

IN THE HIGH COURT OF KIRIBATI 2012

CIVIL CASE NO. 119 OF 2011

	[MP DR TETAUA TITAI FOR [OPPOSITION PARTY	APPLICANT
BETWEEN	[[AND [
	[HON TAOMATI IUTA, SPEAKER OF [MANEABA NI MAUNGATABU	1 ST RESPONDENT
	[KIRATA KOMWENGA FOR [PARLIAMENTARY COUNSEL	2 ND RESPONDENT

Before: Hon Chief Justice Sir John Muria

30 & 31 May 2012

Ms Elsie Karakaua for the Applicant

Mr Birimaka Tekanene, Solicitor General, for the Respondents

JUDGMENT

Muria CJ: The original applicant in this case, MP Rimeta Beniamina, was the Leader of the Opposition Party, Karikirakean te I-Kiribati, then. He is also the MP for Nikunau. It is common knowledge that he is no longer the Leader of the Opposition Party. He now joined Mauri Party and had no interest in pursuing the case. Following an application made to the Court on 27 February 2012, MP Dr Tetaua Taitai, who is now the Leader of the Opposition Party, Karikirakean te I-Kiribati, and the MP for Tabiteuea North, substituted MP Rimeta Beniamina as the applicant for the Opposition Party.

The original application was by way of Originating Summons dated 31 August 2011. The application was amended by a Notice of Motion dated 5 September 2011. The applicant's application was further amended by Notice of Motion dated 26 September 2011 and filed on 27 September 2011. The orders now sought by the applicant are:

1. A declaration declaring that the Hon Speaker had made an unlawful decision in not accepting a motion of no confidence as filed by the Opposition Leader, contrary to the practice of past Speakers of Kiribati;
2. A declaration declaring that the Hon Speaker had breached the Applicant's constitutional rights by not allowing him to put up their motion for discussion before the House of Parliament;
3. A declaration declaring that the Parliamentary Counsel had in writing provided a bias and prejudiced advice against the Applicant;
4. General damages;
5. Such further order or orders as this Honourable Court thinks fit.

At various stages of the case, the Court gave directions as to the conduct of the case, including the evidence to be used and the issues for the Court to determine at the hearing of the matter. It would be useful, however, that I set out briefly the background to this matter.

Brief Background

The Maneaba ni Maungatabu of Kiribati held its 13th Meeting of 9th Parliament Session on 22 August to 2 September 2011. Prior to the commencement of the said Parliament Session, the Leader of the Opposition filed a Motion of No Confidence in the Government on 19 August 2011 and received by the Office of the first respondent on the same date. The motion of no confidence was based on "**the numerous gross mismanagement of public funds**". The first respondent, on the same date, requested the applicant to list the grounds for his motion.

On 25 August 2011, the applicant provided further clarification as requested by the first respondent in the form of an amended motion which now reads:

"That this House expresses no confidence in the Government for, inter alia, its numerous gross mismanagement of public funds as highlighted by the Auditor General and the Public Accounts Committee on the 2008 Government audited account, and also for its undermining of Parliamentary authority over public funds".

Following the receipt of the amended Motion and advice from the second respondent, the first respondent decided that the motion was out of order and disallowed it to be debated during the 9th Session of Parliament. The decision of the first respondent was communicated to the applicant on 25 August 2011.

Issues and Arguments

Pursuant to the Order on Directions from the Court, the parties agreed on the following issues for the Court's determination. Although the issues are grouped into "Preliminary Issues" and "Main Issues", I shall set out the *seriatim*.

1. Is the privileged of Parliament provided under section 76 of the Constitution with regards to the service of the Court documents within the precinct of Parliament an absolute privileged?
2. Can the Court proceed with the case when the matter is only an application pursuant to rule 37(1) of the Rule of Procedures of the Maneaba ni Maungatabu?
3. Can the Court grant a declaration, even though the right of the Applicant to be a member of Parliament has ceased and that fresh election has started?
4. Is the action of the Honourable Speaker when not allowing the Motion filed by the Applicant to be debated in Parliament infringes the right of the Applicant?
5. Is the action of the Learned Parliament Counsel when providing an advice that is bias and prejudicial to the Applicant, infringes the Applicant's right?
6. Is the action of the Honourable Speaker when conducting the internal proceedings of Parliament subject to Court proceedings?

