

SOLOMON SUNAONE MAMALONI -v- ATTORNEY GENERAL (FIRST RESPONDENT) & THE GOVERNOR GENERAL (SECOND RESPONDENT)

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 290 of and 291 of 1993

Hearing: 24 September 1993

Judgment: 8 October 1993

R. Teutao for Applicant

Attorney General In person.

A. Radclyffe for the Second Respondent

PALMER J. On the 18th of June 1993 the people of Solomon Islands waited for the election of a new Prime Minister. The election meeting was conducted in private, before and by His Excellency, the Governor General of Solomon Islands. The High Court Building had been temporarily converted into the Parliament House for that purpose.

There were all 47 members present and voting. Only two candidates had been nominated and contesting; Honourable Francis Billy Hilly, and Honourable Solomon Sunaone Mamaloni.

In his affidavit filed on the 23rd of September 1993, His Excellency stated at paragraph 3 of the affidavit:

"Before the election took place on the 18th June 1993, I went through the procedure with the Honourable members. The Applicant was present. I explained, inter alia, that a candidate who receives 24 or more votes would be declared Prime Minister. I asked if everyone was satisfied. None of the Honourable members queried what I had said."

The ballot was conducted and Hon. F.B. Hilly received 24 votes, Hon. S.S. Mamaloni received 23 votes. His Excellency then declared Hon. F.B. Hilly as the newly elected Prime Minister. He was sworn in later, on the same day at a ceremony held at Lawson Tama.

The Applicant's case centres around the interpretation of the words 'absolute majority', as used in paragraph 7(1) of Schedule 2 to the Constitution. He says that the true definition of the words 'absolute majority' is contained in section 144(1) of the Constitution. That definition reads:

"absolute majority' means at least one half of all the members plus one"

He submits that this definition must necessarily apply to paragraph 7 of Schedule 2 to the Constitution. This is what I would regard as the fundamental assumption which forms the springboard on which this application has been launched.

From that premiss, it is alleged that a misconstruction of paragraph 7(1) of Schedule 2 to the Constitution has occurred, in which His Excellency failed to consider the significance of the words 'at least' as used in section 144(1) of the Constitution.

Mr Teutao then proceeded at great lengths and in great detail, citing numerous authorities, to justify and explain what judicial authorities in other jurisdictions have ascribed as to the meaning to be attached to the words 'at least'. I will mention these very briefly, as it seems to me that the real issue before me, is not so much the meaning of the words 'at least' as the application or non-application of the definition of the words, 'absolute majority' in section 144(1) to paragraph 7(1) of Schedule 2 to the Constitution.

In other words, is it proper and correct to apply the definition in section 144(1) of the Constitution, to paragraph 7(1) of Schedule 2 to the Constitution, as assumed by Mr Teutao?

If the definition in section 144(1) of the Constitution should be applied, then Mr Radclyffe seems not to have taken any issue at all about the way the words 'at least' should have been interpreted. His attack rather is that the words 'absolute majority' should be given their literal and plain meaning within the context of Schedule 2. When that happens, the result of 24:23 votes is an absolute majority vote! I will expound on this later, as this is a crucial point if not, the crucial point in this application.

The learned Attorney General prefers to attack the definition in section 144(1) of the Constitution head-on, by taking what I would call as the pragmatic and simplistic approach. He submits that if the formula is applied, we get 23.5; plus one, equals 24.5. Is there such a person as a half person (flesh and blood)? The answer is no. So what do you do with that fraction? You simply ignore it. The required majority therefore is 24. I wish it was that simple, and that courts had taken such a pragmatic and simplistic

approach in the interpretation of the law. However, the court is not bound by the practicalities of the case so much as the literal and ordinary meaning that should be attached to the words 'at least'.

Mr Teutao has presented a very well researched case as to the meaning of the words 'at least', and in my view an unassailable one.

The correct definition that should be given to the words 'at least' in this case is in my view, 'the lowest minimum', or 'the lowest limit'. In other words, "not less than". The various authorities cited by Mr Teutao are directly to the point. (see 'Corpus Juris Secundum', Volume 7 pages 201 & 202; various English Authorities including:

Dodds -v- Walker [1981] 2 All E.R 609 (H.C), Thompson -v- Stimson [1960] 3 All E R 500, E J Riley Investments Ltd -v- Eurostile. Holdings Ltd [1985] 3 All E R 181; Manorlike Ltd -v- Le Vital Travel Agency and Consultancy Services Ltd [1986] 1 All E. R. 573; Keene -v- Water Resources Commission [1985] 55 LGRA 85; Young -v- Higgon [1840] 6 M & W 49, 1st E.R. 317.)

