

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. 200 of 2016**

**BETWEEN**

**RUGBY REFEREES OF FIJI ASSOCIATION** established on the  
11<sup>th</sup> day of March 2016 under the industrial Associations Act  
(Cap 95) situated at 38 McGregor Road, Suva.

**PLAINTIFF**

**AND**

**FIJI RUGBY UNION** a charitable organization established under the  
Charitable Trusts Act (Cap 67) situated at Rugby House,  
Gordon Street, Suva.

**FIRST DEFENDANT**

**AND**

**JOHN O'CONNOR** as Chief Executive Officer, Fiji Rugby Union.

**SECOND DEFENDANT.**

Counsel : Ms. N. Tikoisuva for the plaintiff  
Mr. N. Lajendra for the defendants

Date of Hearing : 08<sup>th</sup> November, 2016

Date of Judgment : 05<sup>th</sup> December, 2016

## JUDGMENT

[1] The plaintiff filed this originating summons (expedited form) seeking the following reliefs;

1. A declaration that the plaintiff is also known and recognized as the Fiji Rugby Referees Association upon the construction and interpretation of its internal minutes of meeting, registration documents and its constitution.
2. A declaration that the 1<sup>st</sup> defendant being a charitable organization under the Charitable Trusts Act of Fiji does not have exclusive right over the game and sport of rugby in Fiji.
3. A declaration that as charitable trust, the 1<sup>st</sup> defendant governed by the Charitable Trusts Act and in accordance with and in accordance with its constitutional provisions and objects.
4. A declaration that the 2<sup>nd</sup> defendant is an employee of the 1<sup>st</sup> defendant carrying out the directives of its Board of Directors under the interpretation and constructions of the 1<sup>st</sup> defendant's constitution (as amended).
5. A declaration that the actions of the 1<sup>st</sup> defendant through the 2<sup>nd</sup> defendant, in issuing public statements to media agencies in Fiji and organizations (Registered and unregistered) preventing the plaintiff in engaging in the sport of rugby is in contravention of the provisions of

the Charitable Trusts Act and the Fiji Rugby Union Constitution (as amended).

6. A declaration that the 1<sup>st</sup> defendant through its directives to the 2<sup>nd</sup> defendant, has breached its legal obligations and its objects under its constitution (as amended) to select match officials in the sport of rugby in consultation with the plaintiff.
7. An order consequent upon the grant of all or any of the aforesaid declarations, that the 1<sup>st</sup> defendant be restrained from selecting match officials without the consent and/or consultation with the plaintiff in observance of the 1<sup>st</sup> defendant's constitutional obligation and objectives.
8. An order confirming is the body previously known as the Fiji Rugby Referees of Fiji Association.
9. An order directing the 1<sup>st</sup> defendant to cease providing match officials for the game of rugby in Fiji in observance of its objects under its constitution (as amended) and to allow the plaintiff to select match officials.
10. An order consequent upon the grant of all or any of the aforesaid declarations, that the 1<sup>st</sup> defendant pays the plaintiff general, special, compensatory, and exemplary damages for the breach of, or failing to diligently observe its legal powers, duties and functions as a charitable trust, and statutory duty of care, expressly stated in or implied from a true and proper construction and/or interpretation and/or application of the Charitable Trusts Act, the Industrial Associations Act and the minutes of the meeting of the plaintiff.
11. Costs of these proceedings to be taxed if not agreed.

[2] The dispute which led to the institution of these proceedings is between the plaintiff association and the 1<sup>st</sup> defendant union. The 2<sup>nd</sup> defendant is the Chief Executive officer of the 1<sup>st</sup> defendant company. The plaintiff came to court on the basis that it is also known and recognized as the Fiji Rugby Referees Association. The first relief sought by the plaintiff is on that basis. Prior to the registration of the plaintiff association the same members were the members of Fiji Rugby Referees Association. On 11<sup>th</sup> March, 2016 the members of Fiji Rugby Referees Association formed the

plaintiff association under the name of Rugby Referees of Fiji Association. It is the position of the plaintiff that the membership agreed to rearrange words of Fiji Rugby Referees Association to read as Rugby Referees of Fiji Association.

