

IN THE HIGH COURT OF SOLOMON ISLANDS

PHILIP

v.

THE SPEAKER OF THE NATIONAL PARLIAMENT

High Court of Solomon Islands  
Ward CJ  
Civil Case No 224 of 1990

Hearing: 21 November 1990  
Judgment: 23 November 1990

*Parliament - motion of no confidence - notice - procedure - whether can be debated in current meeting of parliament - whether Standing Order 36(3) subject to Constitution, section 34 - power of Speaker to make rulings in parliament - interpretation of Constitution.*

*Jurisdiction - whether court can enquire into proceedings of parliament.*

**Facts:**

The applicant, a member of parliament, submitted to the Speaker of parliament a notice of motion of no confidence in the Prime Minister. The Minister of Foreign Affairs raised a point of order that Standing Order 36(3) prohibited the debate of the motion on the basis that a motion of no confidence had been raised in the previous meeting. The Speaker ruled that the motion was out of order. The applicant applied to the court for declarations, including a declaration that the motion of confidence could be debated in the current session of parliament.

**Held:**

1. The Speaker had powers to rule on points of order and matters arising under Standing Order 36(3) even though the effect was to preclude debate.
2. Standing Order 36(3) provided that the motion could be ruled out of order if it was an attempt to reconsider a question already decided. It was the nature of the question raised by the motion that was of vital importance, not the type of motion.
3. Although the Speaker was not acting *ultra vires* when he ruled on the point of order raised, he wrongly interpreted Standing Order 36(3) which resulted in his wrongly declaring the motion of no confidence as out of order and thereby contravened the member's right to bring such motion.
4. When the Speaker ruled on procedural matters, the court had no jurisdiction to enquire into this unless that ruling interfered with constitutional rights, in which case the court had the right to enquire into the internal procedures of parliament. The court would do

this for the limited purposes prescribed by section 83 of the Constitution and in such a way as to reduce any potential conflict between parliament and the court.

**Cases referred to:**

*Bradlaugh v Gossett [1884] 12 QBD 271*  
*Hinds v The Queen [1976] 1 All ER 353*  
*Hopate Sanft & Another v Noble Kalaniuvalu Fotofite & Others (PC) Appeal No 3 of 1987 (1987) 13(4) Commonwealth Law Bulletin 1248*  
*Kaniuvalu Fotofite and Others v Ipeni Siale (PC) Appeals Nos. 1 & 2 of 1987 (1987) 13(4) Commonwealth Law Bulletin 1249-1250*  
*Kenilorea v Attorney General [1984] SILR 179*  
*Liyanage v Reginam [1966] 1 All ER 650*

**Legislation referred to:**

*Constitution, sections 34(1), (2) 62, 83, schedule 3*  
*Standing Order 27(3)(g), 36(3), 38*

A. Nori for the Applicant  
A. Radclyffe for Respondent  
F. Kabui as amicus curiae.

**WARD CJ:** On 31st October the applicant, who is the Member of Parliament for Wona Wona, Rendova and Tetepari, submitted to the Speaker of the National Parliament a notice of motion for a resolution of no confidence in the Prime Minister. On 7th November it was placed on the Notice Paper and on 14th November was on the Provisional Order Paper.

On 16th November, the Order paper included it for consideration that day but, when the motion was reached and before the applicant started to move, the Speaker announced the Minister of Foreign Affairs wished to raise a point of order. The basis of his point of order was that, as there had been a motion of no confidence raised in the previous meeting of Parliament, Standing Order 36(3) would prohibit the debate on the motion.

Standing Order 36(3) provides:

*"It shall be out of order to attempt to reconsider a specific question on which Parliament has taken a decision during the current or preceding two meetings of that Parliament except on a substantive motion to rescind that decision moved with the permission of the Speaker."*

It is correct that the Leader of the Opposition had moved a motion of no confidence in the Prime Minister on 11th May 1990 during the previous meeting. The question raised by that motion had been the Prime Minister's involvement in a \$250 million loan. The motion by this applicant on 16th November was based on the assertion that the Prime Minister no longer had the numbers to form a majority in Parliament. However, the Member had no opportunity to state that for, following a brief debate on the point of order, the Speaker suspended the sitting for 30 minutes and, on his return, ruled the motion out of order.

