

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 054 OF 2021
[Suva Civil Action No. HBC 243 of 2020]

BETWEEN : **URMILA DEVI SINGH aka URMILA DEVI** *Appellant*

AND : **NASINU LAND PURCHASE AND HOUSING
COOPERATIVE SOCIETY LIMITED** *Respondent*

Coram : **Prematilaka, RJA**
Morgan, JA
Andrews, JA

Counsel : **Mr. S. Singh and Ms. K. Saumaki for the Appellant**
: **Ms. S. Devan for the Respondent**

Date of Hearing : **14 May 2025**

Date of Judgment : **29 May 2025**

JUDGMENT

Prematilaka, RJA

[1] I agree with the reasons and orders of Morgan, JA.

Morgan, JA

Introduction

[2] This is an appeal against the judgment of a High Court Judge (“the Judge”) delivered in the High Court at Suva on the 13th October 2021 (“the Judgment”). In the Judgment

the Judge dismissed the Appellant's application by way of Originating Summons seeking declarations that the Appellant was a member of the Respondent Cooperative and that she be re-instated as a member of the Respondent with all accrued membership benefits ("the Application"). No order was made as to costs. The Application was made under the Cooperatives Act 1996 ("the Act") and the inherent jurisdiction of the High Court.

Background

[3] The Appellant filed an Affidavit in support of the Application ("the Appellant's Affidavit") and the Respondent filed an Affidavit in Opposition ("the Respondent's Affidavit"). These affidavits disclose the following.

[4] The Respondent is a Cooperative registered under the provisions of the Act.

[5] The affairs of the Respondent are governed by and subject to the provisions of the Act and the By-laws of the Respondent registered under the Act ("the By-laws"). The objects of the Respondent as stated in the By-laws are:

- “(a) To purchase from Nasinu Land Company Limited part of CT 3213 on DP 2000 on the seaward side of the Suva to Nausori Road.*
- (b) To arrange for the subdivision, survey and distribution of freehold lots among the members upon such terms and conditions as the general meeting shall determine and to enter into an agreement with each member accordingly.*
- (c) To provide and/or construct roads, gutters, kerbs, drains, footpath, sewer, schools, playground, market, parks, shops and other amenities for the benefit and use of its members. To achieve the above aims it may undertake the work itself or engage contractors to carry out the development for it.*
- (d) To raise funds by means of shares, loans, subscriptions or otherwise from members, banks or other corporate bodies and institutions.*
- (e) To encourage thrift, self-help and cooperation generally among members to promote the development of cooperative ideas and to improve the economic conditions of members within the area of operations.*
- (f) To hold, purchase, lease, acquire any interest in and exercise all privileges of ownership over any freehold or leasehold land as may be necessary or suitable for the conduct and operation of its business or for carrying out of any of its objects and may, subject to the terms of the conveyance or leave, sell exchange, mortgage, build upon, or alter, pull down as rebuild buildings upon any such freehold or leasehold land.*

- (g) *To venture into construction, homes, and build for sale, lease, operate trading business or rent to members in Co-operative Land.*
- (h) *To do all other things that is incidental to or necessary for the attainment of any or all the above objects.”*

- [6] The Appellant’s father in law Ram Narayan Singh was a member of the Respondent. Ram Narayan Singh died on the 4th March 1993. Prior to his death Ram Narayan Singh had nominated his wife Subodh Kumari and his son Mahendra Singh as his nominees in case of his death, pursuant to Section 9 of the repealed Cooperative Societies Ordinance (Cap 219); which is now Section 31 of the Act.
- [7] On 17th January 1978 Lot 55 Deposited Plan No. 4257 Certificate of Title No. 17797 (“the lot”) was transferred to Subodh Kumari and Mahendra Singh.
- [8] On the 25th of July 2001 the Secretary of the Respondent wrote a letter to Ram Narayan Singh advising him that as he was a “fully paid member” the Board had resolved to offer him an undeveloped lot along Ratu Dovi Road. No explanation is given in the affidavit evidence regarding the circumstances around the issue of this letter.
- [9] On the 20th February 2006 Subodh Kumari wrote to the Secretary of the Respondent advising that her husband Ram Narayan Singh had died and that the Certificate of Title “...was made on my name Subodh Kumari f/n Kasi Ram and my son Mahendra Singh his nominees.” She further advised in that letter that she was old and that she relinquished her interest in the Respondent in favour of her son Mahendra Singh. The Respondent then on the 9th March 2006 issued a certificate certifying that Mahendra Singh f/n Ram Narayan Singh was a “bona fide member” of the Respondent. The certificate also recorded Account No. 112496-4 and Lot No. 55 DP No. 4257 (“the Certificate”).
- [10] There was no explanation in the Appellant’s Affidavit as to why the Certificate was issued.
- [11] Mahendra Singh died on the 28th of January 2012 leaving a Will. By his Will he appointed his wife (the Appellant) as the executrix and trustee of his Will and bequeathed his property to the Appellant for her life and after her death to his son

Rajesh Singh. The Appellant obtained probate of her late husband's estate on the 30th January 2019.

