

**IN THE COURT OF APPEAL OF SAMOA**

**HELD AT MULINUU**

**BETWEEN:** **SAMOA RED CROSS SOCIETY INCORPORATED** a duly incorporated society under the Incorporated Societies Ordinance 1952 having its registered office at Motootua.

**Appellant**

**AND:** **MAKA SAPOLU** of Vaivase, Retired, **VAASILIFITI MOELAGI JACKSON** of Safua, Savaii, Businesswoman, **JERRY BRUNT** of Tanumapua, Solicitor and **NAMULAUULU TAUTALA MAUALA** of Nofaalii, General Secretary and **MAILO SIO** of Vaiusu, Self-Employed.

**Respondents**

**Coram:** Honourable Justice Baragwanath  
Honourable Justice Fisher  
Honourable Justice Hammond

**Counsel:** S Wulf for the appellant  
J Brunt for the respondents

**Judgment:** 11 May 2011

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**ORAL JUDGMENT OF THE COURT**

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1. Samoa Red Cross Incorporated is an affiliated member of the International Red Cross. We express our appreciation to its counsel, Ms Brenda Heather-Latu, for her assistance to the Court.
2. The Society is incorporated under the Incorporated Societies Ordinance 1952. Its management, control and the undertaking of its affairs are vested in the National Executive Committee elected at the Annual General Meeting.<sup>1</sup>
3. The central issue in the Supreme Court was whether, as the Supreme Court (Slicer J) decided, a purported meeting of the General Assembly on 13 August 2010 was validly held. If so, the Society's officers elected at the Society's Annual General Meeting of 27 March 2009 were replaced by others. If not, they remained in office. The answer to that question would determine both whether the new officers were entitled to conduct the Society's affairs and whether the old officers were entitled to bring the present appeal in the Society's name.
4. We are however relieved of the need to rehearse the evidence and arguments in the case. That is because the parties on each side of the debate have elected to place the interests of the Society and of the International Red Cross above all other considerations and have reached

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<sup>1</sup> Constitution dated 15 November 1982 Rule 29.

agreement as to terms on which the case can be resolved. They are as follows:

- (1) That a general meeting of the Society be held at 12 noon on 13 August 2011 at the Nurses Hall, Motootua to be chaired by a person nominated by the International Federation of the Red Cross and Red Crescent Societies and failing such nomination by 12 June 2011 by a person nominated by the Supreme Court.
  
- (2) That the agenda for the meeting include:
  - (a) Election of officers for the period to February 2012 in accordance with the original 1982 Constitution of the Society at present registered with the Registrar of Incorporated Societies;<sup>2</sup>
  
  - (b) Ratification of the conduct of the affairs of the Society by the respondents since 13 August 2010;
  
  - (c) Adoption of the Constitution of the Society approved by the International Committee of the Red Cross and

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<sup>2</sup> Rule 41 (i). Amendment by the new constitution will obviate the problem of this very short term.

adopted by a resolution of the Society in 1983 but never registered, with or without amendments.

Any differences as to the terms of the agenda and the notice of meeting are to be resolved by the person who is to chair the meeting.

- (3) That the parties provide to such person forthwith upon such person's nomination or appointment all relevant records relating to current membership of the Society in their possession or power.
- (4) That the costs order of the Supreme Court in favour of the respondents be discharged.
- (5) That the proceeding is remitted to the Supreme Court and leave is reserved to the parties to apply on short notice to the Supreme Court for further directions to be given in accordance with the general tenor of this judgment.

This Court further records, and commends, the agreement of the parties that preparation for, and the conduct of, the above meeting be conducted by or under the supervision of the International Red Cross or its delegate.

5. We are pleased to endorse the agreement by consent of the parties and make orders in terms of paragraphs (1)-(5) of 4. The final paragraph which we record in 4 is not however part of the Court's order.
6. The judgment gives effect to a number of public interests of especial importance to Samoa.
7. The first and most general is the concern we share with the parties for the well-being of the Red Cross. We are familiar with the immensely valuable role it plays in international crises, including war. The courts of Samoa should seek as far as possible to enhance that status.
8. The second is the vital role of the Red Cross in responding to the tsunami of 29 September 2009 and its disastrous consequences to Samoa and its people. It is very desirable if possible to avoid any further distraction of Red Cross from the discharge of its invaluable functions which include helping those still afflicted by the disaster.
9. The third is that the issues included whether there was non-compliance with an order of the Supreme Court. While we are relieved of making any determination on that topic we emphasise that the rule of law requires that those who receive such orders must obey them implicitly; any party affected by a challenged order must go to the court to seek its discharge.

10. The fourth is that in the end it is the members of the Samoa Red Cross Society Incorporated who must determine its fate. The Court will leave ultimate decision-making affecting the Red Cross to its members, as is the rule in cases involving companies and other organisations.
  
11. We congratulate the parties on the agreement reached today. Faafetai tele i loia ma itu o le Faamasinoga ona o le tofa ua mafai ai ona soalaupule ma teuteu lenei mataupu<sup>3</sup>.

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**Honourable Justice Baragwanath**

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**Honourable Justice Fisher**

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**Honourable Justice Hammond**

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<sup>3</sup> Our thanks to counsel and the parties for the “*Tofa*” which has achieved a resolution to this matter.