

1. **THAT** there be an order the third Defendant, his agents, servants or otherwise be restrained from acting as the President of the THEN INDIA SANMARGA IKYA SANGAM in manner whatsoever until the determination of this application.
 2. **THAT** there be an order that the Defendants comply with Order 1.4 of the Orders of this Honourable Court made on 31st of October , 2022 within 21 days and call a proper election for the position of President for the Nadi Branch of the THEN INDIA SANMARGA IKYA SANGAM.
 3. **Costs in** cause.
2. The above Summons is filed pursuant to Order 32 Rule (1) and Order 45 Rule 5(1) of the high Court Rules 1988 and the inherent jurisdiction of this Court. It is supported by the Affidavit of the Plaintiff sworn on 5th April 2023 and filed along with annexures marked as "A" & "B".
 3. The Summons is resisted by the 1st to 4th Defendants. The 2nd Defendant on 28th April 2023 filed an Affidavit in opposition sworn by him on his behalf and on behalf of the 1st and 4th Defendants, together with an annexure marked as "YK-1". This was replied by the Plaintiff by his Affidavit sworn on 23rd May 2023 and filed on 25th May 2023 along with annexures marked as "A", "B", & "C".
 4. The 3rd Defendant filed his Affidavit in opposition on 1st May 2023, along with annexures marked as "MKN-1" to "MKN-3" and this was replied by the Plaintiff by his Affidavit sworn on 23rd May 2023 and filed on 25th May 2023, along with annexure marked as "A".
 5. The Plaintiff on 31st August 2023 filed a supplementary Affidavit, together with the Transcript of the voice recording of the relevant part of the proceedings of the Annual General Meeting held on 12th March 2023, of which the USB drive had already been tendered on 23rd June 2023, together with an Affidavit of Anish Krishna, secretary, of the 4th Defendant.

B. HISTORY IN BRIEF:

6. The Plaintiff filed his Originating Summons on 30th March 2022 (amended) against the 1st to 4th Defendants seeking the following reliefs;
 - a. *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.*
 - b. *Declare that he, during the time material, was able to contest for the election of the President of the Nadi branch of TISIS.*
 - c. *Declare the election & appointment of 3rd Defendant, Muni Kamlesh Naidu, as the President thereof on 27th March, 2022, is null and void.*
 - d. *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.*
 - e. *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.*
7. This Court, after attending to all formalities thereto and to the hearing of the Originating summons, pronounced its Judgment on 31st October 2022 granting the following reliefs:

- 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 relief 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.*
8. As no specific date or time period for holding the Annual General meeting and the election had been prayed for and granted by the court in its judgment dated 31st October 2022, Plaintiff on 15th November 2022 filed an inter-partes Summons supported by his Affidavit seeking orders, inter alia;
1. *THAT there be an order that the Defendants comply with Order 1.4 of the Orders of this Court made on the 31st October, 2022, within 21 days.*
9. The defendants chose not to file Affidavit in opposition, however, when the Summons was taken up for hearing on 26th January 2022, Mr. D. Naidu, Counsel for the Defendants gave a firm undertaking that the AGM of the 4th Defendant and the election for the post of President and Office bearers of the 4th Defendant would be held on 12th March 2023. He gave further undertakings that the Plaintiff's nomination already tendered will be accepted and his name will appear in the Ballot Paper for the forthcoming election.
10. Accordingly, this Court on 9th February 2023, as per the above relief prayed for and the undertaking given by Mr. D. Naidu, made its Ruling as follows.
- a. ***The Order 1.4 made by this Court, by its Judgment dated 31st October, 2022, in terms of the prayer (d) to the Originating Summons, shall be executed and implemented on or before 12th March, 2023 as per the said Order and the undertaking given to this Court by the Counsel for the Defendants.***
 - b. *No costs ordered in relation to this Application and the parties shall bear their own Costs.*
 - c. *Orders shall be sealed and served on the Defendants forthwith.*
 - d. *Report of compliance shall be filed within 14 days from the date of execution.*
11. Thereafter, the Defendants, through PRAVEENA MANI CHETTY, the Administrative Officer of the 4th Defendant, on 23rd March 2023, filed an Affidavit of compliance of Court Order dated 9th February 2023, along with the copy of the Newspaper publication about the AGM and election marked as "PMC-1" and a copy of the election result marked as "PMC-2".
12. The Plaintiff being dissatisfied of the election result for the post of Presidency of the TISIS Nadi District 2023, and the manner in which certain affairs were, allegedly, conducted at the AGM, has made this Application seeking reliefs shown in paragraph 1 above.
13. In the Affidavit in support, the Plaintiff states, inter-alia,