- [12] On the 16th July 2016 the Respondent caused a notice to be published in the Fiji Sun Newspaper comprising two lists both entitled "Unknown Members of the Nasinu Land Purchase and Housing Cooperative Limited."
- [13] One list comprised a list of members of the Respondent with amounts beside their names and stated that the Respondent owed the amounts stated in the table to the listed members and requested those members to contact its office and to finalise the amount to be paid within 30 days from the date of the advertisement and that failure to do so would result in the forfeiture of the said amount. Ram Narayan Singh was in the list with the figure 900 beside his name. The list did not contain the names of either Subodh Kumari or Mahendra Singh.
- [14] The second list comprised a list of names and stated that the Respondent was in the process of verifying and finalising the membership list and that the listed people were requested to contact the office within 30 days from the date of the advertisement to confirm their membership and that failure to do so would result in the forfeiture of their membership. Again Ram Narayan Singh's name was in the list but not that of either Subodh Kumari or Mahendra Singh.
- [15] The Appellant said in her affidavit that following publication of the advertisement, and under the mistaken belief that Ram Narayan Singh was still the owner of a share, her mother in law Subodh Kumari advised the Respondent on 4th August 2016 of the demise of Ram Narayan Singh and Mahendra Singh and requested that the "same membership" be transferred to the Appellant's daughter Vinisha Singh. It is not explained how this advice was given.
- [16] The Appellant's Affidavit discloses that Vinisha Singh then corresponded by email with the CEO/Secretary of the Respondent in July and August 2016 where enquiries were made regarding the advertisements. On the 5th August 2016 Vinisha Singh sent an email to the Respondent attaching a copy of a "membership letter" and copies of two death certificates and a birth certificate. These documents are not annexed to the Appellant's Affidavit.

- [17] On the 28th August 2016 the Respondent replied by email stating "... the Board will advise once it's endorsed and all membership thereafter will go through Special AGM for approval." By email on the 22 March 2017 the Respondent advised Vinisha Singh that "Development of Subdivision is still going on. Once development is done then NLPHCL will advise accordingly to its members on lot allocation list." On the 28th March 2018 the Respondent sent a letter to Ram Narayan Singh c/- Vinisha Devi Singh which stated:-

"This is to notify you that the development works on our sub-division at Nadawa (Stage 11) is on the verge of completion. The above cooperative now wishes to inform you on your lot allocation. Please contact our office for the allocation of your lots."

- [18] Vinisha Singh sent further emails to the Respondent between April and June 2018 enquiring as to progress and what the "next process" was. There was no further communication between Vinisha Singh and the Respondent disclosed in the Appellant's Affidavit. On the 21st August 2019 the Appellant's Solicitors wrote to the Respondent advising that they acted for Vinisha Devi Singh the Administratrix of the Estate of Ram Narayan Singh. The letter stated:

"Our client instructs us that despite information from your office that the Estate of Ram Narayan Singh will be allocated a lot and paid all membership benefits your Satya Narayan Singh keeps deferring a lot allocation for our client and has not paid the members dividends to the Estate despite knowing that our client is the administratrix of the Estate of Ram Narayan Singh."

The letter warned that if the Respondent failed to inform their client of the lot allocation by 4pm 21.08.19 then they were instructed to file Court proceedings to compel the Respondent to allocate a lot and "...to restrain any transfers on the Nadawa Subdivision until she is treated fairly and in accordance with member rights she has."

- [19] The Respondent's Solicitors responded on the 11th October 2019. The letter noted that Ram Narayan Singh was a "fully paid member" of the Respondent, that he had submitted a nomination form to the Respondent appointing his wife Subodh Kumari and his son Mahendra Singh as his nominees in respect of his share in the Respondent,

and that a lot, namely CT 17797, was correctly allocated and transferred to the said nominees and no further entitlement to any other lots subsisted. Further the letter noted Clause 8 of the Respondent's By-laws which provides that membership shall be terminated by the death of a member. This By-law they contended was consistent with the By-laws contained in the First Schedule to the Act.

