IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

IN THE MATTER of the Constitution and the Electoral Act 1963

A N D

IN THE MATTER of Part XVIII of the Supreme Court (Civil Procedure Rules) 1980

BETWEEN: **LEOTA LEULUAIALII ITUAU ALE** of Solosolo, Anoamaa-i-Sisifo, Member of Parliament

Applicant

A N D: **AFAMASAGA FATU VAILI** of Fasitoo-tai, Speaker of the Legislative Assembly of Western Samoa

Respondent

Counsel: T. Malifa for applicant in support of motion
R. Drake for respondent to oppose

Hearing: 14th June 1994

Judgment: 29th June 1994

JUDGMENT OF SAPOLU, CJ

This is a motion by the Member of Parliament for the territorial constituency of Anoamaa-i-Sisifo (hereinafter for convenience referred to as **"the applicant"**) seeking certain orders from this Court. The first of these orders is an injunction to restrain the Speaker of the Legislative Assembly (hereinafter for convenience referred to as **"the respondent"**) or

any person acting by or giving effect to the respondent's decisions dated 21 and 31 March 1994 that the applicant's parliamentary seat has been terminated. In the course of the argument in this case, counsel for the applicant advised the Court that he was not pressing this part of the motion for an injunction too hard. The second of the orders sought is an order to declare invalid the report made by the respondent to His Highness the Head of State that the applicant's parliamentary seat was vacant as that report was made in error. In the course of the argument, counsel for the applicant also advised the Court that the motion includes an application for an order to declare that the applicant still validly holds his seat as a Member of Parliament. There was no objection from counsel for the respondent to this order being sought. So the Court will proceed on the basis that three orders are being sought by the applicant.

The principal grounds advanced in support of the motion are, firstly, the respondent had no power or authority to terminate the applicant's seat as a Member of Parliament and, secondly, only the Supreme Court has the power to determine all questions that may arise as to the right of any person to remain a Member of Parliament.

The Court will now deal with the first order sought by the applicant and then with the second and third orders. The evidence on which the argument by counsel for the applicant is based in relation to this part of the case may be briefly stated. The applicant did not attend the three sittings of the Legislative Assembly on 15, 16 and 17 March 1994 because of injuries he sustained from a car accident at Vailele on 12 March. On 21 March the respondent wrote to the applicant in New Zealand regarding his absence from the sittings of the Legislative Assembly for three consecutive

days. The text of that letter is in Samoan but the relevant parts may be translated into English as follows :

> "An inspection of the record of Members attending each sitting "of Parliament has shown your absence from the sittings of "Parliament held on Tuesday 15, Wednesday 16 and Thursday, "17 March 1994 without permission of the Speaker. The absence of "a Member from the sittings of Parliament for three consecutive "days without permission of the Speaker is clearly provided in "the Electoral Act and safeguarded by the Constitution of "Western Samoa.
>
> "....
>
> "Due to your non-compliance with the provisions of the Electoral "Act and the Constitution of Western Samoa, you are therefore "disqualified or incompetent to hold your seat as a Member of "Parliament, commencing as from today, Monday, 21 March 1994.
>
> "I regret the situation which has arisen but as you are well "aware the provisions of the Electoral Act are clear as to the "circumstances where the seat of a Member of Parliament is "terminated, as well as all the provisions of Article 47 of the "Constitution of Western Samoa pertaining to this matter.
>
> "With due respect
>
> "(sgd) Afamasaga Fatu Vaili
> " SPEAKER "

By letter dated 25 March 1994, the applicant in reply to the respondent's letter sent his courteous apologies and explanation for not attending the sittings of the Legislative Assembly on 15, 16 and 17 March which was due to injuries he sustained in a car accident. In the same letter, the applicant requested from the respondent one more opportunity to serve his territorial constituency. In a brief letter dated 31 March 1994, the respondent replied to the letter from the applicant. This second letter by the respondent is in Samoan but may be translated into English as follows :

"Further to your letter of 25 March 1994, I reply as follows.
"My decision as conveyed to you in my letter of 21 March 1994
"still remains.

"With respect

"(sgd) Afamasaga Fatu Vaili
" SPEAKER "

By letter dated 12 April 1994, the applicant sought from the respondent a change in his decision. There seems to have been no reply from the respondent to that letter from the applicant. Now I have set out the relevant texts of the two letters sent by the respondent to the applicant because of their significance to the decision to be made on the first order sought in the present motion.

