

TURANGA -v- S. I. NATIONAL TEACHERS ASSOCIATION

High Court of Solomon Islands

(Palmer J.)

Civil Case No. 200 of 1992

Hearing: 9 September 1992

Ruling: 24 September 1992

A. Radclyffe for the Plaintiff

A. Nori for the Defendant

PALMER J: This is an application under an Originating Summons for declarations by Patrick Turanga [the Plaintiff against the Solomon Islands National Teachers Association (SINTA) the Defendant].

I list the declarations sought as follows:

1. That the Defendant was in breach of Clause 19(b) of SINTA's Constitution in that the motion of no confidence was not sent to the General Secretary (GS) of SINTA at least 42 days before the date of the 1991 Annual General Meeting (AGM).
2. That the Defendant was in breach of Clause 62(A) of SINTA's Constitution in that the Plaintiff was not given at least 7 days notice that the motion would be put to the AGM.
3. That the decision to allow the motion of no confidence to be debated in the Plaintiff's absence was contrary to the rules of natural justice in that he was not able to answer any allegations made against him.
4. That the decision by the Defendant to remove the Plaintiff as President of SINTA be declared null and void.

5. That the Plaintiff is still the duly elected President of SINTA.

And costs are also claimed.

The Plaintiff was elected as President of SINTA in December of 1989 for a term of 4 years. Up until December of 1991 there was no issue raised challenging his election and accordingly I accept that he was duly elected as President of SINTA in December of 1989.

SINTA is a trade union duly registered under the Trade Unions Act. Its affairs are governed by its Constitution, a copy of which was submitted to the Court by the Plaintiff and marked PTL.

It is not disputed that a letter dated 22 November 1991 (marked PT2) from Mr Stephen Cheka was sent to the GS of SINTA. A copy of this was served on Mr Turanga before he left for an overseas trip on the 29 November 1991.

The letter was headed,

*"Motion of No-Confidence on the SINTA President".*

and read,

*"I hereby give notice on my intention to move the above mentioned motion during the 1991 Annual General Meeting in December this year. The reason for such motion is based on -*

- (a) misuse of authority*
- (b) unprocedural practices in the SINTA Office.*

*Most grateful if you could include this motion in your agenda for 1991 Annual General Meeting".*

On the 4th of December 1991 at 10.30 a.m. the SINTA Executive Council held a meeting at Kola Ridge in which the letter of motion of no confidence was discussed and accepted to be put on the agenda of the AGM. (See Annexure Marked PT3 at Paragraph 7 of the Minutes).

The AGM was held on the 5th and 6th of December in which the motion was put and passed by an overwhelming majority.

An acting president was then nominated and accepted at the AGM.

The first declaration sought requires a consideration of Clause 19(b) and also Clause 62(A) of SINTA's Constitution.

Clause 19(b) reads:

*"Nominations for office bearers (with the consent of the nominee(s) and motions for discussion at the meeting shall be sent by members to reach the General Secretary not less than 42 days before the date fixed for the AGM."*

It was submitted by learned counsel, for the Plaintiff, Mr Radolyffe that the motion of no confidence to be included for discussion in the 1991 AGM had to be sent to the GS to reach him not less than 42 days before the date fixed for the AGM.

Clause 19(b) refers to "motions for discussion", and it was submitted by Mr Radolyffe that the intended motion of no confidence came within this phrase, and that accordingly was subject to the time period requirement of not less than 42 days receipt by the GS. He pointed out that the letter was sent on the 22 November 1991 and the AGM was held on the 5th of December 1991, a period of only about 14 days. This was clearly less than 42 days, and therefore a breach of Clause 19(b).

Mr Nori on the other hand has sought simply to argue that the motion of no confidence is not governed by Clause 19(b) but by Clause 62 of the SINTA Constitution. He argues that if a motion of no confidence is to be debated then Clause 62(A) comes into force irrespective of whether the meeting is an AGM.

He argues that a motion of no confidence can be tabled at an Extraordinary General Meeting and the only requirement there is a 7

days notice. The same requirement therefore applies too to a motion of no confidence at an AGM.

Clause 19(b) refers to motions for discussion at a specific meeting, called the annual general meeting.

The phrase 'motions for discussion' is a general phrase. It covers all motions, including a motion of non-confidence.

