

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 90 of 2022

BETWEEN : **ANAND SAMI KUMAR** of Nadi Town, Businessman
PLAINTIFF

AND : **PARVEEN KUMAR BALA** of Guava Place, Laucala Beach Estate, Suva,
Vice-President North-Western of Then India Sanmarga Ikya Snagam
1ST DEFENDANT

AND : **YOGESHWAR KRISHNA** of Nasinu, Interim Secretary General of the
Then India Sanmarga Ikya Snagam
2ND DEFENDANT

AND : **MUNI KAMLESH NAIDU** of Nalovo, Nadi, President of Nadi Branch of
Then India Sanmarga Ikya Snagam
3RD DEFENDANT

AND : **THEN INDAI SANMARGA IKYA SANGAM** in its capacity as a duly
incorporated company with special dispensation of the word
“limited” having tis registered office in Nadi, Fiji and in its capacity as
a parent body of its youth branch the **THEN INDIA VALIBAR
SANGAM FIJI**
4TH DEFENDANT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. R. Singh – For the Plaintiff
Mr . Mr. F. Daveta with Mr. E. Dass – For the 1st, 2nd and 4th
Defendants.
Third Defendant- In Person

DATE OF HEARING : 15th August, 2022.

WRITTEN SUBMISSIONS: By the Plaintiff on 15th August, 2022.
By the 2nd Defendant on 1st September, 2022.
By the Plaintiff on 12th September, 2022 (Reply Submissions)

DATE OF JUDGMENT : 31st October, 2022

JUDGMENT

A. Introduction:

1. The plaintiff by his Originating Summons(amended), dated and filed on 30th March, 2022, instituted this action seeking, reliefs (a) to (g) in the prayers thereto which are reflected in paragraph 8 below.

The Grounds;

1. THAT 4th Defendant is constituted in accordance with its Memorandum and Articles of association duly registered with the Registrar of Companies.
2. THAT the 4th Defendant has issued guidelines for the governance of each of its branches known as the Directions and Guidelines for the Governance of Branches, Schools, Temples and other institutions of the Then India Sanmarga Ikya Sangam (hereinafter referred to as “ the said rules”)
3. THAT the Plaintiff at all material times was a current and life member of the 4th Defendant.
4. THAT the 1st and 2nd Defendants have been appointed and have taken designation in the v4th Defendant as its Chairman of the Interim Committee and as the interim Secretary General respectively in accordance with certain orders made by the Fiji Court of Appeal in Fiji court of Appeal Civil Appeal Number ABU 109 and ABU 122 of 2016 and ABU 8 of 2017.
5. THAT the 3rd Defendant has been unlawfully on the 27th of March 2022 appointed as the President of the Nadi Branch of the 4th Defendant.
6. THAT the v4th Defendant had advertised the Annual General Meeting (“AGM”) of the Nadi Branch of the 4th Defendant to be held on the 20th of March 2022.
7. THAT the Plaintiff filed a nomination for the position of the President of the Nadi Branch of the 4th defendant for election to be held and conducted on the 20th of March 2022.
8. THAT the 1st, 2nd and 4th Defendants without any color of right and illegally and without any good cause postponed the AGM of the Nadi Branch of the 4th Defendant to be held on the 20th of March 2022 and on the 22nd of March 2022 directed that the AGM be convened on the 27th of March 2022.
9. THAT during which period the 1st, 2nd and 4th Defendants accepted an objection against the nomination of the plaintiff for the post of President of the Nadi Branch of the 4th Defendant.
10. THAT aforementioned objection was made without any substance or legal basis without sufficient reason by one Mannikkam Goundar.
11. THAT on the 25th March 2022 in breach of guideline **Rule 9.14** of the said Rules the 1st, 2nd and 4th Defendants upheld the objection against the nomination of the plaintiff for the position of the President of the Nadi Branch of the 4th Defendant and thereby cancelled the nomination of the plaintiff.
12. THAT the decision of the 1st, 2nd and 4th Defendants in upholding the objection to the nomination of the Plaintiff for the position of the President of the Nadi Branch of the 4th Defendant was against the tenor of the said Rules and was made without affording the Plaintiff an opportunity to properly oppose such an objection.
13. THAT at material times the Plaintiff held the legitimate expectation that the 1st, 2nd and 4th defendants will comply and adhere to Rule 9.14 of the said Rules and also afford the Plaintiff an opportunity to respond in writing before making a decision to cancel the nomination of the Plaintiff.