- a. *“Though, I was permitted to lodge his nomination and contest the election, number of matters occurred with the Annual General meeting and the election which adversely affects the clear, clean and precise execution of orders made by the court on 31st October 2022 and 9th of February 2023. (vide paragraph -7)*
- b. *As per my understanding interim orders had been made restraining the 3rd Defendant from taking up the position of President of the TISI, Nadi Branch. (vide Paragraph -8)*
- c. *That despite the aforesaid orders, the 3rd Defendant was noted as being the President of the TISIS Nadi Branch for the year 2022 in the audited financial report submitted to Ministry of Education as well, thus making an implication to the Annual General meeting, the members present and the floor of the meeting that the 3rd Defendant was the President. (Vide paragraph 9).*
- d. *That in breach of the orders made by this Court the “HLB Report” **being a conditioned accounting report was extensively discussed in the Annual General Meeting** prior to the election, when it was not to be used for any other purpose and not to be distributed. (Vide paragraph 10 & 11).*
- e. *The said **report was widely circulated amongst the membership prior to the election**, and the circulation was maneuvered intentionally to ensure that I do not get a fair shot at the election and be seen and regarded in an adverse position and light in front of the entire AGM, the Members and the floor of the meeting and **the report was brought up by the Counsel for the Defendants**, who was the chair of the meeting prior to the election (Vide paragraph 12).*
- f. *It was wholly inappropriate for the **HLB report to be circulated at the AGM**, and the report was penned essentially against me hence the disclosure of the same at the AGM and discussion of it prior to the election to the floor and membership was to ensure that I will be seen and considered in adverse light in a far inferior position than by opposition at the election. Talking about the HLB Report prior to the AGM was a breach of the Court order (Vide paragraphs 13 to 16).*
- g. *That I seek that I be given an appropriate opportunity to take part in a fair election as I am entitled being a member and pursuant to the orders of the Court”*

C. **ANALYSIS:**

Preliminary Issues:

14. The Plaintiff’s Counsel in his oral submissions at the hearing and through the written submissions raised two preliminary issues. The first one is in relation to the Affidavit in opposition by the 2nd Defendant, **Yogeshwar Krishna**, for swearing the same, being a person who was not present at the AGM and by not disclosing the source for the contents of averments therein. This argument, I find holds water. In addition to above, I don’t find any authority given to him to swear the impugned Affidavit for and on behalf of the 1st and 4th Defendants. Accordingly, this, purported, Affidavit of the 2nd Defendant has to be and is disregarded.
15. The next issue is with regard to the propriety of the Affidavit of Anish Krishna (secretary) filed on 23rd June 2023 stating that he had the authority to swear the Affidavit on behalf of the 1st 2nd and 4th Defendants. He brought in a USB claiming that part of the voice of the proceedings of the AGM are recorded therein. But, there was no leave granted to file an Affidavit with such an annexure. Moreover, he was neither a party to the proceedings nor

had authority to swear this Affidavit on behalf of the 1st and 4th Defendants. Thus, this Affidavit too has to be disregarded.

16. However, when the matter initially came up for hearing on 28th June 2023, counsel for the Plaintiff moved to file an Affidavit in relation to the said Anish Krishna's Affidavit, together with the transcript of the contents in the said USB. Accordingly, by vacating the hearing, leave was granted to the Plaintiff to file his Affidavit, and the Plaintiff on 31st August 2023 filed a supplementary Affidavit, together with the transcript of the said USB. As per the paragraph 5 of this supplementary Affidavit, I find that both the parties have agreed on the contents of the transcript.
17. I find that with this transcript the Court is now at a better position to ascertain as to what actually transpired at the AGM prior to the election. Thus, disregarding the Affidavit in response filed by the 2nd Defendant, and that of Anish Krishna need not adversely affect 1st, 2nd and 4th the Defendants' stance in this matter. However, I find that the contents of the 3rd Defendant's Affidavit in opposition too can be taken into consideration.

