

## CASE NOTE

### *LOBO v. LIMANILOVE* [1]

#### **A Harmonious Decision**

**Debra Mackenzie**

#### **INTRODUCTION**

This case from the High Court of Solomon Islands demonstrates a fine balancing act between *Sefo v. Attorney-General* [2] and *Teonea v. Kaupulev* [3]. In both of these cases the issue was the legality of the act of a traditional authority to ban a new church in the community. Although the Constitutional provisions as to the rights and freedoms were similar in these two cases, the Courts came to different conclusions. These cases will not be discussed here, except to observe that the tone of the judicial process was decidedly adversarial, and the end result was the emergence of a clear winner and loser.

Conversely, in *Lobo*, the Court went to great lengths to honor the position of both parties. In the result, there was a successful party of course, but the decision was couched in terms that preserved the integrity and power of the unsuccessful party. In this case, the local church council tried to ban a new church. The Court reached the same conclusion in law as in *Sefo*, and it is probably the correct one; i.e. upholding the supremacy of the Constitution. However, the Court managed to balance the constitutional requirements with the local realities in its written reasons, and thus manifested a somewhat harmonious rather than adversarial process in its decision making.

#### **THE FACTS**

The Tangarare Catholic Parish Council is divided into steering committees that look after the affairs of a zone. It is the policy of the Council that any religious group or denomination that intends to do or undertake any activity within its jurisdiction must first seek the permission of the Council. The Council considered whether or not the activity or undertaking would cause ill feeling and division within the community, or breach of custom and acceptable standard of good behavior or bad effect on the community, and whether the religious group or denomination would co-operate with the leaders of the community into which such religious group or denomination would wish to come.

The Applicant, the Christian Outreach Centre (COC), was a non-Catholic Christian group that had been introduced into the area in 1994. The presence and the religious activities of the Pastors of the COC were perceived by the Catholic Community as being anti-Catholic. The Council wanted the members of the COC to relocate so as not to continue to disturb them and their belief in the Catholic faith.

There were allegations that the COC went beyond the normal preaching of the Gospel by speaking out against the practices of the Catholic Church, and of custom. Further, the COC had come into the community without the requisite permission from the Parish Council.

## RELEVANT CONSTITUTIONAL PROVISIONS

Chapter 2 of the *Constitution of Solomon Islands* [4] sets out provisions to protect the rights and freedoms of its citizens. Section 11 provides for the protection of freedom of conscience including at 11(1), “freedom of religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.”

Section 3 of the Constitution prescribes the fundamental rights and freedoms of every person in Solomon Islands irrespective of his or her race, place of origin, political opinions, color, creed, or sex.

Section 11(6) (a) and (b) sets out the exceptional circumstances where the rights and freedoms of religion can be curtailed by the State; those being “(a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedoms of other persons, including the right to practice and observe any religion without the unsolicited intervention of members of any other religion.”

## THE APPLICATION

Two of the declarations sought by the Applicant are relevant to this discussion. The COC, as the Applicants, sought a declaration that the Parish Council contravened Section 11(1) of the Constitution in purporting to stop any other religious group or denomination, and in particular the COC Church, from carrying out any of its religious activities within the Parish without its approval. Also sought was a declaration that each member of the COC who was also a member of a landholding tribe within the Parish had the right to enjoy his/her constitutional right pursuant to Section 11(1) of the Constitution together with other COC members either in their, or in Public Places within the Parish. The Applicants also sought an order that the Respondents be restrained from interfering, attacking or disturbing any activities of the COC.

## THE ISSUES

1. The first issue is whether the Council’s stand that any religious group or denomination wishing to enter and worship within its area of jurisdiction should first of all obtain permission from the Council is inconsistent with section 11(1) of the Constitution.
2. The second issue is really a sub-issue of the first, and is whether each member of the COC who is also a member of a landholding tribe within the Parish has the right to enjoy his or her constitutional right pursuant to section 11(1) in land within the Parish.

## REASONS FOR JUDGEMENT

I will set out the reasoning of the Court as it is illustrative of the balancing stance which the Court chose to take in this case.

The Court begins with a discourse on the importance of religion in Solomon Islands. It includes a discussion of the history of churches in the area, with the Court noting that there is a modern trend for new religious movements to erode or chip off the established religions. The Court concludes that: “Differences in the manner of worship and tenets may arise from time to time but understanding and tolerance have always been the champions of harmony and acceptance within the communities in Solomon Islands.”

The discussion moves to a consideration of Sections 3 and 11(6)(a) and (b) of the Constitution. The relevance of Section 3 is that it lays down the fundamental rights and freedoms of every person, but also

provides that these rights and freedoms of the individual are subject to the rights and freedoms of others and in the public interest. Section 11(6)(a) and (b) sets out exceptional circumstances where the rights and freedoms of religion can be curtailed by the State. The Court concludes on the basis of these enactments, that “[t]hese rights and freedoms are not absolute in themselves”, and “[A]ppplied to this case, it means that the rights and freedoms of the Catholic Community in the Tangarare Parish must also be respected by the members of the COC and vice versa.”