14. THAT as result the Plaintiff was unlawfully and without any good cause prevented from contesting the position of the President of the Nadi Branch of the 4th Defendant on the AGM held on the 27th of March 2022 and the 3rd defendant was elected as the President.

15. THAT the plaintiff was unable to contest for the position of the President of the Nadi Branch of the 4th Defendant.

2. The Originating Summons was supported by an Affidavit of Mr. Anand Sami Kumar, the plaintiff, sworn on 29th March, 2022 and filed along with annexures marked as "A" to "J". However, the document marked as "J" was, later substituted by an annexure marked as "A" tendered in open Court on 13th April, 2022, along with the Plaintiff's supplementary Affidavit, with no objection on behalf of the Defendants.

B. **Interim Injunction:**

3. The plaintiff also filed an Ex-Parte Summons on 30th March, 2022, seeking, *inter alia*,

1. THAT the 3rd Defendant by himself, or by his agents or servants, agents or otherwise howsoever be restrained from acting as the president of the Nadi Branch of the Then India Sanmarga Ikyo Sangam including calling any meetings and dealing with the financial and administrative affairs of the Nadi Branch of the Then India sanmarga Ikyo Sangam until further Order of the honorable Court.

4. The Plaintiff relied on the same Affidavit sworn by him, for the purpose of the above Ex-parte Summons for injunction order as well and the same being supported before me on 30th March, 2022, a temporary injunction order was issued as prayed for in the prayer to the Ex-parte Summons.

C. **Evidence:**

5. In response to Plaintiff's Affidavit in support, the 3rd Defendant **Muni Kamlesh Naidu**, filed his Affidavit on 13th June, 2022, which was replied by the Plaintiff Anand Sami Kumar, by his affidavit filed on 27th June, 2022.

The 2nd Defendant filed Affidavit in opposition on 21st July, 2022 on his behalf and on behalf of the 1st and 4th Defendants too, being authorized to do so by the document marked as "YK-1" and supported by documents marked as "YK-2" to "YK-6".

In the meantime the 3rd Defendant filed a supplementary affidavit on 13th July, 2022, along with annexures marked as "MKN-1" & "MKN-2".

Finally, the Plaintiff, on 08th August, 2022, filed his Affidavit with the annexure "A", in reply to the aforesaid supplementary affidavit in response filed by the 3rd Defendant and to the affidavit in response filed by the 2nd Defendant on his behalf and on behalf of the 1st and 4th Defendants.

D. **Hearing:**

6. The hearing into the injunction application being initially fixed for 27th May, 2022, thereafter for 28th June, 2022 and finally for 25th July, 2022, parties on 25th July, 2022 agreed to have the substantial matter (the plaintiffs' Originating Summons) , disposed, while having the injunction order extended till the final determination of the matter. Accordingly, the main hearing was taken-up on 15th of August, 2022, at which both the learned counsel for the Plaintiff, the 1st, 2nd & 4th Defendants and the 3rd Defendant, who appeared in person, were afforded with opportunities of making oral submissions and filing written-submissions. Though the 3rd defendant made oral submission on his behalf, counsel for the 1st and 4th Defendant has, in his submissions, covered the interest of the 3rd Defendant as well.
7. Accordingly, parties have filed their respective written submissions as stated above, except for the 3rd Defendant.

E. **Analysis of Evidence & Merits.**

8. All what the Plaintiff seeks from this Court by his Originating summons, inter-alia, are to:
- i. **Declare** the decision dated 25th March, 2022 made by the 2nd Defendant nullifying his nomination for the post of the President of the Nadi Branch of the "Then India Sanmarga Ikya Sangam" (TISIS), is null and void and of no legal effect.
 - ii. **Declare** that he, during the time material, was able to contest for the election of the President of the Nadi branch of TISIS.
 - iii. **Declare** the election & appointment of 3rd Defendant, Muni Kamlesh Naidu, as the President thereof on 27th March, 2022, is null and void.
 - iv. **Order** the AGM of the Nadi Branch of the TISIS be convened, election be called for the said post of Presidency thereof in the prescribed manner and the plaintiff to be permitted to contest for the said post.
 - v. **Order** that the 3rd Defendant not to be permitted to contest the election for the position of the President of the Nadi Branch of the TISIS.
9. On careful perusal of the contents of the Affidavits filed, those of the annexures, oral and written submissions, it is vividly clear that the only question that requires adjudication here is, whether the Rule 9.14 in the annexure marked as "F" by the Plaintiff, namely, "DIRECTIONS AND GUIDELINES FOR THE GOVERNANCE OF BRANCHES, SCHOOLS, TEMPLES AND OTHER INSTITUTIONS OF THE THEN INDIA SANMARGA IKYA SANGAM", has duly been complied with as far as the Plaintiff's nomination for the post of Presidency of the Nadi Branch of the TISIS is concerned?
10. The Plaintiff's averments in paragraphs 15 and 16 of his Affidavit in support, on the existence and the, purported, application of those rules in annexure "F", has been clearly admitted by the 3rd Defendant in paragraphs 10 and 11 of his Affidavit in response filed on 13th June, 2022, and by the 2nd Defendants paragraph 7 of their Affidavit in response filed on 21st July, 2022. (the 2nd Defendant's Affidavits Covers the 1st and 4th Defendants too).
11. Rule 9.14 of the said Directions and Guidelines marked as "F" reads as follows.

