

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

**CIVIL ACTION NO. HBC 238 of 2023**

**BETWEEN** : **ABDULLA MOHAMED UMARJI, MOIDIN and MOHAMMED HANIF** all  
Trustees of the Madrissa Arabia Islamia  
**1<sup>ST</sup> PLAINTIFFS**

**AND** : **JAN MOHAMMED, YUNUS ADAM PATEL & SIRAJ RASHEED  
MOHAMMED** all Committee members, duly appointed by the  
Trustees  
**2<sup>ND</sup> PLAINTIFFS**

**AND** : **BASIR ALI, SHEIK IRFAN ALI, ZAFEEN FAZEEL, UBAIDULLAH ALI,  
MOHAMMED FAIYAZ and ABDUL LATEEF**  
**1<sup>ST</sup> DEFENDANTS**

**AND** : **THE REGISTRAR OF TITLES**  
**2<sup>ND</sup> DEFENDANT**

**AND** : **THE ATTORNEY GENERAL OF FIJI**  
**3<sup>RD</sup> DEFENDANT**

**BEFORE** : Justice Mr. A.M. Mohamed Mackie.

**APPEARANCES** : Mr. Selvin Singh – For the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiffs.  
: Mr. Yaasin Ali – For the 1<sup>st</sup> Defendants.  
: Mr. S. Kant, with Mr. Bauleka for the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants.

**DATE OF HEARING** : 12<sup>th</sup> February, 2024

**SUBMISSIONS** : On 12<sup>th</sup> February 2024 filed by the Plaintiffs.  
: On 22<sup>nd</sup> February 2024 filed by the 1<sup>st</sup> Defendants.  
: On 26<sup>th</sup> February 2024 reply filed by the Plaintiffs.

**DATE OF RULING** : 18<sup>th</sup> March, 2024

**RULING**  
**(On application for injunction)**

**A. INTRODUCTION:**

1. The Plaintiffs hereof commenced this action by way of their Writ of Summons and the Statement of Claim filed on 01<sup>st</sup> November 2023, together with an Ex-Parte Summons and

an Affidavit in support, with annexures marked from “A” to “F”, seeking reliefs, inter alia, restraining orders as prayed for therein.

2. Subsequently, when Ex-parte Summons came up for hearing on 3rd November 2023 in support of injunctive reliefs, learned Counsel for the Plaintiffs sought leave to amend the papers and the same being granted, on 7<sup>th</sup> November 2023 filed the Amended Writ of Summons (AWOS), the Amended Statement of Claim (ASOC) and the Amended Ex-parte Summons (Summons), along with two supplementary Affidavits in support and further documents annexed thereto.
3. As per the prayers to the ASOC, the Plaintiffs have moved for the following substantial reliefs;
  - A. *A declaration that the Defendants attempted takeover of the **Madrissa Arabia Islamia** is illegal, void and unlawful.*
  - B. *A declaration that the Defendants have no power or authority to terminate the appointments of the Plaintiffs.*
  - C. *A declaration that all the actions of the Defendants including the illegal meetings, illegal appointments as Trustees and Shoora and terminations taken by them from 19 March 2023 October 2023 is void and unlawful.*
  - D. *An order that the Defendants be permanently restrained from interfering with the operations of the Madrissa Arabia Islamia excepting Abdul Lateef who is to provide all books and accounts of the Madrissa Arabia Islamia so that a proper audit of the financial affairs of the organization can take place.*
  - E. *An order that the Third (**correctly the Second**) Defendant removes the Memorial filed with it by the first Defendants and that it does not register any further Memorials filed by the first Defendants.*
  - F. *Such further and/other Orders as the Court deems just and necessary.*
  - G. *Costs.*
4. As per the prayers to the Amended **Ex- Parte summons**, the Plaintiffs are seeking the following reliefs;
  1. *That the first Defendants whether by their servants, agents or otherwise however be restrained from interfering with the operations of the Madrissa Arabia Islamia and holding themselves out as representatives of the Madrissa Arabia Islamia.*
  2. *The first Defendants whether by their servants, agents or otherwise however be restrained from using the letter head and official documents of the Madrissa Arabia Islamia to issue letters to the Plaintiffs or any other teachers or officials of the Madrissa Arabia Islamia.*