The ruling is lengthy and I set it out in full from the Hansard report exhibited to the applicant's affidavit,

*Mr. Speaker: And this is what I came up with. There was a submission made to my office preceding this Meeting which raised the following points in relation to Sections 34 and 62 of the Constitution, and on the 36(3) of the Parliamentary Standing Orders, which concerns the Motion of No Confidence in the Prime Minister.*

*(1) That it is required to give notice of all motions under the Parliamentary Standing Orders. These motions includes the ordinary motions and the motion under Section 34 of the Constitution.*

*(2) That as Standing Order 36(3) embraces a principle founded on the British Parliamentary Practice which does not have a written constitution, standing order 36(3) cannot therefore be interpreted to cut down the provisions of a written constitution.*

*(3) That a motion under section 34 of the Constitution cannot be struck down by rules or procedures made under the Standing Orders.*

*(4) That Standing Order 36(3) merely applies or restricts ordinary motions and not motions under Section 34 of the Constitution; and*

*(5) That the Standing Orders are merely in compliance with Section 62 of the Constitution are separate sections, Sections 62 cannot be interpreted to cut down the legal effect of section 34.*

*This morning we have an objection raised, stating that the motion is out of order, under the Parliamentary Standing Orders, in particular Order 36(3).*

*After a very careful thought and consideration on the submissions made to my office before and after the motion was noticed, and the Point of Order raised this morning and the subsequent Points of Order, my opinions on the points raised are as follows:*

*(1) It is recognised that there is a need to give notice of all motions to be moved and debated in Parliament. This recognises the fact that the Standing Orders were lawfully made under Section 62 of the Constitution, to regulate the conduct and dispatch of business in Parliament, which operates under a written constitution.*

*(2) Although the principle contained in Order 36(3) originated from British Parliamentary Practice, since it is deemed to be made under Section 62 of the Constitution, it assumes the status of new order or rule made under a written constitution. It can therefore regulate business performed under, or in pursuance of, provisions of a written constitution. For instance, a Motion of No Confidence under Section 34 of the Constitution. If this cannot be done, then there is a gap in the Standing Orders. And Parliament must, under Section 62 of the Constitution, amend the Standing Orders to make specific provision to regulate the conduct of motions under Section 34 of the Constitution. Alternatively, if it is accepted that*

*there is no specific provisions in the Standing Orders to regulate the orderly conduct and dispatch of motions under Section 34 of the Constitution, then it is considered, that, as the 36(3) is deemed to be made under Section 62 of the Constitution, it could be inferred that Parliament has intended to apply Order 36(3) to Motions under Section 34 of the Constitution, except that a notice of 7 clear days is required to be submitted to the Speaker.*

*It is considered that a motion under Section 34 of the Constitution comprises a special question to be debated by Parliament. It follows therefore that a motion under Section 34 of the Constitution is caught by Order 36(3).*

*(3) There is no conflict between the provisions of Section 34 of the Constitution and Order 36(3). Section 34(1) of the Constitution merely stipulates a number of voters required for the motion to succeed. And Subsection (2) merely stipulates the period of notice required before the motion is debated. Section 34 of the Constitution is silent on the number of motions to be moved under that section during a single session of Parliament. Likewise, Order 36(3) is also silent on whether it cannot apply to or restricts motions under Section 34 of the Constitution.*

*It is therefore considered that Order 36(3) applies to both ordinary motions and motions under Section 34 of the Constitution. In my view, it could not be argued that Order 36(3) was made under the Standing Orders. It is clearly that all the Orders, in the current Standing Orders are deemed to be made under Section 62 of the Constitution. Section 34 of the Constitution deals with formal matters whereas the Standing Orders set out procedures to obtain those formal matters; and*

*(4) There is no conflict between Sections 34 and 62 of the Constitution. Section 62 merely empowers Parliament to rule and Standing Orders to enhance the regulation and orderly dispatch of business in Parliament. For example, Motion of No Confidence under section 34 of the Constitution.*

*Lastly but not the least I find great difficulty in disassociating the Constitution from the Parliamentary Standing Orders. I believe very strongly that they are complementary. Therefore, under the powers conferred on the Speaker of Parliament by Standing Order 38 and the restrictions provided under Standing Order 27(3)(g) as read with Standing Orders 36(3), the objection raised by the Honourable Minister of Foreign Affairs and Trade Relations is sustained. I therefore rule that as a matter of procedure of proceedings in Parliament, that the Motion of No Confidence in the Prime Minister, moved by the Honourable Member of Parliament for Rendova and Tetepari, is out of order.*

