

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

CIVIL ACTION NO.: HBC 85 of 2018

**BETWEEN : SIGATOKA CLUB
FIRST PLAINTIFF**

**AND : KRISHNA RATTAN BHAN
SECOND PLAINTIFF**

**AND : VIJAY SINGH, MADAN SEN and NIUMAI TOGAKAI
THIRD PLAINTIFFS**

**AND : DEV ANAND SHARMA
FIRST DEFENDANT**

**AND : MARK FROST
SECOND DEFENDANT**

**AND : BIRAN KUMAR
THIRD DEFENDANT**

**AND : SANJAY MAKANJEE
FOURTH DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. S. Nandan [Reddy & Nandan Lawyers]

**FIRST; SECOND &
FOURTH
DEFENDANT :** Mr. N. Sharma [Nilesh Sharma Lawyers]

THIRD DEFENDANT : Not Served and No Appearance Entered

JUDGMENT OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 07th February 2019

INTERLOCUTORY RULING

[Striking Out – Order 18(1)(a)]

1. On 13 June 2018 the Plaintiff made an application via its notice of motion seeking orders that the Defendant's counter-claim be struck out as it does not dissolve a cause of action.

Application is made pursuant to Order 18 rule 18(1)(9) of the High Court Rules and is opposed by the First, Second and Fourth Defendant.

As for the Third Defendant there is no affidavit of service on file to confirm service of the writ on him.

2. The Plaintiffs claim is for the declaration that the Defendants do not hold any office in relation to the First Plaintiff; restraining order to Defendants from holding themselves out as office bearers of the First Plaintiff and Defendants return all property of the First Plaintiff including trustee seal.

It is alleged the Defendants have contravened and breached the Constitution of the First Plaintiff by calling an Extra-ordinary General Meeting on 28 January 2018 and removing the Plaintiffs from their position in the club.

3. Via their Statement of Defence the First; Second And Fourth Defendant state as follows:

Despite being registered as a club the Sigatoka Club was not operational on or about 28 January 2018 and the club premises were leased to another entity.

According to them the 2nd Plaintiff is under a receiving order and cannot act as President of the Club whilst the Third Plaintiffs are not the registered Trustees of the Sigatoka Club.

Last registered trustees were:

- *Bala Krishna Naidu who has resigned on or about 19 December 2017;*
- *Sakiusa Makutu has passed away;*
- *Niraj Kasi Prasad also resigned on 20 December 2017.*

An extra-ordinary general meeting was called on 28 January 2018 and the Second and Third Plaintiffs were removed as President and Trustees respectively on a motion of no confidence.

The constitution allowed for calling the meeting.

The First; Second and Fourth Defendants are the lawfully appointed trustees of the club.

In their counter-claim the First; Second and Fourth Defendants allege the Second and Third Plaintiffs caused the First Plaintiff to cease operation

by renting the premises to a business entity thereby causing loss of member privileges.

The Second and Third Plaintiff during their tenure respectively have failed to account for the income and expenses of the First Plaintiff.

No value added tax has been paid, leading to Fiji Revenue and Custom placing a garnishee order on the debtors of First Plaintiff.

The Defendant seeks orders for Second and Third Plaintiffs to provide audited account for part 3 years and 10 months and account for income and expenses.

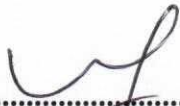
4. The First; Second and Fourth Defendant have in Statement of Defence outlined their capacity as well that of the Second and Third Plaintiff's being part to the proceeding.

In paragraph 13 to 16 they have outlined the breach by the Second and Third Plaintiffs in performing their duties as trustees of the First Plaintiff.

5. I find the application by the Plaintiff is frivolous and vexatious and should be dismissed with cost.

The Motion is dismissed with cost assessed at \$1,000 to be paid in 14 days.




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Vandhana Lal [Ms]
Acting Master
At Suva.