There is an interesting case in Australia, the case of, *Attorney General for the State of New South Wales (at the Relation of Mckellar) -v- The Commonwealth of Australia and others 139 C.L.R [1978], 527*, in which the High Court was also faced with the question of dealing with fractions of human beings. It solved this problem by applying a rule of approximation, which says that the nearest whole number shall prevail. That case is to be distinguished however from this, by the use of the words 'at least' in this case, which means that you cannot go below the fraction stated.

Applying the formula therefore, at least one half of 47 members, is 24. There is no such person as a 23 and a half person. However, that does not mean that such a fraction should be ignored. 23.5 is the lowest minimum that one can go to. The next whole number is 24. It cannot be 23. Mr Teutao therefore is correct in his submission as to the correct definition of the words 'at least' and its application in the case where there are 47 seats in parliament. If the formula is to be applied, then the correct absolute majority required would be 25.

The definition of the words 'at least' however, is not the crucial issue.

The crucial issue, and this is contained in the submission of Mr Radclyffe, is that the context in which the words 'absolute majority' are used must first be considered, before coming to the conclusion that the definition in section 144(1) applies. The first part of section 144(1) reads: "*In this Constitution, unless the context otherwise requires*". Mr Radclyffe submits that in a 47 seat parliament, where the number is an odd number, an

absolute majority can be obtained on a difference of one vote. This is what has happened in this case. Honourable Francis Billy Hilly received 24 votes; one vote more than the total votes of his only rival, the applicant in this case. On that basis, the requirement of absolute majority as demanded in paragraph 7(1) of Schedule 2 to the Constitution had been complied with, and therefore it is not necessary to apply the formula in section 144(1) of the Constitution. In an even number of seats, such as the last parliament of 38 seats, an absolute majority will be obtained on a difference of two votes. Since the increase was made to 47 seats, an absolute majority can be obtained on a difference of one vote.

What does the word 'context' mean? In the 'Australian Little Oxford Dictionary' it is defined as: "*what precedes and follows word or passage*". In "*The Shorter Oxford English Dictionary on Historical Principles, Volume A- Markworthy*" it is defined as: "*The parts which immediately precede or follow any particular passage or text and determine its meaning*"

The word 'context' plays a very important role in the interpretation of statutes, regulations, bye-laws or even Constitutions. A certain word used in a statute may have several meanings. However, when that word is considered within the context in which it is found, in the section or within the scheme of the whole Act, then the true or correct meaning should become apparent. A common phrase often heard is that 'words must be read within their context' or the 'Act must be read as a whole'. In his book 'Statutory Interpretation', by Donald Gifford at page 61 he made the following statements.

"No part of an Act can be considered in isolation from its context - the whole must be considered. In the complex task of wrestling and true construction of an Act it cannot be compartmentalised and scrutinised molecularly. An Act is not to be read as though each word and phrase was in a watertight compartment, and in such a way as to defeat the manifest purpose of the Act. The various provisions must be harmonised and it may be necessary for this purpose to read down general words - but if so they should not be read down any further than is absolutely necessary to achieve that harmony. The words used must be construed having regard to the quality of the Act revealed by a consideration of all its provisions and the meaning of the provision is to be gathered from the statute as a whole. The rule allows the court to avoid absurdity and anomaly as well as repugnancy and inconsistency."

In 'Halysbury's Laws of England', 4th Edition Vol. 44 at paragraph 871, the learned author states:

"Although the words of a statute are normally to be construed in their ordinary meaning, due regard must be had to their subject matter and object, and to the occasion on which and the circumstances with reference to which they are used and they should be construed in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from that context. If the sense of a word can be so determined, then recourse need not be had to its use in other sections of the statute or in other statutes."

And continuing at para. 872:

"For the purposes of construction, the context of words which are to be construed includes not only the particular phrase or section in which they occur, but also the other parts of the statute.

Thus a statute should be construed as a whole so as, so far as possible, to avoid any inconsistency or repugnancy either within the section to be construed or as between that section and other parts of the statute. The literal meaning of a particular section may in this way be extended or restricted by reference to other sections and to the general purview of the statute".

In *Attorney General -v-Prince Ernest Augustus of Hanover [1957] A C 436 at 461* quoted in *Francis Bennion's book 'Statutory Interpretation' Second Edition at page 430, Viscount Simonds said:*

".....words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use 'context' in its widest sense..... its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy I must admit to a consciousness of inadequacy if I am invited to interpret any part of any statute without a knowledge of its context in the fullest sense of that word."

