IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Civil Action No. 466 of 1984

Between:

1. MIRIAMA LEBAIVALU
2. MEREONI BULIANAWASAWASA — Plaintiffs

and

1. MOLLY TAMANI
2. JOKAPECI KOROI
3. VINCENT W. LOBENDAHN
4. FIJI NURSES' ASSOCIATION — Defendants

Mr. D.C. Maharaj for the Plaintiffs
Mr. Hasmukh Patel for the Defendants

J U D G M E N T

The Fiji Nurses' Association, the fourth defendant in these proceedings (to which I will refer as the Association), is a registered trade union.

At the Annual General Meeting of the Association held in 1983 the first plaintiff, Miriama Lebaivalu, was nominated for the office of President. There was a ballot as a result of which a Mrs. Lavinia Padarath was elected. During her year of office Mrs. Padarath resigned. At that time the Association's rules contained the following :

> "(33) In the event of the death, resignation, or dismissal of any member of the National Council between two Annual General Meetings or when, during such period, any member is unavoidably absent from Fiji and such absence is likely to

extend for a longer period than three months, the candidate who secured the next highest number of votes in the ballot at the Annual General Meeting when the National Council was elected shall fill the vacancy. If there is no such candidate the vacancy shall be filled by a majority decision of the National Council."

The application of this rule resulted in the first plaintiff becoming President of the Association. On the 14th January, 1984 the National Council of the Association held a meeting over which the plaintiff presided. The business on hand included the making of arrangements to hold the Annual General Meeting. It was agreed that this would be held at the Nadi Hotel on the 18th February, being the last day of the Association's annual conference. The outline of the programme was approved and the minutes record as follows :

"(i) Election - Sub-Committee

The Executive Director was nominated to be the Chairman of this Sub-Committee and Mrs. S. Ali, Mrs. S.Williams and Mrs. L. Koroi were nominated to be members.

This was approved by a moved and seconded motion."

The Executive Director of the Association is Mr. Vincent Lobendahn, the third defendant, who is not a member or officer of the Association. In this context I use the word "officer" according to the definition in section 2(1) of the Trade Unions Act. At the Annual General Meeting which was held on the 18th February, as arranged, the first defendant, Molly Tamani, was elected unopposed as President of the Association. At the same meeting Article 33 of the Constitution was amended to read :

"Provided that in the event of the Office of President becoming vacant, this office shall be filled by a majority decision of the National Council and the person so appointed shall be a serving member of the National Council. "

The effect of the amendment was to ensure that the situation would not again arise wherein an unsuccessful candidate at the Annual General Meeting succeeded to the office of President of the Association.

These proceedings were commenced by originating summons on the 7th May, 1984. The plaintiffs seek the following declarations :

"1. That nomination and subsequent appointment of the third-named Defendant VINCENT W. LOBENDAHN as Chairman on the Election Sub-committee on 14th January, 1984 by the National Council of the Fiji Nurses' Association was unconstitutional.

2. That the election of office bearers conducted under the Chairmanship of the said Vincent W. Lobendahn on Saturday the 18th day of February 1984 at Nadi was null and void.

3. That Amendment to Article 33 of the constitution of the Fiji Nurses' Association on the said 18th February, 1984 was unconstitutional.

4. Alternatively, that the election of MOLLY TAMANI the first-named Defendant as President of the Fiji Nurses' Association on Saturday the 18th day of February, 1984 at Nadi was null and void."

In determining what took place at the Annual General Meeting, I am required to rely upon the affidavits filed by the parties to these proceedings. Mr. Lobendahn attached to his affidavit a draft of the minutes of the Annual General Meeting. He has not stated by whom this draft was prepared. No affidavit has been filed to support the accuracy of the notes. I cannot therefore regard them as evidence.

