

IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of The High Court of Solomon Islands (Keniapisia J)
COURT FILE NUMBER:	Civil Appeal Case No. 33 of 2021 (On Appeal from High Court Civil Case No. 614 of 2021)
DATE OF HEARING:	29 July 2022 BY CIRCULATION OF PAPERS
DATE OF JUDGMENT:	12 August 2022
THE COURT:	Goldsbrough P Palmer CJ Hansen JA
PARTIES:	ATTORNEY GENERAL -V- SPEAKER OF WESTERN PROVINCE ASSEMBLY
ADVOCATES: APPELLANT: RESPONDENT:	Ofanakwai, N No appearance
KEY WORDS:	Judicial Review Interlocutory Orders Court's jurisdiction
EXTEMPORE/RESERVED:	RESERVED
ALLOWED/DISMISSED	Allowed
PAGES	1 – 7

JUDGMENT OF THE COURT

1. We note that counsel for the Respondent, Mrs Tongarutu, who appeared for the Respondent below advised the Court that the appeal was academic, and she would not be filing submissions. She filed a later letter complaining that the Counsel for the Attorney General was paid fortnightly, but the Respondent had no funds to take part in the appeal. We are not sure what point she was endeavouring to make. In any event we note no submissions were filed on the part of the Respondent. We also note the parties opted to have this appeal dealt with by this Court on the papers.

Background

2. This is an appeal, with leave of the President, from the ruling on an Urgent Application to Set Aside an Interlocutory Interim Injunction/Declaration Order made by the High Court on 24 November 2021 in High Court Civil Case 614 of 2021.
3. The matter relates to the business of the Western Provincial Assembly (WPA) and the scheduling of meetings. Apparently, there were ongoing disputes between the Minister and members of the WPA relating to the holding of requisite meetings. The Speaker sought to Judicially Review the decisions; the first claim being filed on 27 October 2021. It sought an Order quashing the Minister's decision of 14 October 2021 and a Further Order directing the Minister not to interfere with the Speaker's decision when he adjourned the Assembly meetings for 21 and 22 September 2021 to November 2021 or any date thereafter. The background to all of this is apparently the sacking by the Minister of two ministers, Mr Mesepitu and Mr Wale and their replacement.
4. On 9 November 2021 an Amended Judicial Review claim was filed. The parties remained the same. It sought the quashing of Orders made by the Minister on 14 October and 5 November 2021, a Permanent Order to Stay Ministerial Orders until the completion of the proceedings in the Judicial Review claim, and a Permanent Restraining Order against the non-executive members of the WPA not to convene any Assembly meeting until the conclusion of the proceedings in the Judicial Review Claim or until further Orders of the Court. There was a further Order seeking that the Minister's servants and agents be directed not to interfere with the Speaker's decision when he adjourned the Assembly meetings from 21 and 22 September to November 2021, and that was in the same terms as the Original Claim. On 30 November 2021 a

further Amended Judicial Review Claim was filed, which is irrelevant for present purposes as the Application for Interim Injunction and Declaratory Orders pursuant to the Second Amended Claim came before the High Court on 18 November 2021, with the ruling being delivered on 24 November 2021. It appears that the substantive Judicial Review Claim has never been determined.

5. On 9 November 2021, acting under urgency, the Court noted that the second Ministerial Order, Extraordinary Gazette Number 275 of 2021, subject to the Amended Judicial Review, was to proceed in two days' time. He ordered that that be halted and amended on the following conditions.
 2. Ministerial Orders B, C, D, E and F will stand and will form the priority agendas for the meeting of the Western Provincial Assembly, to be convened under Order 3 below.
 3. Ministerial Order A will be amended to read that the meeting of the Western Provincial Assembly will now be held on 29 November 2021 as already catered for under arrangements initiated by the officer of the Speaker and Clerk to the said Assembly.
 4. Any Provincial Assembly member or officers of the relevant Ministry are expected to adhere to the letter and spirit of the orders made herein, and to co-operate with the Office of the Speaker in facilitating the said meeting.
6. The Attorney-General then brought an Urgent Application to Set Aside the Interim Injunction/Declaration Orders made by the High Court, but this was refused by the Judge. It is clear from the Judge's reasons given on 24 November 2021 that he was trying to overcome a political impasse and move the business of the Western Provincial assembly forward. This was an admirable aim.
7. The notice of appeal states:
 1. The learned judge [sic] erred in law in failing to consider the Applicant's submission in the Application to Set Aside the Interim Injunctive Orders in which order 3 of the Interim Injunctive Orders clearly is not an Interlocutory Order but rather a final order that has finally determined the rights of the parties without hearing the substantive claim for JUDICIAL REVIEW contrary to rule 7.1 and 15.3.5 of the Solomon Islands Civil Procedure Rules 2007.

2. The learned judge erred in law in failing to consider the Applicant's submission which stated that Order 3 of the Interim Injunctive Orders of the High Court dated 9 November 2021, in amending the decision of the minister made pursuant to section 47 of the Provincial Government Act 1997, exceeded the supervisory jurisdiction of the court as that power is vested solely on the minister to make.

