulant from the two Members from Meneng, I would presume came about when the President moved for the final closure of the Sitting and on my part I have to comply and adjourn the House to a future date.

As we know, this is normal process and justified procedure under our Standing Orders, as well as incompliance with the Practice and Procedure of our Parliament of which Members cannot dispute. I am sure that Members are fully aware the high office of the Speaker in every democratic country is to uphold and maintain dignity and decorum of the House of the people.

It is more special in our case, where we operate and serve under our motto of "Gods Will First" and the Parliamentary process of Practice and Procedure set in motion by our founding fathers and upheld by every House Speakers before me. I think it is unfortunate for me to have been elected into Parliament during the terms of our founding fathers and to learn from the old as to how to behave with respect.

It now falls on me as the current Speaker to uphold that responsibility and to keep the Parliament clean as much as I can. In all our beloved nation 46 years of freedom and self-ruled and my 31 years in our Parliament, I have never seen or known of such disrespectful, dishonorable and disgraceful attitude from supposedly Honourable Members directed to the President of the country, the Speaker of the Parliament, the House itself, the People of Nauru and our motto of Gods Will First.

The shocking and gloomy moments at the two noted sittings on the 20th January and the 15th of May that happened with tantamount to making this August House appeared to be comparable to an unruly bar-room brawl and free for all venue.

On my part and observing how our Parliament is being eroded into degradation due to arrogance, personal interest and lack of wisdom and respect would prompt me to put in a small personal comment, and that is to remind Members that we are chosen out of the multitude and given the honor to lead people and country to prosperity with dignity, trust and honesty. And in our case being a Christian society to rely on the grace of our Lord, to do otherwise would surely put shame on those people who have given us their trust and elected us into this supreme house, our devilish conduct if unchecked will endow misery upon our country and people as a whole.

From the grossly deplorable conduct from both the noted Members from Meneng as witnessed by many, it is incumbent upon me for the sake of restoring confidence from our people as to how we run the course of our Parliamentary process, hence in as much as it is regretful for me, it is also a demand upon myself to execute the appropriate measure of authority to name the two Members from Meneng, Mr. Sprent Dabwido and Mr. Squire Jeremiah, in duty bound and in accordance with rules under our Standing Orders, I will put it to the judgment of House to consider, what need to be done following on from there. Tubwa".

Pursuant to Standing Order 46, the Chair named Mr. Dabwido (Meneng) and Mr. Jeremiah (Meneng).

4. **Motion - Privileges**

The Hon. David Adeang (Minister for Finance) moved the following motion regarding Privileges.

Hon. Valdon Dowiyogo (Minister for Health) seconded.

"Mr. Speaker,
Having no wish to recall the circumstances arising at the adjournment of this August House at the last sitting;
Duty bound, however, to uphold the dignity and decorum of this August House as well as the Privileges and responsibilities incumbent upon all Honourable Members;
Wishing to hold true to an unspoken yet inherent code of conduct applied to all Members as Leaders of Nauru;
Recalling the unparliamentary, disorderly, shameful disgraceful and disgusting language and behaviour by two Members of this August House;
Recalling with concern that their language and behaviour was directed at two of the highest offices of Nauru namely the Chair and the Speaker of this August House, and His Excellency the President of Nauru. And holding True in Faith to our national motto "God's will First"; therefore this House resolves that:

1. *Hon. Sprent Dabwido MP, Member for Meneng and Hon. Squire Jeremiah MP, Member for Meneng, be suspended immediately from services of this August House;*
2. *That any and all remuneration or reward or privilege normally granted to the two Members being Members of this August House is withheld for the duration of their suspension;*
3. *That their suspension be referred to the Parliamentary Privileges Committee for further consideration and deliberations and recommendations, as appropriate, to this August House."*

The Question resolved in the Affirmative.
Question Put and Passed.

5. ***Division of the House was called For:***
Mr. Stephen (Ewa/Anetan) and Mr. Akua (Anabar/Ijuw/Anibare) called a division.

The House divided

AYES		***NOES***	
Mr. Waqa	*Mr. Adeang*	*Mr. Russ Kun*	*Mr. Jeremiah*
Mr. Dowiyogo	*Mr. Cook*	*Mr. Dabwido*	*Mr. Stephen*
Mrs. Scotty	*Mr. Bernicke*	*Mr. Riddell Akua*	
Mr. Ranin Akua	*Mr. Buramen*		
Mr. Dube			
Total - 9		***Total – 5***	

The Question resolved in the Affirmative.
Question put and passed.

6. ***Leave Sought For***
The Hon. David Adeang (Minister for Finance) sought leave of the House to move a motion.
Hon. Valdon Dowiyogo (Minister for Health) seconded.
Leave was granted.

7. ***Motion - Decorum of the House.***
The Hon. Adeang (Minister for Finance) moved the following motion regarding to the decorum of the House.
Hon. Valdon Dowiyogo (Minister for Health) seconded.