- [20] Considering that she had been treated unfairly and unjustly the Appellant filed the application in the High Court seeking a declaration that she is a member of the Respondent as the Executrix and Trustee of Mahendra Singh and that the Respondent re-instate the Appellant as a member together with all her accrued membership benefits.

The High Court Judgement

- [21] The Judge observed that the application was made "under" the Co-operatives Act 1996. He noted that the parties had referred to Sections 30 and 31 of the Act and Clauses 8 and 12 of the Respondent's By-laws. It is convenient to set these provisions out here.

Sections of the Act

"30 Transfer of interest on death of a member

- (1) On the death of a member a co-operative may transfer the share or interest of that member to the person nominated in accordance with section 31 of this Act or if there is no person so nominated, to the person as may appear to the Board to be the heir or personal representative of the deceased member, or pay to such nominee, heir or personal representative, as the case may be, a sum representing the value of the member's share or other interest in the capital of the co-operative as determined in accordance with the regulations or the by-laws of the co-operative.*
- (2) A cooperative shall pay all moneys due to the deceased member from the co-operative to the heir, legal representative or nominee, as the case may be.*
- (3) All transfers and payments made by a co-operative in accordance with the provisions of this section shall be valid against any demand made upon the co-operative by any other person.*
- (4) Where the member of a co-operative is or becomes of unsound mind the provisions of subsections (1), (2) and (3) shall apply.*
- (5) Every registered co-operative shall furnish to the Commissioner of Estate and Gift Duties, in the prescribed form, a return of all*

transfers and payments made by it under the provisions of this section, without the production of probate or the letter administration within 2 months of such transfers and payments having been made.

31 *Appointment of nominee*

- (1) Every appointment of a nominee by any member of a registered co-operative for the purposes of section 30 of this Act shall be made in writing signed by the member in the presence of 2 attesting witnesses.*
- (2) No member of a registered co-operative with the share capital shall be entitled to appoint more than one nominee, unless that member holds more than 1 share.*
- (3) In any case where more than one nominee is appointed by any member, the number of shares to be transferred or the exact proportion of the amount available that is to be transferred to each of these nominees shall be specified at the time of the appointment.*
- (4) Every appointment of a nominee shall be recorded in the register of members.*
- (5) For the purpose of a transfer to a nominee, the value of any share or interest shall be represented by the sum actually paid for the share or interest by the member holding it, unless the by-laws of the registered co-operative otherwise provide.*
- (6) Where any money is paid to a nominee who is a minor, a receipt given either by the minor or by his or her guardian shall be sufficient discharge to the registered co-operative.”*

Clauses of the By-Laws

“8. Membership shall be terminate by:

- (a) Death;*
- (b) Removal of residence from the area of operations of the co-operative;*
- (c) Permanent insanity;*
- (d) Expulsion as provided for in by-law 9;*
- (e) Withdrawal after application in writing to the Secretary giving one year’s notice.*

...

- 12. On the death of a member, the co-operative may transfer the share and any interest of that member to the person nominated in accordance with Section 31 of the Co-operative Act. If there is no person so nominated, the person as may appear to the Board to be the heir or personnel*

representative of the deceased member shall be transferred, the sum representing the amount of the deceased member's share and other interest in the co-operative. The co-operative shall also pay the amount of all money due to the deceased member from the co-operative to the heir, legal representative or nominee as the case may be after the debts of the deceased to the co-operative has been fully settled."

[22] The Judge noted that there was no survivorship of membership under By-law 8 and that "Section 12 of By-law of the Defendant state that the share and interest of the member may be transferred to a nominee in terms of Section 31 of the Co-operatives Act 1996." The Judge also noted that:-

"If there is no nominee by the member, 'the sum representing the amount of the deceased members share and other interests in the co-operative' it shall also pay 'all the amount of money due' to the member to such person. So the Plaintiffs' claim for a declaration has no legal basis under the Co-operatives Act 1996 or By-laws of the Defendant."