Counsel for both parties filed written and made oral submissions. Reliance was also placed on the affidavits filed on behalf of each party. I shall now turn to the issues and arguments made by Counsel for the parties.

Privilege of Parliament

This issue was raised by the respondent as a preliminary issue. It is important to deal with this issue first because if the respondents succeed on it, then that is the end of the applicant's case.

The argument by Birimaka Tekanene, Solicitor General on behalf of the respondents is that section 76 of the Constitution of Kiribati preserves and protects the privileges and immunity of Parliament. The section provides as follows:

"76(1) Subject to the provisions of this section, the Maneaba ni Maungatabu may determine the privileges, immunities and powers of the Maneaba and of its members.

(2) No civil or criminal proceedings may be instituted against any member of the Maneaba for words spoken before, or written in a report to, the Maneaba or a committee of the Maneaba, or by reason of any matter or thing brought by him in the Maneaba or in a committee of the Maneaba.

(3) No process issued by any court in the exercise of its civil jurisdiction shall be served or executed within the precincts of the Maneaba while the Maneaba is sitting.

The learned Solicitor General submitted that section 76 prohibits the service of Court processes on Members of Parliament within the precincts

of Parliament while Parliament is sitting. Ms Karakaua, on the other hand, submitted that section 76 does not apply in this case for the three reasons, namely first, the case is brought by the applicant to challenge the decision of the Speaker and not **"against a member of the Maneaba for words spoken before or written in a report to the Maneaba or a committee of the Maneaba or by reason of any matter or thing brought by him in the Maneaba or in a Committee thereof"**. Secondly, Counsel argued that section 76 only applies to words spoken or things done in the Parliament while Parliament is sitting, and thirdly, service on the Speaker was effected after the sitting ended on the day in question. Further Ms. Karakaua submitted that the case is about an alleged breach of the member's constitutional right and has nothing to do with immunity of a member of the Maneaba ni Maungatabu.

On any reading of the provisions of section 76 of the *Constitution*, it is obvious that it enshrines the classic statements of the law on the privileges, immunities and powers of Parliament. In 1986, pursuant to section 76, the Maneaba ni Maungatabu enacted the *Privileges, Immunities and Powers of the Maneaba ni Maungatabu Act 1986* to buttress and make further provisions, on the privileges, immunities and powers of the Maneaba.

There are three considerations that section 76 encapsulated. First, it confers authority on Parliament to determine its privileges, immunities and powers and those of its members. Secondly, confers privileges and immunities on a Member of Parliament from civil or criminal proceedings for any words spoken or thing done in Parliament or in a Committee of the Parliament. Thirdly, it confers privileges and immunity from service of Court processes on a Member of Parliament within the precincts of Parliament while Parliament is sitting. These are distinct protection guaranteed by section 76 of the *Constitution*. As such it is not correct, as suggested by Ms Karakaua, that section 76 only applies to what is said and done in

Parliament or in a Committee of Parliament. Indeed, it also applies to service of Court processes within the precincts of Parliament while Parliament is sitting.

The evidence in this case is that, the Originating Summons was filed in the High Court on 31 August 2011. The copy of the Originating Summons was served on the Speaker, first respondent, on 1 September 2011. See paragraph 10 of the affidavit of Teburoro Tito sworn to and filed on 19 September 2011. It is not clear in the affidavit of Teburoro Tito what time of the day on 1 September 2011 he delivered a copy of the Originating Summons to the Speaker. But I take it that it was done at the Office of the Speaker.

Ms Karakaua's argument in this regard is that the Originating Summons was served on the Speaker at the Speaker's Office not while the Maneaba was actually sitting although it was in session but after it had ended its sitting on the day in question.

Section 76(3) of the *Constitution* prohibits in mandatory terms service of a Court process within the precincts of the Maneaba while the Maneaba is sitting:

"No process issued by any court shall be served or executed within the precincts of the Maneaba while the Maneaba is sitting".