The applicant now seeks declarations by this Court as follows:

1. that the ruling by the Speaker of the National Parliament made on 16th November, 1990 that the motion for a resolution of no confidence in the Prime Minister cannot be debated in the current meeting of Parliament is *ultra vires* and void;

2. that a motion for a resolution of no confidence in the Prime Minister, notice of which is given to the Speaker of the National Parliament under Section 34(2) of the Constitution is not subject to the provisions of Order 36(3) of the Standing Orders of the National Parliament;

3. that the Speaker of the National Parliament has no powers to make a ruling on whether or not to allow debate on a motion for a resolution of no confidence in the Prime Minister notice of which is given to the Speaker under Section 34(2) of the Constitution;

Mr Nori's case for the applicant, briefly expressed, is that section 34 of the Constitution provides a procedure whereby Parliament may remove a Prime Minister who no longer has the confidence of the House.

*34. (1) If a resolution of no confidence in the Prime Minister is passed by Parliament by an absolute majority of the votes of members thereof the Governor General shall remove the Prime Minister from office, whereupon the members of Parliament shall meet as soon as possible during the same session of Parliament to elect a new Prime Minister in accordance with the provisions of Schedule 2 to this Constitution.*

*(2) A motion for a resolution of no confidence in the Prime Minister shall not be passed by Parliament unless notice of the motion has been given to the Speaker at least seven clear days before it is introduced.*

That section not only provides the means of removing the Prime Minister but imposes special procedural requirements in relation to it, namely, the need for a absolute majority of the votes of members and at least seven clear days notice. He suggests that, as the Constitution sets out such procedures, it is to be inferred that these are the only procedures to apply. Standing Orders, made as they are under section 62, for the regulation and orderly conduct of the proceedings and the despatch of business, are subordinate to the Constitution and cannot impose restrictions on the rights granted by the Constitution itself. When the Speaker refused to allow debate on a motion of no confidence under Standing Order 36(3), he was using that Order to restrict a right granted by the Constitution. Mr Nori points out that the opening words of section 62 give Parliament the power to make orders subject to the provisions of the Constitution and suggests that means not only that the orders are subject to the Constitution but neither can they add anything to it.

In dealing with the same point, the learned Attorney General gave the Court the benefit of a well researched and helpful history in Solomon Islands of both section 34 and Standing Order 36(3). He pointed out that the Standing Orders had been in existence in an approximately similar form since well before the concept of a motion of no confidence first appeared in the 1974 Constitution. The result is that the nature of the Standing Order is, to some extent, inappropriate in that it cannot wholly apply to such motions, for example, in the reference to a motion to rescind an earlier decision.

Mr Radclyffe, for the Speaker, confined his opposition to the single ground that the Courts cannot interfere with Parliament's exclusive right to control its own internal proceedings. Citing the common law, he urged the privilege covers the whole case. As the motion of no confidence was moved in Parliament and all the events being considered in this case took place within Parliament, the Court quite simply has no jurisdiction on this matter at all.

It is necessary to consider the general principles involved as they may touch on more than one of the declarations sought.

The Constitution is the supreme law of Solomon Islands and, by sections 18, 83 and 84, the power to interpret the Constitution is given exclusively to the High Court.

The privileges of Parliament in the United Kingdom are part of our law having been brought from the common law insofar as they do not conflict with the Constitution. There can be no argument that one of the most fundamental privileges of the United Kingdom House of Commons is the power to control its own proceedings. That important privilege applies in Solomon Islands and is reflected in sections 62 and 69 of the Constitution.

After many years of conflict the common law position is that, whilst the existence and extent of Parliament's privileges are part of the law of the land and, therefore, subject to interpretation by the courts, the manner in which Parliament conducts its internal proceedings may not be enquired into by any Court. Thus Mr Radclyffe argues, once it is established the introduction of the motion of no confidence and the subsequent proceedings were part of the internal procedures of the House, as they clearly were, this Court cannot consider the manner in which they were performed.

I shall return to that but, in the case of the second declaration, I do not feel considerations of privilege apply. The question posed there is whether a motion of no confidence under section 34 of the Constitution is subject to the provisions of Standing Order 36(3) of Parliament. It is based on the proposition that, as the section sets its own requirements, no other restrictions can apply. That involves interpretation of sections 34 and 62 of the Constitution, a matter for this Court, and cannot be affected by Parliamentary privilege.