[23] The Judge considered that the facts in the matter were as follows:

- "2. Plaintiff's father in law, late Ram Narayan was a fully paid member of Defendant, co-operative society since the early 1970s.*
- 3. Late Ram Narayan Singh died on 04 .3. 1993 and before he passed away, he had nominated his wife, Subodh Kumari and late Mahendra Singh as nominees.*
- 4. Subodh Kumari, renounced her entitlements as nomination in favour of late Mahendra Singh on 20.2.2006.*
- 5. Late Mahendra Singh was accepted as '**Bona fide member**' of Defendant on 9.3.2006.*
- 6. Late Mahendra Singh passed away on 28.1.2012 and Plaintiff had taken out a Probate for his estate as executrix and trustee of this estate.*
- 7. There was no nomination by late Mahendra Singh for his membership in Defendant prior to his death.*
- 8. Plaintiff states that management of Defendant had told that she would be given share of her husband in terms of the last will.*
- 9. The last will of late Mahendra Singh is silent as to any interest of Defendant.*
- 10. On 16.7.2016, the Defendant advertised for a membership drive to locate all their members and verify their membership. The advertisement stated that if the members fail to verify membership within 30 days of the advertisement, then the membership would be forfeited.*

11. *On 21.8.2019 solicitors had written a letter to Defendant on behalf of administratrix of estate of Ram Narayan seeking allocation of land of a subdivision carried out by Defendant.*

12. *On 11.10 2019 Defendant's solicitors have informed that,*

a. *That the estate of Ram Narayan Singh received a lot allocation by the Defendant on 19 January 1978 and that is all it will receive.*

Annexed hereto and marked "H" is a copy of the title.

b. *The membership of Mahendra Singh terminated on his death and only interest (i.e share, dividends payable) can be transferred to a nominee or persons entitled by law, in terms of Section 30 of Co-operative Act 1996 and Section 12 of By Law of Defendant*

c. *In terms of By Laws, Section 8 the membership is terminated upon a death of a member.*

d. *Denied that late Mahendra Singh was a member, but stated he was registered as the nominee of late Ram Narayan Singh.*

13. *Defendant in the affidavit in opposition stated*

a. *Late Ram Narayan Singh was a fully paid member and his land was allocated to nominee.*

b. *Only late Ram Narayan was entitled to land allocations and land was transferred to his nominees while he was living in 1978.*

c. *The membership of a person terminated upon death. It is only the interest or shares of the deceased member that devolved to next of kin or nominee of the deceased member."*

[24] In his analysis of the application the Judge noted that the Appellant had not indicated any specific provisions of the Act or By-laws for the orders in the Originating Summons. He noted however that at the hearing and in the Appellant's Affidavit and Submissions, the Appellant had relied on Sections 30 and 31 of the Act and By - law 12.

[25] He noted that Ram Narayan Singh was a "fully paid member" of the Respondent and that Mahendra Singh was his nominee under Section 31(2) of the Act after Subodh Kumari had renounced her rights.

[26] The Judge found that Section 30 of the Act "...does not provide an heir of nominee to be appointed as member of Co-operatives Society. So there is no provision in the law to declare even a nominee as a member of Defendant."

[27] Further, noting the provisions of Sections 30 and 31 of the Act, the Judge found that the Appellant could not seek membership of the Respondent as the executrix and

trustee of the Estate of Mahendra Singh who was the sole nominee of the member of the Respondent.

[28] The Judge noted that the Respondent "...had not accepted late Mahendra Singh as fully paid up member of Defendant but accepted him as 'bona fide member'. The Judge went on to find as follows:-

- "27. *There is no provision in the [Co-operatives Act 1996](#) to inherit **membership** of Defendant. So her declaration for membership with Defendant is without merits.*
28. *Membership of the Defendant is governed by statutory provisions and by laws made under said statute.*
29. *Section 8(a) of by law of Defendant states that membership is terminated by death. This By Law is the existing by law made in terms of Co-operative Act 1996. It is neither challenged nor declared null and void. So it should be interpreted accordingly.*
30. *Plaintiff's submission that by law contradicts with [Co-operatives Act 1996](#) hence should not be followed is also, without merit.*
31. *Section 31(5) of Co-operatives Act 1996, states that by laws of respective co-operative societies shall take precedence in relation to transfer of interest or share to nominee of the members.*
32. *The provisions relating to transfer contained in Section 32(5) of [Co-operatives Act 1996](#) will apply 'Unless the by-laws of the registered co-operative otherwise provide'. As By laws of Defendant determined membership, it not transferred upon death even to a nominee.*
33. *Plaintiff's late husband was a nominee of a deceased member. He was never a fully paid member of Defendant, but was classified as 'bona fide member' indicating he was entitled to interest of deceased member's entitlements.*
34. *Irrespective of what was given to him and how he was treated there is nothing in [Co-operatives Act 1996](#) or By Laws of Defendant that allows Plaintiff to be declared as a member of Defendant."*

[29] The Judge thereupon dismissed the Appellant's Originating Summons with no order as to costs.