3. *The first Defendants be restrained from accessing any of the Bank accounts of Madrissa Arabia Islamia and dealing with the funds in those Bank accounts.*
4. *The status of the Plaintiffs in the Madrissa Arabia Islamia as Trustees and appointed officials be preserved until the hearing and determination of this application.*
5. *Until the hearing and determinations of the substantive matter, the second Defendant remove from the Registrar of Deeds the Memorial of Trustees lodged on 14 September 2023 by the first Defendants and the alleged Constitution and related documents.*
6. *Such further and/or other Orders as the Court deems just.*
7. *Costs*

5. Accordingly, when the Summons was supported before me on 8<sup>th</sup> November 2023, this Court instantly granted temporary injunction orders as per paragraphs 1 to 3 and a further order in terms of paragraph 4 thereof to maintain the status quo.

**B. INTER-PARTES HERAING OF THE SOMMONS:**

6. The following Affidavits and the annexures thereto are before me for the consideration of the current Application (the Summons).
  - a. Affidavit in support by **Mohamed Hanif** (the third named 1<sup>st</sup> Plaintiff) sworn and filed 1<sup>st</sup> November 2023, along with annexures marked as **"A" to "F"**.
  - b. Supplementary Affidavit sworn and filed by said **Mohamed Hanif** on 7<sup>th</sup> November 2023, along with annexures marked as **"A"**.
  - c. 2<sup>nd</sup> Supplementary Affidavit sworn by **Siraj Rasheed Mohammed** (the 3<sup>rd</sup> named 2<sup>nd</sup> Plaintiff) and filed on 7<sup>th</sup> November 2023, along with annexures marked as **"S"**.
  - d. Affidavit in opposition sworn by **Basir Ali** (the first named 1<sup>st</sup> Defendant) on 6<sup>th</sup> December 2023 and filed on 11<sup>th</sup> December 2023, along with annexures marked as **"BA-1" to "BA-35"**.
  - e. Affidavit in reply sworn by said **Mohamed Hanif** on 10<sup>th</sup> January 2024 and filed on 17<sup>th</sup> January 2024, along with annexures marked as **"A-1" to "A-6"**.
  - f. Affidavit in reply [No-2] sworn and filed on 7<sup>th</sup> February 2024 by one **T.A. Haad Ali Shoukat** in support of the Plaintiffs' Affidavit in reply.
7. In addition to the oral submissions made at the hearing by the Counsel for both parties, they have also filed helpful written submissions as well as alluded to in the caption above, for which I profusely thank them.

8. In the meantime, on an inter-parte Summons preferred by the Plaintiffs' Solicitors on 27<sup>th</sup> November 2023 and supported before my Brother Judge Hon. A. Tuilevuka, on 5<sup>th</sup> December 2023, an order has been obtained by consent to operate the Bank Accounts held by the "**Madrissa Arabia Islamia**" at the **Bank of Baroda** and the **Bank of South Pacific**, authorizing **Mr. Shelvin Singh** and **Mr. Yasin Ali** (the Solicitors for the Plaintiffs & 1<sup>st</sup> Defendants ) to be the signatories to the cheques of those Bank Accounts.

**C. LAW & PRINCIPLES ON INJUNCTION:**

9. The Application is made pursuant to Order 29, R.1 (1) of the High Court Rules 1988, as amended ('HCR') which spells out that:

*'1.-(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.'*

10. The governing principles applicable when considering an Application for interim injunction were laid down in the leading case of ***American Cyanamid Co v Ethicon Ltd [1975] UKHL 1; (1975) AC. 396*** as follows:

(1) A serious question to be tried;

(2) Inadequacy of damages;

(3) The balance of convenience;

(4) Special cases.

**D. DISCUSSION & DETERMINATION:**

**The Subject Matter**

11. There is no dispute between the parties that the "MADRISSA ARABIA ISLAMIA" ("the Madrissa") is the subject matter of this action, which is a religious body duly registered under the Registration of Religious Bodies Act. It is also not in dispute that "the Madrissa" not only engages in religious functions, it also runs a teaching institution of Islamic Studies by providing food and lodging (Hostel) facilities and looks after Orphan male children as well.