"Mr. Speaker,

Recalling the last sitting at which the wish of this August House was to suspend certain Members due to public remarks they expressed in the foreign media and which public remarks were intended to inflict maximum damage and pain to the national interest;
Noting that Hon. Kieren Keke, Member for Yaren, Hon. Roland Kun, Member for Buada, Hon. Mathew Batsiua, Member for Boe have all publicly rejected the wish of this August House that they apologise for their remarks;
Noting also that these three Members demonstrate no remorse and show contempt of the House by continuing to express public remarks designed to further damage the national interest. Therefore this August House Resolves that:

1. *All privileges, entitlements and remunerations normally befitting Hon. Kieren Keke, Member for Yaren, Hon. Roland Kun, Member for Bauda, and Hon. Mathew Batsiua, Member for Boe as Member of this House be with-held immediately;*
2. *That the Member be reminded to respect the wishes of, and express apologies to this August House. "*

The Question resolved in the Affirmative.

8. ***Division of the House Called For:***
Mr. Stephen (Ewa/Anetan) and Mr. Akua (Anabar/Ijuw/Anibare) called a division.

The House divided

AYES		***NOES***
Mr. Waqa	*Mr. Adeang*	*Mr. Russ Kun Mr. Stephen*
Mr. Dowiyogo	*Mr. Cook*	*Mr. Riddell Akua*
Mrs. Scotty	*Mr. Bernicke*	
Mr. Ranin Akua	*Mr. Kam*	
Mr. Buramen	*Mr. Dube*	
Total - 10		***Total – 3***

The Question resolved in the Affirmative.
Question put and passed.

9. ***Leave Sought For***
The Hon. David Adeang (Minister for Finance) sought leave of the House to move a motion regarding Housekeeping matters of the Parliamentary Standing Committees.
Hon. Valdon Dowiyogo (Minister for Health) seconded.
Leave was granted.

10. ***Motion - Housekeeping Matters for Public Accounts Committee***
The Hon. David Adeang (Minister for Finance) moved that Mr. Jeremiah (Meneng) be removed from the Parliamentary Public Accounts Committee and be replaced by the Mr. Buramen (Ewa/Anetan). Hon. Valdon Dowiyogo (Minister for Health) seconded".

11. Before the Court considers the merits of the case, we wish to record our gratitude to the Counsel for both the Plaintiffs and the Defendant for their well-argued submissions which have assisted us greatly in our deliberations.

JURISDICTION

12. (a) The Plaintiffs claim that jurisdiction emanates from the Constitution in particular Article 2 (1) and (2), Article 14, and Article 36. The Plaintiffs further claim that this Court has clear authority to consider the "Constitutional validity" of the suspension of the Plaintiffs by vote of Parliament.
(b) The Plaintiffs makes further references to the privileges and contempt of Parliament.

13. The Defendant on the other hand has very strongly contended that these proceedings should be dismissed at the threshold as this Court does not have jurisdiction to review the Parliament's decision to exercise powers to suspend members from the House. The Defendant submitted as follows:

> *"These submissions deal first with the question of the Supreme Court's jurisdiction to entertain these proceedings at all. The question involves the proper relation between two arms of Government, and in particular the substance and extent of the "powers, privileges and immunities of Parliament..." ("Parliamentary Privilege"). In short the equivalency of Nauruan Parliamentary privilege with that of the House of Commons at Westminster compels the conclusion that it is for Parliament exclusively and thus not for the Supreme Court at all to adjudge the conduct of the suspended Members as conduct that justified their suspension".*

14. In our respectful opinion, the first three agreed issues can be broadly subsumed into the general question of whether the matters concerning the Plaintiffs' suspension and the proceedings of the Parliamentary Privileges Committee are justiciable or are privileged and therefore outside the jurisdiction of this Court. This will in turn determine the remaining issues as well. We shall proceed accordingly.

15. Counsel for the Plaintiffs has cited a whole raft of constitutional provisions namely Articles 2, 12, 13, 14, 31 32, 36, 37, 44 and 54 to compel the conclusion that this Court has a duty to intervene in circumstances such as those that are presently before it.

16. Those Articles concern a variety of matters such as the supremacy of the Constitution, the rights of free expression and assembly, the enforceability of rights and questions relating to qualification for membership of Parliament, vacation of membership of Parliament, determination of membership of Parliament by this Court, powers, privileges and immunities of Parliament as so declared, the duty of the Speaker to preside at a sitting of Parliament and the original jurisdiction of this Court to interpret the Constitution.

17. Whether that enables us to act in the manner the Plaintiffs prefer must be determined by reference to the relevant constitutional and statutory provisions together with the decided judicial authorities. Suffice it to say that where the Articles of the Constitution are being invoked for the Court's consideration, the grant of the relief sought is discretionary.

18. Article 37 and Article 90 of the Constitution provide:

> "*37. The powers, privileges and immunities of Parliament and its members and committees are such as are declared by Parliament...*
> *90. Until otherwise declared by Parliament, the powers, privileges and immunities of Parliament and of its members and committees shall be those of the House of Commons of the United Kingdom of Great Britain and Northern Ireland and of its members and committees as at the commencement of this Constitution.*"

19. Pursuant to this Article, Parliament enacted the Parliamentary Powers, Privileges and Immunities Act 1976 (the "Act"). The Act made declarations as to the powers, privileges and immunities of the Parliament and its proceedings.