[30] Being dissatisfied with this decision the Appellant appealed against the Judgment to this Court on the following grounds.

- "1. **THAT** *the Learned Judge erred in evaluating the evidence of the Membership Certificate as the evidence of Mr. Mahendra Singh's membership in the Respondent;*

2. **THAT** the Learned Judge erred in law and in fact in holding that the Appellant was not entitled to be declared member of the Respondent Co-operative as executrix and trustee of his estate when all other current members and benefits transmitted as nominees of the original members.
3. **THAT** the learned trial judge erred in law and in fact in holding that the estate of Mahendra Singh being a 'bona fide' member was a different class of membership and could not be transmitted under section 30 of the Co-operative Act.
4. **THAT** the Learned Judge erred in law by not upholding sections 30 of the Co-operatives Act 1996 against the by-laws of the Respondent.
5. The Learned Judge erred in law and in fact in dismissing the Appellant's claim for membership and failing to consider the affidavits of the parties that clearly showed that the interests of members were transferrable to nominees and membership was the basis for members or nominees or where no nomination was made, for personal representatives of those members to have the membership benefits in terms of section 30 of the Co-operatives Act and clause 12 of the By-Laws of the Respondent.
6. **THAT** the Learned Trial Judge erred in law and in fact by overlooking the evidence that the Appellant was approached by the Respondent and offered an undeveloped lot along the Ratu Dovi Road;
7. **THAT** the Learned Trial Judge erred in law and in fact for holding that membership is not transferable when the membership was transferred from Narayan Singh to Mahendra Singh upon death;
8. **THAT** the Learned Judge erred in law and in fact by failing to uphold/interpret section 30(1) of the Co-operative Act which clearly provides that the membership being the interest of the member in the Co-operative was capable of either being transmitted or the value of that membership was to be paid out to the Appellant.
9. **THAT** the Learned Judge incorrectly held that the By-Laws of the Respondent ought to take precedence over section 30(1) of the Co-operatives Act when clause 8 of the By-Laws conflicted with Clause 12 of the By-Laws.
10. **THAT** the Learned Judge erred in law in applying section 31(5) of the Co-operatives Act when that section had no relevance to the claim for transmission of membership under section 30(1) of the Co-operatives Act.
11. **THAT** the Learned Judge erred in law and in fact in holding that there was no provision in the Co-operatives Act to inherit membership in the Respondent and failed to evaluate section 30(1) of the Act and the evidence in support of the application of the Appellant which clearly should that the Act, the By-Laws and the practises of the Respondent allowed inheritance of membership either by nomination or by way of transmissions to personal representatives.
12. In the circumstances of the case, the Learned Judge erred in law and in fact in dismissing the Appellant's claim."

[31] The Appellant seeks the following orders from this Court:

- A. A declaration that the Appellant is a member of the Respondent co - operative as the Executrix and Trustee of the estate of Mahendra Singh.
- B. That the Respondent reinstate the Appellant as member together with all her membership benefits accrued to date.

[32] I will consider the grounds of appeal in the order that the Appellant presented them in her Written Submissions.

Grounds of Appeal 1, 2 and 3. The Certificate of Membership

Submissions

[33] The Appellant submitted that the Judge had not properly evaluated the Certificate. It was submitted that the Certificate showed that the Appellant had admitted Mahendra Singh as a member in place of his deceased father and that it was evidence of the following:-

- “a. Memberships were transferrable.*
- b. Mahendra Singh was a member.*
- c. A bona fide member meant a genuine member.*
- d. Mahendra Singh was a genuine member of the Respondent.*
- e. As executrix of the estate of Mahendra Singh, the Respondent ought to have transferred that membership to your Appellant under sections 30 and 31 of the Co-operatives Act 1996.”*

[34] The Appellant’s Counsel also referred to the Appellant’s Affidavit in Support which identified members of the Respondent who it was alleged had died and their membership had been “provided” to their executors and trustees and had been allocated lots. As there was no denial or response in the Respondent’s Affidavit in Reply to this assertion it was submitted the assertion could not be denied and was therefore true.

[35] The Appellant further submitted that the Judge was in error when he interpreted the use of the words “bona fide” in the Certificate as indicating that Mahendra Singh had

a different type of membership to a “genuine” member. It was submitted that “bona fide” member can only have one legal meaning and that is that Mahendra Singh was a “genuine member” of the Respondent.