**The Question to be decided:**

12. The 1<sup>st</sup> Defendants are seeking to have the temporary injunction orders granted on 8<sup>th</sup> November 2023 in their absence dissolved, and to have the Application for injunctive orders dismissed. The question before this Court, for the time being, is whether the plaintiffs are entitled to interim injunction orders as prayed for until the determination of the substantial matter. If I decide that the plaintiffs are not entitled to such an interim

injunction, I would dissolve the temporary injunctive orders already granted in favour of the plaintiffs and dismiss the Summons for the same.

13. For that purpose, I will examine the relevant law, the principles applicable to the granting of interim injunction and the facts placed before me by way of Affidavit evidence of both the parties.

(1) **Whether there is a serious question to be tried?**

14. Lord Diplock in his **American Cyanamid judgment** at page 408 also said;

*“... it would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.*

**Kerr LJ in Cambridge Nutrition Ltd v BBC [1990] 3 All ER 523 at 534** said:

*“It is important to bear in mind that the American Cyanamid case contains no principle of universal application. The only such principle is the statutory power of the court to grant injunctions when it is just and convenient to do so. The American Cyanamid case is no more than a set of useful guidelines, which apply in many cases. It must never be used as a rule of thumb, let alone as a straitjacket.... The American Cyanamid case provides an authoritative and most helpful approach to cases where the function of the court in relation to the grant or refusal of interim injunctions is to hold the balance as justly as possible in situations where the substantial issues between the parties can only be resolved by a trial”.*

15. From the above, it is absolutely clear that the court is not bound to follow decision in **American Cyanamid v Ethicon Ltd (supra)** in granting or refusing an application for injunction and it will entirely depend on the discretion of the court. Injunction is an equitable remedy granted at the discretion of the court and the court can, of course, always be guided by the guide lines laid down in previous decisions.

16. The main purpose of granting an interlocutory injunction is to maintain the status quo until the final determination of the substantive matter.

17. In **Hubbard & Another v Vosper & Another [ 1972] 2 Q.B.** 84 Lord Denning said:

*In considering whether to grant an interlocutory injunction, the right course for a judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the Defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead. .... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.*

18. On the other hand, in the absence of an interim injunction, Parties can have an expedited or speedy trial which would include attending to all pre-trial matters on an expedited basis, which would meet ends of justice.

**Lord Diplock in American Cyanamid case (supra)** said (at page 407 H):

*"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial"*

19. From the Affidavits evidence adduced by the parties and the submissions made on behalf of them, it is abundantly clear that, at the trial, both parties are likely to raise serious questions/issues. The plaintiffs are claiming that the first Plaintiffs are the duly appointed Trustees and the second Plaintiffs are the Committee members of the Madrissa being appointed by the 1<sup>st</sup> Plaintiffs. It is alleged that unbeknown to the Plaintiffs, the first Defendants met twice in March and July 2023 and removed the Plaintiffs from their positions as Trustees and Committee Members of the Madrissa.
20. It is also alleged that the Defendants surreptitiously filed the, purported, meeting minutes with the 2<sup>nd</sup> Defendant -Registrar of Title/ Deeds and have got themselves registered (excluding Abdul Lateef) as new Trustees and "Shooras" (the advisors) of the Madrissa, and only when the Registration was confirmed, the notices dated 8<sup>th</sup> October 2023 were issued and served on the second Plaintiffs on 23<sup>rd</sup> October 2023 and on the 1<sup>st</sup> Plaintiffs on 26<sup>th</sup> October 2023 advising that they have been removed as former Trustees and Committee members.
21. The position advanced by the Defendants is that the first named 1<sup>st</sup> Defendant Basir Ali is the only surviving member (in Fiji) of the "Shoora"-the advisory Board of the Madrissa, being appointed by the founder of the Madrissa, namely late Mr. Sheik Noor Ali in the year 2002. Vide letter dated 27<sup>th</sup> July 2002 marked as "BA-1" annexed to the Affidavit in opposition by **Mr. Basir Ali**, the 1<sup>st</sup> first named 1<sup>st</sup> Defendant.
22. Accordingly, the Plaintiffs in their amended SOC are moving for 3 declaratory orders and a permanent injunction order restraining the Defendants from interfering with the operation of "**Madrissa Arabia Islamia**". They also move for an Order that the Second Defendant removes the Memorial filed with it by the first Defendants and not to register any further Memorials filed by the first Defendants. It is with the above final reliefs in mind, the Plaintiffs are moving for interim injunctive orders hereof.
23. The injunctive relief prayed for must be related to the final reliefs sought in the substantive matter and the issues to be tried therein. The serious issues that can crop up for adjudication at the trial, may include, *inter alia*;
  - a. ***Whether the first named 1<sup>st</sup> Defendant, Basir Ali was a member of "the Shoora"- the advisory Board at the time material?***
  - b. ***Whether, as per the Constitution of "the Madrissa" the first named 1<sup>st</sup> Defendant-Basir Ali had the authority/ power to remove the Trustees, the 1<sup>st</sup> Plaintiffs and to appoint new Trustees for the Madrissa.***

