HIGH COURT OF SOLOMON ISLANDS

JOHN A KENIAPISIA AND ROBERT HITE –V- SOLOMON ISLANDS FOOTBALL FEDERATION (SIFF)

Civil Case No. 102 of 2004

Honiara: Brown PJ

Date of Hearing: 29 March 2004
Date of Judgment: 5 April 2004

J. Keniapisia for the plaintiff
G. Suri for the respondent

Reasons for Decision

On the 23 March 2004, the plaintiffs sought answers to particular questions about the appointment of soccer referees by the Solomon Island Football Federation (SIFF) and whether the subsequent revocation of their particular appointment, as referees, by the SIFF was fair and just.

Mr Suri appeared for the Solomon Islands Football Federation and argued on the Federations behalf that the cause disclosed no actionable cause. The action was non-justiciable in this court. In effect he said this court had no business to be involved in the Federations affairs.

The nature of the application is one for judicial review.

An application for declaratory relief is restricted in its effect; by giving to existing legal relations the status of a *res judicata*, for it cannot change them. In other words, it cannot substitute its decision on an argument over facts from that decision which has preceded it. The court does not stand in the place of the decision maker, if it did, this court risks adjudicating soccer matches on a Monday.

The plaintiff has, by seeking this court interference in the Federation affairs (by revoking Federation decisions and directing the defendant to re-instate the two plaintiffs as referees) presumed a power in this court which amounts to a constitutive legal act.

Declaratory orders.

A declaration is a discretionary remedy, effectively declaring what the law is on a particular issue. Mr Keniapisia, a plaintiff but acting on his own behalf and on that of the other aggrieved plaintiff, argued that the Solomon Islands Constitution, in Schedule III effectively precluded recognition of the SIFF's own rules (or constitution), for the constitution did not fall within the laws adopted or recognized pursuant to s.76 of our Constitution (see Schedule III).
Such an argument illustrates the muddled approach to this dispute, for the SIFF constitution is not a "law" of the Solomon Islands envisaged under s.76, and commonly understood to be in the "public law" realm, rather it is "private law". To illustrate, these two referees are aggrieved by a decision or

decisions of the Federation Coordinator/Inspector Mr Reil Poloso, the source of power flowing, not from any "public law" (Statute, By-law, Regulation or Directive) by out of a body of rules adopted and called the "Solomon Islands Football Federation Constitution" by a representative body of members on the 21 December 2000. The "rules", embodied in the constitution affect only those wishing to be so bound, so that, for the plaintiffs to seek rights of redress, in this court, with respect to decisions made in the ambit of the Federations business, recognizes the fact of the constitution and thus it standing as governing appointment of soccer referees, and in so far as it purports to adversely affect these two plaintiffs' rights as referees, they seek to strike out the SIFF constitution, the very document which affords them status as such "referees".

Schedule III of the Constitution has no relevance to this case, only affecting as it does "public laws". It follows that to be susceptible to judicial review the official or body must derive its authority from public law as opposed to private law.

The basis of the distinction is common in the English "common law" jurisdictions.

I had reason to consider such a claim as this in Papua New Guinea, where a student, aggrieved by the decision of a school board to expel him, for misconduct, sought judicial review of the board's decision. The case illustrates the scope of judicial review.

The scope for review is described by the author, Michael A Ntumy in *Administrative Law of Papua New Guinea – cases, materials and text* (2nd edit. CBS Publishers New Delhi 2003), at 217.

> "Before a plaintiff may be heard it is necessary for him to show hat he has "standing" or *locus standi*. Different considerations apply where a party seeks to enforce a private law claim or public law claim. I would consider the cases dealt with by the courts in Papua New Guinea that there is a third category which may be described as public interest applications. (See *SCR No 4 of 1990; Re Petition of Michael Somare* [1991] PNGLR 265).

The author then used the decision of *Bari's* case to illustrate.

> *In this case however it is clear that this is essentially a private law claim. The St. Paul's Teachers College, Vunakanau is not an inferior court, tribunal or other body or person charged with a performance of public acts and duties. In my view the Teachers College is a private institution governed by the Council pursuant to the charter which is in evidence. It cannot be regarded as an emanation of the State so as to attach as it were, to it, a status which justifies interference by the court. There may well be an avenue for review from the Governing Council to the Chairman of the National Education Board Appeal Committee and hence to the Minister for Education but that does not imbue the Teachers College with the character of a "public body" sufficient to attract judicial review on the subject of the boy's expulsion. An aspect where judicial review may be available to the Council of the governing body, for instance, may be where there is a legitimate expectation that the National Government will fund the Teachers College. If facts gave rise to such an expectation then this court may consider an application for judicial review and the application of the Governing Council, in those circumstances for such facts would being the cause within the public law domain.*
>
> *The plaintiff in this case however is a student. Any private law rights that he may have as such arising under contract or tort, (and I do not seek to suggest the existence of any such*

rights by my comment) are not a concern of this court in judicial review proceedings. (See Abraham Sulaiman v PNG University of Technology N610).

