

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

DAILY HANSARD

THIRD MEETING – EIGHTH SESSION

FRIDAY 16TH FEBRUARY 2007

The Speaker, Rt Hon Sir Peter Kenilorea took the chair at 9.30 a.m.

Prayers

ATTENDANCE

At prayers all were present with the exception of the Ministers for Department of Justice & Legal Affairs, Education & Human Resources, Mines & Energy, Communication, Aviation & Meteorology, Provincial Government & Constituency Development and the Members for West Guadalcanal, Savo/Russell, North Malaita and North New Georgia.

STATEMENT OF GOVERNMENT BUSINESS

MOTIONS

Motion No. 4

Hon HAOMAE: Mr Speaker, I beg to move that the National Parliament resolves to recommend to His Excellency, the Governor General, to invoke his powers under section 129 of the National Constitution, to consider appointing a tribunal for purposes of investigating the reasons for the reported dismissal of the Commissioner of the Royal Solomon Islands Police Force.”

Mr Speaker, at the outset allow me to state that the motion is not been moved at the behest of any foreign power or powers...

Hon OTI: Point of order. I thank the MP for Small Malaita for observing the point of order raised from this side of the floor.

Mr Speaker, in relation to the motion, I would like to get your clarification from the stand point of whether the wording of this motion and its intentions would be contrary to Order 27(3)(b) in so far as the Parliament making a resolution for the Governor General to invoke his powers under section 129 of the Constitution. The only two authorities that can influence the Governor General are first of all subsection 7(c) of section 129, and in relation to this particular case the Governor General acts in his own deliberate judgment. Whether Parliament making a recommendation out of this motion through a resolution would not impinge on the powers of the Governor General particularly subsection 7(c), by Parliament passing this motion Mr Speaker.

Mr Haomae: Mr Speaker, point of order. The motion is merely saying to ‘recommend’ and so it is consistent with section 27 of the Standing Orders, and it is not in conflict with the Constitution. The motion is also asking for consideration and that matter of consideration is in line with the Constitution. Also when the Governor General exercises the powers in his own deliberate judgment, that is after a tribunal has made recommendations. The motion is in line with the provisions of the Constitution.

Hon Oti: Mr Speaker, Parliament would therefore agree that for purposes of debate it can pass this resolution but it expects no action to be taken on it.

Mr Speaker: It is a private member’s motion. It is not a government resolution and so it is up to the government to take any step on the basis of its judgment on the legality or the constitutionality of it thereafter.

I think the point raised by the honourable Member is what I was going to say

that he was merely asking Parliament to recommend appointing a tribunal not really asking the Governor General to use his powers. Of course, the Governor General has the final authority to act on this particular thing but then he acts following the views of a tribunal.

I feel that for purposes of proposing investigating under a tribunal, there is no real difficulty with the motion itself because it will be up to the government to either follow it or not because it is for the consideration of the government.

Attorney General: Mr Speaker, if I may contribute to this. Section 129 of the Constitution does provide for the Governor General to exercise his powers in appointing a tribunal. But if Parliament were to be allowed to debate this motion in the frame in which it is couched, it is basically asking this House that makes legislations to contravene its own legislations for this reason. Section 129 of the Constitution says that the Governor General has the powers to commission a tribunal to investigate into allegations against the Commissioner of Police, who for his removal based on inability or to perform the functions of his office or for misbehavior. So it is specific, it is to investigate into these allegations made against the Commissioner of Police. That provision does not empower the Governor General to appoint a tribunal to investigate into reasons for the reported dismissal of the Commissioner of Police. These are two different issues altogether, and the way this motion is framed contravenes section 129. If it is rephrased in accordance with the intention of section 129 in which the Governor General can exercise his powers freely then it will not contravene section 129. But as it is couched, the Governor General does not have the powers to appoint a Tribunal to investigate into the reasons.

Mr Speaker: Are there any suggestions of amendments so that we can be in line with the Constitution? Any suggested amendment? Would the Attorney General suggest some wordings so that we can be in line with the Constitution so that we are not in breach of the Constitution?

Attorney General: Mr Speaker, this is not my motion. The Honourable Member should be qualified and he should know his laws to couch a motion in the proper wording.

Mr Speaker: We are trying whether we can find a proper wording.

Mr Haomae: Let us propose it.