[36] The Respondent on the other hand submitted in relation to the Certificate that the Respondent is a registered co-operative under the Act and is solely governed by the provisions of the Act and the By-laws which comply with the Act. It was submitted that for the Appellant to establish therefore that Mahendra Singh became a member of the Respondent she must found her claim on the provisions of the Act and the By-laws.

[37] The Respondent submitted that clause 7 of the By-laws provide:

“Application for membership shall be made through the Secretary and shall be disposed of by the Board who may grant or refuse admission subject to payment of any upfront fees as approved by the General Meeting.”

[38] It was submitted that no evidence was put forward by the Appellant that Mahendra Singh had applied to become a “paid member” of the Respondent.

[39] The Respondent submitted that a pre-requisite of becoming a member is to first acquire at least one share. The Respondent relied on clause 39 and 42 of the By-laws which provide:-

“(39) The capital of the Co-operative shall be raised by all or any of the following:-

(b) shares subscribed and paid up by each member...”

“(42) All shares shall be paid up prior to allotment”

[40] The Respondent submitted that the Appellant’s husband not having acquired membership in the “usual way” sought to argue that he became a member when he was appointed a nominee by his late father Ram Narayan Singh and that having thus become a member by virtue of such nomination he was entitled to hold interests and benefits transmitted as nominee of the original member. It was submitted that this is untenable in law and devoid of reason and sense.

[41] Finally, it was submitted that Mahendra Singh and Subodh Kumari were merely nominees appointed by Ram Narayan Singh and this does not extend the legal status as nominees beyond the intention of Ran Narayan Singh nor beyond what is

permissible under the Act and By-laws. In this regard the Certificate should be interpreted accordingly. At best the document merely served to establish that Mahendra Singh was entitled to Lot 55 on Deposited Plan No. 4257 which had already been transferred to Subodh Kumari and Mahendra Singh. The Respondent concluded that the Judge was correct in holding at paragraphs 27 and 29 of his judgment that “membership” was governed by the statutory provisions and By-laws of the Respondent and there was no provision to “inherit” membership of the Defendant.

Discussion

- [42] I do not consider that the Respondent’s submissions relating to a “paid up member” are relevant in respect of these grounds of Appeal. I also do not consider that the Judge was correct when he stated in his judgment that the Respondent never accepted Mahendra Singh as a “fully paid up member” or that he was never a “fully paid up member” as there was no evidence to this effect before him.
- [43] The Judge was also wrong when he appeared to differentiate between a “bona fide member” and a “fully paid up member.” There was no evidence to suggest this and there is no provision in the Act or By-laws creating different classes of membership.
- [44] These errors by the Judge however have no bearing on the correctness of the final outcome as will become clear later.
- [45] The Certificate is prima facie evidence that Mahendra Singh was a member of the Respondent at that date and that membership relates to Account No. 112496-4 Lot No. 55 DP 4257 which appears to be the lot which at that point in time had already been transferred to Subodh Kumari and Mahendra Singh. In the absence of any further evidence relating to the circumstances surrounding the issuing of the Certificate, the Certificate cannot be taken any further than that.
- [46] I do not accept the Appellant’s submissions that the Certificate was evidence that membership was transferable and that the Respondent should have transferred that membership to the Appellant under Sections 30 and 31 of the Act. As discussed later Section 30 provides for transfer of the “share” of a member to a nominee, not a member’s “membership.”

[47] I also do not accept the Appellant's contention that the unanswered allegations in the Appellant's Affidavit identifying members who had died, and alleging that their executors and trustees had been "provided" the deceased membership and had been allocated lots, represented bias against the Respondent. Each case must obviously be determined on its own facts.

[48] I do not consider that these grounds of appeal have any merit. Therefore, they should be dismissed.

Grounds 4, 5, 6, 7 and 8. Failure to properly consider the evidence of the parties against Sections 30 and 31 of the Act

Submissions of the Appellant

[49] The Appellant submitted that the following was clear from the evidence in the affidavits:-