The evidence in this case shows that the Originating Summons was served on the Speaker in his Office which is within the precincts of the Maneaba as defined in Schedule 3 of the *Privileges, Immunities and Powers of the Maneaba ni Maungatabu Act 1986* as Amended.

In the context of the law on the privileges and immunities of Parliament, the words "**while the Maneaba is sitting**" are of very significant importance. Those words signify that when the Maneaba is not in session, the immunity from service of Court process within the precincts of Parliament does not apply. This is because the Maneaba ni Maungatabu sits and meets only when it is in session.

But there is a further consideration to the protection of immunity from service of Court process under section 76(3) of the *Constitution*. There are two requirements to be satisfied in order to claim protection. First, the service or execution of Court process was done "**within the precincts**" of the Maneaba, and secondly, the Maneaba "**is sitting**". In the language of section 76(3) "**within the precincts of the Maneaba while the Maneaba is sitting**" (emphasis added) the two requirements are inseparable. So that if, for instance, service of Court process is effected on a member of the Maneaba at his home while the Maneaba is sitting, such service is perfectly valid, (*Letima –v- Letima* [1984] LSHC 135) or vice versa, service is effected on a member of the Maneaba within the precincts of the Maneaba but the House is not sitting, the protection is not available (**Cochrane's case** (1815) British House of Commons).

In *Letima –v- Letima*, the member of Parliament of Lesotho was served with a Court process at his home while Parliament was still sitting. The High Court of Lesotho held that if a member of Parliament goes to his home while the House of Parliament is still sitting, service of Court process on him at his home is proper service. The privilege can be enjoyed by a member of Parliament only when he is within the precincts of Parliament while Parliament is sitting.

In **Cochrane's case**, Lord Cochrane was a member of the British House of Commons in 1815. He was convicted of a criminal offence and

committed to prison. He escaped, made his way into the House of Commons Chamber and sat on a bench on the right hand side of the Speaker's chair (Government side of the House). The members had not entered the House and nor the prayers had been read. In other words the House had not commenced sitting yet. He was re-arrested in the Chamber of the House. The House of Commons found that the privilege of the House had not been violated.

Lord Cochrane's case shows that the precincts of Parliament cannot be a sanctuary for a member, and more so the floor of Parliament is not sacrosanct even when the House is sitting, provided that it has not yet commenced official business of the House.

To return to the facts of this case, the only evidence of service on the first respondent came from Teburoro Tito who deposed to the fact that he served a copy of the Originating Summons on the first respondent. It was suggested in argument by the learned Solicitor General that Teburoro Tito served the first respondent with the Court papers on 31 August 2011. In paragraph 10 of his affidavit sworn to and filed on 19 September 2011, Teburoro Tito deposed to the fact that he served the first respondent on Thursday 1st September 2011 – and **"requested him to allow the motion to be placed on the agenda of the next day sitting of Parliament"**, the request which the first respondent declined to accept.

In her submission Ms Karakaua contended that the Originating Summons was served on the Speaker at the Speaker's Office after the Maneaba had ended its sitting on the day in question. Thus the argument that service on the Speaker was not done while the Maneaba was sitting. There was no evidence from the respondent nor argument to counter the suggestion that the first respondent was served with a copy of the Originating Summons in his office, not while Parliament was actually sitting

but after the sitting of the House on 1 September 2011. The contention by learned Solicitor General was simply that the service of Originating Summons on the Speaker breached section 76 of the Constitution because Parliament was in session.

It seems to me that, despite the strong argument mounted on behalf of the respondents by the learned Solicitor General on this issue, I am inclined to accept the submission of Ms Karakaua of Counsel for the applicant. The first respondent was served in his office after Parliament rose from its sitting on 1 September 2011. The language used is in the present tense, that is, while the Maneaba "**is sitting**" which must be taken to mean while the Maneaba is actually sitting. The case of Lord Cochrane brings home clearly the point that the privilege only applies "**within the precincts of Parliament while Parliament is sitting**".

On the facts of the present case, the respondents cannot rely on the protection of section 76 of the Constitution.