Hon Sanga: Mr Speaker I would suggest that the honourable mover of the motion look at the ingredients of section 129 and then set forth the grounds on which he is trying to substantiate the motion for debate. He should also bear in mind that if the Governor-General receives instructions from Parliament he would want to know the basis on which he is obliged to invoke section 129. I think he needs to rephrase the motion so that he takes into account the ingredients specified in section 129.

Mr Haomae: Point of order. I have not presented the motion yet. The reasoning is within the motion.

Mr Speaker: I think the Attorney General has got a point.

Mr Haomae: I think the Government is trying to play up with my presentation of the construction of how I presented the motion.

Hon Lilo: Point of Order. The content of your presentation does not matter it is the motion. It is the motion that matters.

Mr Haomae: I have asked for a point of order Mr Speaker.

In terms of what the honourable Attorney General has said, amendments have been coming to this House all the time, but it is the human shortcoming that is provided for, it is an universal thing. I am not too sure what she is trying to insinuate in that regard. But what I am saying here is that those reasons are in the motion. When I present it then you will know whether it is true or not and Parliament will give instructions to His Excellency. As I have

already said it is only a recommendation. I have not sit down yet and so you should not stand up.

Hon. Oti: Point of Order. The gist of this debate now over the point of order is that the tribunal established under section 129 of the Constitution is only there to investigate inability and misbehavior of the Commissioner of Police, not to investigate anything apart from that or any reasons behind that. That is the contention. The tribunal can be established, we can debate it but it is out of context in terms of the letter and the spirit of section 129 of the Constitution. Thank you.

Mr Speaker: Yes, I got it from the Attorney General's explanation that it does involve two issues. One issue is the purpose for the tribunal under this particular section, and another issue is the suggestion of this motion. They do not add up, they do not meet as it were. I think it is not that there is an opposition to a motion, it is whether or not this motion being debated has no meaning to the purposes of the tribunal under this particular section.

I would suggest to the honourable Member that under section 31 he withdraws it and then reword it for next Friday. I think that is the best way out so that we may be talking about something that is meaningful because we might be talking about something that has no meaning.

Hon Sanga: Mr Speaker, to help the other side may I suggest that since the declaration by the Minister for Immigration has already been tabled as Parliament Paper No. 18 of 2007, I would suggest that he goes back and redraft his motion to be in line with Section 62(2) of the Interpretation and General Provisions Act as read with the definition of the subsidiary legislation under Section 16, which reads "*Subsidiary legislation means any legislative provision including a delegation of power or duties made in exercise of any power in that behalf conferred by any Act by way of bye-law, notice, order, proclamation, regulation, rule, rule of court or other instruments*".

The declaration by the Minister for Immigration and Foreign Affairs comes under the definition of instrument such that if he invokes Section 62(2) of the Interpretation and

General Provisions Act then that is the proper way to go in dealing with this particular case.

Section 62(2) says, "*If Parliament passes a resolution within three months after any subsidiary legislation is laid before it to the effect that the subsidiary legislation is annulled, the subsidiary legislation shall thereupon cease to have effect but without prejudice to the validity of anything previously done under the subsidiary legislation.*"

In effect he should bring in a motion negative the declaration that was made by the Minister for Immigration. I think that is the right way to go instead of misguiding the Parliament in dealing with this particular issue under Section 129 of the Constitution.

Mr Speaker: Thank you honorable Minister. My ruling is having understood the guidance of the Attorney General that we are discussing two different things, because it is meaningless even if this motion is discussed. I think it is the language of it against the purpose of that particular section that is important. As I said I would suggest to the honourable Member if he withdraws it and comes back with a new format language that may be agreeable, and may be even discuss it with the Attorney-General to help the language of it for purposes of discussion, understanding that motions are intentions and cannot cut across present legal provisions and regulations. That is my advice.

Mr Haomae: Mr Speaker, I understand that the Attorney General was trying to be helpful in couching the wording so that it is consistent. What I was trying to suggest, Mr Speaker, is if Parliament can adjourn for about 15 minutes so that I can see the Attorney General so that the motion can be coached in such a way that it is consistent with Section 129 and then we come back and discuss it today because there is no business for today and so let us not waste people's time.

Sitting suspended until 2.00pm

Parliament resumes

Hon Lilo: Point of order. Mr Speaker, the order that I am seeking from you is that in

accordance with Section 67 of the Constitution and consistent with Standing Order 12, I do not believe that we have the quorum to continue with the sitting.

Mr Speaker: Objection on the basis of no quorum has been raised and so we shall wait 15 minutes.

The House waits 15 minutes but no quorum gained

The House adjourned at 2.20pm