- "a. The By-Laws of the Respondent which are standard bylaws as provided for under the Act provide for termination of membership on death of members.*
- f. There is provision for a transfer of membership on death to a nominee if a nomination is made by that member.*
- g. Mahendra Singh had a Certificate of Membership with and from the Respondent. The representation in the Certificate was that he was a bona fide member of the Respondent. The Learned Judge opined that a membership and a bona fide membership were somehow different. The Learned Judge was error when he tried to differentiate 'bona fide' member as opposed to a member – bona fide had one legal meaning and that is that the Respondent was a genuine member of the Respondent which had been acknowledged by the Respondent [page 24 of HCR] on 09 March 2006.*
- h. For some odd reason, after Mahendra's death, the Respondent recognized his father, Ram Narayan Singh as being the member and entitled to a freehold land lot allocation (HCR pages 29 – 44 and 55).*
- i. Ram Narayan Singh had died in 1993.*
- j. Mahendra died in 2012.*
- k. Mahendra had been granted membership based on nomination of Ram Narayan Singh and a renunciation by his mother, Subodh Kumari.*
- l. There was no way in which the Respondent could say that Ram Narayan Singh's membership was terminated by his death and Mahendra Singh was not a member.*
- m. Your Appellant is entitled to that membership by her position as executrix and trustee of the estate of Mahendra Singh."*

- [50] The Appellant acknowledged in her submissions on these grounds that the By-laws of the Respondent provide for termination of membership on death. The Appellant submitted however that there is provision for transfer of “membership” on death to a nominee if a nomination is made by that member - without stating which By-law allows this. The Appellant contended that the Certificate confirms that Mahendra Singh was a “genuine member” on the 9th March 2006.
- [51] The Appellant contended that because Mahendra Singh was acknowledged as being a member the Appellant was entitled to be recognized as a member as his executrix and trustee.
- [52] The Appellant submitted that the Judge failed to consider Section 31(4) which provides that all appointments of nominees are to be recorded in the Register of Members.
- [53] The Appellant then contended that nominations are not normal forms of transfers. They are special forms of transfer post death of a member. The Appellant further submitted “That nomination is lodged with the Union being the wish of the Member for transmission of his share or interest on his or her death.” It was submitted that the Judge erred in law in not appreciating that distinction.
- [54] The Appellant acknowledged that Mahendra Singh did not make a nomination, but submitted that the successors or assignees of other members who are deceased had been “given membership of the deceased members provided the requirements of sections 30 and 31 had been completed with.”
- [55] The Appellant submitted that “at some point in time from 2016 up to 2018” the Respondent had requested the Appellant’s daughter for information on the deaths of Ram Narayan Singh and Mahendra Singh and letters of Administration and a Probate were provided.
- [56] The Appellant then submitted that “The Respondent appears to have reciprocated a form of goodwill in 2018 by agreeing to provide the Estate of Ram Narayan a lot but changed its position in 2019 “...and stated that the share or interest of Ram Narayan Singh was transmitted to his nominee Mahendra Singh and not his membership and that a 1977 Transfer of Land to his wife and son were sufficient discharges of his

shares completely disregarded the letters it wrote in 2001 and 2018 advising Ram Narayan Singh of entitlement to membership lot.”

[57] The Appellant concluded in this regard that this change in position by the Respondent is without legal basis unfair and biased towards the Appellant.

[58] Finally the Appellant submits:-

“23. Further, the learned Judge erred in not accepting that the Respondent Co - operative was a body corporate by registration by virtue of section 14 of the Act and membership in body corporate is by way of shares. That is the reason why sections 30 and 31 speak of shares or interests being transmitted and nominees being recorded in the register of members. For some odd reason, the Learned Judge took it that the shares or interest under sections 30 and 31 were some other form of interest in which a member holds no interest.”

The Respondent’s Submissions

[59] The Respondent contended that it is clear from Sections 30 and 31 of the Act that only the shares or interest of a member can be transferred to a nominee. As such the only interest that was transferable to the nominees was the interest of Ram Narayan Singh in the piece of land that was to be allocated to him in exchange for the payment made which was Lot 55 on Deposited Plan No. 4257. This lot had already been transferred to Subodh Kumari and Mahendra Singh.

[60] Further it was submitted Mahendra Singh and Subodh Kumari were merely nominees appointed by Ram Narayan Singh. The Appellant cannot extend their legal status as nominees beyond the intentions of Ram Narayan Singh nor beyond what was legally permissible under the Act and By-laws.

Discussion

[61] Section 30 provides that on the death of a member a Cooperative may transfer the share or interest of that member to the person nominated in accordance with Section 31 or if there is no person so nominated to the person as may appear to the Board to be the heir or personal representative of the deceased member.