The background setting in this case is, as I have outlined at the beginning, the election of a Prime Minister, by the 47 members of Parliament, with each and every member entitled to cast a single vote each.

There are two questions that I pose at this point. First, does paragraph 7(1) of Schedule 2 to the Constitution require a particular formula of absolute majority to be applied? Secondly, does paragraph 7(1) specify a minimum number or a particular number of votes difference that must be attained by an absolute majority vote?

The words 'absolute majority' are common, every day words in the English Language. They are not words of art.

The word 'absolute' is defined in the Oxford Advanced Learner's Dictionary of Current English by, A.S. Gimson, Oxford University Press as inter alia, "*complete, perfect.*" In 'The Smaller Oxford English Dictionary on Historical Principles' Volume A-- Markworthy the word 'absolute' is defined inter alia as "*entire, pure.*"

In 'Words and Phrases' Permanent Edition West Publishing Co., Vol. A-- Accident, it is defined as inter alia: "*finished; total; positive; clear; certain.*"

The word 'majority' is defined as "*the greater number or part (of); number by which votes for one side exceed those for the other side.*" (see Oxford Advanced Learner's Dictionary of Current English). In the Shorter Oxford English Dictionary, it is also defined as:

"The state or fact of being greater; superiority; pre-eminence; The greater number or part; more than half; The number by which, in voting, the votes cast on one side exceed those cast on the other."

In 'Black's Law Dictionary' Henry Campbell Black, 5th Edition, it defines 'majority' as: "*The greater number. The number greater than half of any total.*" Under the words 'majority vote' the following definition is used: "*Vote by more than half of voters for candidate or other matter on ballot. When there are only two candidates, he who receives the greater number of the votes cast is said to have a majority; when there are more than two competitors for the same office, the person who receives the greatest number of votes has a plurality, but he has not a majority unless he receives a greater number of votes than those cast for all his competitors combined.*"

Of all the dictionaries consulted, the 'Australian Little Oxford Dictionary' contains a definition of the two words put together; it reads: "*absolute majority, one over all rivals combined.*" The words 'absolute majority' in my view are fairly clear and unambiguous.

Applying the literal and plain meaning rule to the words 'absolute majority', in the context of the 47 members electing a Prime Minister, is the result of 24 to 23 votes an absolute majority vote? The answer I think is fairly obvious. There is clearly one absolute, whole, perfect vote difference between Honourable Francis Billy Hilly and the Applicant. The gap is bridgeless. There is no way that the Applicant can ever defeat Hon. Francis Billy Hilly on a vote of 23 as against 24. The total votes have been exhausted and Hon. Francis Billy Hilly has emerged as the overall winner; one vote over and above his only rival.

Seeing then, within that context, an absolute majority vote has been obtained, should the formula or definition in section 144(1) of the Constitution be applied nevertheless?, in other words, is its application mandatory?

Mr Teutao did not address this question, and thereby making in my view, the fundamental error in assuming that the definition applies anyway. Mr Radclyffe is correct in my humble opinion in saying, that where the context says that a vote of 24:23 is an absolute majority, then the formula in section 144(1) of the Constitution shall not apply.

Earlier on, I posed two questions without answering them. I will now do so. First, no where in Schedule 2 to the Constitution does it say that the definition in section 144(1) shall apply to the definition of the words 'absolute majority' in paragraph 7 of Schedule 2 to the Constitution.

If it had intended its application to be mandatory it would have said so. Secondly, no where in paragraph 7 of Schedule 2 does it say that there must be a minimum of say two votes difference for an absolute majority to be obtained.

There is a third reason, which strongly supports the contextual interpretation to be given to the words absolute majority, and this is to be seen in the words "*unless the context otherwise requires*". This phrase permits the context within which the words 'absolute majority' are contained, to take precedence over the definition in section 144(1) if there has been an absolute majority vote obtained (as in the result of 24:23), although it did not comply with the formula in section 144(1) to the letter.

The fourth reason is to be seen by comparing the effect of the words 'absolute majority' as used in section 34(1) of the Constitution, to paragraph 7 of Schedule 2.

Section 34(1) reads as follows:

34-(1)"If a resolution of no confidence in the Prime Minister is passed by Parliament by an absolute majority of the votes of members thereof the Governor-General shall remove the Prime Minister from office, whereupon the members of Parliament shall meet as soon as possible during the same session of Parliament to elect a new Prime Minister in accordance with the provisions of Schedule 2 to this Constitution."