Then on 7 April 1994 the respondent reported to His Highness the Head of State pursuant to Article 48 of the Constitution that the parliamentary seat for the Anoamaa-i-Sisifo territorial constituency was vacant. It is also important that the text of that report be set out herein :

"In compliance with the provisions of the Constitution of the
"Independence State of Western Samoa, Article 48, I hereby
"report that the Parliamentary Seat for Anoamaa-i-Sisifo
"Territorial Constituency is now vacant pursuant to the provi-
"sions of the Constitution, Article 46, clause (2) subclause (d)
"with reference to the provisions of the Electoral Act, section
"10 paragraph (a).

"**GIVEN** under my hand this 7th day of April 1994

"(sgd) Afamasaga Fatu Vaili
"**SPEAKER OF THE LEGISLATIVE ASSEMBLY**"

Counsel for the applicant in his industrious argument says that the respondent has terminated the applicant's parliamentary seat but he had no

authority to do so. The authority to determine all questions that may arise in relation to the right of a person to remain as a Member of Parliament has been vested by Article 47 of the Constitution in the Supreme Court. Therefore the action of the respondent in terminating the applicant's seat as a Member of Parliament must be invalid. Article 47 of the Constitution provides :

> "All questions that may arise as to the right of any person
> "to be or to remain a Member of Parliament shall be referred
> "to and determined by the Supreme Court".

Reference was also made by counsel for the applicant to the official record of the Constitutional Convention Debates 1960 and in particular to the discussion on Article 47, and he says he finds nothing in there which vests in the Speaker authority to terminate the seat of a Member of Parliament.

Counsel for the applicant also refers to section 10 of the Electoral Act 1963 and goes on to argue that there is nothing in that provision which is inconsistent with Article 47 of the Constitution so that his argument based on Article 47 still stands. Section 10 of the Electoral Act 1963 provides for the circumstances where the seat of a Member of Parliament shall become vacant. In particular, paragraph (a) of that section says :

> "The seat of a Member of Parliament shall become vacant on
> "the occurrence of any of the events specified in subclauses
> "(a), (b) and (c) of clause 2 of Article 46 of the Constitu-
> "tion, and in addition he shall be disqualified from holding
> "his seat if on three consecutive days he fails, without
> "permission of the Speaker of the Legislative Assembly, to
> "attend in the Assembly".

Now Article 46(2) of the Constitution provides :

> "The seat of a Member of Parliament shall become vacant -
>
> "(a) upon his death; or
> "(b) if he resigns his seat by writing under his hand
> " addressed to the Speaker; or
> "(c) if he becomes disqualified under the provisions
> " of this Constitution or of any Act".

By the use of the word "shall" in both section 10 of the Electoral Act 1963 and Article 46(2) of the Constitution, it is clear that those provisions are mandatory. It is also clear that Article 46(2)(d) provides the constitutional authority for the enactment by Parliament of section 10 of the Electoral Act. On the particular point submitted by counsel for the applicant that there is no inconsistency between the provisions of section 10 of the Electoral Act 1963 and Article 47 of the Constitution, I agree. Section 10 is an expansion of the specific circumstances where the seat of a Member of Parliament shall become vacant as provided in Article 46 of the Constitution. Article 47 on the other hand refers to the tribunal authorised by the Constitution to deal with all questions which may arise as to the right of any person to be or to remain a Member of Parliament. So the two provisions relate to two different although somewhat related matters. And there is no inconsistency between the two provisions as they presently stand.

Now counsel for the respondent says that the respondent accepts that the authority to determine any question which may arise as to the right of any person to be or to remain a Member of Parliament has been vested in the Supreme Court by Article 47 of the Constitution. She also accepts that there is no inconsistency between section 10(a) of the Electoral Act 1963