Past Practice of Speakers

I deal next, very briefly, with the complaint by the applicant that the first respondent failed to follow the past practice of Speakers of the Maneaba ni Maungatabu when he declined to accept the applicant's Motion of No Confidence. The argument of the applicant is that the first respondent was obliged to follow the practices of previous Speakers of the House and accept the Motion. Very little by way of support is offered by the applicant on this point in the submission by Ms Karakaua and I need not delve with it at length.

I have to say that I accept the Solicitor General's contention that there is nothing in the Rules of Procedures of the Maneaba ni Maungatabu that

obliges the first respondent to follow what previous Speakers of the House did when a Motion of No Confidence is filed. Of course, the first respondent may follow the practices of his predecessors if he wishes. The obligation on the first respondent is to follow the requirements of the Rules of Procedures of the Maneaba ni Maungatabu, in particular, in this case, rules 37 and 38.

There is no merit in this complaint. Since it is one of the declarations sought, it must be declined.

Advice of Parliamentary Counsel

The issue of the advice of the second respondent can also be disposed of very briefly. The complaint by the applicant is that the Parliamentary Counsel (second respondent) gave a biased and prejudiced advice against the applicant.

The position of Parliamentary Counsel is provided for in rule 10 of Rules of Procedure of the Maneaba ni Maungatabu. It states:

“10. There shall be a position of a Parliamentary Counsel whose role, among other things, is to provide legal advice to the Speaker and to private Members during all sittings of the Maneaba and to provide assistance to private Members in the drafting of Bills and amendments to Bills”.

In Kiribati, the Office of Parliamentary Counsel performs two roles, namely to provide legal advice to the Speaker and private Members of the House, and secondly, to provide assistance to private Members in the

drafting of private Members' Bills. When he gives legal advice to the Speaker on a legal issue, the Speaker may accept it or refuse to follow it. Likewise, he may give legal advice to a private Member (whether in the Government side or Opposition side) and that private Member may accept it or chose not to follow it. But it does not necessarily follow that any advice given to the Speaker on an issue which he has to rule on would be prejudicial to a private Member of the House if the decision of the Speaker goes against the interest of that private Member, and vice versa. No authority whatsoever had been cited by Counsel for applicant to support the contention that a legal advice given by a Parliamentary Counsel to the Speaker that runs counter to the interest of a Member of the House amounts to bias and prejudice.

Further, the legal advice given by the second respondent in his capacity as Legal Counsel to the Speaker would, in my view, fall into the category of legal professional privilege. As such, this Court would not be in a position to delve with such advice, unless the applicant can point to any lawful reason why the protection accorded to such professional advice can be excepted.

This is a bad point and it is rejected. Consequently the declaration sought under this issue is also declined.

Dead Issue

This issue revolves around the suggestion that Parliament had been dissolved, the applicant had ceased to be member of Parliament, the process for general election had commenced and concluded to elect new members of Parliament and the order seeking to reconvene Parliament had been withdrawn. In those circumstances, the learned

Solicitor General submitted that the applicant's complaint was a dead issue.

It is true that if the issue before the Court is a dead issue and the Court proceeds to deal with it, then the Court is very much being asked for its advisory opinion. The Constitution does not permit such a course of action, save for the circumstances provided for in the proviso to section 88(6).

Issues between parties before the Court can be regarded as dead issues if the parties have settled or resolved the said issues and that there is nothing remaining to be decided by the Court. In the present case, the complaint by the applicant was, and still is, that the first respondent was wrong to reject the applicant's motion of no confidence in the Government and by so doing, he had breached the applicant's right under the Constitution to move the said motion. The legality of the first respondent's action has not yet been settled or resolved between the disputing parties or has not yet been finally "given a decent burial" by the parties, to adopt the language used by the Supreme Court of India in ***M/s Shree Ram Mills Ltd -v- M/s Utilities Premises (P) Ltd*** (21 March 2007) S.C. Appeal (Civ) 1523/07. It is still an unresolved issue and very much alive. The fact that Parliament had been dissolved and election of the members of the new House had been done and life had moved on since, does not change the applicant's unresolved complaint into a dead issue. The dispute between the applicant and the respondents in this case is very much a live issue still before the Court.

