

**IN THE HIGH COURT OF NIUE**

**Application No. CV6/2014**

**IN THE MATTER OF:** Article 6(2) of the  
Constitution of Niue

**BETWEEN:** TOGIA SIONEHOLO,  
MEMBER OF THE NIUE  
LEGISLATIVE ASSEMBLY

Applicant

**AND** AHOHIVA LEVI, SPEAKER  
OF THE NIUE  
LEGISLATIVE ASSEMBLY

Respondent

**Judgment:** 7 July 2014 (11.00am New Zealand time)

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**DECISION OF COXHEAD J**

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**Introduction**

[1] This is the third application - or an amendment to application CV4/2014 - that the applicant has made relating to art 6 of the Constitution of Niue (Constitution) and his notice of intention to move a vote of no confidence in the Niue Cabinet.

[2] This application has been made despite the fact that the Niue Legislative Assembly (NLA) has already met and the motion for the vote of no confidence was tabled, debated, and was put to the vote where it was defeated by 12 votes to 7.

**Background summary**

[3] There are two decisions of this Court, 31 January 2014 and 4 February 2014, which along with the submissions filed, provide a summary of the background into this matter. This background follows.

[4] At a meeting of the NLA on 20 January 2014, the applicant gave notice to the Speaker of his intention to move a motion of no confidence in Cabinet. This was done in accordance with art 6(1)(b) of the Constitution.



[5] On Wednesday 22 January the speaker advised the NLA Members present at the Assembly Chambers that a meeting for the motion of the vote of no confidence would be called for 3 February 2014.

[6] On 23 January the applicant filed an application seeking an order directing the Speaker of the NLA to appoint a day within the period of 26 January 2014 and 30 January 2014 for the meeting of the NLA to debate and vote on a motion of no confidence in the Cabinet.

[7] Subsequently, on 24 January 2014 the Speaker issued a notice that a meeting would be held on 29 January 2014 in order to comply with the requirements of art 6(2) of the Constitution.

[8] Following the issue of a notice for the meeting of 29 January 2014, the applicant amended application CV 3/2014 (First application) to seek a declaratory judgment on the interpretation of:

- a) Article 6(2) with respect to the meaning of the word "day"; and
- b) The meaning of the reference in s 4 of the Niue Constitution Act 1974 that the Constitution "shall be the supreme law of Niue" in so far as it relates to the Niue Assembly Standing Orders.

[9] On 29 January 2014 the meeting of the NLA was started and 19 Assembly members were present. However, 11 members left the meeting, resulting in a lack of quorum and the meeting being abandoned.

[10] On 29 January 2014 following the NLA meeting, the applicant filed a further application, CV 4/2014 (Second application), with the Court. In the Second application, the applicant asked the Court to issue a direction to the Speaker of the NLA to call and hold a meeting of the NLA on Thursday 30 January 2014 pursuant to art 6(2) of the Constitution.

[11] In the late afternoon of the 29<sup>th</sup> of January 2014, the Speaker issued notice of a meeting to be held on 30 January 2014.



[12] On 30 January 2014 a NLA meeting took place. The applicant's motion for the vote of no confidence was tabled, debated and when put to the vote the motion was defeated by 12 votes to 7.

[13] On 31 January, I issued a decision dismissing the First application (CV 3/2014).

On 4 February 2014, the Court issued its decision regarding the Second application (CV 4/2014). That application was also dismissed on the basis that the Speaker had complied with the requirements of art 6 of the Constitution.

### **Current application**

[14] Firstly, it is not totally clear as to what the applicant is wanting.

[15] It appears that the applicant is seeking to amend the Second application (CV 4/2014). That application has been dealt with and dismissed. It is at an end. The Court cannot amend an application that is no longer before it.