However, when talking about motions of non-confidence there is a specific clause which deals with them. That clause therefore must be considered.

Clause 62 A. reads:

*All motions of non-confidence in, or removal of any office bearer shall not be entertained by the person presiding at any meeting, unless*

- (i) at least seven days notice thereof has been given to the meeting and*
- (ii) the person against whom the motion is directed shall have been given at least seven days' notice of the said motion."*

That clause is unequivocal about non-confidence motions in or removal of office-bearers.

It is this Court's view that Clause 19(b) must not be read exhaustively, as restricting all motions for discussion at the AGM to the requirement of not less than 42 days notice. Where there is an express clause governing a particular motion (as in the case of Clause 62 for non-confidence motions) then that express clause must be considered in its proper context and given the construction that is fair and will enhance and give effect to the objects of the Constitution.

It is this Court's view as a general rule of interpretation that Clause 62 (a specific clause) cannot be made to read as being subject to the general requirements of Clause 19(b). This is but an extension

of the maxim *generalia specialibus non derogant*. (See para 875 page 534 of Halsbury Laws of England, 4th Edition, Volume 44).

It will be noticed too that the wording of Clause 62 A is slightly different so that the requirements are indeed different, and does show that Clause 62 A is to be considered separately from the requirements of Clause 19(b).

The requirement of Clause 19(b) is for motions for discussion at the AGM to be sent to reach the GS not less than 42 days before the date fixed for the AGM.

The requirement of Clause 62 A however is for 7 days notice to be given to the meeting and for the person affected to also be given 7 days notice.

A notice given to the meeting is very different from any notice sent to the GS. I will deal with the question of what constitutes notice to the meeting later.

There is another interesting point to note in Clause 62 A. That clause specifically refers to a motion of non-confidence being moved at any meeting. The only logical meaning that can be given to the words *any meeting* is that they can only mean either a meeting at an AGM or a meeting at an Extraordinary General Meeting (EGM).

It is clear therefore from the above that a motion of non-confidence in or removal of office bearers can be moved at an AGM or EGM provided that the requirements of Clause 62 A have been met.

Clause 19(b) do not apply to motions of non-confidence in or removal of office bearers. The applicable clause is Clause 62 A.

Accordingly I rule that no breach has occurred in respect of Clause 19(b) and the declaration prayed for is denied.

In considering the second paragraph prayed for, it is important to note the two arms of Clause 62 A. The first arm (paragraph (i)) deals with the requirement of seven days notice of the motion being given to the meeting, and the second arm (paragraph (ii)) deals with the requirement of notice of the motion being given to the person affected.

I will deal first of all with paragraph (i) of Clause 62 A.

The key issue in this paragraph can be dealt with by posing the question "what constitutes notice to the meeting?"

And in answering this question reference must be made to the SINTA Constitution.

There is no separate clause on the question of notice. However, Clauses 19 and 20 do reveal the requirements of notice for an AGM which does assist in answering the question above.

Clause 19 mentions the requirement of sending motions to the GS not less than 42 days before the date for the AGM.

Clause 20 however mentions the requirement that a notice containing the agenda shall be made known by placing it in at least one newspaper circulating in Solomon Islands or Radio not less than 42 days before the meeting is due to take place.

The requirement of notice concerning the agenda of the AGM is that it be made known publicly by advertisement in a local newspaper or through the radio.

It never says that sufficient notice is given to the GS or, to the Executive Council. It does say (i.e. Clause 20):

*"The Secretary, on the instructions of the Executive Council, shall prepare an agenda for the Annual General Meeting and shall make it known by inserting a notice including such agenda in at least one newspaper circulating in Solomon*

*Islands or Radio not less than 42 days before the meeting is due to take place."*

The important thing to note about this notice is the public nature of it.

It is to be publicly advertised. A question then is asked, 'who is it intended to be reached by the public advertisement of the notice?' Surely, it can only be intended to reach as many members of SINTA as possible and if others say that they have not seen or heard such advertisement then for the purposes of fulfilling the requirements of service of notice to the members they will be deemed to have had notice. The intention of publicly advertising the notice of the agenda of the AGM is that all members of SINTA shall be deemed to have had notice of it.