Breach of Constitution

I feel that it would be convenient to deal with the remaining issues under this heading since they all touch on the alleged breach of the constitutional provision in question, namely section 68 of the *Constitution*.

The case for the applicant is that when the Speaker refused to accept the motion of no confidence submitted by the applicant to be debated by Parliament, the Speaker had deprived the applicant's right under section 68 of the *Constitution*. Put another way, when the Speaker disallowed the motion under Rule 38 of the Rules of Procedure of the Maneaba ni Maungatabu, he wrongly deprived the applicant of his right to move a motion of no confidence in the Government. Thus says the applicant, the Speaker's action was unconstitutional.

Section 68(1) of the *Constitution* permits any member to introduce any Bill or motion or present any petition to the Maneaba for debate. It states as follows:

"68(1) Subject to the provisions of this Constitution and of the rules of procedure of the Maneaba ni Maungatabu, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Maneaba, and the same shall be debated and disposed of according to the rules of procedure of the Maneaba".

The procedure for moving a motion in the House is set out in the Rules of Procedure of the Maneaba. In this case, the relevant rule is Rule 37(1) which provides:

"37(1) Except as otherwise provided in these Rules no motion shall be moved unless notice of it has been given not less than three clear days before that on which the motion is to be considered by the

Maneaba or Committee thereof, except that a motion of no confidence requires five clear days notice".

As it was a motion of no confidence, the applicant gave notice of it on 19 August 2011. The rule required not less than five clear days before the date on which it was to be debated. On the 26 August 2011 the Speaker rejected the motion relying on rule 38(4) which states:

"38(4) The Speaker may in his discretion disallow any motion or amendment which is the same in substance as any question[s] which, during the same session, has been resolved in the affirmative or negative".

His reasons for rejecting the motion were set out in paragraph 11 of his affidavit sworn to and filed on 9 September 2011 as follows:

"11. When considering the matter, it was clear to me that the 2008 PAC Report had been fully debated in April of this year and other issues were raised during the first reading of Supplementary Bill on Tuesday the 25th day of August 2011. In my opinion, the motion is out of order and at the same time putting it to the Maneaba to be dated is a clear invitation to invoke rule 38(4)".

There can be no doubt on the Speaker's power to rule on a motion as out of order if it is the same in substance as any question which has already been resolved by the Maneaba during the same session. However, if the Speaker wrongly interprets rule 38(4) resulting in a breach of the member's right under the *Constitution*, then the Court can enquire into that decision, even if it means examining the actual decision made on the floor of Parliament. See *Fotofili and Others –v- Siale* [1988] LRC Const.) 102; *Speaker –v- Philip* (30 August 1991) Court of Appeal of Solomon Islands

CAC No. 5 of 1990: *President of the Republic of Vanuatu –v- Korman* (9 January 1998) Civ. App. 8 of 1997. This now leads to two issues to be first considered.

First, is there a right conferred on each member to move a motion of no confidence under the *Constitution*? Secondly, was the motion submitted by the applicant the same in substance as the issues raised and resolved by the Maneaba in April and on 25 August 2011?

While section 68 of the *Constitution* does not expressly say that a member has a right to move a motion of no confidence, one would observe that the said provision, and I would add more particularly, section 33(2)(b) also of the *Constitution*, assume that a right inherently exists in a member of the Maneaba to move such a motion. I have already set out Section 68 above, but Section 33(2)(b) states:

“33.....

(2) The Beretifenti shall cease to be Beretifenti—

(b) if a motion of no confidence in the Beretifenti or the Government is supported in the Maneaba ni Maungatabu by the votes of a majority of all the members of the Maneaba”;

The *Constitution* provides for the mandatory procedure to be followed under Sections 33(2) and 35(1) once the motion of no confidence against the Government is passed. It follows therefore that there must be a right inherent in all of the members of the Maneaba ni Maungatabu to move a motion of no confidence, otherwise the mandatory consequence of passing such a motion would be wholly stultified: see *Speaker –v- Philip* (30/8/91) Court of Appeal of Solomon Islands CAC 005 of 1990. I hold that the applicant, a Member of the Maneaba ni Maungatabu has a right under the *Constitution* to move a motion of no confidence.