and Article 47 of the Constitution. What counsel for the respondent disputes is the allegation by counsel for the applicant that the respondent terminated the applicant's parliamentary seat. Counsel for the respondent says that the respondent did not terminate the applicant's parliamentary seat but was merely following the provisions of the law as set out in Article 46(2) of the Constitution and section 10 of the Electoral Act 1963. She argues that when the applicant failed to attend the sittings of the Legislative Assembly for three consecutive days without permission of the Speaker, his seat as a Member of Parliament automatically became vacant by operation of law as provided in section 10(a) of the Electoral Act 1963. So there was nothing for the respondent to terminate as section 10(a) of the Act has already dealt with the situation that arose. And when the respondent wrote on 21 March 1994 to the applicant in New Zealand, it was not to terminate the applicant's seat as a Member of Parliament but to inform him that he was disqualified under the provisions of the Electoral Act 1963 and the Constitution for failing to attend the sittings of the Legislative Assembly for three consecutive days without permission of the Speaker. So counsel for the respondent goes on to say that the respondent was not determining any question as to the appellant's right to remain a Member of Parliament in contravention of Article 47 of the Constitution but merely informing the applicant that he was disqualified from holding his seat as a Member of Parliament by operation of law.

Turning to the report sent by the respondent to His Highness the Head of State, counsel for the respondent argues that that report was not a termination of the applicant's parliamentary seat but performance by the respondent of his duty to report to the Head of State, as required by Article 48 of the Constitution, any vacancy that has occured to the seat of

a Member of Parliament. For the sake of clarity, Article 48 provides :

> "Whenever the seat of a Member of Parliament becomes vacant
> "under the provisions of clause (2) of the Article 46, the
> "Speaker shall, by writing under his hand, report that
> "vacancy to the Head of State, and the vacancy shall be
> "filled by election in the manner provided by law".

Now section 10 of the Electoral Act 1963 was enacted by Parliament pursuant to the autority of Article 46(2)(d) of the Constitution; therefore any vacancy to the seat of a Member of Parliament that arises under section 10 is also subject to the reporting requirements of Article 48 of the Constitution. And it is the duty of the respondent as the Speaker to report such vacancy to the Head of State.

So the essence of the dispute in this part of the case is whether the respondent did or did not terminate the applicant's seat as a Member of Parliament. There is no dispute that the respondent as Speaker does not have authority to terminate the seat of a Member of Parliament. Both counsel are in agreement on that point. The question in dispute whether the respondent did or did not terminate the applicant's parliamentary seat is a question of pure fact. In general, the Courts are disinclined to make declarations on pure questions of fact, especially where the facts of a case are in dispute : **Re a Lease, Barber v Hampling [1948] NZLR 855, Collins v Lower Hutt City Corporation [1961] NZLR 250, New Zealand Insurance Co Ltd v Prudential Assurance Co Ltd [1976] 1 NZLR 84, Van Kessel v Human Rights Commission [1986] 1 NZLR 628, R v Sloan [1979] 1 NZLR 474.** In this case the facts are not really in dispute but it is the interpretation of those facts which is in dispute. Out of respect to the industry of counsel and in view of the fact that a substantial part of the argument was focussed

on the question whether the respondent did or did not terminate the applicant's parliamentary seat, the court will proceed to make a finding of fact on this point. In doing that the Court will have to return to the relevant evidence.

Here I will refer again to the letter dated 21 March 1994 which the respondent sent to the applicant in New Zealand. In the first paragraph of that letter, the respondent says that an inspection of the record of attendance of Members of Parliament shows that the applicant failed to attend the sittings of the Legislative Assembly on 15, 16 and 17 March 1994 without the permission of the Speaker. In the second paragraph of the same letter, the respondent points out that the absence of a Member of Parliament from the sittings of the Legislative Assembly for three consecutive days without the Speaker's permission is clearly provided in the Electoral Act and safeguarded by the Constitution. In the next paragraph of his letter the respondent goes on to say that due to your (the applicant's) non-compliance with the provisions of the Electoral Act and the Constitution you are therefore disqualified or incompetent to hold your seat as Member of Parliament as from 21 March 1994. And then in the last paragraph of his letter, the respondent says that as you are well aware the provisions of the Electoral Act are clear as to the circumstances where the seat of a Member of Parliament is terminated. The respondent also specifically mentions in the same paragraph the provisions of Article 47 of the Constitution.

