

IN THE HIGH COURT OF NIUE
(Civil Division)

APPLICATION NO: CV14/2019

UNDER Section 71 of the Niue Act 1967

BETWEEN TERRY DONALD COE
Plaintiff

AND THE GOVERNMENT OF NIUE
Respondent

Date: 20 December 2019 (NZ)

DECISION OF CHIEF JUSTICE C T COXHEAD

Urgent application

[1] Member of Parliament, Honourable Mr Terry Coe, has filed an application pursuant to section 71 of the Niue Act 1967. The application is brief and to the point in terms of what is sought. He seeks to have the Niue Public Service Commission recommendation that is to be put before Niue Legislative Assembly to be deferred.

Decision

[2] In the normal course of matters I would seek a response from the Speaker of the House. However, this is very urgent given the Niue Legislative Assembly is sitting on the 19th of December 2019 (Niue time). I think there are jurisdictional difficulties with what is being requested.

[3] Section 71 states:

71 Procedure so far as not governed by rules of Court

Subject to any enactment, the practice and procedure of the High Court in the exercise of its civil and criminal jurisdiction shall be such as the Court thinks in each case to be most consistent with natural justice and convenience.

[4] In his affidavit Honourable Terry Coe states that he is seeking a court injunction to defer the increase in Niue Assembly Member's salaries until the Niue Constitution Article 70 has been followed. In essence he ask the Court to injunct Parliament.

[5] Section 17 (2)(a) of the Crown Proceedings Act 1950 states:

17 Nature of Relief

...

(2) (a) Where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but may instead make an order declaratory of the rights of the parties.

...

[6] It is questionable if the Court has the jurisdiction to injunct the Niue Legislative Assembly which is essentially what is being sought. The application does not assist in stating what jurisdiction the Court has to injunct the Niue Legislative Assembly.

[7] Further, I do not read section 71 of the Niue Act 1967 as providing the Court with the necessary jurisdiction to injunct the Niue Legislative Assembly from considering the Niue Public Service Commission recommendation.

[8] The application is dismissed.

Dated at Rotorua, Aotearoa/New Zealand this 20th day of December 2019

C T Coxhead
CHIEF JUSTICE