24. For the time being, what this Court is called upon to decide, as per the facts and circumstances of this case is, **Whether there should be injunctive orders in place as prayed for by the Plaintiffs? Or Whether the Court should order the status- quo to remain as it is till the final determination of the substantial matter?**
25. Let me commence this analysis by referring to the paragraph 1 of the Plaintiffs' written submissions wherein, among other things, it is stated "..... *the first defendants allegedly met twice in March and July 2023 and removed the Plaintiffs from their positions as Trustees and Committee members in the Madrissa .....* The Defendants, excepting Abdul Lateef, **are now registered trustees and Shoora of the Madrissa and have full control over it.....**"
26. The above statements by the learned counsel for the Plaintiffs, in addition to other tacit admissions in the form of documents found in the record, clearly demonstrate that the Defendants are now in charge of the administration and running the affairs of the Madrissa (though not fully operational), irrespective of the facts as to how they managed to put themselves into that position. The propriety of this method adopted has to be gone into and decided at the trial.
27. When the administration and control of the subject matter Madrissa is, admittedly, with the Defendants as stated above, a question arises as to how the Plaintiffs could have prayed for an order against the Defendants directing not **to interfere** with the operation of Madrissa? Because, for an injunctive order of this nature to be issued against the Defendants, as prayed for by the Plaintiffs, necessarily the administration and control of the subject matter should be with the Plaintiffs at the time of filing the Application.
28. Further, the move made by the Plaintiffs before Hon. A. Tuilevuka -J by way of inter parte summons filed on 27<sup>th</sup> November 2023 seeking orders for the Plaintiffs to operate the Bank Accounts held by the Madrissa, and the contents of the e-mail dated 15<sup>th</sup> December 2023 sent by the Plaintiffs' Solicitor to the Defendants' Solicitors clearly demonstrate that the administration, of the Madrissa was with none other than the Defendants on the day the Plaintiff came to Court and immediately prior to that.
29. If the Court is minded to make such an injunctive Order now, it would, undoubtedly, pave the way for the Plaintiffs to walk into the premises with the order in hand and to get back to the administration of the subject matter of which they, admittedly, had no control at the time when they came to court on 1<sup>st</sup> November 2023. In other words, it is not possible to get such reliefs by way of a prohibitive injunction order, except by way of a mandatory injunctive order, which perhaps can put the Plaintiffs back to the position they were at, if the circumstances so demanded such an order. But, the Plaintiffs have not prayed for such an Order. Thus, an injunctive order as prayed for in paragraph 1, 2 and 3 of the Summons cannot be considered now.
30. Further, the prayers in paragraphs 2 and 3 of the Summons, namely "**...to restrain the Defendants from using the letter head and official documents of the Madrissa Arabia Islamia.....**" and to **.....restrain the first Defendants from accessing any of the Bank accounts of Madrissa Arabia Islamia and dealing with the funds in those Bank accounts**"

also is a tacit admission that Plaintiffs are not in control and in charge of the administration of the subject matter and it was the Defendants who were actually in charge and control and the administration of it.

