

LR

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION
ACTION NO. HBC271 OF 2006

No. 221/2006

BETWEEN:

SUBHASH VERMA father's name Varma
Nand of 55 Drasa Avenue, Lautoka,
Campaign Organiser.

Plaintiff

AND:

MARIA OSBORNE Returning Officer,
Officer of the Returning Officer Western,
Regional Elections Officer Western,
Lautoka.

Defendant

Ms N. Khan and Mr. Chaudhry for the Plaintiff
Mr Tuilevuka & Ms Prasad for the Defendant

Date of Hearing: 8 September 2006
Date of Judgment: 8 September 2006

ORAL JUDGMENT OF FINNIGAN J

- [1] The Plaintiff seeks three Declarations. Declaration No 2 is in respect of the Electoral (Registration of Political Parties) Regulations 1991. As I say that declaration is unsupported by any evidence and I must decline that application.
- [2] In doing so I need to comment the parties have prepared for this

case very fully but at very short notice and there is no reflection at all on Counsel intended by my remark about the absence of evidence. The fact is however the evidence is not there.

- [3] We come now to Declaration No 1, which I think is regarded as the most important of the three. Mr Chaudhry has submitted that the whole case is predicated on Regulation 13 of the Local Government (Elections) Regulations 1991 and with that a claim by the Plaintiff that in the exercise of her discretion the Returning Officer acted contrary to the requirement in the regulation that she avoid any likelihood of confusion.
- [4] Her interpretation of the regulation was attached in submissions. To me her interpretation is irrelevant. Her action only can be judged and it must be judged by the Court's interpretation of the words in Regulation 13.
- [5] Those words are clear in their natural and ordinary meanings. It was not necessary for Counsel to instruct me on the principles of statutory interpretation. The first of the well-known principles applies and the ordinary and natural meaning the words are clear. In the regulation stress is given to "confusion". The Returning Officer is bound not merely to avoid confusion but to "avoid any likelihood of confusion".
- [6] This puts a heavy onus on the Returning Officer in the exercise of the discretion. The evidence of how and why the discretion was exercised is set out in the affidavit of the Returning Officer, which was sworn and filed today.
- [7] The evidence is that the Government Printer required the sample of

the voting paper for printing on 4 September 2006 and that only on that date was she advised by a faxed letter which - if she accepted it as being what it purported to be - conflicted with what she had been told by two of the three candidates. Both candidates had filed their nomination papers in person and both claimed a right to the Fiji Labour Party symbol. She had invited them to come again in person and let her decide which if either of them was disentitled as a result of the faxed letter she had received at the last minute although she had already made that decision. She had invited them to come already on the 1 September 2006 and had given each of them a time and neither of them came. It surely was her duty if she had any confusion in her mind to consult with the candidates and make her own decision. But neither of them came and both still claimed in their nomination papers the right to the symbol. The status quo remained as at the 1 September which was a Saturday and on Monday the 4th she proceeded on that basis.

- [8] On its face the voting paper that was then prepared represented what the Returning Officer believed to be the situation. Two candidates presented, each claiming official status and each had some apparent claim to that at the time that the sample voting paper went to the Government Printer.
- [9] Without being given any law by either Counsel I tend to think that the time to present one's credentials to represent any political party would be at the official nomination time. At official nomination time each of the two candidates both claimed official representation. I do not know what status in law to give to the faxed letter which the Returning Officer received some days later on 4 September 2006.

- [10] How was the Returning Officer to exercise her discretion? Mr. Chaudhry cited an authority which so far as I can see among the authorities I have on the bench he did not hand up but the principle I noted at the time is one which is consistent with my view of the law. As cited by Mr. Chaudhry the principle is that the Court must not impose its own view. It must be shown that the Returning Officer did not exercise her discretion at all or if she exercised it that she exercised it in an arbitrary capricious or unreasonable manner. I accept that as good law.
- [11] I cannot find any evidence that the Returning Officer exercised her discretion in an arbitrary capricious or unreasonable manner, in view of the environment in which that discretion was exercised. Her decision affected the two nominations that she had and the letter dated 31 August 2006 which arrived by fax on 4 September 2006 was in my view insufficient basis for her to deprive one of the two candidates of the symbol which he at the time of nomination with some apparent justification had claimed. I cannot find that the Returning Officer has been in breach of her statutory duty as claimed and I must decline Declaration No. 1.
- [12] I come now to Declaration No 3. The claim of this declaration rests solely on para. 3 of the affidavit of the Plaintiff and annexure A to which that paragraph refers. This is the letter said to be the letter of 31 August 2006, which was said to have been received by the Returning officer on 4 September. This document is said to be evidence that there was an official endorsement of the Plaintiff by the Fiji Labour Party. I acknowledge the difficulties of Counsel in preparing for hearing at short notice but in this Court of law a mere document is not itself and has never been proof of what it

contains. A copy of an original is in itself another document entirely and though it may be in the substance of its contents the same it can still have differences from the original which are either very significant or insignificant. In either case the proof of the truth of what is written in a document must be established in a Court of law by evidence of who was the maker and either the evidence of the maker himself or themselves or evidence of the authority for the statements contained in the document and to my mind that evidence is entirely lacking and I must decline declaration no. 3.

- [13] Costs are awarded to the Defendant and these are to be agreed or if agreement cannot be reached they will be settled by the Registrar.



At Lautoka

8 September 2006

A handwritten signature in black ink, appearing to read "D.D. Finnigan".

D.D. Finnigan

JUDGE