

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 0093 OF 2020
[Lautoka Civil Action No: 63 of 2020]

BETWEEN : 1. FIJI MUSLIM SPORTS ASSOCIATION
2. HAFIZUD DEAN KHAN

Appellants

AND : SADIQ KHAN AND AFZAL KHAN
AND MOHAMMED IFRAAZ KHAN

Respondents

Coram : (Dr.) Almeida Guneratne, P
Lakshman, JA
Qica, JA

Counsel : Mr S. Singh and Ms K. for the Appellants
Ms M. Vasiti for the Respondents

Date of Hearing : 19th September, 2023

Date of Judgment : 29th September, 2023

JUDGMENT

Almeida Guneratne, P

The Proceedings in this Court

Re: A Preliminary matter raised by Court

- [1] At the outset I queried from Mr Singh given that, the period of suspension imposed on the 1st Respondent has now come to pass whether it would not be futile to proceed with the appeal (in as much as the issue in contention being the alleged breach of natural justice); thus rendering the matter academic and moot subject though to consideration of this Court of the award for costs made by the High Court.
- [2] Mr Singh's position however was that, he was obliged to vindicate his client's actions. He submitted that, his endeavor would be to demonstrate that his client had not breached any principles of natural justice and to procure a judgment from this Court to have the judgment of the High Court set aside.
- [3] Being mindful of my thinking and judgment in the case of **The Electoral Commission v. The Supervisor of Elections** [ABU0069 of 2014] which I wrote for the full Court and the House of Lords decision in **R v. Secretary of State** *etal* [1999] 2 AllER 42, seeing merit in Mr Singh's stand, the Court proceeded to hear submissions on the substantive matters based on the grounds of appeal urged as against the impugned judgment of the High Court and the background facts in brief.

Background facts in brief

- [4] "(a) *The original action concerned an incident that took place during the Appellants soccer tournament on or about 31 March 2018. The Respondents were alleged to have assaulted another soccer player and member of the Fiji Muslim League during a match between the Respondents Team and the Nasinu Team. Based on*

this alleged assault, on 2 September 2019, the Council of the Fiji Muslim League suspended the Respondents from participation into any further sporting activities of the Appellants for a period of 2 years.

- (b) Each of the three Respondents were given a right to appeal their suspension within 14 days of 02 September 2019.*
- (c) The first Respondent did not appeal his suspension.*
- (d) The second and third Respondents appealed their suspension to the Appeals committee of the Fiji Muslim League and the Committee heard the appeals on 05 September 2019 and on 06 September 2019, the Appeals Committee stated that the suspension would stand until decided otherwise by it.*
- (e) As a result of the suspension, the Respondents were not able to participate in the 2019 tournament of the Appellants which their team won."*

[5] In those background facts I shall now look at the grounds of appeal urged as against the impugned judgment of the High Court.

[6] I did not feel the need to analyse the judgment of the High Court in detail if only for the reason that, the salient features of it have been with precision been brought out in the grounds of appeal urged.

[7] Accordingly, I felt it would be expedient to deal with the said grounds seriatim.

Re: Ground 1 read with Grounds 6, 7, 8, 9, and 10

[8] To suspend the respondents initially was the right the appellants had and I am unable to hold that there was any breach of natural justice at that point. Consequently, I accept the aforesaid grounds as being viable.

Re: Ground 2

[9] Having perused the entire Copy Record I must say I could not find an iota of material to counter the said ground.

Re: Grounds 3, 4 and 5

[10] Here, I found certain religious overtones as urged therein which I refrain from making any comments thereon but basing my decision on the provisions of the Constitution of the FML Constitution in terms of and in pursuance of which, I was unable to fall in line with the learned High Court Judge's reasoning contained in his Judgment (at pages 6 – 29 of the Copy Record) that, the appellant had breached natural justice principles.

Re: Grounds 11 and 12

[11] These grounds relate to one or another or several which I have referred to above in consequence of which I express the view that, the learned Judge erred in law as urged in the said grounds.

Re: Grounds 13 and 14

[12] In view of what I have articulated above, the aforesaid grounds consequentially are entitled to *succede in toto*.

A Brief Exposition on the applicable considerations in the context of the present case

[13] To begin with, the initial incident arose in the context of a game of sports. The aggrieved parties were two players and their father to which organization they all belonged to and had become members voluntarily. The said organization is not a statutory functionary as known to public law, where the doctrine of public trust would have been attracted.

[14] Nevertheless, the said members rights being affected by the appellant's actions, they did have a right to challenge the appellants' actions. On the basis that the principles of natural justice are "fair play in action."

- [15] It is that “*fair play in action*” which the appellant had responded to giving the appellants an initial audience, though stating that a review would follow.
- [16] That, in my view was in accord with the seminal English decisions in **R v Liverpool Cpn** *estal* [1972] 2 Q.B. 299 and **CCSU v. Minister for the Civil Service** [1985] AC 374.
- [17] Indeed, as it has been said, principles of natural justice are not cast in stone, their application will depend on the facts and circumstances of particular cases.
- [18] The appellant did give the respondents’ (who challenged the appellant’s decisions) opportunities to challenge its decisions.
- [19] What more could the appellant have done?
- [20] Accordingly, although Ms Vasiti made a valiant forensic effort on behalf of the respondents to meet the grounds of appeal urged by the appellant by referring to the respective affidavits filed of record, I was unable to be convinced.

Determination

- [21] In the result I hold that, this appeal is entitled to succede and consequently grounds 13 and 14 will not arise for consideration on merits.
- [22] On the basis of the foregoing reasons I proceed to make my orders in this appeal as follows.

Lakshman, JA

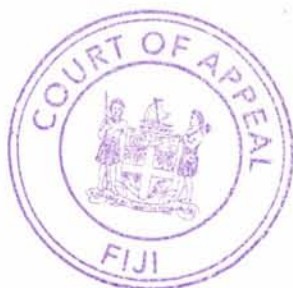
- [23] I entirely agree with the reasoning and conclusions of Guneratne, P.

Qica, JA

[24] I've considered your decision and entirely concur with your views. There was a process available for them to challenge the decision. This process was exhausted by two of them. Hence, fair play was extended to them via appeal process as per their Constitution. I totally concur with the views of Guneratne, P.

Proposed Orders of Court

- 1) *The appeal is allowed and the judgment of the High Court is set aside including the award of costs made by the High Court.*
- 2) *However, in all the circumstances of this case, no order is made for costs in this appeal.*



Hon. Justice Almeida Guneratne
PRESIDENT, COURT OF APPEAL

Hon. Justice Chaitanya Lakshman
JUSTICE OF APPEAL

Hon. Justice Samuela Qica
JUSTICE OF APPEAL

Solicitors:

Shelvin Singh Lawyers for the Appellants
Azure Legal for the Respondents