[16] If I am to take this application CV 6/2014 as a new application rather than an amendment to CV 4/2014, then it appears the applicant seeks a declaration from this Court as to an interpretation of art 6(2) of the Niue Constitution – specifically, whether in the situation where a NLA meeting is abandoned for a lack of quorum as a result of either a deliberate decision of members to walk out or to boycott the art 6(2) meeting, then:

- a) there is effectively no art 6(2) meeting; and
- b) the proper procedure is to call for the art 6(2) meeting for the very next day and so forth until a proper and complete art 6(2) meeting is carried out.

### **Applicant's submissions**

[17] The application is made on the basis that:

- (a) The events leading up to the debate of the art 6 "vote of no confidence" raised a number of constitutional issues that require the interpretation of the rules by the Court;

- (b) The applicant was dealing with a constitutional issue directly touching on an elected member's rights under the Constitution;
- (c) In the event that an art 6(2) meeting is abandoned for lack of quorum before any debate or vote is carried out, there effectively is no art 6(2) meeting and consequently an art 6(2) meeting must be called for the next day;
- (d) These are important constitutional legal issues different from the interpretation of the word "day" in art 6(2) of the Constitution which was the subject of the First application;
- (e) The applicant wishes the Court to make it clear that where the procedures are prescribed in the Constitution, it prevails over any other rule or the Standing Orders particularly with respect to a vote of no confidence motion as opposed to an ordinary motion;
- (f) The application is not a small or minor matter;
- (g) The tendency of politicians to test the boundaries of art 6 of the Constitution makes it important for the Court to clearly state the law with respect to art 6(2) meetings;
- (h) Article 6(2) will be utilised again in the future because it is an important tool in the operation of the "checks and balances" mechanism central to the separation of power in a Westminster Parliamentary democracy; and
- (i) An application for a declaratory judgment on an art 6(2) meeting is not a waste of Court resources.

### **Respondent's submissions**

[18] The respondents submit that:

- a) The applicant is seeking a Court declaration on a matter that has not happened;



- b) The Court's decision will not affect an outcome of NLA proceedings;
- c) If a declaratory judgment is issued in these circumstances, there will be nothing to prevent the applicant from seeking a declaratory judgment on other articles of the Constitution, keeping the Court busy for the next few years while exhausting the entire Constitution; and
- d) The current application relates to the Second application (CV 4/2014) a matter in which the situation was resolved and the application was dismissed by the Court.

### **Declaratory Judgments**

[19] It is clear that the High Court of Niue has the jurisdiction to issue a declaratory judgment on one of the three grounds contained within s 107 of the Niue Act 1966. Section 107 states:

#### **107 Declarations**

A person may apply to the High Court for a declaration where the applicant—

- (i) has done or desires to do an act the validity, legality or effect of which depends on the construction or validity of an enactment or of any document; or
- (ii) claims to have acquired any rights under any such enactment or document, or in any other manner to be interested in its construction or validity; or
- (iii) wishes to have a formal statement as to the existence or non-existence of a marriage or the validity of a dissolution of marriage.

[20] Article 37(2) of the Constitution provides that:

Except as provided in this Constitution or by law, the High Court shall have all such jurisdiction (both criminal jurisdiction, and civil jurisdiction in relation to land) as may be necessary to administer the law in force in Niue.

[21] Furthermore, s 71 of the Niue Act 1966 states that:

Subject to any enactment, the practice and procedure of the High Court in the exercise of its civil and criminal jurisdiction shall be such as the Court thinks in each case to be most consistent with natural justice and convenience.



[22] Therefore as a matter of practical necessity, administration of the law in force in Niue requires that the High Court has the discretion to refuse to issue a declaratory judgment in some circumstances.

### Decision

[23] In this case, it is not clear whether the applicant is now continuing to seek the declarations which the Court has declined to issue, whether he has raised a new issue for the Court to address, or whether he is seeking a rehearing. This adds to the confusion.

[24] I agree with the respondents that there is nothing to be gained by the Court issuing a declaration as sought by the applicant.

