

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 220 of 2016

BETWEEN : **NIZAM MOHAMMED & MOHAMMED SADIQ** of Rakiraki,
Businessman.

PLAINTIFFS

AND : **RAKIRAKI MUSLIM LEAGUE** a duly registered religious
body having its office in Rakiraki.

DEFENDANT

Solicitors : Mr.Chandra, Vijay Naidu & Associates for the Plaintiffs
Ms. N. Khan, Natasha Khan & Associates for the Defendant

EX TEMPORE RULING

BACKGROUND

1. The plaintiffs Nizam Mohammed (“**Mohammed**”) and Mohammed Sadiq (“**Sadiq**”) were members of the Rakiraki Muslim League (“**RML**”). On 09 August 2016, the RML Executive Committee met and decided to suspend Mohammed’s and Sadiq’s RML membership. On 15 August 2016, a letter was written by the RML Secretary to Mohammed and to Sadiq separately. By those letters letter, RML conveyed its decision and the basis for it to Mohammed and to Sadiq. Below, I reproduce the relevant part common to both letters:

You have violated motion 6; item 15 of 2015 Annual General Meeting.

Rakiraki Muslim League reaffirms that such acts to breach RML Constitution will never be condoned.

.....

Sgd. Sheik Nasir Ali

Secretary- Rakiraki Muslim League

2. RML’s decision was based on the fact that both Mohammed and Sadiq had become members of the Fiji Muslim League (“**FML**”) at some point in time earlier this year. It was Mohammed and Sadiq who, themselves, informed the President of RML and also other members of the RML Executive Committee

of the fact that they had become members of the FML. The suspension means that neither Mohammed nor Sadiq can no longer participate in any RML business. The next AGM of the RML is scheduled for Sunday 23 October 2016. Mohammed and Sadiq are keen to attend the AGM. They argue that the RML has not really explained to them the reason for their suspension. They say that when they approached the RML Executive Committee for an explanation, they were told that their suspension was going to be discussed at the AGM.

3. Mohammed and Sadiq now apply to this court for an Order that they be allowed to attend the next RML AGM as paid members with full rights and entitlements under the RML 1994 Constitution. The next RML AGM is scheduled to be held on Sunday 23 October 2016. Mohammed's and Sadiq's application were initially filed *ex-parte*. However, I had directed that the application be served on RML and that I would deal with the matter *inter-partes*. RML has since instructed Ms Khan. An affidavit sworn by Sheik Riyaz Ali on 20 October 2016 has been filed on behalf of RML in opposition to Mohammed's and Sadiq's application.

THE REASON WHY MOHAMMED & SADIQ WERE SUSPENDED

4. To reiterate, the 15 August 2016 letter by the RML Secretary to Mohammed and to Sadiq alleges that they had violated **Motion 6 Item 15** of the 2015 Annual General Meeting which was in breach of the RML Constitution. Motion 6 Item 15 was in fact a motion moved by Mohammed himself at the RML 2015 AGM held at Rakiraki Muslim Primary School on 03 May 2015.
5. In court, Mohammed and Sadiq had argued through their counsel that they were not told of the reason for their suspension and that they were not even

given an opportunity to defend themselves against whatever allegations there were that influenced the decision to suspend them.

6. According to the affidavit of Sheik Riyaz Ali sworn on 20 October 2016 filed for RML, Motion 6 Item 15 was amongst several others which were passed at the said AGM and were then incorporated into the RML constitution. The particular motion in question in fact would become clause 25(c) of the RML constitution. Mohammed himself conceded through his counsel in Court today that he had moved Motion 6 Item 15 at the 2015 RML AGM, and that the said motion was in fact passed. I note that his counsel seemed rather surprised at this. His counsel had been instructed on the basis of the RML 1994 Constitution which did not contain clause 25(c). Nowhere in Mohammed's or Sadiq's affidavit in support of their application did they ever mention Motion 6 Item 15 or clause 25(c) of the Constitution.

CLAUSE 25(c)

7. The effect of clause 25(c) which I reproduce below is as follows:

The RML board shall be in charge of the affairs and running of Rakiraki Muslim Primary School thus abiding by FML regulations with regards to the school only. In the event Rakiraki Muslim League is not allowed to run the school affairs the members of Rakiraki Muslim League will not join the board of Fiji Muslim League to run the Rakiraki Muslim Primary School.

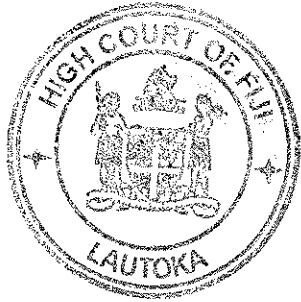
8. From what I observed in Court today, it is clear to me that Mohammed and Sadiq were perfectly aware of the reason why they were suspended from the RML (i.e. because of their membership of the FML). I say that because the RML letter to them clearly stated so. That they are members of FML is not in doubt because they themselves had informed the RML accordingly. This, they had confirmed in Court today. And there seems no doubt from where I sit (at this interlocutory stage) about the validity RML clause 25(c).

MOHAMMED & SADIQ CHANGE TUNE

9. At the hearing today, Mohammed and Sadiq would change their tune. Instead of seeking an Order that they be allowed to attend the next AGM as fully paid members with all the entitlements under the 1994 constitution (which was misleading), they were merely seeking that they be allowed to attend as observers without any form of participation at the meeting. The purpose why they would want to do so since they are already suspended, they did not explain to me. Initially, their reason for seeking the orders in their application was to be able to hear discussions about their case. Ms Khan submits that their presence in the meeting would create a lot of discord and that it is best that they stay out. If they want to pursue their case, they could write again to the RML Executive Committee and consider withdrawing their membership of the FML.
10. I note with concern that there is no provision in the RML constitution for any formal appeal process against any decision to suspend and/or discipline any RML member, nor is there any structure in place to allow any member facing potential discipline and/or suspension to defend themselves before any decision is taken against them. This would appear to violate every conceivable sense of basic fairness.
11. However, in the particular circumstances of this case, given the fact that there is indeed a bright-line rule in the RML constitution that no member of the RML should also be a member of the FML, and given that is not in dispute that both applicants are members of the FML, perhaps there is not so much room for the applicants to appeal or to defend themselves. Clause 25(c) does leave little or no room for varying interpretation.

CONCLUSION

12. It is not clear to me whether the RML is registered under any statutory scheme (Charitable Trusts Act; Religious Bodies Registration Act; Companies Act; Friendly Societies Act etc) or whether it is an unincorporated association.
13. It is safe to say in any event that its constitution binds all its members. It is clear from where I sit that the applicants both knew of the existence of clause 25(c) and that they had breached it.
14. I decline their application.
15. Costs to the defendant which I summarily assess at \$2,000.



Anare Tuilevuka
JUDGE
21 October 2016.