

**DAVID DAUSABEA ~V~ LORD MAYOR OF HONIARA CITY COUNCIL AND
CLERK TO HONIARA CITY COUNCIL**

High Court of Solomon Islands
(Palmer J.)

Civil Case Number 246 of 2002

Hearing: 12th November 2002

Judgment: 19th November 2002

Pacific Lawyers for the Applicant
Attorney-General for the Respondents

Palmer J.: The Applicant is the Councillor of Naha Ward in the Honiara City Council ("Council"). On 12th August 2002 he filed a Notice to move a Motion of No Confidence ("the Motion") in the leadership of Ronald Fugui, Lord Mayor pursuant to Standing Order 18 as read with section 8(1)(a) of the Honiara City Act 1999 ("the Act"). The Motion was returned to him with the advice that it be resubmitted with particulars of the grounds to be relied on. On 13th August 2002 Applicant resubmitted his Motion. It was accepted and included in the Order Paper for the Meeting of the Council on 24th September 2002. On said date however, the Deputy Mayor who was the presiding officer (hereinafter referred to as "the Chairman") ruled in favour of an objection raised by the Lord Mayor ("first Respondent") on the grounds inter alia that no reasons and grounds in support of the Motion had been provided and suspended hearing and debate of the Motion for the purpose it seems of seeking legal clarification from the Attorney-General's Chambers.

The Motion has never been brought before the Council since even in spite of an attempt by the Applicant and ten other Councillors to summon a meeting of the Council under Standing Order 6 of the Standing Orders of the Council. The Applicant seeks by Originating Summons filed 17th October 2002 a determination on inter alia two primary questions. First, whether he is obliged to furnish reasons or grounds in support of his Motion, and secondly, whether Standing Order 6 empowers him to summon a meeting of the Council for the purpose of debating his Motion. He seeks consequential declarations consistent with his rights as determined by the court.

The Respondents' case was that the Deputy Mayor was entitled to suspend hearing of and debate of the Motion on the ground that insufficient grounds or reasons had been provided. Further, they add that any further grounds or reasons provided would be deemed to be a **fresh** Notice of a Motion of No Confidence and would require a lapse of 28 whole days before the motion could be debated. A meeting of the Council accordingly has not been scheduled until filing of the Applicants Originating Summons on 17th October 2002.

The Issues.

There are primarily two issues for determination from which consequential declarations may follow. These are: (i) what constitutes sufficient Notice, whether adequate Notice had been given by the Applicant; and (ii) if indeed sufficient notice had been given, whether he is empowered to summon a meeting pursuant to Standing Order 6, provided the requirement stipulated therein had been complied with.

The Law

Section 8(1) of the Act provides for the circumstances in which the office of Mayor becomes vacant. Paragraph 8(1)(a) is relevant and I quote:

"The office of Mayor becomes vacant where –

- (a) a resolution is passed by an absolute majority of the elected members of the City Council declaring that the Mayor be removed, and the Minister makes a declaration to that effect;"*

Section 14(1) of the Act provides for the making of Standing Orders for the regulating of its procedure and any other matters relating to the business of the Council. Schedule 2 to the Act sets out the matters which may be provided for by the Standing Orders. This includes the resolution to remove the Mayor in paragraph 13. I quote:

"Where a motion is to be moved under section 8 or 9 provision ensuring that adequate notice of the motion (not being less than 28 whole days) is given to members of the City Council."

Standing Order 18 sets out how a motion calling for the removal of inter alia, the Mayor may be done. The requirement is brief but clear, that notice is to be given to the Mayor in writing not less than 28 whole days before the day on which it is to be moved. No further guidelines are provided as to the contents of the notice, whether grounds or reasons or particulars should be provided or not, and failing which the Mayor may refuse to have the motion debated. Take for instance the Standing Orders of the National Parliament of Solomon Islands, which provide for Motions at Part H. The relevant Standing Order is Order 27. It is headed "Manner of Giving Notice of Motions and Amendments" and sets out in detail how a motion is to be worded. Paragraph (3) sets this out in full:

"(3) If the Speaker is of the opinion that the proposed motion or amendment –

- (a) in one which infringes, or the debate on which is likely to infringe, any of the provisions of these Orders; or*
- (b) is contrary to the Constitution; or*
- (c) is too long; or*
- (d) embraces more than one substantive motion or amendment; or*
- (e) is framed in terms which are inconsistent with the dignity of Parliament; or*
- (f) contains or implies allegations which in the Speaker's opinion cannot be substantiated by the Member; or*
- (g) contains matter which is inconsistent with paragraphs (2), (3), (4), (5), (7) or (8) of order 36; or*
- (h) anticipates a matter already appointed for consideration in Parliament; or*
- (i) is ambiguous or cannot or may not be understood,*

he may direct either that the motion or amendment be returned to the Member as inadmissible or that it can be printed with such alterations as may be agreed with the Member."