After careful consideration of the contents of the respondent's letter of 21 March, it is clear to the Court that the respondent in that letter was not by his own individual actions terminating the applicant's

parliamentary seat in the sense of bringing to an end his membership in Parliament. The references in the respondent's letter to the Electoral Act and the Constitution clearly show that the respondent had the provisions of that Act and the Constitution very much in mind when he wrote his letter of 21 March to the applicant. And when it says in the respondent's letter that the absence of a Member of Parliament from the sitting of the Legislative Assembly for three consecutive days without permission of the Speaker is clearly provided in the Electoral Act, the respondent clearly must have had the provisions of section 10(a) of the Act in mind for there is no other provision of the Act on the same subject matter. Then when the respondent goes on to say that due to your non-compliance with the provisions of the Electoral Act and the Constitution you are therefore disqualified or incompetent to hold your seat as a Member of Parliament, that is quite clear that the applicant was disqualified not by any personal action taken on the part of the respondent but by virtue of the operation of the provisions of the Electoral Act and the Constitution. It is that disqualification which appears to me the respondent was conveying in his letter to the applicant. It also appears to the Court that the persistent references in the respondent's letter to the Electoral Act and the Constitution presumes that the letter is to be read and understood in relation to and against the backdrop of the provisions of the Electoral Act and the Constitution even though these provisions are not expressly set out in detail in the letter. Add to all that the specific reference in the last paragraph of the respondent's letter to Article 47 of the Constitution and the irresistable conclusion is that the respondent was aware of the provisions of Article 47 which say that the authority to determine all questions which may arise as to the right of any person to be or to remain a Member of Parliament is vested in the Supreme Court.

All this point to the conclusion that the respondent was not on his own volition and by his own individual actions terminating the applicant's seat as a Member of Parliament. The clear and reasonable conclusion to be drawn from the contents of the respondent's of 21 March is that the respondent was in that letter informing the applicant that he was disqualified from holding his seat as a Member of Parliament by operation of law.

In fairness to the industrious argument by counsel for the applicant, he did refer to the respondent's letter of 31 March which was in reply to the applicant's letter of 25 March. In that letter the respondent says that my decision as conveyed to you in my letter of 21 March 1994 still remains. It is not stated in the respondent's letter of 31 March what that decision is or what decision in the respondent's letter of 21 March it relates to. Be that as it may, counsel for the applicant, as I understand his argument, says that the use of the word "decision" by the respondent in his letter of 31 March 1994 and the reference back to his letter of 21 March suggests that the respondent was personally terminating the applicant's parliamentary seat.

After careful consideration, I am unable to accept this argument. As already stated, what the respondent was conveying in his letter of 21 March 1994 to the applicant was that he was disqualified from holding his parliamentary seat by operation of law. That is not a decision by the respondent but a consequence brought about by the independent operation of the provisions of section 10(a) of the Electoral Act 1963 and the respondent says so in his letter. And the Court cannot accept in the absence of clear words in the letter of 31 March 1994 that what the respondent meant or did by the use of the word "decision" in that letter was to transform the

message he conveyed in his letter of 21 March 1994 into a personal decision of the respondent and not a consequence brought about by the operation of the provisions of section 10(a) of the Electoral Act 1963. At best the word "decision" used in the respondent's letter of 21 March is ambiguous and vague in meaning.

There is only one matter contained in the letter of 21 March 1994 which may be termed a decision made personally by the respondent. That is the commencement date of the applicant's disqualification. The respondent says that the applicant is disqualified from holding his seat as a Member of Parliament commencing from Monday, 21 March 1994. But that is not a decision as to the actual disqualification of the applicant from holding his parliamentary seat. It is a decision as to the commencement or effective date of the disqualification which had already occured by operation of law. In any event, this seems to be a decision which is favourable to the applicant in terms of remuneration as a Member of Parliament. This is because it is arguable that once the circumstances provided in section 10(a) of the Electoral Act 1963 come into existence, a Member of Parliament is automatically disqualified from holding his seat and therefore the applicant appears to have been disqualified not as from 21 March but from 17 March. However, as this particular point was not argued by counsel I express no conclusive view on it. The argument by both counsel was focused on the question whether the respondent did or did not terminate the applicant's parliamentary seat and not the question of when the applicant was disqualified.

Perhaps I should also refer briefly in this connexion to another point which arises from the evidence. That is the request by the applicant

in his letter of 25 March 1994 to the respondent to be given one more opportunity to serve his territorial constituency. It appears to the Court that what the applicant was asking for from the respondent was his parliamentary seat back. In my view, it was not legally possible for the respondent to give back to the applicant his parliamentary seat once the circumstances provided in section 10(a) of the Electoral Act 1963 came into existence and section 10(a) comes into automatic operation. So the applicant's request to the respondent was not in order.

