



## Employment Relations Tribunal

# Interlocutory Decision

**Title of Matter:** Viva Panapasa Simote  
v  
Trustees of the Republic of Fiji of the Methodist Church in Fiji

**Section:** Section 211 *Employment Relations Act 2007*

**Subject:** Notice of Motion to Determine Employment Grievance

**Matter Number:** ERT Miscellaneous Application No 23 of 2018

**Appearances:** Mr E Batiweti, on behalf of the Applicant  
Mr J Suveinakama, Toganivalu & Valenitabua, for the Respondent

**Date of Hearing:** Thursday 13 December 2018

**Before:** Mr Andrew J See, Resident Magistrate

**Date of Decision:** 13 December 2018

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**KEYWORDS:** Issuing of Interim Recommendations to Employer; Section 234(b) *Employment Relations Act 2007*; Capacity of Tribunal to Entertain Employment Grievance When No Referral from Mediation Service; Section 211(1)(k) *Employment Relations Act 2007*; Adjudication on Matters Referred to it by any Party to the Mediation.

### Background

[1] On 27 March 2018, the Applicant filed an Ex Parte Notice of Motion in effect asking that the Tribunal acknowledge that there was a legitimate employment grievance between Reverend Smote and the Methodist Church in Fiji and that until such time as the Grievance resolved, that the church body desist from attempting to evict the Applicant from her residential quarters that are owned by that entity. Several key issues have been flagged by Counsels appearing for the Respondent. These include the importance of identifying the correct legal entity; and the question as to whether or not an employment relationship is in place that would give rise to the right of Reverend Simote to pursue a grievance as an employee, under the *Employment Relations Act 2007*.

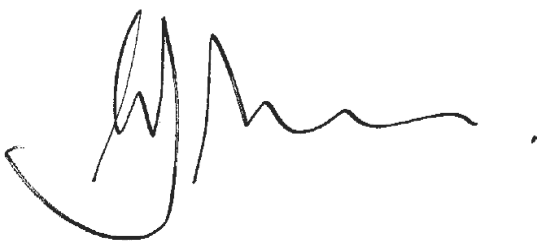
[2] It seems common ground, that there is a grievance that has been initiated and is presently before the Mediation Service, albeit that it is for some reason suspended pending the outcome of this matter. The Tribunal is of the view that it is highly undesirable to have the same employment grievance prosecuted in more than one location. That is, in both the Mediation Service and the Tribunal. Whilst Mr Batiweti has drawn the Tribunal's attention to Sections 211(1)(k) and 224(b) of the Act, in a bid to justify the advancement of this matter, the Tribunal is nonetheless

concerned that what is being sought by the Applicant is not that clear at the present stage<sup>1</sup>. For the present purposes and to allow both parties the opportunity to consider what should be done in a bid to conclude this matter, an adjournment of proceedings until 28 January 2019 at 2.00pm will take place, at which time the parties will be required to elect whether the Motion has any further work to do, or should the Grievance before the Mediation Service be allowed to run its course either by resolution, or referral to the Tribunal in accordance with Section 194(5) of the Act.

[3] In the interim and having regard to the fact that the Reverend Dr Vakadewavosa indicated that the Standing Committee resolved that Reverend Simote was to be relieved of her appointment in the Dudley Circuit for one year only, warrants the church to now re-assess whether after the “period of reflection” that the Applicant should now be reassigned within the ordained ministry of the church. For that reason and given the passing of the 12 month period, the Tribunal now recommends to the Respondent that it meet with Reverend Simote, in a bid to determine her ongoing role, if any, within the church ministry. If it is the case, that Reverend Simote is to either resume at the Dudley Circuit or be reassigned to another location, then the ostensible outstanding dispute would appear to be, whether or not she should be compensated at all, for the period in which she was withdrawn from her duties. The other outstanding issue that will need to be resolved, will be whether Reverend Simote should thereafter remain in the residential premises that were provided to her in conjunction with the Dudley Circuit appointment.

#### **Recommendation**

[4] It is the Recommendation of this Tribunal, that the Respondent now meet with the Applicant following the expiration of the twelve month period of reflection, so as to ascertain whether or not Reverend Simote can now continue within the ordained ministry of the Church.



**Andrew J See**  
**Resident Magistrate**

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<sup>1</sup> Though it may well be the case that the grievance before the Mediation Service, provides a greater insight in this regard.