I accept that a motion of censure on a Prime Minister is sufficiently important to receive special provision in the Constitution. It is for that reason there are also special requirements with regard to notice and the necessary majority. Strangely, given the serious consequences that can flow from a successful motion, there is no provision in the Standing Orders for priority (as occurs, for example, in the Australian House of Representatives) or any other matter; no doubt, as Mr Kabui points out, because of the general adoption of Standing Orders that had not originally envisaged such a procedure. However, I cannot accept that the drafters of the Constitution intended the whole procedure to be covered by section 34(1) and (2). Had such an unusual situation been intended, I am sure it would have been stated.

Standing Orders provide for many things besides notice and majority and they are necessary to regulate and order the conduct of proceedings in Parliament. By section 62 they are subject to the Constitution and so where there are specific provisions in the Constitution, they cannot override or vary them. Thus, the normal order that motions require three clear days notice cannot apply to motions under section 34 because of the specific requirement of seven days notice. Similarly with regard to the requirement of an absolute majority but, on matters that do not conflict with the Constitution, Standing Orders can and must apply.

Mr Nori, if I understand his point, suggests that, in some way, the mere application of Standing Order 36(3) takes away a member's right to move a motion of no confidence. That is simply not so. All that Order does is to prevent him moving the same question again after it has been decided previously. It did not prevent his motion being moved the first time, it simply prevents it

being moved again following a decision by the House. Thus I cannot make the second declaration sought by the applicant. A motion of no confidence under section 34 of the Constitution clearly is subject to Standing Order 36(3).

In order to decide the first and third declarations it is necessary to look at the Courts' right to examine the internal proceedings of Parliament.

As I have said, the rule in England is clear and would preclude the Court from enquiring further. Mr Radclyffe relied on the case of *Bradlaugh v. Gossett* (1884) 12 QBD 271 and I accept it is a clear authority for the proposition. In that case, the court ruled that even where Parliament acted inconsistently with the requirement of a statute dealing with the oath of members which would normally be a matter within the exclusive jurisdiction of the courts, the court was precluded from enquiring into it. Stephen J. at 278 said:

*I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute law which has relation to its own internal proceedings.*

He cited with approval a statement by Blackstone in his Commentaries that:

*the whole of the law and custom of Parliament has its origin from this one maxim 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed and adjudged in that House to which it relates and not elsewhere.*

The question here is whether such a rule applies and, if so, the extent to which it applies in Solomon Islands where we have a written Constitution as the supreme law. Study of the law in England is of undoubted value but where the principles of an unwritten constitution have been, to a great extent, supplanted by a written constitution, such precedents must be adopted with care. This warning was given by White J. in *Kenilorea v. Attorney General* (1984) SILR 179 at 181 when he suggested a section of our 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* [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."*

The case law in England is the result of a long and determined fight by Parliament for supremacy. The present reluctance of the Courts to interfere with the internal proceedings of Parliament is based on practicality and common sense but it stemmed from the structure of the institutions in England whereby, if the courts had jurisdiction in such matters, the final appeal to the House of Lords could place that House in the position of controlling the proceedings of the Commons, something against which the latter had fought for centuries.

The same practical and common sense considerations apply in Solomon Islands. It would be impossible for Parliament to function if, every time a Member disagreed with the Speaker, he was to seek the Courts' ruling. Equally the proceedings in Parliament depend on the respect of the Members for the impartiality and integrity of the Speaker. I would suggest that constant battles in the Courts can only damage that respect. It is partly for this reason the battle of the last centuries between the Courts and Commons in England has been resolved by a tacit acceptance by each side of many of the assertions of the other.

However, as has been said, these matters now largely form part of our Constitution and that written Constitution should not be negated or reduced to fit the situation in the United Kingdom unless that is the intention of our law. The Constitution defines, provides and protects many of the rights of people of Solomon Islands. By Schedule 3, it embraces the rules of the common law but only insofar as those rules are not inconsistent with its provisions.

One of the protections enjoyed under our Constitution is provided by Section 83 which allows any person whose interests are affected by a breach of the Constitution to apply to the High Court for redress.

