

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)

OA: 17/2000

IN THE MATTER of a by-election for the
Constituency of
Pukapuka/Nassau held
on Thursday the 28th
day of September 2000

AND

IN THE MATTER of Rule 126 and Rule 132
of the Code of Civil
Procedure of the High
Court 1981

BETWEEN Sir Geoffrey Arama
Henry of Rarotonga,
Politician

Plaintiff

AND Tiaki Wuatai of
Pukapuka, Politician

First Defendant

AND Ngereteina Puna of
Rarotonga in his
capacity as Speaker
of Parliament

Second Defendant

Mr Puna and for Plaintiff
Mr Mitchell for First and Second Defendants
Mr Manarangi for Electoral Office
Date: 28 November 2000

JUDGMENT OF GREIG CJ

This is a further separate application before the Court arising out of the Pukapuka by-election. I have heard it urgently and am giving my decision immediately because what is sought is to deal with a sitting of Parliament which is to begin at 1.00pm –

about a quarter of an hour from now.

Mr Wuatai who is the First Defendant in these proceedings was the successful candidate at the last by-election. In accordance with S73 of the Electoral Act 1998 the Chief Electoral Office declared him the successful candidate. By virtue of S8(2) of that Act, he took office as a Member of Parliament on the day that declaration or the warrant in respect of the declaration was signed by the Chief Electoral Officer.

It is common ground in this morning's hearing that Mr Wuatai is the successful candidate and a person who has been declared to be a Member of Parliament.

Under Article 30 of the Constitution no Member of Parliament is entitled to sit or vote therein until he has taken and subscribed the Oath of Allegiance which is required to be taken before the Speaker of Parliament. It is the member's duty to make that Oath which seems clearly the Speaker's duty to administer and take the Oath.

S8 of the Electoral Act provides that a member failing to subscribe to the Oath of Allegiance shall vacate his seat. What is sought in this application is an order to prevent Mr Wuatai and the Speaker of Parliament from taking and administering that Oath. It is an attempt to prevent Mr Wuatai from taking his seat in parliament and voting and sitting there.

On the face of it, he has been declared elected, he is a Member of Parliament, he has a duty to subscribe to the Oath but the purpose of the application before me is to prevent that taking place. The reason behind this application is that on his taking his seat he will provide for the Government, so I am told, a 2/3rd majority that will enable the Government to pass any resolution which requires a 2/3rd majority. It is suggested a resolution to remove the Speaker of Parliament may be one of those resolutions in prospect.

On the merits of the matter the Plaintiff must fail. The defendants are severally obliged to carry out the duties as prescribed and there is no good reason in my view for that not to take place. The fact that there is a petition still to be decided cannot


conclude that. The petition may be unsuccessful. The petition though successful in part may not result in the change in the election result as may be thought.

There is a provision in Article 29(2) prescribing that Parliament does not sit after a General Election until all the petitions have been disposed of. That is for a General Election. It is because, as I understand it, on a General Election the whole Parliament position may be altered. By-elections are not provided for in that particular Article. I do not in fact think one can extend that provision to a by-election.

But there is a further, I think, even more important ground upon which this application must fail. It is a very important principle of democracy that there be a separation between Parliament and the Judiciary. Parliament may not interfere with the act or conduct of Judiciary and equally Judiciary may not interfere with the act or conduct of Parliament.

Of course with a Constitution it is the Court that rules whether procedure or conduct is unconstitutional but there is nothing in this case which raises that. What is in fact expressed in the Constitution of the Cook Islands, is in Article 36, a declaration as to the privileges of Parliament and its members. A number of sub paragraphs of that Article are relevant but particularly sub paragraph 2 which prohibits the Court from enquiring into and dealing with the exercise by the Speaker of Parliament of his powers for the regulation of procedure, or the conduct of business by the Speaker or Members of the Parliament.

As I said what is to be done is the duty of the Speaker and the member to subscribe to the Oath of Allegiance. There is in my view a clear prohibition of the Court in taking away its jurisdiction in relation to the exercise by the Speaker and the Members of those powers. In the result then the application fails and is formally dismissed. Costs are reserved. Counsel may make submissions on the question of costs if required.


CHIEF JUSTICE