[25] The application is therefore dismissed for the following reasons:

- a) The applicant has not shown that there is an act (done or about to happen) the validity, legality or effect of which depends on the construction of the Niue Constitution - (s 107(i) Niue Act 1966).
- b) This is not a situation where the applicant claims to have acquired any rights under any such enactment or document, or in any other manner to be interested in its construction or validity - (s 107(ii) Niue Act 1966).
- c) This is not a case where s 107(iii) of the Niue Act 1966 would apply.
- d) The applicant seeks an answer to a hypothetical situation – although close to having occurred – that has not eventuated. Therefore there is no “live issue” to be dealt with.
- e) No relief is being sought by the applicant. While this is not fatal to a declaratory judgment being issues, in this case it does seem somewhat futile to grant a declaration given the issues raised are moot, unless there is a good reason in the public interest to allow the declaration to proceed. I find there is no public interest to allow the declaration to proceed.
- f) The broad jurisdiction to seek a declaration without compensation or other relief is normally for the purpose of declaring legal rights of parties in litigation

before the Court, not to declare the law generally or give advisory opinions or a declaration with no utility.

- g) While this application may have merit in creating certainty for the future, it could lead to difficulty if the Court were to be occupied with answering applications in the hypothetical.
- h) The current application does not require an answer that will assist parties in resolving a situation or a dispute. There is no situation requiring an answer.
- i) In providing a declaration the Court will not be assisting the outcome of NLA proceedings. The Court's determination would amount to giving an advisory opinion or a declaration with no utility.

[26] I agree with the applicant that there is no doubt that art 6 may be utilised again. If such an application is filed with the Court in the future, then it will be appropriate for the Court to make a ruling based on that particular factual situation and with regard to the relief sought.

#### **Costs**

[27] The respondent raises the issue of costs on the basis that:

- (a) The first application sought by the applicant was for a declaratory judgment for the meaning of "day" and the Niue Constitution to be recognised as the supreme law of Niue to compel the speaker to call a meeting on the week of 26-30 January 2014. The Court agreed with the respondent and found that the issues raised were adequately covered under the Interpretation Act 2004 therefore it was unnecessary to issue orders;
- (b) The second application that was filed was also dismissed; and
- (c) The current application relates to the second application and involves a matter which resolved itself and was dismissed by the Court.

[28] The respondent therefore seeks costs of \$675 and respectfully submits that the Court considers an award of the above cost which will also deter such frivolous and vexatious applications.

#### **The applicant's response as to costs**

[29] The applicant has responded to the issue of costs and submits in summary:

- (a) The application for declaratory judgment is not a small matter wasting Court resources; and
- (b) The applicant draws the attention of the Court to the Niue Court of Appeal's 2012 decision of *Sioneholo v Talagi* [2012] NUCA; (August 2012).

#### **Decision as to costs**

[30] As discussed in *Sioneholo v Talagi*, in line with other Courts in the Pacific, the Court has total discretion as to costs.<sup>1</sup>

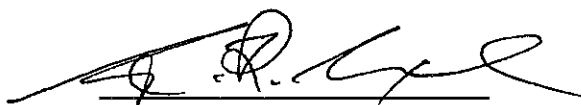
[31] The First and Second applications were dismissed. However, there is a sense that these applications have prompted the Speaker into undertaking the actions that he did.

[32] It is arguable that without the First and Second applications that have been put before the Court, a different course of action may have been undertaken by the Speaker.

[33] While this application has been dismissed, it did raise a constitutional point – however hypothetical.

[34] On balance, costs should lie where they fall and no order for costs will be made.

Dated at Rotorua, New Zealand, this 7<sup>th</sup> day of July 2014

  
C T Coxhead J

<sup>1</sup> *Hekau v Tongahai* (2012) Land Appeal MB 2, 33-41 as cited in *Sioneholo v Talagi* [2012] NUCA; (August 2012).