*83. (1) Subject to the provisions of sections 31(3) and 98(1) of, and paragraph 10 of Schedule 2 to, 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 in pursuance of 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 in pursuance of the preceding subsection that any provision of the 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 for the time being in force in Solomon Islands, as the Court considers appropriate.*

*(4) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 52 of this Constitution otherwise than upon an application made in accordance with the provisions of that section.*

By that section the jurisdiction of the High Court is clear. If an action is brought seeking a declaration on those grounds, the Court must enquire into it to ascertain whether there has been a contravention and whether the applicant's interests are affected. A strict observance of the common law rule that the Courts cannot enquire into the internal proceedings of Parliament would preclude such an enquiry and is therefore inconsistent with section 83.

Mr Radclyffe referred the Court to two Tongan cases reported in the Commonwealth Law Bulletin (1987) Vol. 13 No. 4 pp. 1248 and 1249. I am fortified to see they show the Courts in that Kingdom allow enquiry into the internal proceedings of Parliament as an exception to the common law rule where there has been a breach of the Constitution.

The concept of the separation of powers between the Legislature, Executive and Judiciary which is the basis of our Constitution makes any such enquiry exceptional. In the same way that Parliament will avoid criticising or interfering with the Courts, so the Courts must be most reluctant to be seen to interfere with the affairs of Parliament.

The Courts in England will rule in such a way as to reduce any conflict and the same must apply here. Whilst the Court will never shirk from its duty to remedy any breach or infringement of the constitutional rights of any person even if that requires an enquiry into the internal procedures of Parliament, it will only do so for the limited purposes of section 83 and in such a way as to reduce any potential conflict between the two institutions. Thus, although Section 83 gives the Court power to make declarations and grant relief, counsel for Mr Philip has sought only the former and I have no doubt that was an intentional limitation. The making of a declaration alone should be sufficient and it would be most unusual for the Courts to feel it necessary to make a specific order for further relief.

Most of the proceedings of Parliament do not involve constitutional questions. When the Speaker rules on procedural matters, the Court has no jurisdiction to enquire further but if that ruling interferes with constitutional rights of the person involved, the Courts do have the right to enquire.

How does that apply to the present proceedings? No one has challenged the right of the applicant to come to the Court or his interest in the matter. Mr Radclyffe's objection goes to the right of the Court to enquire further.

The case for the applicant is that the right to move a motion of no confidence in Parliament rests with each and every Member. I have ruled that, in order to have it debated, the Standing Orders govern procedure subject to the specific requirements of section 34. The Speaker had a right to rule, as he did, on the effect of Standing Order 36(3) but what if he rules on that wrongly and, by so doing, deprives the Member moving the motion of his right to have it debated? That would

make it far more than a mere procedural ruling and allows the mover to seek the Court's ruling under section 83.

The third declaration sought suggests the Speaker has no power to make a ruling on whether or not to allow debate on a motion of no confidence. By Standing Orders he clearly may rule on points of order and matters arising under Standing Order 36 even if the effect is to preclude debate. That is what he did and so I cannot make the third declaration.

However, in arguing the point, the learned Attorney General and counsel for the applicant both questioned the correctness of the ruling itself because it is not the fact he ruled but that he wrongly interpreted Standing Order 36(3) that led to the contravention of the applicant's constitutional right to move the motion. In order to investigate that contravention, they say the Court's right to examine the proceedings in Parliament extends to the actual decision made.

That must be correct. If the Speaker is entitled to rule, as he clearly is, the Court cannot redress a wrong caused by his ruling unless it decides whether or not the ruling is correct. If it is, there will be no contravention of the Member's rights.

By Standing Order 36(3), it is out of order to attempt to reconsider a specific question on which Parliament has previously taken a decision. In his ruling the Speaker first considered the question of whether that Order covered motions of no confidence under section 34 of the Constitution. Having concluded that it did, he stated:

*I therefore under the powers conferred on the Speaker of Parliament by Standing Order 38 and the restrictions provided under Standing Order 27(3)(g) as read with Standing Order 36(3), the objection raised by the Hon. Minister of Foreign Affairs and Trade Relations is sustained. I therefore rule that as a matter of procedure of proceedings in Parliament, that the Motion of No Confidence in the Prime Minister moved by the Hon. Member of Parliament for Rendova and Tetepari, is out order.*

That is a surprising conclusion. The basis on which the motion can be ruled out of order is that it is an attempt to reconsider a specific question already decided. At no time did the Speaker examine what was the specific question. The Hon. Minister's objection was that a similar motion (that is of no confidence) had been moved previously. A motion of no confidence is not a specific question, it is a generic form of proceeding. In order to ascertain whether the motion was an attempt to reconsider the specific question on which Parliament had already made a decision, it was necessary to examine the question on which each motion of no confidence was based.

