

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 344 OF 2014

BETWEEN : **JOSEFA SERU**
VIREND SINGH
AND : **ILAI RAVULA**
NOA NAISEVU
SAULA TAWAKE

1st Plaintiff
2ND Plaintiff
1st Defendant
2ND Defendant
3RD Defendant

COUNSEL : **Mr. F. Vosarogo the Plaintiffs.**
Mr. R. Vananalagi for the Defendants.

Date of Hearing : **26th October, 2015**

Date of Judgment : **14th December, 2015**

JUDGMENT.

[1] The plaintiffs instituted these proceedings by way of originating summons seeking the following reliefs;

1. A declaration that the 1st and 2nd defendants are not fit and proper persons to be holding or standing in a position of trust in the administration and trusteeship of Faith Christian Fellowship Outreach (“FCFO Ministry/Church”).

2. A declaration that the 1st defendant has acted without diligence and proper procedure and protocol of trusteeship in appointing the 3rd defendant to the position of oversight of FCFO in Fiji in his absence.
3. Alternatively, a declaration has acted without proper authorisation and the trustee approval /endorsement and mala fide in appointing the 3rd defendant to the position of oversight of FCFO in Fiji in his absence.
4. An order that the 1st and 2nd defendants be removed for cause from the Trusteeship of the FCFO Ministry/Church.
5. An order restraining all the three defendants by themselves, their respective servants and/or agents from any gatherings of the FCFO Ministry/Church meetings.
6. An order that that the 1st and 2nd defendants be substituted in the trusteeship by:
 - (a) Eparama Kaitani.
 - (b) Akasio Rabosea.
7. Costs on indemnity basis.

[2] However, at the hearing the learned counsel for the plaintiffs informed Court that the plaintiffs are only seeking the removal of the 1st and 3rd defendants.

[3] The case of the plaintiff is that on or about December 2013 the 1st defendant decided to go to Australia with his children to participate in a conference organized by a Sydney based Liverpool church for a youth programme. The 1st defendant then withdraw about \$ 1600 from the FCFO account and informed the Board of the church that said amount could be deducted from his allowance. The plaintiff alleges that the 1st defendant without paying the said amount continued to withdraw his allowance.

[4] 1st defendant has left for Australia in or about February 2014 and the plaintiff avers that he had been reliably informed that the 1st defendant has no intention of returning

to Fiji soon. The 1st defendant before leaving for Australia has appointed the 3rd defendant who is not a member of FCFO, to function as the senior pastor in his absence.

[5] The 3rd defendant raises the following preliminary objections to the maintainability of the plaintiffs' action;

a) The plaintiffs and the persons sought to be appointed as trustees (Eparama Kaitani and Akasio Rabosea) has no *locus standi* to bring this action as they have resigned as members of the church effective from 2nd February 2014. They no longer engage and/or involve themselves with the daily/weekly/monthly physical and/or spiritual work required of them by the church since their resignation and this is a mandatory qualification for a person to become a member of the church.

b) The constitution of the church prohibits any member from instituting any legal action against the pastor, committee or any other member of the church.

[6] The 3rd defendant tendered to the Court along with his affidavit in opposition a letter sent by the 1st and 2nd plaintiffs with three other people out of which two of them are the persons sought to be substituted in place of the 1st and 2nd defendants, withdrawing from the membership of Faith Christian Fellowship Outreach congregation. The English translation of the said letter dated 1st February 2014, addressed to the Chairman of the Faith Christian Fellowship Outreach reads as follows;

This is with respect and appreciation I wish to convey to you that I wish to convey to you that we and our family have withdrawn our support and membership of this congregation.

Reason being that we were so disappointed of the leadership apprehended to us, in front of the members of the church at the Annual General Meeting on 1st February 2014.

Therefore, we would like to convey to you, that you have to vacate the church building straight away after the morning service today, 2nd February 2014.