[62] The section is very specific in that it provides for transfer of the share or interest of a member. As the Judge rightly pointed out in his judgement, there is no provision in

the Act to inherit membership so the application for a declaration of membership with the Respondent was without merit. The Appellant submitted that it was clear from an evidentiary basis that there was provision for a transfer of membership on death to a nominee if a nomination is made by that member. I cannot find anything in the affidavits or in the Act or By-laws to support this. The Appellant contends that the Judge failed to consider Section 31(4) of the Act which provides that all appointments of nominees shall be recorded in the register of members. The register of members is provided for by Section 21 of the Act which states:-

“21. (1) *Every co-operative shall maintain a register of members, and where a co-operative issues shares to its members, a register of shares held by each member.*

(2) *The register of members and shares shall be prima facie evidence of any of the following particulars entered in it: -*

(a) the date on which the name of any person was entered in register as a member;

(b) the date on which any member ceased to be a member;

(c) the number of shares held by a member; and

(d) the value of each share.”

[63] The purpose of Section 31(4) is to provide a notice on the register regarding any nomination that may have been made in respect of any member who has died. It does not create a “special form of transfer post death of a member” as contended by the Respondent. The judge did not err in not considering Section 31(4) in his Judgement. He was not required to. There was no evidence adduced by either party as to whether Mahendra Singh was recorded in either the Register of Members or Register of Shares.

[64] The Appellant’s Summons did not seek a declaration relating to the entitlement or otherwise of the Appellant to a share in the Respondent. The application specifically sought a declaration that the Appellant was a member of the Respondent. The Appellant’s submissions relating to Section 31(4) of the Act above have no basis. Firstly, it is clear from the submissions of the Appellant filed in support of her application in the High Court, which are included in the High Court Record, that this submission was not raised. In any event, the Judge did not hold in his judgment that the shares or interest under Sections 30 and 31 were “some other form of interest in which a member holds no interest.”

[65] The Appellant contended in Ground 9 of her grounds of appeal that the Judge incorrectly held that the By-laws ought to take precedence over Section 30(1) of the Act when clause 8 of the By-laws conflicts with clause 12 of the By-laws. I agree with the Respondent's submission in respect of this ground that clause 8 is an exact replica of the prescribed By-laws in the First Schedule to the Act and that clause 12 of the By-laws is adopted from Section 30 of the Act. There is no legal basis to agree that these provisions are in conflict with each other.

[66] I do not consider that the judge failed to properly consider the evidence of the parties against Sections 30 and 31 of the Act as contended in the grounds of appeal. On the contrary I consider that the Judge properly considered the terms of Section 30 and 31 of the Act in terms of the affidavit evidence before him and reached the correct conclusion in refusing to grant the very specific declaration applied for.

[67] For the reasons stated above, I consider that these grounds of appeal have no merit and should be dismissed.

Ground 10 – Relevance of Section 31(5) of the Act

[68] Section 31(5) only relates to the value of a share or interest for the purpose of the transfer to a nominee and to that extent had no relevance to the application before the High Court. I do not consider however that the Judge applied that section in his determination of the application nor that his reference to the section affects the outcome which as stated above I consider was correct. This ground has no merit and should be dismissed.

Ground 11 – Transfer of Membership

[69] The Appellant relied on Section 31(4) of the Act to support his contention that a nominee stands in place of a deceased member and this has already been considered above. This ground has no merit and should be dismissed.

Conclusion

[70] For the reasons stated above I do not consider that any of the grounds of appeal have merit. The Originating Summons sought a very specific declaration that the Appellant

was a member of the Respondent as the Executrix and Trustee of Mahendra Singh. I do not consider that the Judge erred in law in dismissing that summons on the affidavit evidence before him.

Comment

[71] Although it was not raised as an issue in this matter in the High Court and was therefore not an issue of this appeal, I note the Judgment of this Court in this session in **Mohammed Ali Maqbool v. Nasinu Land Purchase and Housing Co-operative Society Limited Civil Appeal** No. ABU 087 of 2023 that the proper jurisdiction for the determination of disputes such as the dispute in this matter lies with the Registrar of Co-operatives and/or the Co-operatives Tribunal under Section 115 of the Act and not the High Court.

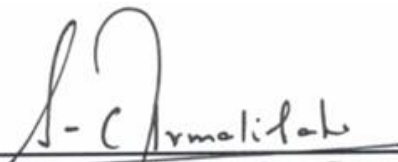
Andrews, JA

[72] I have read and agree with the judgment of Morgan, JA.


Orders of the Court

1. *The appeal is dismissed.*
2. *The Judgment of the High Court dated 13th October 2021 is affirmed.*
3. *In the circumstances of this case, as in the High Court, I do not consider that there should be any order for costs.*




Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL


Hon. Mr. Justice Walton Morgan
JUSTICE OF APPEAL


Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL

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