Submissions

8. We have already noted that the respondent determined not to file any submissions.
9. Mr Ofanakwa referred to rule 7.1 of the Courts (Civil Procedure) Rules 2007. He pointed out that the Primary Interim Orders sought by the Respondents in the Further Amended Urgent Application were an Order halting the convening of any further assembly meetings pursuant to the Premier's order gazetted on 5 November 2021 until Further Order of the Court; an order to stay the Ministerial Order made on 5 November 2021 and gazetted as Extraordinary Gazette until Further Order of the Court; and an Order to temporarily halt convening of any further assembly meetings pursuant to the Premier's Order dated and gazetted on 5 November 2021 until further Order of the Court.
10. The Attorney submitted that Order 3 of the Interim Order perfected on 9 November 2021 is not an Interlocutory Order but is one of major reliefs sought by the Respondent in the Amended Judicial Review Claim. He said this is self-evident when it is noted that Order 3 of the Interim Orders is not a relief sought in the Urgent Application for Interim Injunctive Orders, but a Permanent Order sought in the Amended Judicial Review Claim filed on 9 November 2021.
11. Reference was then made to the well-known authorities of *American Cyanamid Co v Ethicon Ltd* [1975] UKHL 1 and *Allardyce Lumber Company Ltd v Anjo* [1997] SBCA 3; CA-CAC 8 of 1996 (15 April 1997).
12. On this basis it was submitted the learned Judge erred in law in failing to consider the submission that Order 3 of the Interim Injunction Order perfected on 9 November 2021 is a Final, not an Interlocutory, Order, contrary to rule 7.1 of the Courts (Civil Procedure) Rules 2007.
13. As to the second ground of appeal, the submission referred to that part of Order 3 that stated the Ministerial Order "will be amended to read".

14. It is submitted the power the Judge purports to amend is vested only in the Minister, pursuant to section 47(1) of the Provincial Government Act 1997. The Attorney accepted that the Court may exercise a wide discretionary power to grant further orders as the Court deemed fit but submitted that power does not include power to amend the Minister's order, as that is only vested in the Minister pursuant to section 47 as just mentioned.

Discussion

15. We say at the outset that we are in accord with the submissions made on behalf of the Attorney.
16. Turning to the first ground of appeal, rule 7.1 of the Courts (Civil Procedure) Rules reads:

An interlocutory order is an order that does not finally determine the rights, duties, and obligations of the parties to a proceeding.

17. Clearly the *American Cyanamid* principles are part of the law of the Solomon Islands following the decision in *Allardyce Lumber Ltd*. In *American Cyanamid*, Diplock LJ stated:

... acts alleged to be in violation of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when *ex hypothesi* the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action... The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour...

18. As counsel noted, line 3 of paragraph 9 of the Judge's reasons the Judge stated: "Claimant may discontinue, because after 29 November 2021, his amended claim seeking to quash the second Ministerial Order may become desolate and moot." We take it that the word 'desolate' should in fact be 'obsolete.' Clearly, the Judge understood the order he made would bring a final end to the Judicial Review claim.

19. This makes it quite clear that the order made had the effect of a final order and falls outside rule 7.1 set out above.

20. In relation to the second ground, section 47(1) of the Provincial Government Act 1997 states:

Notwithstanding the provisions of this Act or any other law, the Minister may by order published in the Gazette, make such provisions as appear to him necessary or expedient for the purposes of—

- a. providing for any unforeseen or special circumstances; or
- b. resolving, determining, or adjusting any doubt, question or matter,

which may arise in relation to the application or implementation of this Act or in respect of which no provision or effective provision has been made in or under this Act.

21. It is clear beyond peradventure that the power is vested in the Minister alone. While the matter before the Court in the Judicial Review proceedings was reviewable by the Court, care must be taken both in relation to the making of a Final Order, which cannot occur, and in relation to what powers on review the Court has. The Court did not have the right to amend the decision of the Minister. The Judge went too far.

22. We agree with the submission from counsel that the Judge erred in law when he failed to consider the submission that in amending the Minister's order, he exceeded the High Court's supervisory jurisdiction.

23. We cannot stress enough the importance of Judge's in Judicial Review proceedings not exceeding their powers and always bearing in mind the constraints of the Court's jurisdiction in such applications. It is also noted that the substantive Judicial Review in this matter has never been heard, in part because of the Judge's excess. It remains alive, and given Mrs Tongarutu advice to the Court, in writing that the appeal is academic we would expect her client to instruct her to withdraw or discontinue the substantive Judicial Review claim that still remains for resolution immediately.

24. It follows that the appeal must be allowed. In relation to ground one, we are satisfied the Judge erred by making an order that had the effect of a final order, contrary to rule 7.1. In relation to ground two, the Judge erred in exceeding his supervisory capacity as

the power pursuant to section 47 is vested in the Minister and the Minister alone. The supervisory jurisdiction of the Court does not give it jurisdiction to intervene.

25. We note there was no application for costs, so we make no order.

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Goldsbrough (P)

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Palmer (JA)

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Hansen (JA)