The Speaker's reasons for rejecting the motion as out of order as already noted was that "**the PAC 2008 Report was fully debated in April**" last year and "**other issues**" raised during the first reading of the Supplementary Bill on Tuesday 25 August 2011. With respect, when one observes the nature of issues raised in the debate on the 2008 PAC Report and that raised in the applicant's Motion, they were entirely different. In April the House debated the 2008 PAC Report. A debate and decisions (if any) taken on the PAC Report is not the same thing as a debate and a decision taken on a Motion of no confidence on the basis of gross mismanagement of public funds and of undermining of Parliamentary authority over public funds which was the applicant's complaint.

It must also be pointed out that for a Motion to be rejected as out of order, the reasons for doing so must be specific. To say that a motion is out of order because of "**other issues**" raised during a debate on a Bill is certainly not in keeping with Rule 38(4) of the Rules of Procedure of the House.

In this case, I hold that the Speaker had misapplied Rule 38(4) and in so doing, adversely affected the applicant's constitutional right to have the Motion put before the House to be debated.

Aside to the issue of the Speaker's interpretation to Rule 38(4) of the Rules of Procedure, the Solicitor General also contends that the Court cannot enquire into the proceedings of the Maneaba. Counsel cited the case of *Bradlaugh -v- Gossett* (1884) 12 QBD 271 to support the proposition. In England, the rule is clear that the Court is precluded from enquiring into internal proceedings of Parliament. In Kiribati, the Supreme law of the land is the written *Constitution* which also makes provisions on privileges of Parliament, so that precedents obtained in the United Kingdom must be

adopted with care. This warning was sounded out by White P in *Kenilorea –v- Attorney General* (1984) SILR 179, at 181; [1986] LRC (Const.) 126 at 138 that the Solomon Islands Constitution –

"should not be interpreted in strict conformity with the situation as it has developed in the United Kingdom. This question was considered by the Privy Council in Liyanage v. Reginam [1965] UKPC 1; [1966] 1 All E.R. 650, at 658 Lord Pearce said:-

"During the argument analogies were naturally sought to be drawn from the British Constitution. The British Constitution is unwritten whereas in the case of Ceylon their Lordships have to interpret a written document from which alone the legislature derives its legislative power.

On the other hand, I consider that it is clear the position existing before the adoption of a written Constitution in Solomon Islands has an important bearing. As was pointed out by Lord Diplock in Hinds v. The Queen [1976] 1 all E.R. 353 at 359:

The new constitutions evolutionary not revolutionary provided for continuity of government through successor institutions, legislative, executive, and judicial, of which the members were to be selected in a different way, but each institution was to exercise powers which, although enlarged, remained of a similar character to those that had been exercised by the corresponding institution that it had replaced."

I respectfully observe the position in Kiribati is the same. In addition to these matters now being embedded in our Constitution, provisions have also been made to provide for the rights and protection of the people of Kiribati. One such protection is conferred by section 88 of the Constitution which permits a person to apply to the High Court for redress if his or her interests are affected by a breach of the Constitution. Section 88 states:

88. (1) Subject to the provisions of this Constitution, if any person alleges that any provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available,

that person may apply to the High Court for a declaration and for relief under this section.

- (2) The High Court shall have jurisdiction, in any application made by any person under the preceding subsection or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:*

Provided that the High Court shall not make a declaration in pursuance of the jurisdiction conferred by this subsection unless it is satisfied that the interests of the person by whom the application under the preceding subsection is made or, in the case of other proceedings before the Court, a party to those proceedings, are being or are likely to be affected.

- (3) Where the High Court makes a declaration under the preceding subsection that any provision of this Constitution has been contravened and the person by whom the application under subsection (1) of this section was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the High Court may grant to that person such remedy, being a remedy available against any person in any proceedings in the High Court under any law in force in Kiribati, as the Court considers appropriate.*
- (4) Nothing in the foregoing provisions of this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 60 or 117 of this Constitution otherwise than upon an application made in accordance with that section.*

(5) The High Court shall have jurisdiction to make a declaration as to whether any Bill referred to it by the Beretitenti under section 66 (5) of this Constitution, if assented to, would be inconsistent with this Constitution.