*"A member who has been **implicated and found guilty by the Council of Management / a Court of Law** for any impropriety , corruption, fraud, fraudulent conversion of Sangam*

funds , or is owing money to Sangam or any other act of disrepute and misconduct which is deemed to be detrimental to the interest of Sangam and/or has been disciplined under the provisions of Article 8 of the Article and Memorandum of Association of Sangam shall not be eligible for election to any office bearers position unless otherwise specified by the Council of Management". (Emphasis mine)

12. The Plaintiff's involvements and the time period of such involvement, in the affairs of the TISIS as averred in paragraph 18 of his Affidavit in support, are not seriously disputed by the Defendants in their respective Affidavits in response. The 3rd Defendant in paragraph 13 of his Affidavit in response admits that the Plaintiff took active part in the activities of TISIS from the year 2014. The 2nd Defendants in paragraph 9 of his Affidavit in response has admitted that the Plaintiff became a life member in the year 2011.
13. With regard to the Plaintiff's averment in paragraph 19 of his Affidavit in support to the effect that he is the current Treasurer of "Siva Subramanian Temple", the 3rd Defendant in paragraph 14 of his affidavit in response says that the Plaintiff was relieved from the duties as the Treasurer, while the 2nd Defendant in paragraph 10 of his Affidavit in response states that the Plaintiff was removed from the position of Treasurer, which give two different meanings. However, none of them have given the exact date/ month/ year on which the Plaintiff was so relieved or removed as claimed by them.
14. The Plaintiff's averments in paragraphs 20 to 23 in his Affidavit in support to the effect that the AGM and the Election for the post of President of the Nadi branch of the TISIS were to be held on 20th March, 2022, that he had proffered his candidacy for the post of the President of the Nadi Branch of TISIS, that upon the submission of the Application, one Manikkam Gounder, by his letter dated 14th March 2022, had objected for the same, are admitted by the 3rd Defendant in paragraphs 15 and 16 of his Affidavit in response and by the 2nd Defendant in paragraph 11 of his Affidavit in opposition.
15. With regard to the Plaintiff's contention in paragraph 24 of his affidavit in support, that the objection raised by Manikkam Gounder, was baseless and he (the Plaintiff) was neither implicated nor found guilty by a Court of law or by the Council of Management, what the 3rd Defendant in his Affidavit in response states is that the "evidence is available" which he failed to adduce. But, the 2nd Defendant in paragraph 12(a) of his affidavit in response admits that the Plaintiff was never found guilty by any Court of law as he was not referred to Police or by the Council of Management, yet the evidence of the Plaintiff's wrong doing was recorded and so obvious that the objection against his nomination was upheld. I observe that the annexures "YK-3" to "YK-6" relied on by the 2nd Defendant in this regard have emerged only after the rejection of the Plaintiff's nomination on 25th March 2022 and filing of this action on 30th March, 2022.
16. In relation to the plaintiff's averments in paragraphs 25 to 29, on summoning of him by the Head Office, intimation given to him to withdraw his candidacy, the absence of written reason for decision, failure to afford him an opportunity to respond to the decision to postpone the Election without any good or sufficient reason and the way in which he was treated at the meeting on 18th March, 2022, the 3rd Defendant in his Affidavit in response has pleaded ignorance, while the 2nd Defendant in paragraph 12 (c) (d) (e) and (f) of the affidavit in response has admitted the said allegations and taken up a position to the effect

that as there was evidence of wrong doing thus, the Plaintiff's nomination was disallowed.