20. Sections 21 and 26 of the Act read as follows:

> *"21. 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 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 expressed provisions of this Act...*
> 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".*

21. The Standing Orders of Parliament were drafted in October 1983 pursuant to Article 38 of the Constitution. They constitute the procedural rules for the conduct of proceedings in Parliament. Articles 45 to 50 deal with disorderly conduct within the House. Their formulation is a prerogative of Parliament to regulate its own procedures. The Plaintiffs contend the procedures followed were irregular in that the sanctions (i.e. of withdrawal of remuneration and privileges) contained in the motion were contrary to Standing Orders 47 and 48.

22. They further argue that the Speaker's actions in suspending them from Parliament on the respective occasions that he did so was unlawful, whereas Counsel for the Defendant submits that even before that issue can be raised, the fact that those matters concern the internal procedures of Parliament, and therefore beyond the scrutiny of this Court, are a sufficient answer to the claim.

CONSIDERATION OF THE ISSUES

23. The privilege of non-impeachment enjoyed by Parliament has its roots in common law and was explained by Stephen J in *Bradlaugh v Gossett* [1] at 275:

> *"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."*

24. It was reaffirmed in *British Railways Board v Picken*[2] where Lord Reid quoted with approval a decision of Lord Campbell in *Edinburgh and Dalkeith Railway Co. v Wauchope*[3] at 787:

> *"... all that a court of justice can look to is the parliamentary roll; they see that an Act has passed 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 will be given to every Act of Parliament, both private as well as public upon the just construction which appears to rise upon it."*

25. While acknowledging the Court has the constitutional means to review the proceedings of Parliament where appropriate, it will necessarily be exercised sparingly. As was stated by Dixon CJ in *The Queen v Richards ex parte Fitzpatrick and Browne*[4] at 162:

> *"It is unnecessary to discuss at length the situation in England; it has been made clear by judicial authority. Stated shortly, it is this: it is for the courts to judge the existence of either House of Parliament of a privilege, but given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise. The judgment of the House is expressed by its*

[1] *Bradlaugh v Gossett (1884) 12 QBD 271*
[2] *British Railways Board v Picken (1974) A.C. 765*
[3] *Edinburgh and Dalkeith Railway Co. v Wauchope (142) CL at 10; J Bell 252*
[4] *The Queen v Richards ex parte Fitzpatrick and Browne (1955) 92 CLR 157*

resolution and by warrant of the Speaker. If the warrant specifies the ground of the commitment the court may, it would seem, determine whether it is sufficient in law as a ground to amount to a breach of privilege, but if the warrant is upon its face consistent with a breach of an acknowledged privilege it is conclusive and it is no objection that the breach of privilege is stated in general terms."

26. Those statements of the law which describe the boundaries between Parliament and the Courts, apply to the Parliament of Nauru bearing in mind section 90 of the Constitution and section 21 of the Act.

27. *In the Matter of Article 36 of the Constitution Reference to the Supreme Court by Bobby Boe*[5] the Petitioner sought redress from this Court over his disqualification as a Member of Parliament, for having been absent without leave from Parliament for a period of two months as specified in Article 32(1) (d) of the Constitution. In his application, the Petitioner *inter alia* sought to have reviewed a ruling by the Speaker rejecting a motion to obtain the leave of the House to absent himself. Donne CJ in determining the issue against the Petitioner stated as follows at 14:

"In the present case there is no question that what is sought by the Petitioner to be reviewed by this Court is a "Proceeding of Parliament". There was an attempt to move a motion to obtain the leave of Parliament for him to absent himself. This was made to the Speaker in Parliament. The mover was Mr Adeang. His attempt to do so was rejected by the Speaker. Now, as I have already said there was a clear procedure available under Standing Orders to have the Speaker's ruling reviewed by Parliament which, of course, was the authority, and indeed the only authority empowered to grant leave, Parliament did not get the opportunity to consider further either the ruling of the Speaker or the application for leave since the matter was not pursued after the Speaker's decision. The matter arose in Parliament, the procedures of which allowed the whole matter to be adjudicated upon in Parliament. To use again the oft-quoted words 'whatever is done within the walls of Parliament must pass without question in any other place.' Consequently this Court I am satisfied has no jurisdiction to review what is here a proceeding in Parliament and the application is so declined."

28. His Honour held that the attempt to seek a review of what had transpired in Parliament in which the Speaker had ruled on a particular motion was a "Proceeding of Parliament" and therefore a matter of privilege not open to judicial review.