Be that as it may, the Court finds as a fact that the respondent did not terminate the applicant's seat as a Member of Parliament. If the respondent had done that then he would have been acting unlawfully for he has no lawful authority to terminate or disqualify a Member of Parliament from holding his seat. But the respondent has not done that. Accordingly the motion for an injunction to restrain any person from acting by or giving effect to the decision of the respondent terminating the applicant's parliamentary seat is refused.

Now the second order sought by the applicant is an order to declare the report made by the respondent to His Highness the Head of State that the applicant's parliamentary seat was vacant is invalid as that report was made in error. It was clear during the course of the argument that the error which is referred to here is that the respondent without authority terminated the applicant's parliamentary seat. As the Court has already found, the respondent did not terminate the applicant's parliamentary seat. What the respondent did was to inform the applicant that because he had for three consecutive days failed, without the permission of the Speaker, to attend the sittings of the Legislative Assembly, he was therefore

disqualified from holding his parliamentary seat by virtue of the operation of the provisions of the Electoral Act 1963. The applicant was therefore disqualified by operation of law and not by any decision taken by the respondent.

So the basis on which the applicant seeks to have the report by the respondent to His Highness the Head of State declared invalid is not valid. The order sought in this regard is therefore also refused.

I come now to the order sought by the applicant to declare that he is still validly holding the seat as a Member of Parliament. This must be the most important part of this case as far as the applicant is personally concerned. In dealing with this part of the case, it is necessary to refer to the evidence again. The evidence shows that on Saturday night, 12 March 1994, the applicant was involved in a car accident at Vailele and he sustained injuries from that accident. He was taken to the National Hospital the same night and was seen and examined by a doctor at the Out Patients Department. In his report the doctor says that the applicant was well conscious during his examination. The doctor noted the following injuries on the applicant : abrasions to both knees, a lacerated wound on the left knee, and bruised muscles causing muscle pain around the trunk and chest. The doctor also says that a chest xray was carried out on the applicant but no fracture was seen. The applicant's wound, which I take to mean the lacerated wound on the left knee, was stitched and antibiotics were prescribed. The doctor also advised the applicant to have bed rest for one week and to see the doctor immediately if any severe pain developed.

At 10.00am on Sunday morning, 13 March, Sergeant Pulepule and another police officer visited the applicant for police inquiries. According to Sergeant Pulepule, when he spoke with the applicant he noticed that the applicant was in a very critical condition and was lying down and could not get up for an interview. The applicant said that he had pains in his chest and on both knees. So further police inquiries were deferred.

On 17 March the applicant flew to New Zealand. In the evening of 18 March he went to the Remuera Central Care Clinic in Auckland where he was seen by a doctor who prescribed xrays and a course of medical treatment. On Monday, 21 March, the applicant called his family physician on the phone and advised him that he, the applicant, was attending the clinic as arranged. The physician replied to continue with his course of therapy at the clinic. Then on 7 April the applicant saw his family physician and complained about pain in his chest and back as still troubling him even though he was mobile and able to move about more freely. On 8 April an xray was done on the applicant and according to his physician's report "a small recent compression fracture in his vertebral body cannot be absolutely excluded. No other abnormality is detected". The physician then says that he told the applicant that the car accident had caused a compression fracture to one of his vertebrae. Pausing here for a moment, it is difficult for me to accept that the applicant's physician can be so definite in telling the applicant that his car accident had caused him a compression fracture to one of his vertebrae when earlier in his report the physician says in relation to the xray report that a small compression fracture to the applicant's vertebrae body cannot be absolutely excluded. It would have been more accurate for the physician to advise the applicant as to the precise result of the xray, namely, that

the possibility of a vertebrae compression fracture cannot be absolutely excluded instead of telling the applicant that he had sustained such a fracture. The physician then goes on in his report to say that the vertebrae compression fracture sustained by the applicant would have caused him considerable pain and agony and would have prevented him from moving around during the first one to two weeks following the car accident. I also find it difficult to accept this part of the physician's report because the applicant was able to move around within the first one to two weeks following the car accident. He flew to New Zealand on 17 March; and 18 March he went in the evening to the Remuera Central Care Clinic; and on 21 March the applicant advised the family physician that he was attending the clinic as arranged and the physician replied to continue with his course of therapy at the clinic. Thus the clear picture is that the applicant was moving around within the first one to two weeks following the car accident on 12 March.