17. The contention of the Plaintiff in paragraph 30, 31 of his Affidavit, about the rescheduling of the AGM, and the 2nd Defendant's notification on 25th March, 2022 about the rejection of his nomination, are admitted by the 2nd 3rd Defendants in their respective affidavits in opposition .
18. The Plaintiff has taken a stern position in paragraph 32, 33 and 34 of his affidavit in support, that what he believed and advised by his Solicitor was that the TISIS can decide to nullify his nomination only when he is **implicated and found guilty** by a Court of Law or the Council of Management on any impropriety, corruption, fraud, fraudulent conversion of TISIS funds in accordance with the said Rules. He further avers that the decision of the 2nd Defendant representing the TISIS is not correct and by failing to properly consider and apply the said Rule, they have wrongfully nullified his nomination and prevented him from contesting the Election.
19. The responses of the 3rd Defendant in paragraph 21 of his Affidavit and that of the 2nd Defendant in paragraphs 15 of his Affidavit on the above averments of the Plaintiff are not at all acceptable as they are purely founded on the purported evidence created and adduced by the Defendants belatedly in order to justify and cover-up their wrong-full decision in nullifying the Plaintiff's nomination, when the Rule 9.14 of the Directions and Guidance marked as "F" had not in any manner restricted or curtailed the Plaintiff from contesting at the Election.
20. Undisputedly, the decision of the interim Chairman of the 4th Defendant and the 2nd Defendant, as the interim General Secretary, to reject the Plaintiff's nomination for the post of the President, has prevented the Plaintiff from contesting at the election thereto, which has led the Plaintiff to this Court for redress.
21. It is also undisputed that the objection to the Plaintiff's nomination was raised by none other than another contender for the very post of Presidency, namely, Manikkam Grounder. (Vide paragraph 22 of the Plaintiff's Affidavit in support). On this objection being raised on 14th March, 2022, what has happened next is the calling the Plaintiff to the head office and informing him that he should reconsider his nomination, otherwise the Returning Officer will have to take a decision.(Vide para 12(d) of 2nd Defendant's Affidavit in response).
22. Accordingly, it is clear that the Plaintiff was not afforded with an opportunity by the 1st, 2nd and 4th Defendants, to show cause or response to the, purported, charges levelled against him in the said objection, at least by considering the fact that the very objection had come from a person with vested interest, being another candidate for the post of Presidency. The contention of the Plaintiff that the rules of natural justice were not observed by the Defendants in this regard cannot be disregarded.
23. Careful scrutiny of the Rule 9.14 of the relevant **"Directions and Guidance for the Governance of the Branches....."** marked as "F" shows that for a person to be **disqualified** from the Election, such person should have been **"implicated and found guilty"** by the

Council of Management/ a Court of Law, and/or he should have been disciplined under the provisions of Article 8 of the Articles and Memorandum of Association of the Sangam.

24. The Defendants have not adduced even an iota of evidence to establish that the Plaintiff, at the time material, had been **"implicated and found guilty"** by the Council of Management or by a Court of Law or to show at least that he was disciplined under Article 8 of the Articles and Memorandum of Association of Sangam. It is to be observed that the 2nd Defendant had, in his Affidavit in response, admitted that no a Police complain has so far been made. But the 3rd Defendant in his objection had stated that a Police Complain had been made, which is now proved to be false. Further not even an internal inquiry had been commenced against the Plaintiff at the material time.
25. It is only after the filing of this action on 30th March, 2022 and the service of the Summons on them, the Defendants seems to have engaged in the voyage of discovery for evidence against the Plaintiff by originating the letter dated 29th June, 2022 marked as "YK-3" addressed to the Auditors and obtaining the purported "Report of Factual Finding" dated 8th July, 2022 marked as "YK-4" and annexed to the Defendants Affidavit in response. This report, now projected as an Audit Report by the Defendants, is nothing but a belatedly obtained self-serving document.
26. The contents of the last two paragraphs of the said report, which are self-explanatory will, undoubtedly, make one to think twice on the admissibility of it before embarking on any prosecution relying on it. This report states that contents of it are only for the purposes set forth in the said letter and for the writer's information and not to be used for any other purpose or to be distributed to any other parties. Then, the question arises as to how it could be accepted and acted upon by this Court or any other forum for a successful prosecution.
27. Though, the alleged financial irregularities said to have been committed by the Plaintiff longtime back, the Defendants have waited to move against the Plaintiff till the dawn of the Election and an objection is raised by another candidate. No evidence adduced to show that the Defendants, who were aware or ought to have been aware of such irregularities, had acted diligently in this regard.
28. It is only by letter dated 14th July, 2022 marked as "YK-6" the 2nd Defendant wrote to the Plaintiff for the first time informing the plaintiff about the alleged irregularities and calling for his explanation, which is nearly after about 3 ½ months' time from the date of the rejection of his nomination on 25th March, 2022.
29. It is also to be noted that there is a subtle attempt by the 2nd Defendant, as per paragraph 2 of his letter dated 25th March, 2022, marked as "A" to the Plaintiff's Supplementary affidavit, to amend the contents of the Rule 9.14 by inserting a new wording **"under investigation"**, which is not a part of the Rule 9.14 of the aforesaid Directions and Guidance for the Governance of the Branches of the TISIS.
30. In order to disqualify the Plaintiff or any other member from obtaining nomination to contest the election, a mere allegation or, implication and/ or an ongoing investigation is not sufficient. A finding of guilt by a Court of Law or by the Management is also a must in