No similar guidelines are provided for the Mayor or the Clerk on how a motion of no confidence may be prepared and lodged. All that is required is a period of 28 days notice.

Meaning of a Notice.

What is a notice of a motion of no confidence? The word "notice" means:

"knowledge or cognizance. To give notice is to bring matters to a person's knowledge or attention."
(Osborn's Concise Law Dictionary sixth edition by John Burke)

It also means:

"Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge. Intelligence by whatever means communicated." (Black's Law Dictionary sixth edition by Henry Campbell Black).

The essence of a notice is that it brings a fact or information to the attention or knowledge of another person for his consideration or to put him on inquiry.

There are all sorts and types of notices. A notice of appeal for instance gives notice to the other side of an intention to appeal and contains the grounds of appeal or reasons for the appeal. If no grounds or reasons are given the appeal is described as having been filed without cause and can be summarily dismissed by the Registrar of the Court of Appeal.

The requirement of a notice is vital to the notion of a fair hearing. **It necessarily includes the right to have notice of the other side's case and the right to be able to prepare argument or defence and to be heard** (H.W.R. Wade on Administrative Law sixth Edition). The requirement of notice to enable a person to make his defence has been described as an ancient rule. Fortescue J. in **R. -v- University of Cambridge**¹ traced this right to the Garden of Eden. Before Adam was judged he was given opportunity by God to be heard. In **R. -v- Secretary of State for the Environment ex p. Southwark LBC**², it was held that a proper hearing must always include a *"fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view"*.

In **Kanda -v- Government of Malaya**³, Lord Denning added:

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them."

See also **R. -v- Thames Magistrates' Court ex p. Polemis**⁴ and **Brenthall -v- Free Prebyterian Church of Scotland**⁵ which held that disclosure of the opposing case or charge must be made in reasonable time to

¹ *R. -v- University of Cambridge* (1723) 1 Str. 557

² *R. -v- Secretary of State for the Environment ex p. Southwark LBC* [1987] The Times, 11 April

³ *Kanda -v- Government of Malaya* [1962] AC 322

⁴ *R. -v- Thames Magistrates' Court ex p. Polemis* [1974] 1 WLR 1371

⁵ *Brenthall -v- Free Prebyterian Church of Scotland* 1986 SLT 471

allow the person affected to prepare his defence or his comments. In **Mahon -v- Air New Zealand Ltd.**⁶ it was held that he must have fair notice of any accusation against him or where there is an inquiry, any person who might be affected by adverse findings should be given fair warning so that he can defend himself against them at the hearing.

Mr. Deve, Counsel for the Respondents has also referred me to the case of **Hanson -v- Church Commission for England and Another**⁷ in which his Lordship Lord Denning had said:

"It is one of the cardinal principles of natural justice that a matter should not be decided adversely to a man unless he has had a fair warning of the case against him and a fair opportunity of dealing with it."

Has the requirement of Notice been complied with?

The Notice of Motion that was lodged on 12th August 2002 with the Honiara City Clerk ("the Clerk") read as follows:

"That the full Council has lost confidence in the leadership of the City's Lord Mayor, Hon. Ronald Fugui."

This was returned on the same day to the Applicant on the grounds inter alia that it lacked grounds to substantiate the motion of no confidence in the Lord Mayor. The Notice was re-submitted on the following day 13th August in the following terms:

"This supercedes the informal paper, which was submitted yesterday, Monday 12 August 2002. I now submit in notice the motion in order to qualify for the period of time (28 clear days) as required in the Council's Standing Orders.

Sir, beside the Mayor having lost control of political administration of the Council, I decide as proposed mover of the motion to reserve other issues until the motion is presented on the floor when the full Council is convened.

Also presently it is not my intention to engage in instigating "allegations" to back up the motion while it is in notice. However, the motion will give opportunity to the elected and appointed Councillors of the City to review leadership in the Council."

The only issue or matter disclosed in the Notice was the issue on **having lost control of the political administration of the Council**. The impression given it seems was that the Mayor had lost the political support of the majority of the elected Councillors.

Was this sufficient ground to enable the Motion to be debated in the floor of the Council?

