

IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO: 6/2008

BETWEEN:

**DR. KIEREN KEKE & MR. FREDERICK PITCHER**

PLAINTIFFS

AND:

**MR. DAVID ADEANG**

DEFENDANT

Date of hearing/judgement: 10<sup>th</sup> April 2008

Mr. Ruben Kun for the Plaintiffs

Mr. Pres Nimes Ekwona for the Defendant

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DECISION  
(EX TEMPORE)

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This action, begun yesterday, arises out of events in the Parliament in the last few weeks. These events led to the Constitutional Reference 1 of 2008 in which I answered a series of questions last Monday.

The relief sought in this action is set out are the Statement of Claim:-

- “a. That the Naoero Citizenship (Amendment) Act 2008 is not an enactment of the Nauru Parliament and is null and void;**
- b. That Standing Order 21(b) is contrary to Article 36 of the Constitution and is null and void; and**
- c. That the plaintiffs are and remain members of the parliament and are therefore entitled to attend all sittings of the 17<sup>th</sup> Parliament.”**

The matter has come before the Court this morning to hear an application for an interim injunction against:

**“...the defendant that until the hearing of the writ herein the defendant, his servants or agents be restrained from taking any action to prevent the plaintiff's performing their duties as members of the parliament and entering or remaining in the parliamentary chamber, by reason of their dual citizenship.”**

It is supported by the affidavit of Dr. Keke. In the affidavit Dr. Keke deposes (paragraph 3), that:-

**“...the defendant made a statement to Parliament in Nauruan in which he said that even if the Supreme Court were to express the opinion that the business of Parliament on 22 March was not validly transacted, the defendant would come to his own separate opinion on such matters;”**

Dr. Keke further deposed (paragraph 4) that:

**“..since the Supreme Court handed down its decision in Constitutional Reference 01/2008 the defendant has made statements in the New Zealand and Australian media questioning the validity of the Supreme Court's decision and indicating that he does not believe he is obliged to act in accordance with the decision;”**

So far as the latter allegations (paragraph 4) as to what has been said to the media, that is too vague and unsubstantiated for the Court to be able to act upon it.

So far as the former allegations (paragraph 3) the Court may not take note of what is said in Parliament. Section 3 of the Parliamentary Powers, Privileges and Immunities Act is quite explicit:-

**“No civil...proceedings may be instituted against any member for words spoken before...the Parliament...or by reason of any matter or thing brought before the Parliament by him...otherwise.”**

This section echoes the traditional position in the Common Law that a Court will not enquire into what is done in Parliament, let alone interfere.

I am not able to grant the relief sought this morning.

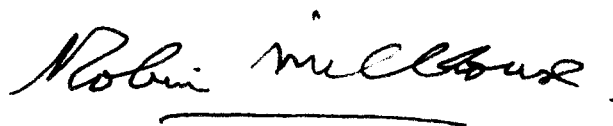
This is an action inter partes which must be allowed to proceed. Both plaintiffs and defendant must have an opportunity to put reasoned argument to the Court on all issues raised in it.

I say that despite the very strong views I expressed when giving answers to the questions asked in the Constitutional Reference. The Court must always be open to argument. I do however express the hope- because the terms of the Constitution are so clear- that no attempt will be made to prevent the two plaintiffs from taking their places in Parliament. Whether they are qualified to be members or not is a matter pursuant to Article 36 for this Court and no one else.

**“Article 36 – Determination on questions of membership of Parliament**  
***36. Any question that arises concerning the right of a person to be or to remain a Member of Parliament shall be referred to and determined by the Supreme Court.”***

The application for an interim injunction is dismissed. The action must take its normal course.

Dated this 10<sup>th</sup> day of April 2008



**THE HON. ROBIN MILLHOUSE QC**  
**CHIEF JUSTICE**