31. So with the above ground situation and realities, the pivotal question that arises for consideration now is as to how this Court can grant an order as prayed for in paragraph 4 of the Summons to **preserve the status of the Plaintiffs in the “Madrissa”** when they had, admittedly, lost their status at the time they came before the Court on 1<sup>st</sup> November 2023 and immediately prior to that. It is clear that the Plaintiffs, when came before the Court on 1<sup>st</sup> November 2023, were not the Trustees or the Office bearers of the Madrissa for them to have an order from this Court to preserve their status.
32. Accordingly, the restraining orders sought in paragraphs 1, 2, 3 of the summons and the Order for the preservation of the, purported, status of the Plaintiffs as prayed for in paragraph 4 of the Summons cannot be granted at this stage. To my understanding, it is just like waving at the Bus, which has just passed the Bus Stop.
33. As far as the prayer 5 of the Summons is concerned, this Court has not made any order on the date the matter was supported on 8<sup>th</sup> November 2023 or thereafter directing the 2<sup>nd</sup> Defendant Registrar and/or affecting the Registration of the Deed \ / Memorial of Trustees, the Constitution and related documents, and has reserved the same to be considered *inter partes*. But, the learned Counsel for the Plaintiff, at the end of the paragraph 1 of his written submission wittingly or unwittingly has stated that “.... **the Court has suspended the Registration....**” which is factually incorrect.
34. Had this Court made such an order, the Plaintiff’s Solicitors would, undoubtedly, have got such orders sealed and served on the 2<sup>nd</sup> Defendant Registrar of Title. However, after hearing both the parties and on consideration of the facts and circumstances hereof, for the reasons stated hereunder, I find no compelling ground/s is before me to make such an order at this juncture. The Registration can remain intact till the final determination of the substantial action.
35. Without prejudice to the above observations and findings arrived at, let me delve into the respective positions taken by both parties through their Affidavit evidence and the contents of the annexures thereto. The bone of contention between the parties is the funds of the Madrissa, on which they are making allegations and counter allegation against each other. The 1<sup>st</sup> Plaintiffs were in office as the Trustees for nearly 20 years, which also appears to have contributed and prompted the 1<sup>st</sup> named first Defendant – Bashir Ali to remove the Plaintiffs from their positions by relying on his, purported, authority as the **Shoora** of the Madrissa.

#### **The Constitution of Madrissa Arabia Islamia:**

36. The Plaintiffs do not dispute the existence of the “CONSTITUTION AND RULES OF MADRISSA ARABIA ISLAMIA “adopted on **21<sup>st</sup> April 1994**, which they have marked and tendered as a part of the annexure “B” to the Plaintiffs’ initial Affidavit in support. Parties



are in serious dispute about the handling of the funds of the Madrissa, wherein they accuse each other of mismanagement and utilizing for the own benefits etc. The accusation by the Plaintiffs in this regard is principally aimed at their own Treasurer **Mr. Abdul Latheef**, who worked with the Plaintiffs for a long time and now stands with the Defendants.

37. Unfortunately, for the reason/s best known to the Plaintiffs, no serious actions were taken against the said Treasurer and/or the other persons responsible for the alleged mismanagement or misappropriation during their period of office as Trustees, except for passing time to time resolutions.
38. Parties are also not at variance on the time to time existence of the successive Boards of Trustees , which were appointed on 20<sup>th</sup> May 1994, on 30<sup>th</sup> March 2001 and on 6<sup>th</sup> January 2003 , as evidenced by the annexures “B” to the Plaintiffs’ Affidavit in support , of which the latest one dated 6<sup>th</sup> January 2003 shows that all 3 first Plaintiffs hereof were the Trustees the Madrissa Arabia Islamia until they were sacked by the letters dated 8<sup>th</sup> October 2023 sent by the first named 1<sup>st</sup> Defendant Basir Ali.
39. It is also observed that the second named 1<sup>st</sup> Plaintiff Mr. MOIDIN has held the post since 1994 (from the inception) while the third named 1<sup>st</sup> Plaintiff Mr. MOHAMMED HANIF has held the post from the year 2001 as per the said annexures’ “B”.
40. On the other hand, the appointment of a “Shoora”- the Advisory Board, by the Founders in the year 1994 comprising of 6 persons of eminence to advise, to supervise and to look into the affairs of the “Madrissa” and the fact that the first named 1<sup>st</sup> Defendant MR. BASIR ALI also formed part of the “Shoora” are not disputed by the Plaintiffs.
41. Also, the provision in the constitution that gives authority to the “Shoora “to appoint the Trustees and to remove them, if they are found to be acting against the interest of the Madrissa, is also not seriously disputed by the Plaintiffs.
42. Unfortunately, out of the 6 members of Shoora, four members have already passed away and the first named 1<sup>st</sup> Defendant Mr. BASIR ALI is the only surviving Shoora in Fiji now, while another member, namely, Mr. MOHAMMED RAHIM, appointed as Shoora in the year 2002, is now permanently resident in New Zealand. He has expressed his solidarity to Mr. Bashir Ali, by his letter dated 10<sup>th</sup> September 2023. However, since he has migrated for good, as per the constitution, he has lost his position in the Shoora. However, his letter dated 10<sup>th</sup> September 2023 marked as “BA-1” substantiates that Mr. Bashir Ali is a Member of Shoora and ne continues to be so.
43. The pivotal question that may beg answer, among others, at the substantial trial, as alluded to by me in a foregoing paragraph, is whether the first named 1<sup>st</sup> Defendant, Mr. BASIR ALI, being the only member of Shoora, could have singlehandedly removed and sacked the 1<sup>st</sup> Plaintiffs as the members of the Board of Trustees, who apparently have run the administration of the Madrissa for nearly 20 years.
44. The next question that may arise for determination, if the answer to the foregoing issue is in favor of the Defendants, is the propriety of the means or method, allegedly, adopted by