Assuming for one moment that the same facts in the election of the Prime Minister also exist here, i.e there are 47 members present and voting, and assuming that when the results were tallied, they were 24 votes in favour of the no confidence motion, and 23

votes against. But just before the Honourable Speaker makes the announcement that the motion of no confidence had been carried, on a majority of 1 vote, the Prime Minister jumps up from his seat and raises a point of objection. The objection, is that the words 'absolute majority' as defined in section 144(1) of the Constitution, requires that there must be 25 votes in favour of the no confidence motion, to succeed, and not 24! If the speaker of the House should accept that, and dismiss the motion of no confidence, what is the likely outcome of future parliamentary meeting and conduct of Government business in parliament? First, there will be in power, a minority Government. Second, assuming that all 24 members are so closely knitted together and all vote together, then no business of the Government which requires a majority vote would ever get past the first reading stages. The whole machinery of parliamentary process and Government business will grind to a halt. No budget will be passed, no legislation made, amended or repealed, and the Government will be faced with a major crisis.

It seems so certain and clear, that in such a situation, a 24:23 vote of no confidence on the Prime Minister, will be sufficient to have him unseated, as an absolute majority of votes. You would not need to apply the definition of section 144(1) of the Constitution in such a case. It is not only unnecessary, inappropriate and inapplicable, but repugnant to the whole democratic principles of majority rule. I do not think that in such a situation, such a result would not be regarded as an absolute majority. In other words, the context requires that an 'absolute majority' is obtained on a vote of 24:23.

The argument then follows, that if a 24:23 result is sufficient as an absolute majority vote to unseat the Prime Minister under section 34(1) of the Constitution, then isn't it equally sufficient to elect a new Prime Minister with!

The fifth reason which supports the contextual interpretation is to be found in section 71(1) of the Constitution. That subsection reads:

"Subject to the provisions of this Constitution, all questions proposed for decision in Parliament shall be determined by a majority of the votes of the members present and voting".

What this means, is that a Government with only one vote majority will be able to carry out most of its duties and responsibilities in Parliament, with the exception only of certain entrenched provisions in the Constitution, which would require votes not less than three -quarters of all the members (section 61(2) of the Constitution) and of votes not less than two-thirds of all the members of Parliament. (see section 61(3) of the Constitution).

The sixth reason, is that, despite the submission of Mr Teutao that a one vote difference would be too unstabilizing and contrary to the purposes for which it was intended an absolute majority should be, it is perfectly Constitutional and valid to have a Government with only one vote majority. I will demonstrate this shortly.

Assume for one moment that there are 3 candidates contesting in the first ballot. The first one received 20 votes, the second, 19 votes, and the third, 8 votes. A second ballot would therefore be necessary. The candidate with the fewest votes would be eliminated under paragraph 7(2)(a). Paragraph 7(5) would subsequently be activated. The result of the second ballot is 24:23 votes. The winning candidate would have obtained a greater number of votes and gotten elected on a one vote difference. The argument therefore by Mr Teutao cannot stand.

Mr Teutao was asked in court how the elimination process in paragraph 7 would operate in the case where the vote 24:23 was not an absolute majority. He mentioned in his submissions, that in such a case, a further ballot should have been held, and only then can the elimination process take place after the second ballot. So if, the applicant should again receive 23 votes, then, and only then can he be eliminated. With due respects, I cannot agree. If the elimination process is to take place, then it commences after the first ballot. Paragraph 7(2)(a) makes this crystal clear. I quote:

"If no candidate should receive an absolute majority of votes at the first ballot a further ballot shall be held wherein-

(a) the candidate who received the fewest votes at the first ballot shall thereby be eliminated."

It is my view however, and this is obiter, that if the absolute majority required was 25 votes, and it was not obtained in the first ballot, then further ballots should be held until the required number of votes is obtained, or the election is countermanded and the procedure commenced anew. To suggest that the elimination process would commence after the second ballot in my view, is not only illogical, but a non sequitur.