It is not in dispute that the election was conducted by the Sub-Committee appointed by the National Council with Mr. Lobendahn in the chair. Mrs. Molly Tamani was duly nominated and shortly afterwards nominations were closed. The second plaintiff, Mereoni Bulianawasawasa, said

in her affidavit as follows :

> "4. Within seconds another member moved that nomination be closed and this was also quickly seconded.
>
> 5. A number of hands were raised including mine wanting to propose other names but Mr. Lobendahn ignored them and closed the nomination within matter of seconds declaring Mrs. Tamani as having been elected President unopposed.
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> 6. I was most disappointed with the manner in which the election for the post of the President was conducted and feel rather aggrieved that I was not permitted to propose the name of MIRIAMA LEBAIVALU as the President. "

In the opposing affidavits it is stated that only one nomination for President was made. In the course of argument it was conceded by counsel for both sides that nomination for the office of President was closed as a result of a resolution passed by the members present at the meeting immediately after the nomination of Mrs. Tamani had been received. It is also clear from the affidavits that no one objected at the time to the procedure followed.

The plaintiff contends that as Mr. Lobendahn was not an officer or member of the Association he was not entitled to be the Chairman of the Election Sub-Committee appointed by the National Council to conduct the elections and therefore everything done by or under the authority of that Sub-Committee was null and void. Rule 25 of the Association reads as follows :

> "All elections or other matters for decision by secret ballot at an Annual General Meeting or at an Extraordinary General Meeting of the Association shall be held under the authority of the National Council or under the authority of an Election Sub-Committee appointed specifically for the purpose by the National Council. "

Rule 27 reads :

> "The Secretary or other officer appointed for the purpose under Rule 25 above shall be responsible for issuing ballot forms. Ballot forms will be issued only to voting members. "

The plaintiff submits that if Rules 25 and 27 are read together, then only the secretary or an officer may be a member of the Election Sub-Committee and that Mr. Lobendahn did not fall into such a category.

It is generally accepted that when a person joins a trade union he enters into a contract with the union. The rules of the union are generally regarded as containing the terms of that agreement. (Bonsor v. Musicians' Union (1954) Ch. 479).

In Heatons Transport v. T.G.W.U. (H.L.(E)) [1973] A.C. 15 at 100 Lord Wilberforce said :

> " Turning now, first to the rules: the original source of the shop stewards' authority is the agreement entered into by each member by joining the transport and general workers union. By that agreement each member joins with all other members in authorising specified persons or classes of persons to do particular kinds of acts on behalf of all the members, who are hereafter referred to collectively as the union.
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> The basic terms of that agreement are to be found in the union's rule book. But, trade union rule books are not drafted by parliamentary draftsmen. Courts of law must resist the temptation to construe them as if they were; for that is not how they would be understood by the members who are the parties to the agreement of which the terms, or some of them, are set out in the rule book, nor how they would be, and in fact were, understood by the experienced members of the court. Furthermore, it is not to be assumed, as in the case of a commercial contract which has been reduced into writing, that all the terms of the agreement are to be found in the rule book alone: particularly as respects the discretion conferred by the members upon committees or officials of the union as to the way in which they may act on the union's behalf. "

Mr. Lobendahn is a paid employee of the Association. He is not a member of the Association or a member of the

nursing profession. Section 31 of the Trade Unions Act places certain restrictions on the appointment of officers of trade unions. In particular it requires that officers other than the secretary (or in the case of the treasurer, at the discretion of the Registrar) must be persons who have been engaged or occupied for a period of not less than one year in the occupation with which the union is directly concerned. However, the Act does not refer to employees of trade unions. A trade union is not precluded from appointing as "officials" people who are not members or who may have nothing to do with the occupation of the union members. Otherwise it would be impossible for some unions to function at all.

I do not consider that a strict interpretation of Rule 27 is required. In ordinary speech amongst members of the Association, I am satisfied that Mr. Lobendahn might be properly described as an "official". He might also be referred to as an "officer". The distinction is not one which would be apparent to ordinary members. There was, therefore, no requirement that the person conducting the election had either to be a member of the Association or of the nursing profession and I am not prepared to say that any irregularity attached to the appointment of Mr. Lobendahn as Chairman of the Election Sub-Committee.

But, even if Mr. Lobendahn should not have been appointed to preside over the elections as Chairman of the Sub-Committee, such an irregularity would not affect the outcome. The Annual General Meeting is the supreme authority of the Association (Rule 14) and the wishes of the majority at that meeting must prevail.