the Defendants, particularly, the first named 1<sup>st</sup> Defendant Mr. Bashir Ali, in sacking the 1<sup>st</sup> Plaintiffs from the post of Trustees.

45. The membership of Bashir Ali in the Shoora from the year 2002 as substantiated by the letter dated 27<sup>th</sup> July 2002 marked as “BA=1” by Bashir Ali, is not disputed by the Plaintiffs with any cogent evidence. Though, the Plaintiffs in paragraph 20 their Affidavit in support sworn by Mohamed Hanif, has averred that Bashir Ali had been removed from his position in the year 2011, it has not been substantiated by any minutes of meetings or by any other evidence. On the contrary, the Plaintiffs’ own meeting minutes marked as “BA-36” by Bashir Ali confirms the existence of Bashir Ali as a member of the Shoora.
46. Further, as per the letter dated 6<sup>th</sup> March 2020 marked as “BA-1”, the very Board of Trustees comprised of the 1<sup>st</sup> Plaintiffs, through its Secretary Mr. Tasdeek Hussain, has invited Mr. Bashir Ali for the AGM in his capacity as a member of the Shoora. This profusely serves the first named 1<sup>st</sup> Defendant – Mr. Bashir Ali, to vindicate his position that he still remains as a member of the Shoora.
47. A notable feature in the constitution is that it does not specify any mode or method to be adopted, when the members are sacked or removed. However, it specifically states that “*The executive committee shall remain in at the pleasure of the Shoora*”. It does not specify that a particular number of shoora members should take part in such a decision-making process. The Plaintiffs’ claim that one Haji Abdul Rasheed and Mufti Naien Ali were appointed as shown in their 2015-2016 Report, has been refuted by the very same individuals by their letters marked as “BA-4” and “BA-5” annexed to the Affidavit in opposition.
48. It appears that the Shoora is the supreme body in charge of the affairs of the Madrissa, particularly, in appointing and removing the Trustees at its will and pleasure provided such need arises. The Defendants’ position that the appointments and removal are done by none other than the Shoora, and not by the election or any other mode or person/ authority, has not been seriously disputed by the Plaintiffs. It also appears that the aims and the objectives of the Madrissa, as per the vision of the founder late **Haji Sheik Noor Ali**, are to be executed by the Board of Trustees under the advice and supervision of the Shoora.
49. The section 3 (2) of the Trustees Act expressly states as follows;

(2) The powers conferred by or under this Act on a trustee are in addition to the powers given by the provisions of any other Act and by the instrument (if any) creating the trust; **but the powers conferred on a trustee by the provisions of this Act, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument (if any) creating the trust and have effect subject to the terms of that instrument.**
50. As the Counsel for the Defendants pointed out, the Plaintiffs cannot rely on the above provision to assume power to appoint the 2<sup>nd</sup> Plaintiffs as committee members when the constitution prevails, as argued by the learned Counsel for the Defendants. This Court, at

this stage, cannot lessen or under estimate the weight attached to the constitution of the Madrissa before it is tested at the trial.