[3] As submitted by the learned counsel for the plaintiff the Fiji Rugby Referees Association was not a registered association under the existing laws of the country. It is common ground that the members of the interim committee of the Fiji Rugby Referees Association were appointed from the membership of the Rugby Referees of Fiji Association.

[4] In the Minutes of the meeting of the Rugby Referees of Fiji Association held on 7<sup>th</sup> November, 2015, under the sub-heading "NAME CHANGE FROM FRRA TO RROFA" it is stated as follows;

James Bolabiu presented the Working Committee proposal for the name to be changed from Fiji Rugby Referees Association (FRRA) to a name which is marketable and easy to say and promote.

Reason behind the change that was proposed to the members:

- I. For promotion and marketable in sounding.
- II. Easy to remember - catchy name.

[5] Whether by rearranging the earlier name or otherwise the plaintiff association has changed its name and registered it as a new association although the membership is the same.

[6] Assuming that the intention of the membership of the Fiji Rugby Referees Association was to rearrange the word of the old name and not to form a new association I will now consider whether the 1<sup>st</sup> defendant has violated any rights of the plaintiff in forming another association using the earlier name of the plaintiff.

[7] Forming an association by using the name of another existing association is no doubt a violation of the right to the name of the association registered earlier. In the instant case the 1<sup>st</sup> defendant has reactivated the Fiji Rugby Referees Association with the support of a fraction of the members of the Rugby Referees Association of Fiji.

[8] It is important to note that the plaintiff does not have the exclusive control over the rugby referees in the country.

[9] Freedom of association is a right guaranteed by the Constitution of Fiji which is the supreme law of the country. Section 19 of the Constitution provides that every person has the right to freedom of association. This right can only be exercised subject to the provisions of subsection 2 of section 19 of the Constitution which reads as follows;

A law may limit, or may authorise the limitation of, the right mentioned in subsection (1) –

- (a) in the interests of national security, public safety, public order, public morality, public health or the orderly conduct of elections;
- (b) for the purpose of protecting the rights and freedoms of others;
- (c) for the purpose of imposing restrictions on the holders of public offices;
- (d) for the purpose of regulating trade unions, or any federation, congress, council or affiliation of trade unions, or any federation, congress, council or affiliation of employers;
- (e) for the purposes of regulating collective bargaining processes, providing mechanisms for the resolution of employment disputes and grievances, and regulating strikes and lockouts;  
or
- (f) for the purpose of regulating essential services and industries, in the overall interests of the Fijian economy and the citizens of Fiji.

[10] There is no allegation that the 1<sup>st</sup> and 2<sup>nd</sup> defendant acted in violation of any of the conditions referred to above.

[11] The paragraphs 2, 3 and 4 of the letter dated 21<sup>st</sup> July, 2016 written by the 2<sup>nd</sup> defendant to all affiliated unions under the heading "Registration of Union Referees" read as follows;

(2) The FRU constitution clearly recognizes the Fiji Rugby Referees Association and not RROFA after the events on Saturday, we have no intention of having any further discussion with PROFA.

(3) We met with the Referees representing their different Referees Association yesterday Wednesday 20<sup>th</sup> July and it has been unanimously agreed that in view of the impasse with RROFA, there was an urgent need to reactivate Fiji Rugby Referees Association which we have done and selected the following Office Bearers:

SamuTuidraki	-	Interim President
IlisoniRatumaikoro	-	Interim Vice President
AisakeDrekeni	-	Interim Secretary
IsireliMatavesi	-	Interim Treasurer
Aporosa Bole	-	Interim Committee Member
George Fonmoa	-	Interim Committee Member
Jo Bosoka	-	Interim Committee Member
SamuRacaca	-	Interim Committee Member
Jo Vakatavitavi	-	Interim Committee Member
AkuilaVakaduadua	-	Interim Committee Member
LaisaKauyaca	-	Interim Committee Member
SaivasaTawake	-	Interim Committee Member

(4) The Interim Officials will have the primary responsibility to re-uniting the Rugby Referees family and also address with FRU the areas in relation to the appointment of Referees standard of refereeing, their welfare and their wellbeing.

