

IN THE HIGH COURT OF TUVALU

Civil Case no: 5/13

IN THE MATTER OF THE CONSTITUTION OF TUVALU

AND

IN THE MATTER OF THE PARLIAMENTARY RULES OF PROCEDURE

AND IN THE MATTER OF AN EXPARTE ORIGINATING SUMMONS BY THE ATTORNEY GENERAL

Ruling

I have considered the papers sent to me by the Attorney General seeking a number of declarations in respect of proclamations by the Governor General to summon meetings of Parliament made in his own deliberate judgment having determined that it is impracticable to act on the advice of Cabinet.

The application has been made ex parte by the Attorney General because of the urgency of the situation. It seeks the Court's opinion on the proper interpretation of some provisions of the Constitution and the Rules of Parliamentary Procedure to the extent, in the case of the latter, that the Court has jurisdiction to give such opinion.

The situation requires an urgent answer because the Governor has summoned Parliament to sit tomorrow. A matter of this nature will normally need time to hear submissions from other interested parties but I accept the extreme urgency of the situation and make limited declarations on the material before me. Where the declarations appear to involve more than matters of interpretation of the law involved, I shall list them for hearing at a subsequent sitting of the High Court if they are still pursued.

I have based my deliberations on the Attorney General's affidavit in support sworn on 1 August 2013. Annexed to that affidavit is a statement of agreed facts prepared by the Attorney General and agreed by the Speaker and a number of relevant documents.

There are a total of five declarations sought in the originating summons. I do not set them out at this stage.

Having considered the case I am satisfied that declarations 1, 2 and 3 correctly state the legal position and can be made subject to some amendment. I make them in the following terms:

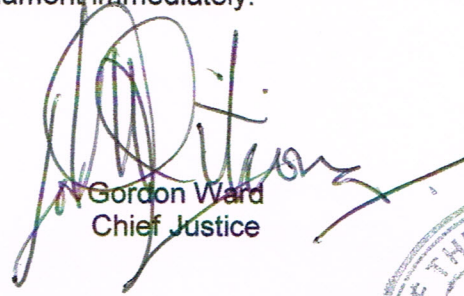
1. That under section 18 of Schedule 1 to the Constitution, the proclamations of the Governor General dated 3 July 2013 and 1 August 2013 made in his deliberate judgment under section 116(1) and section 17 of Schedule 1 of the Constitution are valid.
2. That under sections 110 and 108 of the Constitution and Rule 36(9) of the Rules of Parliamentary Procedure, if a motion of no confidence is duly notified under rule 36(2), the Speaker shall not refuse to hold a debate and a vote because a seat is vacant or to suspend a sitting of Parliament until further notice because a seat is vacant.
3. That under section 113 of the Constitution, Parliament has power to consider a vote of no confidence so long as there is a quorum present, even if any seats are vacant. Section 109(1) requires a quorum of one more than half of the total membership and subsequently under the terms of section 109(3) whatever number of members are

actually present. Under section 63(2)(f) and section 9 of Schedule 1 to the Constitution for a vote of no confidence to succeed it must be supported by the votes of a majority of the total seats irrespective of whether any of them are vacant.

I will not consider declarations 4 and 5 until I have given other interested parties an opportunity to make submissions.

I shall give written reasons for the above declarations 1, 2 and 3 on notice.

In view of the urgency, I direct that the Senior Magistrate shall add the case number and sign and seal this judgment on my behalf and deliver it to the Governor General, Attorney General and the Speaker of Parliament immediately.


Gordon Ward
Chief Justice

1 August 2013

Reid 2/8/13 0955hrs.