(6) Subject to the provisions of this Constitution, the High Court shall have original jurisdiction to hear and determine any question as to the interpretation of this Constitution".

Provided that the following authorities only are entitled to make application to the High Court under this subsection –

- (a) The Beretitenti, acting in accordance with the advice of the Cabinet;**
- (b) the Attorney General; and**
- (c) the Speaker.**

In addition to investing the High Court with jurisdiction to enquire into the internal proceedings of Parliament where a breach of the *Constitution* is alleged to have occurred, this section confers legal standing on any person to come to this Court seeking declaration and relief arising out of such breach of the *Constitution*. It was suggested by the learned Solicitor General in argument that the applicant failed to show that he has legally recognized interest to bring these proceedings. As I have found that the applicant has a right under the *Constitution* to move a motion of no confidence by virtue of sections 33 and 68 of the *Constitution*, the learned Solicitor General's argument must obviously fail. The applicant's right to move the motion of no confidence had been affected by the first respondent's erroneous application of Rule 38(4) of the *Rules of Procedure of the Maneaba ni Maungatabu*.

It must be pointed out that the applicant's interest that is being affected in this case stems from his right as a Member of the Maneaba ni Maungatabu to move a motion of no confidence has been contravened.

As pointed out in the Kiribati case of *Tong –v- Taniera and Another* [1987] LRC 1, there is no blanket standing on a Member of the Maneaba ni Maungatabu to invoke the Court's jurisdiction under Section 88(1) of the *Constitution*. A Member still has to establish his interest before he can enter the gate of Section 88(1) of the *Constitution*.

In this case, as I have already found, the applicant has established his legal standing to bring these proceedings.

Damages

The applicant also claims general damages in this case, no doubt relying on the power of the Court to grant "a declaration and relief" in Section 88(1) of the *Constitution*. The Court has power to award damages as a relief for a breach of the applicant's right under the *Constitution*. See *Maharaj –v- Attorney General of Trinidad and Tobago* [1979] AC 385; see also *Jamakana –v- Attorney General and Another* [1985] LRC (Const.) 569. However, the award of damages is not automatic. It has to be established. The injury suffered by the applicant as a result of the breach must be proved. The injury suffered might be tangible, physical, financial, emotional or whatever but it must be established by acceptable evidence before the Court. See *James –v- Attorney General of Trinidad and Tobago* [2010] UKPC 23; *Attorney General of Trinidad and Tobago –v- Ramanoop* [2005] UKPC 15.

In the present case, apart from the bare claim for "general damages" in the Originating summons there not a stint of evidence offered by the applicant demonstrating any loss or injury suffered as a result of the deprivation of his right to move a motion of no confidence. Again in the course of argument, no submission was addressed at all on the issue of

damages. I find the claim for damages in this case not proved and it is rejected.

As it was said in cases of this nature in *Inniss –v- Attorney General of St Christopher and Nevis* [2008] UKPC 42 and *Philip –v- Speaker* that a contravention of a constitutional provision such as the one with which we are concerned in this case, would be sufficiently met by a declaration which is all that is needed to vindicate the applicant's right in the circumstances of the case.

Conclusion

In the light of what I have stated in this judgment, the Court makes the following declarations and orders on the Originating Summons brought by the applicant:

1. The Speaker was not bound to follow the practice of past Speakers and so his decision not to accept the applicant's motion of no confidence cannot be said to be unlawful on that basis. The declaration sought is refused.
2. The Speaker had wrongly interpreted Rule 38(4) of the Rules of Procedure resulting in the rejection of the applicant's motion of no confidence and thereby contravening the applicant's constitutional right to move the motion in the House. The declaration sought is granted.
3. The Parliament Counsel's written advice to the Speaker was neither bias nor prejudicial to the applicant. The declaration sought is refused.

4. The claim for award of general damages is rejected.
5. The applicant has succeeded, although only in part, his rights under the Constitution had been contravened due to the action of the first respondent and so the applicant is entitled to his costs to be paid by the respondents.

Dated the 6th day of August 2012



SIR JOHN MURIA
Chief Justice