AGM & ELECTION ON 12th MARCH 2023

3rd Defendant's Alleged Role

18. In paragraphs 8 and 9 of the Affidavit in support, the Plaintiff complains about the role played by the 3rd Defendant at the AGM before the members by making an implication that he was the president. It is also alleged that he had signed the 2022 financial report in the capacity of the President. The 3rd Defendant in his Affidavit in opposition has given the explanation to the effect that he had signed it inadvertently as the President, however the Financial Reports sent to the Education Ministry in relation to two schools were signed by the Acting President Mr. Madhu Sologar. Counsel for the Defendants in his submissions has confirmed this position. I don't think this could have caused any prejudice to the plaintiff or brought any benefit to the 3rd defendant.
19. Apparently, the 3rd Defendant was the opposing candidate to the Plaintiff for the Presidency at the election that was to be held subsequently, and there is no evidence to show that he played any role in conducting the AGM or the election, except for being present as an opposing candidate. Even if he had exhibited or projected himself to give such an impression, by his action and behaviour, it need not necessarily have influenced the voters to make any impact in the outcome of the election.
20. As per the annexure marked as "PMC 2" to the Administrative Officer's Affidavit of compliance, it is observed that out of the 460 registered members for the meeting, only 405 members have used their votes for the post of presidency, wherein the 3rd Defendant obtained 235 votes, while the Plaintiff obtained only 165 votes, leaving 5 votes as invalid.
21. It is observed that the remaining 55 members, who had registered for the meeting, have not used their votes either for the post of Presidency or for the other posts. The total number of members who used their votes had not exceeded 407. The Plaintiff is not the only victim of this non-voting by 55 registered members. No evidence to establish that 55 members desisted from voting due to the alleged role played by the 3rd defendant.

Alleged Circulation of and Discussion on HLB Report:

22. This is an audit Report obtained in July 2022 from HLB MANN JUDD (FIJI) in relation to certain financial irregularities alleged to have occurred in the year 2018. Careful perusal of the Transcript of the voice recording marked and tendered by the Plaintiff along with his Supplementary Affidavit clearly shows that the impugned HLB Report was neither circulated among the members nor extensively discussed at the meeting as alleged by the Plaintiff in his Affidavit in support.
23. It also transpires that Mr. Naidu, had neither brought up the Report nor raised any issue on the same. It was an anonymous member, and later one Munusamy Pillay, who had raised the question in relation the alleged misuse of funds, over which Mr. Naidu or others could not have had any control. The voting members have a legitimate right for information and may raise questions. In my judgment too dated 31st October 2022, I have clearly mentioned that it is the well-informed voters, who decide as to who should be the President of the TISIS.
24. In any event, the transcript clearly shows that the Plaintiff, has had the opportunity to clarify on it and express his stance before the members .It was the Plaintiff, who had asked to read it out stating that ***“we need the truth to come out”***. (Vide page 2 of the transcript).
25. There was no circulation or extensive discussion of the impugned report. It was only a limited response by the Chair (Mr. Naidu) to a question came up from the members, wherein the Plaintiff also had his say. This Court is not moved by the argument that there was a wider circulation and/ or the extensive discussion and it has had an effect in the outcome of the election.
26. The election was held not only to elect a President of the TISIS of Nadi District for the year 2023, but also for the other posts thereof. Careful analysis of the number of votes that each candidate polled for the respective posts and the deference between the numbers of votes they obtained clearly shows a uniformity. This shows that the alleged reason adduced by the Plaintiff has not contributed for his defeat at the election for the post of Presidency, and there could have been other factor/s as well that decide the outcome.
27. The Plaintiff knew very well about the opposition that he had to face from the 3rd Defendant as his opponent for the post of Presidency. Thus, in his Originating Summons he, *inter-alia*, prayed for the relief (e) to the effect ***“THAT the 3rd Defendant not be permitted to contest the election for the position of the President...”*** The Court did not grant this relief and that part of my judgment remains unchallenged. The existence of the impugned “HLB Report” or the alleged circulation and /or the discussion on it, in my view, could not have had any impact on the outcome of the election for the post of Presidency.

D. CONCLUSION:

28. For the reasons stated above, this Court stands convinced that the reasons adduced by the Plaintiff in his Affidavit in support cannot be considered as valid grounds for his defeat at the election held on 12th March 2023. Thus, the reliefs prayed for in his amended Originating Summons cannot be granted. I also find that the 4th Defendant, being a Charitable Trust, should not have been burdened with expenses on an Application of this

nature. Accordingly, I order the Plaintiff to pay \$1,500.00 unto the 4th Defendant as summarily assessed costs. No costs ordered in favour of the 1st, 2nd and 3rd Defendants.

E. FINAL ORDERS:

- a. The Plaintiff's Application fails.
- b. The amended originating Summons filed by the Plaintiff on 30th March 2022 is hereby dismissed.
- c. The Plaintiff shall pay a sum of FJ \$1,500.00 (One Thousand Five Hundred Fijian Dollars) unto the 4th Defendant as summarily assessed costs.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 30th day of October, 2023.

SOLICITORS:

For the Plaintiff:

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

For the 3rd Defendant:

Messrs – Patel & Sharma – Barristers & Solicitors

Pillai Naidu & Associates – Barristers & Solicitors

Ravneet Charan Lawyers – Barristers & Solicitors