[12] All these office bearers are admittedly the members of the plaintiff association. It appears that there is in fact a dispute among the members of the plaintiff association.

[13] The constitution of every association makes provision governing the internal affairs of the respective associations. The persons who are not members of a particular association are not bound by constitution. It is a fraction of the membership of the plaintiff association who has taken the initiative to reactivate the Fiji Rugby Referees

Association and to operate it as a separate entity with the concurrence of the 2<sup>nd</sup> defendant. It would not have been possible for the 2<sup>nd</sup> defendant to do the so called reactivation of Fiji Rugby Referees Association without the assistance and participation of the members of the plaintiff association. No court, in my view, has the power or jurisdiction to compel a person or group of persons to become members of a particular association. If the members whose names appear above have acted contrary to the constitution of the plaintiff society, its membership must decide what steps they should take against such members.

[14] Section 63 of the constitution (amended) of the Fiji Rugby Union provides as follows;

Except where competition rules require otherwise, match officials for all Fiji representative matches will be chosen by the Board of Directors from a panel consisting of the names of the leading officials submitted to by the Fiji Rugby Referees Association.

[15] As I have discussed earlier in this judgment this is also a constitution which governs the internal affairs of the Fiji Rugby Union. There no agreement which is binding on the 1<sup>st</sup> defendant to compel it to appoint referees from a particular Association of Referees. There had only been a draft memorandum of agreement between the plaintiff association and the 2<sup>nd</sup> defendant which was not signed by the parties.

[16] In his affidavit the President of the plaintiff association avers that the 2<sup>nd</sup> defendant coerced its members to enter into a contract which is unfair and has no protection to any person signing it. Making an offer alone is not wrong. If the members of the plaintiff association are not satisfied with the terms of the contract they can always refuse to sign it.

[17] The plaintiff also alleged that a staff member of the 1<sup>st</sup> defendant Mr. Patrick Gock has approached and selected match officials contrary to section 63 of the FRU constitution. As I have already said the terms and conditions contained in the FRU constitution are meant to control the internal affairs of the Union and if a member of the FRU acts in violation of the terms of the constitution it is the members who are entitled to take action against such person.

[18] The plaintiff also alleged that the 2<sup>nd</sup> defendant has made adverse comments on the plaintiff association to the press and has made false representations to the members

of the plaintiff association and there by breached statutory obligations and legal and fiduciary duty to encourage the development of the sport of rugby. From the pleadings and documents filed before this court it appears that what is more important for the plaintiff is its existence and not the development of the game of rugby. Subject to certain qualifications the Constitution of Fiji guarantees the freedom of speech. However, no person is entitled in law to make any statement about any one which is defamatory in nature. In this case there is no allegation that the statement made to the press by the 2<sup>nd</sup> defendant has the effect of defaming the character of anybody. A mere allegation without any detail as to the manner in which such a statement affects the dignity of any person or association the court is unable to arrive at a finding that the statement given by the 2<sup>nd</sup> defendant to the press has any adverse effect on the plaintiff.

[19] For the reasons stated above I am of the view the plaintiff had no cause of action accrued to it to sue the defendants in this action.

[20] Accordingly, I make the following orders;

1. The originating summons of the defendant is struck out and the plaintiff's action is dismissed.
2. The plaintiff shall pay the defendants \$4000.00 (\$2000.00 each) as costs of this action within 14 days from today.



  
Lyone Seneviratne

JUDGE

05<sup>th</sup> December, 2016