- [7] The origination summons was filed of 4th December 2014. At the time of the institution of these proceedings the plaintiffs and the other two persons who are sought to be appointed as trustees were not members of the Faith Christian Fellowship Outreach. Therefore, they have no right to bring this action in the capacity of trustees of the church. The preliminary objection taken on behalf of the 3rd defendant that the plaintiffs had no *locus standi* to bring this action must therefore be upheld.
- [8] It is also important to note that the plaintiffs are seeking reliefs in respect of two people who are not parties to these proceedings. Once a matter is brought before the Court it is vested with the jurisdiction to inquire into the dispute between the parties before it. The Court is not empowered to make orders in favour of or against persons who have not been made parties to a particular action. Therefore, the Court has no jurisdiction to go into the question whether Eparama Kaitani and Akasio Rabosea who sought to be appointed as trustees are in fact entitled to be so appointed. If they are to be appointed as trustees the application must come from them and not from a third party.
- [9] The English translation of Section 7, part 1 of the Constitution of the Faith Christian Fellowship Outreach reads to the following effect;

The Faith Christian Fellowship Outreach as a matter of policy will not allow any dispute within the church taken to Court of Law. Church members are not allowed to take any dispute involving any Pastor, Board of Elders and Board of Stewards, Office Staff or any other church member before a Court of Law. Disputes are to be resolved in the following way:

1. Disputes among church members should be resolved among those concerned following Christian principles. If the dispute still exists and cannot be resolved, it is then taken before the Senior Pastor for his/her counsel and advice. If the Dispute is still not resolved after that, then it is then taken to the Board of Elders or to a committee appointed by the Senior Pastor to look into the dispute and try to resolve it.

2. No legal Attorney is allowed to participate in this progress.

3. The decision of the committee appointed to resolve the dispute will be final and binding to the disputing parties.

- [10] In view of the above provisions of the Constitution, the plaintiffs claiming to be members of the Faith Christian Fellowship Outreach could not have brought this dispute to Court. However, since the plaintiffs, at the time of the institution of these proceedings, were not members of the church they were not governed by the above provisions. However, it is the view of the Court that since this is a dispute regarding the appointment of trustees the membership of the Church is in a better position to decide as to who is more suitable hold such a post.
- [11] The main allegation against the 1st defendant is that the money withdrawn by him was not paid back. It is the position of the plaintiffs that the 1st defendant instructed to deduct it from his allowance but for reasons best known to the officers who were responsible in paying this allowance had not deducted it. The 1st defendant therefore, cannot be said to have misappropriated the funds of the church.
- [12] The learned counsel for the plaintiffs submitted that since the 3rd defendant's name has not been registered as required by the provisions of section 4 of the Religious Bodies Registration Act (Cap 68) he is not a trustee in law and referred to the documents tendered along with the affidavit in support marked as "JS1" and "JS2".
- [13] Section 4 of the said Act provides as follows;

In the event of the death, resignation or removal from his trust of any trustee of a religious body, the requisite alteration in the names of the trustees of such body shall be effected by a new memorial to be signed and registered under the conditions imposed by the provisions of section 3. Until the registration of such new memorial the trustees already registered shall be treated for all purposes as existing trustees, and no trust under this Act shall in any case devolve upon the heirs or personal representatives of any trustee.

[14] If the name of the 3rd defendant has not been registered as required by the above provisions the question of declaring his appointment a nullity will not arise for two reasons. Firstly, the plaintiffs have not prayed for such a declaration and secondly, when a particular act becomes void by operation of law a declaration by the Court to that effect is not required.

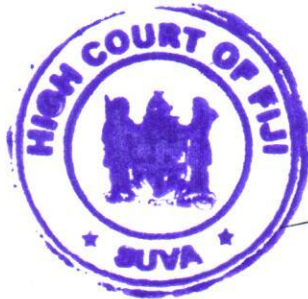
[15] However, since the two persons who are sought to be appointed as trustees in this action have resigned as members of the Church and also for the reasons given above they are not entitled to be appointed or perform as trustees.

[16] For the reasons aforementioned I make the following orders.

ORDERS.

[17] The originating summons of the plaintiffs is struck out.

[18] The plaintiffs shall pay the defendants \$ 500 as costs of this action to each defendant (\$ 1500 in total).



Lyone Seneviratne
.....
Lyone Seneviratne

JUDGE