terms of the said Rule. Otherwise, a person can be simply implicated and prevented from contesting the election.

31. Another salient point that has escaped the attention of both the learned Counsel and the 3rd Defendant is the 3rd line from the bottom of the Rule 9.14, where it says “..... Shall not be eligible for election to any office bearer’s position.....” From this, it is clear that what a member of the Sangam become ineligible for as a result of being **implicated and found guilty** of any charge stated therein, is the **election** of himself/ herself to any office bearer’s position and he or she is not prevented from submitting their nomination or being nominated. This Rule does not prohibit such a person from tendering a nomination and/ or being nominated. This is the main operative part of the much debated Rule 9.14.
32. At the end of the day, it is the well-informed voters (the Members of the Sangam), who decide as to whether a candidate with such a nefarious background should be elected or not. However, if the words “to contest” had been inserted by an amendment before the word “election” in the Rule 9.14, then the decision of the 2nd and 4th Defendants could have stood justified.
33. It is my considered view that before arriving at a decision to reject the plaintiff’s nomination for the post of Presidency, he should have been afforded with an opportunity to answer or show cause against the allegations levelled against him. Further, it is also mandatory that in addition to the implication of the Plaintiff to any charges, there should have been a finding of guilty by the Management or a Court of law. In the absence of both the implication and finding of guilty as per the Rule 9.14, the plaintiff could not have been deprived of his nomination for the election to the post he was aspiring for.

F. **Conclusions:**

34. In the light of the above, I find that the 2nd and 4th Defendants, by not affording an opportunity to the Plaintiff to show cause against the allegations levelled against him by another candidate, and by arriving at a decision to reject the Plaintiff’s nomination in the absence of a conviction as required by the Rule 9.14 of the relevant Guidance and Direction, have acted in violation of Plaintiff’s right to be nominated for the Post of the President of the Nadi Branch of the TISIS.

Further, the relevant Rule 9.14 does not prevent the Plaintiff from tendering a nomination and being nominated. The Rule inhibits only the election and not the nomination.

The injustice caused to the plaintiff in this process can only be remedied by declaring that the decision of the 2nd Defendant dated 25th March, 2022, made nullifying the nomination of the plaintiff for the position of President of the Nadi Branch of the TISIS, is null and void and by granting other reliefs as prayed for, except for the prayers (e) which is on the prospective candidacy of the 3rd Defendant and the prayer (f) as to the costs, granting of which are not warranted under the given circumstances.

G. Final Outcome.

- a. The reliefs prayed for in paragraphs (a), (b), (c) and (d) to the prayer of the amended Originating Summons dated 30th March, 2022 are hereby granted.
- b. The reliefs prayed for in paragraphs (e) to the prayer as to the future candidature of the 3rd Defendant is hereby declined.
- c. The order for costs as prayed for in the paragraph (f) to the prayer is also declined.
- d. This Orders shall be sealed and served on the Defendants


A.M. Mohamed Mackie
Judge



At High Court Lautoka this 31st day of October, 2022.

SOLICITORS:

For the Plaintiff:

For the 1st, 2nd & 4th Defendants:

For the 3rd Defendant:

Messrs Patel & Sharma

M/S Pillai, Naidu & Associates

In Person