I have pondered carefully over this issue. The Notice filed on 12th August 2002 and re-submitted on 13th August 2002 indicated that he might have lost the political support of the majority of the elected Councillors in that it contained the endorsements of at least six other elected Councillors. Bearing in mind that for a motion of no confidence to have any chance of succeeding, at least seven votes should be cast in favour of the motion, there being twelve elected Councillors (section 8(1)(a) of the Act) in the Council, the implication sought to be drawn was that there were sufficient numbers of Councillors who were prepared to support the

⁶ *Mahon -v- Air New Zealand Ltd.* [1984] AC 80

⁷ *Hanson -v- Church Commission for England and Another* [1977] 2 WLR 848 at 855

Motion. It also implied that the Council might be faced with a political crisis in the administration of its business. That was a very serious issue and which would justify the convening of the Council for the purpose of debating the Motion.

However, in order for meaningful debate to be conducted, it is equally important that the reasons for that loss or withdrawal of support are provided, so that the Mayor could prepare to defend himself and counter or contradict any allegations that may be raised against him or where necessary provide explanations. A motion of no confidence is no light matter. It is a very serious and grave matter for any Council to consider. The basic reasons or allegations in summary form should be provided. This is the reason why there is a minimum period of 28 days notice to be provided. The rationale behind this is simple. It is to give the Mayor adequate time to prepare his defence for the day of reckoning. Secondly, this is consistent with the requirements of transparency, accountability and responsible government, which should characterize the activities and conduct of the Council's business.

So whilst there was good cause and reason for summoning a meeting on the 24th September to debate inter alia the motion of no confidence, the demands of natural justice, vis a vis the right to a fair hearing in the Council Chambers demand that sufficient particulars of the reasons or grounds to be relied on in support of that motion should have been disclosed. They do not have to be in detailed form, a summary of the reasons will suffice. That was not done. The Applicant did submit reasons (Exhibit "RF4") on 24th September 2002 but that was after the Meeting had been suspended.

The Mayor therefore was entitled to raise objection on 24th September 2002. That in order for him to defend himself adequately and to counter any arguments or allegations against him, sufficient details should have been disclosed. He is entitled to have notice of the reasons, allegations or grounds to be relied on, as to why the support of his colleagues had been withdrawn, why they are prepared to move a motion of no confidence and perhaps vote in favour of it. Moving a motion of no confidence is one thing, casting a vote after a reasoned, meaningful and intelligent debate on it is another matter. The fact that the notice as filed on 12th August and re-filed on 13th August was endorsed by at least six other Councillors does not necessarily mean that they will automatically vote for it or in favour of it on the appointed day. **They may change their minds!** That is what democratic government and the democratic process is all about, that one is able to make a meaningful, reasoned and intelligent judgement or decision after debate on matters affecting the Council.

So whilst the requirement of the 28 days notice of the intended motion of no confidence had been complied with and that the inclusion of the motion in the Order Paper for the 24th September 2002 was not improper or invalid, **the fact the Mayor had not been furnished with reasons or allegations in support of that intended motion was prejudicial to his right to a fair hearing before the Council Chambers.** It is one thing to file an intention to move a notice of motion of no confidence in the Mayor it is quite another matter to provide a summary of the allegations or reasons in support of it which would enable him to make a reasoned and intelligent response and defence. It is my considered opinion that reasons ought to have been provided.

The decision of the Chairman/Deputy Mayor

There are conflicting affidavit evidence as to the exact decision of the Chairman (the Deputy Mayor). The Applicant says in his affidavit evidence that the debate was suspended to enable the Chairman seek legal clarification from the Attorney-General on whether or not the Applicant was required to furnish reasons in support of his motion or not. He claims the meeting was supposed to be re-convened the following day for further clarification and decision on whether the debate should be continued.

The Clerk on the other hand claims the motion was suspended for failure to provide reasons or allegations in support of the Motion. He says that this meant that the Motion could only be moved after another 28 days

had lapsed. The Meeting was then supposed to reconvene the following day to continue with other business matters of the Council.

The Council Meeting did re-convene the following day but without the inclusion of the motion of no confidence in its Order Paper. It re-convened merely for the purpose of dealing with other matters of the Council. When this became known to the Applicant he walked out followed by those who supported him. This resulted in the meeting for that day to be cancelled.

Was the Chairman right in accepting the objection of the Mayor? Insofar as no reasons or grounds had been furnished or insufficient details provided, he was correct. He was wrong however to suspend the meeting in limbo without giving further directions or clarifications that day or the following day. The reason for suspending the meeting was on grounds of breach of natural justice, vis a vis the right to notice, to prepare his defence or counter arguments and to be heard.