At this point, the Court remarked that there is a balancing exercise here, and it calls for “great restraint, maturity, understanding, and sensitivity on the part of the COC in its methods of worship lest those methods hurt the feeling of others of the Catholic faith and thereby antagonize them. In practice, it means abstaining from criticizing the Catholic faith in all its tenets and worship practice in all its forms.”

The Court cited an Indian case [\[5\]](#) where the use of loudspeakers by a church was disallowed on the grounds that the right to practice religion was not absolute and did not permit the forcing of any citizen to hear anything against his or her will. The Indian court concluded that in a civilized society religious activities disturbing the peace of others could not be justified.

The Solomon Islands Court then continued on with its discussion of balance by citing the sections of the Solomon Island *Penal Code Act* (Cap. 26) that specifically deal with offences related to religious practices. Defiling a place of worship with the intention of insulting the religion (s. 131), and deliberately insulting religious feelings (s. 135) can draw terms of imprisonment as well as fines. The Court concluded from this that “there is therefore a balance in the eyes of the law to be maintained in society in the exercise of one’s freedom of religion”.

The Court reviewed the evidence of the defendant which suggested that the presence of the COC was causing divisions within their community, and then proceeded to take judicial notice of the fact that freedom of religion under the Constitution “when exercised by individuals has the tendency of creating division between families and close relatives”. A discussion by the Court of the Melanesian concept of family, and its importance in terms of “togetherness in doing things and meeting custom obligations” followed.

The Court recognized that an individual may change his or her religion or faith, but does so for personal reasons, and not for the benefit of his or her community. However, the only restriction that may be made is that the spread of religion must have regard to the rights and freedoms of others. Therefore, the Court decided that the Council’s conduct was unconstitutional, and granted the first declaration sought by the Applicant.

However, the Court granted the first declaration sought only in so far as it affected the COC, not as, in the words of the Court, “a blanket declaration so as to open the flood-gates to any other religious group or denomination waiting on the edge to devour the Catholic congregation”. The second declaration was also granted.

The Court did not grant the order sought to restrain the Respondents from interfering with, attacking or disturbing any of the activities of the COC. The Court had insufficient evidence of particular incidents, but also commented: “The granting of such injunction would tend to suggest that the members of the Catholic Community at Tangarare should not do anything further to exercise their constitutional rights and freedoms in the Catholic Faith. To do so by the granting of an injunction per se would send a wrong signal in that the Catholic Community at Tangarare should no longer be complaining about the work of the COC because the High Court has ruled in their favor.”

The Court concluded the reasons with the following: “The constitutional right and freedom to worship freely under the Constitution is not a sword but a right and freedom co-exist[sic] with others in the

exercise of one's freedom to worship in one's religion. The granting of the declarations in this case does not mean that the members of the COC can override the rights and freedoms of the members of the Catholic Church at Tangarare Parish to practice their faith... As I have said, it is a matter of keeping the proper balance between different denominations in the communities in Solomon Islands.”

## DISCUSSION

The lengthy summary of the Reasons is set out above to illustrate how the Court in this case balanced the interests of the parties. In the result, the declarations were granted, but really, the Court appeared to be taking the parties back to the beginning, to work out their differences so that the COC would succeed or fail, but it would be on the same terms as the other offshoot religious groups that had come to Solomon Islands in recent history.

There is no overwhelming winner or loser here. The Applicants were granted their declarations, and were allowed to stay and practice their religion, but the Court was very careful not to grant them anything that might be perceived as any new power in the community. The Council had to allow the new religion, but the Court indicated that their position remained strong vis a vis other newcomers, and also stressed that the right of the COC to remain and practice their new religion was dependent on the COC not infringing upon the constitutional rights of the Catholic Church.

This was no standard common law decision. The starting point was the *limits* of the constitutional rights, rather than the right which was the subject of the declaration sought. The Court spoke of Melanesian values, and took judicial notice of the fact that freedom of religion has a tendency to cause division in families. This statement does not reflect impassive legality. The Court endeavored to find a balance, or a place of agreement for the parties so that they could peaceably coexist, which is an unlikely goal in the supposedly adversarial setting of the High Court.

I like this decision. It is reflective of the social relations in a relatively small community where family and kinship relationships are still important. [6] In a sense it sends the parties back to their communities to work out their differences over time without impeding one another. The court is clear that the constitutional right was not acquired by one party in Court, but already existed for both parties. And, in a final bow to parity, the Court ordered each party to pay its own costs.

---

[1] [2002] SBHC 110

<http://www.paclii.org/sb/cases/SBHC/2002/110.htm>  
accessed 05/10/2006

[2] [2000] WSSC 18

<http://www.paclii.org/ws/cases/WSSC/2000/18.html>  
accessed 04/10/2006

[3] [2005] TVHC 2

<http://www.paclii.org/tv/cases/TVHC/2005/2.html>  
accessed 04/10/2006

[4] schedule to *Solomon Islands Independence Order 1978*

[5] see *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association* in (2002) 2 *Commonwealth Human Rights Law Digest* 237-238.

[6] For a discussion in this area of anthropology see Nader, L. and Todd, Harry, eds., *The Disputing Process-Law in Ten Societies* (New York, 1978).

© University of the South Pacific 1998-2006