

**IN THE HIGH COURT OF NIUE
(CIVIL DIVISION)**

Application No: CV2022-00081

IN THE MATTER OF

Sections 67 & 101(a) of the
Niue Act 1966 and Niue
Islands Sports and
Commonwealth Games
Association Games
Association Constitution 2017

BETWEEN

NIUE LAWN BOWL
ASSOCIATION
INCORPORATED
Applicants

AND

NIUE ISLAND SPORTS
AND COMMONWEALTH
GAMES ASSOCIATION
Respondent

Date: 10 July 2022 (Cooks Islands Time)

JUDGMENT OF CHIEF JUSTICE C T COXHEAD

Introduction

[1] On 30 June 2022 (NZ Time) in a matter between these parties, I made orders pursuant to s 107 of the Niue Act 1966 for:

- (a) a declaration that the suspension of the applicant by Niue Island Sports and Commonwealth Games Association (NISCGA) violated the rules of natural justice and is therefore null and void;

- (c) a declaration that NISCGA had acted ultra-vires Articles 3H and 4B of the NISCGA Constitution and therefore its unilateral selection of the Niue Lawn Bowling team for the Commonwealth Games 2022 is null and void.

[2] I also left it for the parties to sit together urgently to discuss the implication of this decision – not implication in terms of their positions as presidents of their organisations but most importantly the implications for the athletes.

[3] Mr Hipa as president of Niue Lawn Bowls (NLB) and Mr Talagi as president of NISCGA meet on 4 July to seek a resolution. The applicants say that despite the Courts decision of 30 June Mr Talagi was not prepared to change his stance and remained adamant that the team that NISCGA had selected is the team to represent Niue.

[4] Mr Talagi says that he and Mr Hipa met and Mr Hipa was to come back to him after the meeting but has not done so.

Injunction application

[5] NLB now make application for orders by way of perpetual restrictive injunction prohibiting and restraining the NISCGA from sending the Niue Lawn Bowls Team (players and officials) unilaterally selected by NISCGA to represent Niue in the 2022 Commonwealth Games in violation of the rights of the applicant pursuant to Article 48 of the NISCGA Constitution and as already determined by the Court.

[6] The Court has received the application along with an affidavit of Mr Hipa, as well as a response from Mr Talagi on behalf of NISCGA along with supporting documents. A short reply was emailed to the Court from Counsel for the applicants and then a further reply submission from Mr Hipa. Mr Sidney Lui also filed submissions from athletes.

[7] The grounds that support the application are in summary:

- (a) Despite the Courts decision of 30 June Mr Talagi was not prepared to change his stance and remained adamant that the team that NISCGA had selected is the team to represent Niue.

- (b) The president's refusal to reconsider the team selection and his insistence on the team that NISCGA had already selected is tantamount to a continuing violation by NISCGA of the applicant's rights under Article 48.
- (c) There is no other remedy available to the applicant.
- (d) To allow NISCGA to send a team in violation of the Constitution and in violation of the applicant's rights would not be in the interest of justice nor would it be in the public interest.

[8] NISCGA have filed a response where they in summary submit:

- (a) NISCGA has filed an appeal of the 30 June 2022 decision.
- (b) That in the interest of sports and athletes that if the three named players do not go to the games then there will be no Lawn Bowls Team for Niue.
- (c) The three players of NBL selection have not been registered in time for accreditation by 18 March 2022. Consequently despite NISCGA's attempts they are not registered and cannot go to Birmingham 2022.
- (d) Non-accreditation of the three NBL athletes is beyond NISCGA's control and they are unable to attend Birmingham.
- (e) NISCGA is not depriving athletes of the opportunity to compete at the Commonwealth games but rather giving those athletes who are already accredited and who want to go to the games the opportunity when the other athletes of the NBL selection confirmed they did not want to go to the games.
- (f) It would be a grave injustice if the athletes who want to go to the games are deprived of such an opportunity not only to fly the Niue flag but also to compete for Niue.

[9] A number of emails and letters have been submitted that note a number of things including that athletes knew the cut-off date for accreditation, that there has been a meeting and an agreement that if the three players who NBL want included in the bowls team are not included to attend the Commonwealth games then no lawn bowls team will attend and certain athletes have noted due to other commitments they are unable to commit towards attending the games.