There were two options open to the Chairman when the objection was raised. (i) He could suspend the meeting for the purpose of enabling the Applicant to lodge particulars of his reasons and allegations in support of the Motion, within a specified time period, say within 24 hours or so. The evidence adduced showed that the Applicant did lodge details of his reasons shortly thereafter, on the same day. He could then have fixed a suitable time and date anytime thereafter for the Meeting to be re-convened for the purpose of continuing with the debate. If the Mayor had required more time that could have been given. The requirement imposed that a further 28 days had to lapse before the motion could be re-heard has no basis as no new notice was being given. A valid notice had already been given. **All that was required was for particulars in support of that motion to be provided.**

(ii) The second option would have been for the Chairman to over-rule on the objection, allow the Applicant to continue and complete his submissions, but before allowing debate to continue further, suspend the meeting to allow the Mayor to prepare his defence before resuming debate, say in a couple of days time. This would have satisfied the requirements of natural justice and preserved the right of the Mayor to a fair hearing in the Council Chambers.

Summoning of meetings of the Council

Paragraph 1(2) of Schedule 2 to the Act covers the summoning of meetings of the Council by the Mayor or other members. Standing Order 6(1) expressly provides for the summoning of meetings of the Council. I quote:

"All meetings of the City Council shall be summoned by the Mayor or half plus one of all members of the City Council.

Mr. Deve for the Respondents submits that half plus one of all members of the City Council can only summon a meeting when the office of the Mayor is vacant. As long as the Mayor is in office, he alone can summon a meeting.

Mr. Titiulu for the Applicant says that a meeting can be summoned by half plus one of all members of the City Council. The word "or" gives options on who can call a meeting. Where the requirement is met, a meeting may be called.

I agree with the submissions of Counsel Titiulu. Standing Order 6(1) is crystal clear and needs no further construction. All meetings of the Council may be summoned by the Mayor or half plus one of all members of the City Council. This provides specifically for the situation where a meeting ought to be called but the Mayor

refuses or delays for one reason or another. Provided the requirement of half plus one of all members is met, they are entitled to summon a meeting. The Clerk and Mayor in that instant are required to prepare the agenda and have the meeting convened.

Decision

The answers sought to the Originating Summons can now be answered. Question 1 should be answered in the affirmative. The Chairman was right in accepting the objection of the Mayor and suspending debate on the motion to enable the Applicant provide details in support of his motion. Unfortunately, the requirement imposed that a further lapse of 28 days would be required before the motion could be tabled or discussed was wrong. He should have allowed time for reasons to be filed and further time for the Mayor to prepare his defence before re-convening the meeting to a later date. He failed to do that and to that extent denied the parties their rights to a fair hearing, not only the Applicant but the Mayor as well.

Question 2 should also be answered in the affirmative. A meeting should have been convened and an agenda drawn up by the Clerk following the receipt of a notice on 14th October from the Applicant and ten other Councillors calling on the Clerk to summon a meeting to debate inter alia the Motion of the Applicant. The Applicant by then had complied with the requirements of natural justice on 24th September 2002 by filing his reasons and allegations to the Mayor.

As to the specific orders sought in paragraph 4(a) to (d) it is unnecessary for me to make such orders. All that is required of me is to grant declaration of the rights of the Applicant, which in the circumstances of this case is to the effect that the Applicant is entitled under Standing Order 6 to summon a meeting of the Council. He had done that. It is simply a matter for the Mayor and Clerk to act on that in the normal way.

Some observations

These are obiter comments. It appears that the suspension of the Council Meeting on 24th September was in fact the suspension of the debate on the notice of motion of no confidence. The other business of the Council was supposed to have been debated on the following day 25th September 2002. Those Councillors who walked out could have remained to debate the budget and vote on its merits or, to vote against the Budget and force a resignation on the Mayor.

Secondly, it is unnecessary to have the Council dissolved at this point of time, as the normal democratic processes of the Council are yet to be exhausted. The power to dissolve the Council must be exercised with great caution and not taken hastily. The Councillors should be given opportunity to debate the motion of no confidence and to exercise their democratic rights responsibly, intelligently and maturely.

Costs

The Applicant is entitled to have his costs. It must be borne in mind that the Respondents are sued in their official capacity and not personal capacity. This means that whatever costs are awarded against them should be borne by the Council. I grant costs on that basis.

THE COURT