29. Reliance is placed by the Plaintiffs upon the decision of Millhouse CJ in *Constitutional Reference No 1 of 2008* [6]where the Court held it had jurisdiction to

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[5] *In the Matter of Article 36 of the Constitution Reference to the Supreme Court by Bobby Boe [1988] NRSC 1; [1980-89] NLR (25 November 1988)*

[6] *[2008] NRSC 19*

review proceedings in Parliament. In that decision the learned Chief Justice remarked with approval as follows in relation to Peter MacSporran's commentary on the Constitution of Nauru concerning Article 90 and section 21 of the Act at 25:

> *"Mr Peter Mac Sporran in his excellent commentary on the Constitution published last year-a work which has been most useful in my coming to conclusions on this Reference-I have consulted it constantly-refers in his commentary on Article 90 to Section 21 of the Parliamentary Powers Privileges and Immunities Act 1976-*
>
> *"21. In addition to the powers, privileges and immunities which the House of Commons of the Parliament of the United Kingdom and its members have for the time being, except for such powers, privileges and immunities as are inconsistent with or repugnant to the Constitution or the express provisions of this Act"*

Mr Mac Sporran goes on-

> *"... This is of course, an unfortunate provision as it raises more questions than it answers. It encourages members to think they have more powers than they do and experience shows that the view of Westminster tends to come with blinkers that blot out the Constitution. The House of Commons is not burdened by a Constitution and many of its powers and privileges cannot survive consideration of the provision of this Constitution."*
>
> *He hits the nail on the head - The House of Commons is not burdened by a Constitution. The Parliament of Nauru is."*

30. His Honour also referred to dicta by Barwick CJ in *Cormack v Cope*[7] at 454:

> *"...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 law-making process of the Parliament. While the Court will not interfere in what I have called the intra-mural deliberative activities of the House, including what Isaacs J called "intermediate procedure" and "the order of events between Houses", 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."*

31. Millhouse CJ determined that the evidence placed before the Court obliged it to consider whether Article 45 of the Constitution had been complied with. That provision provided that no business shall be transacted at a sitting of Parliament, if the number of members present including the person presiding was less than half the total number of members of Parliament. Raising the shield of privilege to forestall any inquiry into a quorum was inconsistent with Article 45. Moreover, it fell within the exception in section 21 of the Act and therefore conferred jurisdiction on the Court to intervene. As there was no quorum, His Honour held that all business purported to be done was a nullity.

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[7] *Cormack v Cope [1974] HCA 28; (1974) 131 CLR 432*

32. Notwithstanding the approach His Honour took, the dicta of Barwick CJ made the distinction between "the intramural deliberative activities of the House" and the "Court's right and duty to ensure that the constitutionally provided methods of law-making are observed." The former reference is not subject to judicial scrutiny. And the observations by Peter MacSporran, while well-taken, have not obviated the cautionary approach this Court has generally taken where the proceedings of Parliament have come before it for review in some form.

33. It is also clear from a reading of Millhouse CJ's decision that he had before him a constitutional reference in which he had to consider whether Article 45 of the Constitution had been complied with. Whereas we have before us matters which require us to consider lifting the parliamentary veil of privilege and pronounce upon what are proceedings of Parliament in order to restore rights which have been allegedly breached. Just how far we are invited to intervene will become clear presently in considering commentary on parliamentary procedure upon which the Plaintiffs' counsel relies.

34. Counsel for the Defendant urged the Court follow the decision of the full Court in *Harris v Adeang*[8] in which Donne CJ and Dillon J held, on an application to nullify business enacted in Parliament on 12 June 1997, that the issue was non-justiciable because it would require the Court to enquire into the practice and procedure of Parliament which was solely within the province of Parliament.

35. After discussing a number of relevant authorities Donne CJ concluded as follows at 10:

> "*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 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*

[8] *[1998] NRSC 1*

judicially reviewed as was done in the cases of the Solomon Islands, the Cook Islands and Zimbabwe as referred to above." [9]

36. Although *Harris v Adeang* supra and *Constitutional Reference No 1 of 2008* supra appear to be conflicting authorities and Millhouse CJ expressly stated his reasons for not following *Harris*, the caveat in the passage cited from Donne CJ's judgment contemplated the possibility of judicial review of the consequences of any proceedings in which unlawful action takes place. His Honour, while taking an expansive view of parliamentary privilege, recognised that it was not a licence to act with impunity. This approach commends itself to us because it acknowledges and recognises the right of Parliament to regulate itself within the bounds of the Constitution.

37. In *Rediffusion (Hong Kong) Ltd v Attorney General of Hong Kong*[10] at 1157 Lord Diplock expressed the formulation of parliamentary immunity as follows:

> *"The immunity from control by the courts which is enjoyed by members of a legislative assembly while exercising their deliberative functions is founded on necessity. The question of the extent of the immunity which is necessary raises a conflict of public policy between the desirability of freedom of deliberation in the legislature and the observance by members of the rule of law of which the courts are the guardians. If there will be no remedy when the legislative process is complete and the unlawful conduct in the course of the legislative process will by then have achieved its object, the argument founded on necessity in their Lordships' view leads to the conclusion there must be a remedy available in a court of Justice before the result has been achieved which was intended to be prevented by the law from which a legislature which is not fully sovereign derives its powers.*

38. While the Parliament of Nauru is not sovereign in the sense that it functions within the limits of a written Constitution, it is nevertheless a well-settled proposition that it is the arbiter of its own procedures although subject to the provisions of the Constitution. That is reflected in sections 21 and 26 of the Act as mentioned previously and the authorities cited. Hence the need, in our respectful opinion, for caution and circumspection in considering matters such as arise in the present case.