51. The Defendants in their Affidavit in opposition are making serious allegations against the third named 1<sup>st</sup> Plaintiff. Likewise, the Plaintiffs are also making allegations against the Defendants, particularly about the failures of the 6<sup>th</sup> named 1<sup>st</sup> defendant Abdul Azeez, the former Treasurer. The Plaintiffs seem to have not taken any drastic action against their own Treasurer and others accused of mishandling and misappropriation of funds of the Madrissa while they were running the institution for nearly 20 years. When the allegations of this nature are levelled against a party, who have held the office for almost two decades, such allegations, in my view, cannot be disregarded or lightly taken.

**Balance of Convenience & Damages:**

52. Obviously, the parties hereof are engaged in this legal brawl, not to achieve any personal gain or benefits in terms of money or materials. As true believers of their Religion, the ultimate goal of their exercise cannot be anything, but serving the community they live in, fulfilling the objectives of the founders and finally to earn the pleasure of the Creator almighty God. Whatever, the hardships they face will have to be endured for the sake of the cause they are dedicated to.
53. Whether it is the Plaintiffs or the Defendants in power, the truth is that they are the temporary custodians of the institution founded by its pioneers and that of the finance and other resources the institution receives by way of donations, charity and in various other permitted forms for the materialization of the objectives of the institution.
54. The Plaintiffs, being removed, rightly or wrongly from the position of Trustees they held, need not necessarily suffer any harm or damages. The people who suffer or lose on account of the conflict between the parties hereof are none other than the Students, orphans, the teachers and the society at large. Therefore, the consideration of the Balance of convenience and the damages need not arise, particularly when the Court has formed the view that interim injunction orders sought are not warranted due to aforesaid reasons.
55. The defendants as per the records, seem to have started rolling for this change from 15<sup>th</sup> March 2023 and their movements could not, possibly, have escaped the attention of the 1<sup>st</sup> Plaintiffs, who were in office. They could have sensed those moves by the Defendants and sought the Court's intervention well in advance. However, there can be more facts that could be ascertained at the trial in order to arrive at a justifiable final decision. Until such time, it is my considered view, that the status quo of the subject matter should remain as it is.
56. Therefore, the orders made by this Court on 8<sup>th</sup> November 2023 granting temporary injunction as per paragraphs 1,2 and 3 of the Summons and the order made in terms of paragraph 4 thereof have to be discontinued and not to be extended any further. Further, in view of the outcome hereof, the consent order entered into before Hon. A. Tuilevuka –J on 5<sup>th</sup> December 2023 in relation to the operation of the Bank Accounts ceases to be in force.

57. The Application for interim injunctive orders and other orders as prayed for in the summons should be rejected and the status quo of the subject matter should remain with the Defendants as it was at the time of filing this action on 1<sup>st</sup> November 2023.

**Costs.**

58. As I alluded to in a foregoing paragraph, the parties hereof are not engaged in any profit-making venture, but serving the community and the Religion they belong to in order to earn the pleasure of the creator –the Almighty God and obtain merits for their hereafter life. They are not supposed to claim costs from the opposing party, unless it is warranted on any exceptional circumstance. The parties may bear their own costs.

**Final Orders:**

59. For the reasons stated above, this Court decides to make the following orders.
- a. The amended summons filed by the Plaintiffs on 7<sup>th</sup> November 2023, seeking injunctive and other orders, is hereby dismissed.
  - b. The Ex-parte orders made on 8<sup>th</sup> November 2023 in favour of the Plaintiffs on temporary basis are hereby discontinued and not extended.
  - c. No costs ordered and the parties shall bear their own costs.
  - d. The matter shall be mentioned before the Master on 24<sup>th</sup> April 2024 to deal with the striking out application, and for other formalities, if need arises.



  
A.M. Mohamed Mackie  
Judge

At High Court Lautoka this 14<sup>th</sup> day of March, 2024.

**SOLICITORS:**

For the 1<sup>st</sup> & 2<sup>nd</sup> Plaintiffs:

For the 1<sup>st</sup> Defendants:

For the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants:

Shelvin Singh Lawyers- Barristers & Solicitors

Messrs. Loyal Legal

Office of Attorney-General