

IN THE SUPREME COURT OF SAMOA
HELD AT MULINUU

IN THAT MATTER OF: the Declaratory Judgments Act 1988 and the inherent jurisdictions of the Supreme Court of Samoa, and the Supreme Court (Civil Procedure Rules) 1980.

BETWEEN: LETUFUGA ATTILA
MANUTOIPULE ROPATI,
President of the Land and Titles
Court.

APPLICANT

A N D: THE ATTORNEY GENERAL,
sued on behalf of the
Honourable Fiame Naomi
Mata'afa, The Prime Minister.

RESPONDENT

Counsel: F S Ainuu and F M Lemisio for Applicant
Attorney General, S H Wallwork Lamb and D J Fong for Respondent

Decision: 31 October 2022

DECISION OF PERESE CJ

1. The Applicant, Letufuga Attila Manutoipule Ropati, is the President of the Land and Titles Court and he seeks urgent relief, by way of an ex parte (or without notice) application for the for interim declaratory orders, as set out in his Notice of Motion dated 29 October 2022. I directed that the ex parte application be called before me this afternoon and for the Attorney General be served on a pickwick basis.
2. Private parties are able to make applications for interim declaratory orders (despite the oxymoron) against the Government, in reliance on this Court's decision in *Drake and Co v Bank of Western Samoa* [1997] WSSC 25, and affirmed in *IRSS Nominees (30) Limited v Commissioner of Inland Revenue* [2014] WSSC 59. In essence the position appears to be as described by His Honour Sapolu CJ, in *Drake*:

I have given some serious consideration to this part of the case. Given what is said in *de Smith, Woolf and Jowel Judicial Review of Administrative Action* (1995) 5th ed at p. 74, the fact that in New Zealand the Courts now have jurisdiction to grant interim declarations, and the express wording of section 12 of our own legislation, **I have come to the view that this Court has jurisdiction to grant an interim declaration against the government or an officer of the government in an appropriate case under the Government Proceedings Act 1974.** Not to have such jurisdiction would leave a serious gap in our law because there is no jurisdiction to grant an interim injunction against the government or its servants and officers acting in their official capacities. It is also somewhat uncertain whether an interim

injunction would lie against a servant or officer of the government who is committing a tort within his official capacity. But there may be circumstances where the justice of a particular case would justify the granting of interim relief until the final determination of the substantive issues. If the Court does not have jurisdiction to grant an interim injunction and does not have jurisdiction to grant an interim declaration, that may give the impression that in some circumstances the government as well as its servants and officers are virtually above the law. I doubt whether the servants and officers of the government would consider that to be a desirable situation because at some stage they too will become ordinary members of the public while others become servants and officers of the government.

The jurisdiction to grant an interim declaration in government proceedings must, however, be exercised sparingly. The interim declaration *must be reasonably necessary* to preserve the position of the applicant until the final hearing. The approach, I would suggest, to be adopted is that stated by the New Zealand Court of Appeal in *Carlton and United Breweries Ltd v. Minister of Customs* [1986] NZHC 1031; [1986] 1 NZLR 423 as applied in subsequent New Zealand cases.

(My emphasis)

3. The *Drake* authority represents the present state of the law in Samoa. Any change to the law would need to be the subject of full argument and careful consideration.

Serious issue to be tried

4. I am satisfied there is a serious issue to be tried; namely, whether s.67 of the Land and Titles Court Act 2020 (the Act¹) means the Applicant was summarily dismissed without cause as the President of the Court when the Act came into force, and if he was not,¹ can he nevertheless be subsequently dismissed whilst he is carrying out his duties under the transitional provisions of the the Act?
5. The Attorney General in her submissions responds by arguing that the decision to appoint a new President arises under the Constitution and that the Government is obliged to make the Constitutional appointment to lead the new Judiciary with all its new features.
6. Whether the Attorney General's submission adequately addresses the summary effect of the Act is a matter for further consideration at a hearing.

The balance of convenience

7. The second issue is whether the balance of convenience favours the making of an interim declaration.
8. Normally, where the Government is involved, the conventional wisdom is that damages is an adequate remedy. In this case it is difficult to see how an award of damages could ever compensate the harm which would be caused to the independence of a person holding the office of President of the Land and Titles Court.
9. Having heard from the Attorney General, she submits that it is imperative that the new President, whose warrant has been signed by the Acting Head of State to act as of tomorrow 1 November 2022, is allowed to begin leading the new Judicial system brought into existence by the Act and the changes to the Constitution. Importantly, the Attorney General submits membership of the

¹ President of the Land and Titles Court v the AG [2022] WSSC 8

Judicial Services Commission is now complete, and that body will be able to appoint new Judges to sit in the new jurisdiction, once the appointment criteria is added to the Act, which is hoped to be amended in the December sitting of the Parliament.

10. It is well known there are backlog issues in the LTC, the appointment of new Judges will enable the addressing of proceedings that are not provided for in the Act's transitional provisions.
11. The principle of judicial independence with respect to tenure is of fundamental importance.
12. Whether the Government has acted in breach of that principle can be adequately, in this case, be addressed in damages and a declaration from the Court. It is material in my decision that even if it could be shown that the Applicant has been improperly dismissed that he would not automatically be entitled to continue to be the President of the LTC for that new legal system. Post the Act and the constitutional amendment, the role is now specifically provided for in the Constitution . The Applicant was appointed President under the LTC 1981 Act.
13. The administration of justice requires that I give proper weight to the interests of those affected by the uncertainties to the new LTC system caused by the continued delay in the appointment of Judges under the Act, and a President under the Constitution.
14. I also consider that the Applicant was not chosen to lead the new Land and Titles Court legal system, and this Court should be slow to interfere with judgment calls made by those empowered by the Constitution to make them.
15. In the result, I consider that the balance of convenience does not lie in favour of the granting of interim orders.

Should the court nevertheless exercise its jurisdiction to grant relief?

16. Having read the motion, affidavit of the Applicant and counsel's memorandum filed in support, and having heard from counsel, I am satisfied that an interim declaration is **not** reasonably necessary to preserve the position, pending further order of the Court.

Decision

17. For these reasons I dismiss the Applicants application.
18. Costs are reserved.



S. Perese

CHIEF JUSTICE