39. Section 9 of the Act provides-

> *"Exclusion of a suspended Member*
>
> *10. A member who has been suspended by the Speaker from the service of the Parliament shall not enter or remain within the precincts of the Parliament while the suspension remains in force and, if such member is*

[9] *Harris v Adeang* [1998] NRSC 1

[10] *Rediffusion (Hong Kong) Ltd v Attorney General of Hong Kong* [1970) AC 1136

found within the precincts of the Parliament in contravention of this section, he may be forcibly removed therefrom by any officer."

40. The Plaintiffs invoke the jurisdiction of the Court by reference to the various constitutional provisions cited to intervene on their behalf and grant the relief sought. However, it would appear to us that where the Speaker has suspended a Member of Parliament whether on his own initiative or pursuant to a motion of Parliament, and it is in the process of being considered by the Parliamentary Privileges Committee, it is by definition part of the "intramural deliberative activities of the House" (as described by Barwick CJ) and not open for us to consider.

41. The Plaintiffs' counsel cited various parliamentary authorities regarding the procedures of Parliament. In *Griffith and Ryle on Parliament, Functions, Practice and Procedures*[11] at paragraphs 6-092 to 6-094 the following is stated:

> *"It is only when the wishes of the Chair are not respected or its directions disobeyed that the Chair needs to resort to formal disciplinary powers given by standing orders to restore order to enforce its authority. [6-092] If a Member is "grossly disorderly" or persists in disorderly conduct, particularly if he disregards the authority of the Chair and usually after several warnings, the Chair can require the Member to leave the House for the remainder of that day's sitting. [6-093]The offences for which Members have been ordered to withdraw from the House include refusal to withdraw unparliamentary language, refusal to discontinue a speech when ordered to do so, challenging the distraction of the Chair ... and imputing partiality to the Chair in exercising its powers. [6-093] For the most serious cases of disorder by individual members ... the Speaker ... names the Member concerned ... if a Member is named in the House a motion is immediately made by the Leader of the House ... 'That ... be suspended from the service of the House' ... The motion is not amendable or debatable and the question is therefore put without debate ... but there may be a division. [6-093] Suspension under this procedure lasts for 5 sitting days (including the day of the offence on the first occasion in a session ... While suspended he can perform no other parliamentary function, such as tabling of questions or motions but can continue constituency work from elsewhere. [6-094]"*

The Plaintiffs commend this and other commentaries to the Court to allege irregularity, impropriety and illegality on the part of the Respondent and by extension Parliament itself. Their detail and the requisite scrutiny called for from this Court is indicative of the extent to which the Plaintiffs would have us subject the affairs of Parliament i.e. with a microscopic lens no less. However in our respectful opinion, the gist of these authorities clearly emphasize what are within the domain of Parliament to regulate. They are rights and prerogatives that Parliament has jealously and zealously guarded since the Glorious Revolution of 1688 in England.

42. The very nature of the questions posed by the Plaintiffs point us in directions we are not inclined to venture. These include whether the House had the power to suspend the Plaintiffs? Was the motion in whole or in part unlawful and within power? If the

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[11] *Blackburn R., and Kennon A., Wheeler-Booth Sir Michael, Sweet & Maxwell, London, 2003*

suspension was within power was it nonetheless unconstitutional as constituting a *de facto* expulsion? This latter matter we will address shortly.

43. In *Hon Moana Kalosil Carasses and Ors v Hon Philip Boedoro and Anr* [12] Saksak J of the Supreme Court of Vanuatu held that the constitutional rights of the Petitioners pursuant to Articles 5 (1) (d), 5(2) (a) and (b), 16, 21, 28, 43 (2) and 47 (1) of the Constitution had been infringed, that a purported Motion to suspend the Petitioners from Parliament amounted to a breach of their constitutional rights and was void and that a ruling made on 25 November 2014 to suspend the Petitioners is invalid and void. The ruling to suspend and exclude the Petitioners was accordingly quashed and the First Respondent and Police were restrained from preventing access of the Petitioners to Parliament from date of judgment (i.e. 2 December 2014).

44. We respectfully take note of the robust approach adopted by the Supreme Court of Vanuatu but are not minded to do likewise. In our respectful opinion, the legal and parliamentary traditions of Vanuatu appear to have evolved somewhat differently from the pattern here in Nauru. No consideration appears to have been given in the learned Judge's decision to the prerogatives of Parliament to deal with matters of internal procedure as per Article 90 of the Nauru Constitution and sections 21 and 26 of the Act. Neither does it appear there were arguments by the parties in that regard. In our respectful view, the purported breach of the Petitioners' rights which were determined by Saksak J and which the Plaintiffs similarly assert before us Court have to be considered in that context.