The seventh reason why I am convinced that the contextual interpretation as submitted by Mr Radclyffe is the correct interpretation to be applied to the words 'absolute majority' in paragraph 7 of Schedule 2 to the Constitution, is actually contained in the article referred to by Mr Teutao, written by Yash Ghai, the author of the Constitution, and contained in the book 'The Making of the Independence Constitution' in Solomon Islands Politics (edited by Peter Larmour and Sue Torua) Institute of Pacific Studies; USP, Suva, 1983. In his article commencing at page 32 to page 33, this is what Yash Ghai said:

"(ii) *The most significant modifications related to the appointment and dismissal of the Prime Minister. Under the conventional system, the head of state appoints as prime minister the member of parliament who in her view commands the support of the majority of the members. She can also deprive him of that office if she considers that he has ceased to command that support (normally evidenced by a vote of no confidence in Parliament). The modifications that were adopted had in fact been devised in 1974 when the Governing Council was abolished, and provision was made for the post of Chief Minister. The British officials had wanted the appointment to be made by the Governor from among the elected members. The elected members opposed this and proposed that the members should themselves elect the Chief Minister. They were anxious to minimise the influence of British officials, suspicions of whom had been one reason for the opposition to the Governing Council. Their proposal was accepted, and the first ever Chief Minister - Solomon Mamaloni - was elected by the members. The Constitutional Committee recommended that the Prime Minister should be elected in the same manner, and all the councils endorsed this. The recommendation received the support of the Assembly, who were by then familiar with the method, having used it on three occasions. The system worked, if **no overall majority resulted in a ballot**, by the elimination of the candidate securing the least votes, until such time as a **majority resulted**, or only two candidates remained, in which case the one with the **larger vote** was declared Prime Minister. The method had, however, raised some practical difficulties. There had been too many candidates. Ballots were held in rapid succession if no majority emerged, which did not give the supporters of the weak candidates time to discuss shifting their allegiance and negotiating concessions. Candidates once nominated could not withdraw, even if it appeared they enjoyed little support. Too many ballots were necessary. (These defects might be reduced by requiring the nomination of a candidate to be supported by four other members, the lapse of one day between ballots, and permitting a candidate to withdraw). Once elected, the Prime Minister could be removed by the Head of State only if Parliament had passed a motion of no confidence in him by **an absolute majority**, leaving no discretion in the Governor-General.*

Although not without difficulty, this method of dealing with the choice and removal of the Prime Minister made considerable sense in the political circumstances of Solomon Islands. There was no well-defined party system, and most candidates stood as individuals rather than as part of a group. It would have been extremely difficult for the Governor-General to determine which member enjoyed majority support. After the general elections, the leading candidates have to mobilise and negotiate their support, and any premature intervention by the Governor-General would have tilted the balance in favour of one candidate and exposed the extreme discretion vested in him. It would have inevitably drawn him into political

controversy. Election by Parliament provides a means to determine the member with the highest popularity, enables the leading contenders to put together coalitions, and ensures to an extent support for the Prime Minister in the house. The importance of these functions is the greater for want of developed and stable party system. Yet, if and when parties do develop, the rules should cause little difficulty as the largest party or largest coalition should be able to elect its leader the Prime Minister."

The most significant thing in my view, in respect of what the learned author of our Constitution has said concerning the election of a Prime Minister is the consistency and harmony with the contextual interpretation of the words 'absolute majority' as submitted by Mr Radclyffe. Yash Ghai's choice of words is most illuminating. He refers to an 'overall majority' in any ballot. Isn't this the same thing as an absolute majority? Honourable Francis Billy Hilly did receive an overall majority in the election on the 18th of June 1993.

The only time Yash Ghai uses the words 'absolute majority' is when describing the process by which a motion of no confidence on the Prime Minister can be passed. As already seen, in the example I have earlier referred to, isn't he saying the same thing as an overall majority, ie. more votes cast for the no confidence motion than all the votes cast against, combined together, even if the difference is by one vote!

At page 33 Yash Ghai mentions the words 'majority support' and then describes the election of the Prime Minister by Parliament as a means of determining which member has the highest popularity! Isn't this exactly what has happened in Hon. Francis Billy Hilly's case? He has the highest votes and therefore enjoys the highest popularity. This also means that he has support in the house and cannot be removed except, if one of his supporters should throw in his or her towel, and crosses the house to the other side. If that does not happen, then Hon. Francis Billy Hilly will never be removed as Prime Minister, and is as secure as if he had 3 or more majority votes in his favour. Honourable Francis Billy Hilly has not been appointed by the Governor General. He has been elected by the majority of members in Parliament. He enjoys an 'overall majority' support in the house, which is equivalent to an absolute majority support in the house; one vote over and above the total combined of his only rival.

His Excellency therefore has not committed any error of law whatsoever, and was perfectly entitled to say as he did in his determination on the 6th of August 1993:

"I am convinced that the absolute majority in this case is 24 votes."

The issue of estoppel by conduct does not arise in this case; neither the issue of error of law apparent on the face of the record.

Both applications in CC 290/93 and 291/93 are dismissed with costs.

(A.R. Palmer)

JUDGE