Decision - injunction

[10] The application for injunction is made pursuant to s 67 of the Niue Act 1966 that states:

67. Injunction, certiorari, mandamus and prohibition

(1) The High Court may exercise by way of order in the ordinary course of its civil procedure the same jurisdiction as that possessed and exercised for the time being by the Supreme Court of New Zealand by way or in lieu of injunction, certiorari, mandamus and prohibition, including the power of awarding damages in lieu of injunction.

(2) No such jurisdiction by way of mandamus, certiorari, or prohibition shall be exercised by the High Court as against the Land Court or the Land Appellate Court.

[11] The Court is being asked to stop NISCGA from sending the Niue Lawn Bowls Team (players and officials) to the Commonwealth Games.

[12] This will deprive athletes, although not selected through the correct processes, from being able to compete at the games.

[13] I understand airfares, accommodation and other arrangements have already been made for the athletes. Importantly it appears that athlete's accreditation for the games has been completed and no athletes can be added to the team. It is intended that the athletes fly out on 11 July 2022.

[14] The athletes are the innocent parties caught up in this power struggle as to who has authority to select the lawn bowls team. Clearly as I stated in my decision of 30 June according to Articles 3H and 4B of the Constitution neither NISCGA or Sports Associations

can act unilaterally and in isolation when it comes to selecting and training athletes for the Commonwealth Games.

[15] Despite my decision of 30 June NISCGA, and in particular it seems NISCGA, appears to continue to act unilaterally. NISCGA does provide some explanations that matters are now out of NISCGA's control in terms of getting new athletes accredited.

[16] As I say the athletes are the innocent parties and they should not be deprived of their opportunity to represent Niue at the Commonwealth games.

[17] The application for injunction is declined and dismissed.

Decision – contempt of Court

[18] Application is also made in reliance on s 101 of the Niue Act 1966 that states:

101. Contempt of Court defined - Every person is guilty of contempt of the High Court who-

(a) Disobeys any judgment or order of that Court, or of any Judge thereof, otherwise than by making default in the payment of a sum of money (other than a penalty) or compensation payable under the judgment or order; or

(b) Uses any abusive, insulting, offensive, or threatening words or behaviour in the presence or hearing of the Court; or

(c) Assaults, resists, or obstructs, or incites any other person to assault, resist, or obstruct, any constable or officer of the Court in serving any process of the Court, or executing any warrant of the Court or of a Judge thereof, or executing any judgment or order of the Court or of a Judge thereof; or

(d) By any words or behaviour obstructs in any manner the proper and orderly administration of justice in the Court; or

(e) Does any other thing which elsewhere in this Act or in any other Act is declared to be a contempt of the High Court; or

(f) Aids, abets, counsels, procures, or incites any other person to commit contempt of the High Court.

[19] No specific grounds are noted with regard to the issue of contempt of Court. I presume that it is contended that Mr Talagi or the NISCGA Executive are not obeying the Court's judgment of 30 June 2022 and are therefore in contempt of Court.

[20] It is unclear whether Mr Talagi's is operating on his own or whether it is the NISCGA Executive who are making final decisions. To complicate matters further it was unclear to

me whether the athletes' submissions filed by Mr Lui were done so in his capacity as an executive member of NISCGA or as the Manager of the Commonwealth Team.

[21] Certainly, Mr Talagi's actions as president of NISCGA have been in breach of the NISCGA Constitution but more concerning is that his actions potentially put athletes' opportunities to attend the Commonwealth games in jeopardy. His actions must raise genuine concerns for the sports people of Niue going forward.

[22] As I say this is a presumption given no actual grounds of contempt are submitted and it is unclear who it is alleged is in contempt of Court. I presume that the contention is that Mr Talagi or NISCGA Executive are not obeying the Court's decision of 30 June and continues to act unilaterally in breach of Articles 3H and 4B of the NISCGA Constitution. However, I am not prepared to speculate as to the situation with regard to contempt matters.

[23] This part of the application is also dismissed.

C T Coxhead
CHIEF JUSTICE