The Governing Council cannot be equated with the Public Service. The public may have an interest in seeing that the curriculum provided for by the Governing Council of the Teachers College corresponds with guidelines facilitating financial assistance from the Government. The Council however is the governing body of the Teachers College. The maxim omnia praesenmuntur rite esse acta applies for the avenues of appeal have been exhausted. The New Zealand Court of Appeal applied this maxim in Edwards v Onehunga High School Board (1972) 2 NZLR 238 where the appellant challenged the vires of a school rule. The Board was presumed to have acted within its powers. The Council have responsibility and power to govern the college and this court cannot interfere. It is the private concern of the Governing Council.

There is then no public interest in such a case sufficient to afford this plaintiff a right of judicial review of the actions of that Governing Council. It consequently follows the actions of the Chairman of the Appeal Committee and the Minister following as they do from the private law provisions of the Teachers College charter are also not amenable to judicial review.

For these reasons leave is refused.
(Bari v-St. Paul's Teachers College (1995) PNGLR 364)

In *Ragi –v- Maingu* (P.N.G Supreme Court 459/1994) the Court said

"As a general rule judicial review is used where a public body is relying for its decision making power on a statute or subordinate legislation made under statute. Judicial review is a remedy when the action of a public authority is to be challenged.

In R –v- East Berkshire Health Authority; Exparte Walsh (1984) All. E.R. 425 at 429 "The remedy of judicial review is only available where issues of "public law" are involved." "And see O'Reilly –v- Mackman (1982) 3 All ER 680 per Lord Denning at 693" and later "Private law rights relate to issues which arise either out of contract or out of tart whereby a private individual is claiming against either a private or public body damages or other remedy for breach of contract or a breach of duty a common law which is owed to him personally"

(Edit: Michael A. Ntumy ibid at 219)

The applicant are soccer referees who are aggrieved by a decision of the soccer authority running the sport in country. They seek this courts interference in a matter which is properly left to the body administering the sport. The Federation is not a public body.

Part of the mutually supporting character of the Federation is an understanding, written into the constitution, that disputes will be dealt with by, in effect, the members who bind themselves to uphold the constitution. If a member is aggrieved, he has rights pursuant to that body of rules (the constitution) adopted by members of the Solomon Islands soccer fraternity. As a consequence of membership and adhering to the rules of the Federation, members became part of the world wide FIFA.

To step outside, as it were, the fraternity, by seeking this courts interference in the administration of this Federation, risks exclusion from membership of the Federation, for it ignores the mutually restrictive covenants in the Constitution to "play by the rules".

This is not a case where the High Court should play a part. The claim for redress is without foundation, in law, for the decisions which I have touched on, are appropriate reflections of the law in this jurisdiction and encompass the field of this application.

The SIFF Constitution Article 16.13.3(5) provides –

> "Tribunal shall have the function *"to arbitrate, conduct hearings and sit in judgment on all disputes involving members, clubs, official, players, referees, coaches, spectators, games, tournaments, leagues and any other matter referred to it for decision".*

As an affiliate of the International Body, the national body has an obligation to adopt, implement and impose the governing soccer body's Statutes and Regulations, and those statutes and regulations provide an avenue of redress between F.I.F.A, the confederation, members, officers, players, officials, and others. The statutes and regulations clearly intend to be exclusive and this is reinforced by Article 6 1(2) of FIFA status which prohibits these plaintiffs from –

> "recourse to ordinary courts of law etc.".

The argument advanced on the basis of the two cases decided in this court do help me. Both cases *Avaiki Shipping* (unreported civil case 248/200 per Kabui J) and *Silvania Products (Australasia) Ltd* (unreported civil case 22/1990 per Ward CJ) both relate to "public law" issues. The destinction, however, is clearly made.

The PNG decisions set out principles which I am minded to follow in this jurisdiction, principles which need be satisfied by a plaintiff.

Any argument over O.58 cannot affect the substantive law principles affecting the courts role in judicial review.

There is no "public interest" in the meaning of the phrase as commonly understood, to give these plaintiffs standing to come to this court. They shall need to pursue their rights in the forum provided by their Federation, for this court should not interfere in "private law" disputes of this kind.

The claim is struck out as affording no cause of action since the plaintiffs lack standing.

J.R. Brown
Judge