The majority are the only persons who can complain that a thing which they are entitled to do has been done irregularily. /Foss v. Harbottle 2 Hare 461/. In MacDougall v. Gardiner 1 Ch. 13 at 24 Mellish L.J. said :

" I think it is a matter of considerable importance rightly to determine this question, whether a suit ought to be brought in the name of the company or in the name of one of the shareholders on behalf of the others. It is not at all a technical question, but it may make a very serious difference in the management of the affairs of the company. The difference is this: Looking to the nature of these companies, looking at the way in which their articles are formed, and that they are not all lawyers who attend these meetings, nothing can be more likely than that there should be something more or less irregular done at them - some directors may have been irregularly appointed, some directors as irregularly turned out, or something or other may have been done which ought not to have been done according to the proper construction of the articles. Now, if that gives a right to every member of the company to file a bill to have the question decided, then if there happens to be one cantankerous member, or one member who loves litigation, everything of this kind will be litigated; whereas, if the bill must be filed in the name of the company, then, unless there is a majority who really wish for litigation, the litigation will not go on. Therefore, holding that such suits must be brought in the name of the company does certainly greatly tend to stop litigation.

In my opinion, if the thing complained of is a thing which in substance the majority of the company are entitled to do, or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, there can be no use in having a litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes. Is it not better than the rule should be adhered to that if it is a thing which the majority are the masters of, the majority in substance shall be entitled to have their will followed? If it is a matter of that nature, it only comes to this, that the majority are the only persons who can complain that a thing which they are entitled to do has been done irregularly; and that, as I understand it, is what has been decided by the cases of Mozley v. Alston (1 Ph. 790)and Foss v. Harbottle (2 Hare, 461). In my opinion that is the rule that is to be maintained. Of course if the majority are abusing their powers, and are depriving the minority of their rights, that is an entirely different thing, and there the minority are entitled to come before this Court to maintain their rights; but if what is complained of is simply that something which the

> majority are entitled to do has been done or undone irregularly, then I think it is quite right that nobody should have a right to set that aside, or to institute a suit in Chancery about it, except the company itself. "

The above principle has been applied to registered trade unions in Cotter v. National Union of Seamen (1929) 2 Ch. 58. There is no reason why it should not be followed in Fiji.

The plaintiffs cannot succeed on that ground.

As to the manner in which the election was conducted, Rule 14 contains the following simple provision:

> "The supreme authority of the Association shall be vested in the Annual General Meeting and, subject to that authority, the Association shall be governed by the National Council. "

The members gathered at the Annual General Meeting may resolve by majority any matter which they deemed fit and which does not infringe the Constitution. It was quite within the powers of that majority to resolve that nominations to a particular office be closed at any time. I concede that it is possible that this course of action may have been planned in advance. But, that does not affect its legality. The resolution confirmed that it was the wish of the members that the President be returned unopposed. If that motion had been defeated, other nominations could have been received in which case a secret ballot would have been mandatory. It would not be reasonable to require such a secret ballot if there was only one candidate nominated for the office. It is not for the courts to intervene and defeat the wishes of the majority who are entitled to govern an association such as this as they think fit.

Notice had been given of the intended amendment of the Constitution as is required by Rule 22. The

plaintiff's objection to the inclusion of this resolution on the agenda is that it was not considered by the National Council at its meeting on the 14th January. She relies upon Rules 19 and 20 in support of that contention.

> "19. The Annual General Meeting or an Extra-ordinary General Meeting in conformity with these rules shall be the only authority to rescind, alter, or add to any of these rules.
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> 20. The Secretary, on the instructions of the National Council, shall prepare an agenda of the Annual General Meeting or for an Extraordinary General Meeting and shall make it known by inserting a notice including such agenda in two newspapers circulating in Fiji not less than 14 days before the meeting takes place. "

There is no information as to when or by whom the proposed amendment to the Constitution was handed in. I am not prepared to interpret these rules in such a strict fashion as would require the National Council to approve of the inclusion on the agenda of a resolution to amend the Constitution. All that was required was that notice of the proposed amendment be given to the members and this was done. Again the majority resolved that issue and it is not the business of the Supreme Court to overturn that decision.

For these reasons I dismiss this action with costs to be paid by the plaintiffs jointly and severally.

I wish to record that counsel who argued this case were of little assistance to me.

(F.X. Rooney)
JUDGE

Suva,
7th January, 1985