45. The learned Judge also treated the passing of the motion to suspend the Petitioners as an exercise of judicial powers. His Honour states as follows at paragraph 20 of 15:

> *'In my considered view this pronouncement by the movers of the motion amounted to a conclusion of guilt pronounced on the petitioners without first being tried by a competent court of law. It is apparent that by doing so the executive arm of government under the guise of Parliament as in the legislative arm of government were encroaching on the powers of the judiciary, the third arm of government. The notion of separation of powers is deeply embedded in our Constitution and must be respected and maintained at all times."*[13]

In relation to the exercise of judicial powers by Parliament, Dixon CJ in *The Queen v Richards ex parte Fitzpatrick and Browne*[14] supra at 166, 167 observed:

> *"Then it was argued that this is a constitution which adopts the theory of the separation of powers and places the judicial power exclusively in the judicature as established under the Constitution, the executive power in the executive, and restricts the legislature to legislative powers. It is said that the power exercised by resolving upon the imprisonment of two men and issuing a warrant to carry it into effect belonged to the judicial power and ought therefore not be conceded under the words of s.49 to either House of the Parliament. It is true that the judicial power of the Commonwealth is reposed*

[12] *Constitutional Case No 1 of 2014*
[13] *Hon Moana Kalosil Carasses and Ors v Hon Philip Boedoro and Anr Constitution Case No 10 of 2014*
[14] *The Queen v Richards ex parte Fitzpatrick and Browne* (1955) 92 CLR 157

exclusively in the courts which are contemplated by Chap. III of the Constitution. It is further correct that it is a general principle of construction that the legislative powers should not be interpreted as allowing of the creation of judicial powers or authorities in anybody except the courts which are described by Chap.III of the Constitution. Accordingly, it is argued that a strong presumption exists against construing s. 49 in a sense which would enable the particular power we have before us to be exercised by the Senate or the House of Representatives...

The considerations we have already mentioned is of necessity an answer to this contention, namely, that in unequivocal terms the powers of the House of Commons have been bestowed upon the House of Representatives. It should be added to that very simple statement that throughout the course of English history there has been a tendency to regard those powers as not strictly judicial but as belonging to the legislature, rather as something essential or, at any rate proper for its protection. This is not the occasion to discuss the historical grounds upon which these powers and privileges attached to the House of Commons. It is sufficient to say that they were regarded by many authorities as proper incidents of the legislative function, notwithstanding the fact that considered more theoretically - perhaps one might even say, scientifically - they belong to the judicial sphere."

46. Any basis for intervention by this Court would be pursuant to the exception to section 21 of the Act and more generally on the basis of any purported breach of the Constitution. As was mentioned earlier, the Plaintiffs have not alleged any breach of their constitutional rights. The proposition was expressed as follows by Lunabek CJ in *Natapei v Tari* [15] at 45, 46:

> *"The general rule is that Parliament is not subject to direction by the Courts so long as its proceedings are not inconsistent with obligations placed upon it by law from which it derives its powers ... It is plain that the Court has a constitutional duty to interfere "if the constitutionally required process of law-making is not properly carried out." [Court of Appeal, Decision No. 7 of 1996, Attorney General and Natapei v Willie Jimmy and Barak Sope & Ors]."*

47. Eames CJ also cited that passage with approval *in Keke & Ors v Scotty & Ors* (2) [16]at 6 and the correctness of the principle is in our respectful opinion self-evident. His Honour observed further at 9:

> *"The power "to determine" any question as to the "effect" of a provision of the Constitution must carry with it the power, in appropriate circumstances, to intervene when the effect of an incorrect interpretation would be to deny a constitutional right to a person. The remedies sought in this case are discretionary, but whilst the Court might be slow to impose them in cases where the constitutional boundaries between legislative and judicial powers are uncertain, that is not this case."*

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[15] *Natapei v Tari [2001] VUSC 113*
[16] *Keke & Ors v Scotty & Ors (2) NRSC 3*

We respectfully concur with that cautionary approach as the relief sought in these proceedings venture "*where the constitutional boundaries between legislative and judicial powers are uncertain …*"

48. What is sought are a series of declarations that the exercise of power by Parliament was beyond power or a breach of the Constitution or both, a declaration that the Motion of 15 May was ineffectual and void *ab initio* and a declaration that the Plaintiffs are entitled as of right to attend to the business of the House as Members of Parliament. They also seek declarations relating to the payment of all their entitlements including salary and other benefits. These proceedings can be distinguished from the other cases of a clearly constitutional nature that have been dealt with by this Court, in that parliamentary privilege is a relevant, even determining, factor in this case.

49. The Plaintiffs in Civil Action No 39 of 2014 were suspended for such time as each of them made an unequivocal apology in writing to the House and to the foreign media in which those remarks were made and their remuneration, rewards or privileges was also suspended.

50. The Plaintiffs in Civil Action No 40 of 2014 were suspended for their disorderly conduct and all their remuneration, rewards and privileges were also suspended and their suspension has been referred to the Parliamentary Privileges Committee.