The point of vital importance in Standing Order 36(3), as the learned Attorney General points out, is not the type of motion or other proceeding but the nature of the question it raises. The subject matter of each of the motions in May and November was entirely different and so the motions themselves are different. Whilst they were both intended to demonstrate a lack of confidence in the Prime Minister, the means by which that was to be demonstrated was different in each case.

Having ruled that Standing Order 36(3) applied to such motions and before he ruled that this motion contravened the Order, the Speaker needed information on the questions involved. Whether the second motion was substantially the same as the first is a matter for the judgment of the Speaker. He had heard argument directed solely to the former point and none directed to the

latter and thus had nothing on which to base his judgment.

I do not understand his reference to Standing Order 27(3)(g). That Order relates to an earlier stage when the notice of motion is initially submitted to the Speaker. At that time:

*3. If the Speaker is of the opinion that the proposed motion:*

...

(g) contains matter which is inconsistent with paragraph (3) of Order 36,

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

The Hon. Minister, in making his point of order, had referred to the fact the Speaker had accepted the motion as correct in terms of the Constitution, presumably the seven days clear notice, and suggested the Speaker had no right to rule at that earlier stage. It is quite clear that he had and, if he had then pointed to the breach of Standing Order 36(3), the matter could have been considered and the nature of the question ascertained in good time. I would venture to suggest that the purpose of Standing Order 27 is to allow the Speaker to use his experience and knowledge of Parliamentary procedure to assist Members and thus ensure their motions are acceptable rather than to provide a means of preventing matters being properly laid before Parliament. The unfortunate result of the Speaker's action was to suggest to the Member his motion was acceptable in terms of Standing Order 27 and thus take him by surprise on the floor of the House.

The misinterpretation of Standing Order 36(3) then had the effect of contravening the applicant's constitutional right to have such a motion debated by the House.

The first declaration sought is based partly on the ruling that Standing Order 36(3) had been contravened. Whether the Speaker was acting *ultra vires* depends on his power to rule and not on whether his ruling was correct and so his mistake did not render his action *ultra vires*. Mr Nori also asked the Court to consider whether the Speaker's ruling was, in fact, a ruling on the Constitution. As has already been stated, the High Court has the sole jurisdiction to interpret the Constitution. If the Speaker should do so, he is clearly acting *ultra vires*.

At the outset of his ruling, he listed the points relating to sections 34 and 62 of the Constitution that concerned the motion of no confidence some of which had apparently been supplied to him before the meeting. Any reading of those would suggest they are inviting an interpretation of those sections. The Speaker would have been wise at that stage to have sought legal advice. Such a point could have been conveniently resolved by the procedure under Standing Order 27. However, once the matter was raised in the House, he had to rule on a point of order in order to allow the business of the House to continue.

I have studied his opinion carefully. Although the last paragraph of paragraph (2), the last sentence of paragraph (3) and the whole of paragraph (4) could be read as rulings on the law, I feel on balance they simply form part of the process of determining the scope of Standing Order 36(3) and as such are points as I have already found, on which he could rule. Had he gone further he would have been acting *ultra vires* but I am not satisfied he did so.

Thus I decline to make the declarations sought in paragraph 2 and 3. In the case of the first declaration, I do not find that the Speaker was acting *ultra vires* but I do find that he was wrong in his interpretation of Standing Order 36(3). The result of that mistake was that he wrongly declared the motion of no confidence moved by the Member for Vona Vona, Rendova and Tetepari as being out of order and therefore contravened the Member's right to bring such a motion and I so declare.

Although the applicant has only succeeded in part I feel his rights under the Constitution were contravened and that occurred as a result of the action of the Speaker. Thus I order the Speaker must pay the applicant's costs.

Before I leave this case I feel I must make a further observation on cases brought under section 83 of the Constitution.

When a declaration or relief is sought under that section, it should be clearly stated so to be. Equally, although it was not in issue in this case, it is a requirement that the applicant's interests are being or likely to be affected by the contravention. In future cases, the contravention complained of and the interests affected must be specifically pleaded.