Although Clause 20 does not expressly say so, implicit in it is the requirement of notice to be sent to all the members of SINTA. And when taking into account the scatteredness and remoteness of teachers throughout the country, the drafters of the Constitution of SINTA must have then purposely included in the Constitution, the requirement of service of notice to all the members to be deemed sufficient when it has been publicly advertised in a newspaper or the radio.

The phrase '*notice ..... to the meeting*' in my view can only mean that notice must be given to all the members of SINTA. And therefore as used in Clause 22 it means that not less than 7 days notice must be given to all the members before the due date of the meeting.

There is a difference between the service of notices or processes on SINTA as a corporate body, and the service of notice to a meeting or the convening of a meeting.

Service of notices or process to the association may be done through the GS or an Officer of the Executive Council. Service of a notice to a meeting on the other hand must be done to all members of the association entitled to participate in the meeting. (See *Halsbury's*

*Laws of England 4th Edition, Vol. 9 at page 762 paragraph 1293, re convening of meetings.)*

To effectively serve notice of the motion to the meeting, it can either be done at the meeting itself or that all members entitled to participate in the meeting are notified.

I am satisfied that no such service of notice to the AGM was ever made, or to the members entitled to participate at the AGM. The letter of Mr Stephen Cheka to the GS was not notice to the AGM, nor the meeting of the Executive Council on the 4th of December 1991. There was no record or evidence of any public advertisement of the notice of the motion at least 7 days before the AGM was convened.

The only time that the notice was ever first raised to the attention of the AGM was on the 5th and 6th of December 1991. The person presiding at that time therefore was not entitled pursuant to Clause 62 A to entertain the motion of non-confidence, there being no 7 days notice given.

He did however allow the motion to be discussed and to be voted on that same day.

He would have been entitled to allow the motion to be discussed if the requirements of Clause 62 A (i) had been suspended by the AGM for the purposes of that meeting. Was any such suspension done? Having perused the minutes of the meeting held on the 6th of December 1991, I am satisfied, that no such action was taken.

Accordingly, there was a clear breach of Clause 62 A (i).

The second arm of Clause 62 A paragraph (ii) imposes a requirement of 7 days notice of the motion to the person affected.

There is no particular format spelled out or any particular requirement as to the wording of such notices. There is no particular method of service outlined in the Constitution either.



There is no dispute that the Plaintiff was aware of a letter written by Mr. Chaka of his intention to move a motion of non-confidence against him in the AGM. The grounds for that motion were:

- (i) misuse of authority
- (ii) unprocedural practices in the SINMA office.

That motion however was never moved at the AGM. Instead a motion of non-confidence based on the Plaintiff's failure to comply with provision 18 of the SINMA Constitution was moved. The Plaintiff was never aware of this. He became aware of this only on his return on the 3th of December 1981. By then he had been ousted from his position. There was no notice of that motion served on the Plaintiff, as required by clause 20 A (iii) and accordingly was breached. I therefore grant the declaration sought in paragraph 2.

Having so ruled, it would not be necessary to consider paragraph III of the declarations sought.

However, it would be sufficient to make the following observations. First, it is not disputed that the Plaintiff was served with a copy of Stephen Chaka's letter sometime before the 29 November 1981. The reasons given for the motion were twofold. At the AGM however, a completely different ground was raised and was passed which resulted in the removal of the Plaintiff from his office as President.

It would appear on the face of things that the Plaintiff had not been given the opportunity to rebut the new allegation raised suddenly by the mover at the AGM. Whether the Plaintiff had been present or not, he was entitled to a clear 7 days notice of the grounds for the motion to give him time to prepare his case. That no such opportunity was given would seem so clear to be a breach of the rules of natural justice. I decline however, to make any declaration as it has not been necessary for me to do so.

The declaration prayed for in paragraph 4 therefore is accepted and I declare the decision to remove the Plaintiff as President of SINTA to be null and void.

Mr Nori has submitted with reference to the last prayer that it would be wrong for this Court to grant such declaration in view of the fact that the Plaintiff is no longer a teacher and also in view of the fact that he has not paid his fees for this year. However, what must be clearly understood is that but for the unprocedural and unconstitutional removal of the Plaintiff, he would still be the president until the present time.

I also make the declaration that he is still the duly elected President of SINTA.

Costs to be paid by the Defendant.

(A. R. Palmer)  
JUDGE