I have dwelled on the applicant's injuries and health condition because of their relevance to the question the Court has to decide in this part of the case. Section 10(a) of the Electoral Act 1963 provides in mandatory terms that the seat of a Member of Parliament shall become vacant if on three consecutive sittig days he "fails", without permission of the Speaker, to attend in the Legislative Assembly. There is no dispute that the applicant did not attend the sittings of the Legislative Assembly for three consecutive days on 15, 16 and 17 March. There is also no dispute that the applicant did not have the respondent's permission to be absent for those three days from the sittings of the Legislative Assembly. However there must be circumstances where a Member of Parliament does not attend sittings of the Legislative Assembly for three consecutive days without permission of the Speaker and he is not disqualified from holding his seat

as a Member of Parliament. Such circumstances arise where it is physically impossible for a Member of Parliament to attend at the sittings of the Legislative Assembly and it is also physically impossible for him through any means to contact the Speaker for permission. An example of such circumstances is where a Member of Parliament has a stroke and is in a coma for more than three days while the Legislative Assembly is sitting and therefore cannot attend to the Legislative Assembly or contact the Speaker for permission; another example is where a Member of Parliament goes out fishing and his boat has an engine fault out at sea for more than three days while the Legislative Assembly is sitting and therefore he cannot attend those sittings or contact the Speaker through any means for permission. No doubt there may be other examples.

In my view, the use of the word "fails" in section 10(a) of the Electoral Act 1963 implies a situation where it is possible for a Member of Parliament to attend the sittings of the Legislative Assembly but he does not do so or to contact the Speaker for permission if it is not possible for him to attend but he also does not do so. In a physically impossible situation a Member of Parliament does not "fail" as there is simply no opportunity for him to attend to the sittings of the Legislative Assembly or to contact the Speaker for permission even if he has the desire to do so.

In the present case, it might have been difficult for the applicant to attend at the Legislative Assembly given the injuries noted by the doctor who examined him at the National Hospital on the night of the car accident. However they were not really serious injuries. And the chest xray done the same night showed no fracture. The applicant was also able to fly out of the country to New Zealand on 17 March and in the evening of 18 March,

which must be the same day he left Western Samoa since New Zealand is one day ahead of Western Samoa, he went to see the Remuera Central Care Clinic in Auckland. So while it might have been physically difficult for the applicant to attend to the Legislative Assembly, the Court is unable to come to the conclusion that it was physically impossible for him to do so, especially on 17 March when the applicant was able to fly out to New Zealand while the Legislative Assembly was sitting.

Apart from that, it is clear to the Court that it was quite physically possible for the applicant to contact the respondent for permission not to attend the sittings of the Legislative Assembly on 15 to 17 March. The least that could have been done was to call the respondent on the phone or send someone to the respondent with a message at least on 17 March when the applicant was able enough to travel to New Zealand. The report by the applicant's family physician in New Zealand also does not satisfy this Court that is was impossible for the applicant to seek permission from the respondent within the material time.

I have also considered the point raised by counsel for the applicant that in early February the applicant applied for permission from the respondent not to attend the sittings of the Legislative Assembly scheduled for 15, 16 and 17 March because of his university semester in New Zealand which was due to start on 28 February. Counsel for the applicant says that there was no reply to that application. The answer by the respondent to that point is that he did not reply to that application because when he received it and made enquiries, he discovered that the applicant had already left the country without waiting for a reply. And when the applicant

appeared and attended the special sitting of the Legislative Assembly on 7 March, the respondent says he assumed then that the applicant was also going to attend the sittings on 15, 16 and 17 March.

In my view the point raised here does not assist the applicant because permission was sought from the respondent in early February for leave of absence due to the applicant's university semester in New Zealand which was to start on 28 February. But in very early March the applicant was back in the country and there is no evidence to show that his return to the country at that time was for the purpose of his university studies. It also appears that the absence of the applicant from the sittings of the Legislative Assembly on 15, 16 and 17 March was not for the purpose of his university studies in New Zealand for which permission was sought from the respondent in early February.

In all then I find that the applicant on three consecutive sitting days, namely 15, 16 and 17 March 1994, failed, without permission of the Speaker of the Legislative Assembly, to attend in the Assembly. The order sought to declare that the applicant is still validly holding his seat is therefore refused.

Instead it is declared that the applicant is now disqualified from holding his seat as a Member of Parliament and that seat has now become vacant.

There will be no order as to costs.

F F M Sapolu

CHIEF JUSTICE