51. Faced as we are with the decision of the full Court in *Harris v Adeang*[17] and the decision of Millhouse CJ in Constitutional Reference No 1 of 2008, we respectfully adopt the approach taken by the full Court in *Harris'* case. In our respectful opinion, the present proceedings invite us to delve closely into the manner in which Parliament deals with its Members, an intervention which is properly not ours to make.

52. In considering Article 45 of the Constitution and whether or not there was a quorum on the day in question, Millhouse CJ had clear evidence before him that the provision had not been complied with. In these proceedings we have allegations and assertions by the Plaintiffs that their suspensions are unlawful and irregular as against the prerogative of Parliament to deal with its own Members.

53. True it is that the Constitution binds Parliament, the Judiciary and the Executive. However, the Plaintiffs require us to lift the parliamentary veil of immunity and examine the internal mechanisms of the Parliament of Nauru. In these circumstances, we feel obliged to respect the right of Parliament to regulate the conduct of its own affairs. Notwithstanding the claims the Plaintiffs make in relation to their personal circumstances and the consequences for their constituents and the implications for parliamentary representation, Parliament is seized with the matter and must determine it as appropriate.

54. The issue of whether the Plaintiffs' rights of assembly, free speech and right as Members of Parliament and that of their constituents have been breached in violation

[17] *Harris v Adeang [1998] NRSC 1*

of the Constitution does not arise as they remain suspended and await a determination by Parliament.

55. We are fortified in this conclusion by the case of *In re Article 36 of the National Constitution*[18] in which Millhouse CJ held that a Member of Parliament who was absent from Parliament on every day on which a sitting of Parliament is held during a period of two months or more by reason of being under suspension, not being granted leave of absence, had not vacated his seat for the purposes of Article 32(1) (d) of the Constitution and remained a Member of Parliament. His Honour remarked as follows:

> *"The member is not absent without leave. An involuntary absence has been imposed on him. Leave is implied by the suspension-involuntary leave but leave nevertheless. It would be most unfair if a member could be suspended, the suspension continue for more than two months and he (or she) then be declared to have vacated his (or her) seat; expulsion from Parliament by the back door. Furthermore the reason for suspension may have no relevance to the more drastic penalty of expulsion from Parliament."*[19]

Millhouse CJ's observations in the last sentence of the passage cited have a direct bearing on the assertion by the Plaintiffs that their suspension is in effect a de facto expulsion from Parliament and we respectfully adopt His Honour's reasoning in that regard.

56. *In the Matter of the Constitution and in the Matter of the Dissolution of the Eighteenth Parliament*[20] von Doussa CJ agreed with the proposition that the Constitution of Nauru was a special law with a function and character that differed from an ordinary statute. It was therefore legitimate to have regard to the history of the Constitution and to secondary materials available in the transcript of the Constitutional Convention. The relevance of this point lies in their relation to the arguments being made by the Plaintiffs. It would seem reasonable to assume that the framers of the Constitution like the founding father of independent Nauru, Hamer deRoburt himself, would not have countenanced the proceedings and internal workings of Parliament being subject to judicial examination.

57. In both actions it is important to note that the suspension of the remunerations, rewards and privileges is not final.

58. The Defendant's case is that the issue of lawfulness or otherwise of the Plaintiff's suspension is not justiciable. The issue of justiciability was discussed in detail by the full Court in the case of *Harris v Adeang* [21] and we adopt all the discussions in that case as to be the correct law.

59. In both cases we hold that this Court does not have jurisdiction to inquire into the Practices and Procedures of the Parliament or to review it. That is a matter solely within the province of Parliament. In our respectful view Parliament should be

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[18] *[2008] NRSC 13*
[19] *op. cit, 14*
[20] *[2010] NRSC 1*
[21] *Harris v Adeang (1998) NRSC Civil Action number 39/1979*

allowed to conduct its proceedings as it deems fit and if a Member of Parliament is unhappy with its decision then he/she may use the Parliamentary process to appeal against the decision and not resort to this forum to seek relief.

60. On the issue of whether the suspension of the termination of the reward and privileges is lawful this issue was discussed in the case of *Harris v Adeang* (*supra*) where it was stated as follows:

"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 159/93) delivered on 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 endure beyond 7 days. The action came before the Appellate Court by way of 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 the jurisdiction allowed the Court to review and pronounce upon proceeding 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 made the order, enacted legislation to give retrospective validation to the order), No, inquiry into Parliamentary process' to establish the suspension order or the reason for it was necessary. The Court consequently held there was no bar to the jurisdiction to entertain the suit.

The circumstances in Robati's were similar to those in the Zimbabwe case of Smith v Mutasa and Anor (1990) ILRC (Const.) 87 which concerned a former Prime Minister of Zimbabwe who was a Member of the House of Assembly of the new country. He had, whilst visiting United Kingdom made remarks derogatory of the black people and their representatives in Zimbabwe. He was found guilty of contempt of Parliament. He subsequently made further remarks of a similar kind and was then suspended by the House of Assembly for a year and deprived of his allowances. The Speaker gave a certificate that the matter was one of privilege and the High Court.....jurisdiction" held the proceedings should there upon be stayed on the basis that there had been finally determined by Parliament. On appeal from the decision, the Supreme Court allowed an appeal on the ground that 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 the matters of privilege without scrutiny of the Courts and so upheld the Principle of the supremacy of

Parliament, it drew a distinction in the case of Parliament acting unlawfully. Parliament had the exclusive power to deal with Smith in respect of his remarks and could properly debate and decide on the content matter. It, however, had no power in law to initiate proceedings which resulted in the suspension of the salary. The proceedings were bad, ab initio. No inquiry into them was necessary. It was for that reason the Court had accepted jurisdiction."

61. In this case the issue of suspension of remuneration has not been finally decided. It is still before Parliament and it has asked the Plaintiffs in Civil Action No 39 of 2014 to issue an apology as mentioned above. In Civil Action No 40 of 2014 the matter is referred to the Parliamentary Privileges Committee, so the issue has not been finalised as yet. It is possible that the Parliament may revisit its own decision and review it and pay the salaries of the Plaintiffs. In the circumstances we refrain from making any orders with respect to the suspension of the Plaintiffs' salaries and benefits.

62. We also note for completeness that Parliament recently enacted the Parliamentary Salaries and Allowances Act (Amendment) Act (Act No 22 of 2014) to confer discretionary power to withhold the salaries of Members of Parliament if suspended. We forbear comment other than to respectfully raise the propriety of such an initiative when the matter on which it has a direct bearing is presently before the Court for determination.

63. Having considered the Plaintiffs' arguments and that of the Defendant, we answer the issues for determination as follows:

1. Whether the suspension of the plaintiffs from Parliament was lawful?
   YES
2. Whether the Court can delve into the procedures of the Privileges Committee?
   NO
3. If the answer to (2) is in the affirmative, whether its procedures were lawful?
   NOT APPLICABLE
4. Whether the Plaintiffs are entitled to attend the Parliament during the currency of their suspension?
   NO
5. Whether the Plaintiffs' suspension has unlawfully deprived their constituents of representation in Parliament?
   NO
6. Whether the withholding of the Plaintiffs salary and allowances is unlawful?
   NO

The Plaintiffs' case is accordingly dismissed without any order for costs.

HAMILTON-WHITE J:

64. I have had the opportunity to read through the Judgment of Madraiwiwi CJ and Khan J and concur in the answers for determination in relation to Questions 1 – 5.

65. I dissent in relation to Question 6 (Whether the withholding of the Plaintiffs salary and allowances is unlawful?) and answer that question in the affirmative.

66. There are eight Divisions in Nauru returning a total of 19 candidates to form Parliament[22]. The five Members of Parliament the subject of this suspension are from the Districts of Yaren, Bauda, Boe and Meneng, and together represent approximately one-third of the population of Nauru.

67. The elected Members' role in relation to their constituents is varied and goes beyond that of representing their constituents in Parliament. The Plaintiffs have other duties and obligations as elected Members, which include *inter alia* assisting constituents with issues affecting individuals by writing letters or making representations on their behalf; speaking at events concerning issues in relation to their constituents and assisting in resolution of issues between constituents in their Division and between Divisions.

68. Members of Parliament are remunerated according to the *Parliamentary Salaries and Allowances Act* 2008 ("The Act"); this remuneration allows them to carry out their diverse responsibilities in representing their constituents.

69. At the time of their election, suspension from Parliament and appearance before this Court in these matters, The Act reads as follows:

> s5 Salaries and Allowances of Members of Parliament
> *"The salaries and allowances of Members of Parliament, including Members of Cabinet and the president shall be as set out in the Schedule to this Act".*
>
> s6 Charge on Treasury Fund
> *"The amounts to which a person shall be entitled under this Act shall be paid from the Treasury Fund which shall be charged accordingly".*
>
> s7 Review of Salaries and Allowances
> *"The salaries and allowances of Members of Parliament, including Members of Cabinet and the President, may only be amended by Parliament approving amendments to the Schedule of this Act."*[23]

70. The Plaintiffs are all lawfully elected members of the Parliament of Nauru, elected by their respective Divisions to represent the interests of the constituents of that Division.

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[22] *Nauru Constitution, Art. 28*
[23] *Parliamentary and Salaries Act 2008*

In order to properly carry out this role they are entitled to receive remuneration as per the schedule under The Act.

71. The Act uses the wording "*shall*" in relation to the payment of salaries and allowances and as such I am of the view that in the circumstances the payments should be paid as per The Act.

72. I find that the Plaintiffs are entitled to receive their salary and benefits as per The Act whilst they hold the office of elected Members of Parliament, and that this entitlement continues during the period of their suspension.

DATED this 11th day of December 2014.

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Joni. Madraiwiwi
CHIEF JUSTICE

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Mohammed. Shafiullah. Khan
JUDGE

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Jane. Elizabeth. Hamilton-White
JUDGE