

IN THE CO-OPERATIVE TRIBUNAL

CENTRAL DIVISION

COT 05 of 2021

BETWEEN: SATYA NAND

COMPLAINANT

AND: NASINU LAND PURCHASE CO-OPERATIVE LIMITED

COMPLAINEE

For the Complainant: Mr. G. O’Driscoll

For the Complainee: Mr. R. Singh

RULING

Background

1. The Complainant is a businessman residing in 7 Ratu Dovi Road, Nadera and the Complainee is a duly registered cooperative based at 68 Suva Street, Suva. The Complainant filed this application for referring a dispute to this Tribunal on 10th June 2021 (hereinafter referred to as “the application”).
2. One of the primary objectives of the Complainee is to arrange for the subdivision, survey and distribution of Part of CT 3213 on DP 2000 on the seaward side of Suva to Nausori road among its members upon payment of their shares. This objective, amongst others, also runs with the ultimate responsibility of the Complainee to ensure that membership is dealt with according to the by-laws and Cooperative Act 1996. This is where the issue before this Tribunal arises.
3. The nature of the application is that the Complainee should transfer the membership of Gopal his late grandfather, to him. The membership supposedly possesses account

number 140768-7 (fully paid). The Complainant relies on a letter dated 15th July 1990 supposedly authored and submitted by Gopal to the Complainee nominating the Complainant as the recipient of his membership under the Complainee (“the letter”).

4. Both parties filed several affidavits in support of their respective positions. Whilst the affidavits were initially filed for various purposes, both parties submitted at the end of the hearing of this matter that they respectively seek for this Tribunal to consider all of the said affidavits in this Ruling. These affidavits are as follows:
 - a. Affidavit of Satya Narayan dated 5th January 2022.
 - b. Affidavit of Satya Nand dated 28th January 2022.
 - c. Affidavit of Rohit Dayal dated 11th February 2022.
 - d. Affidavit of Kala Wati Singh dated 11th February 2022.
 - e. Affidavit of Satya Narayan dated 11th February 2022.
 - f. Affidavit of Satya Nand dated 24th February 2022.
 - g. Affidavit of Satya Narayan dated 4th March 2022.
 - h. Affidavit of Satya Nand dated 15th July 2022.
 - i. Affidavit of Satya Narayan dated 4th August 2022.

Complainant’s Submission

5. This Tribunal has considered all the evidence and submissions in support of the Complainant’s position. The following are some of the salient features of the evidence and submissions.
6. The Complainant states that he and his father, Ram Shankar, bought a lot of land located at Nadawa junction under the Complainee, from his late grandfather, Gopal. However, the transferring of the lot and membership under the Complainee to the Complainant did not happen immediately as the Complainant avers that one Yogesh Krishna fraudulently transferred the said lot to his son, Nikhil Krishna Nair without taking out the letters of probate. After confronting the said Yogesh Krishna with the matter, the property was then transferred to his (Complainant’s) name, but not the membership. The Complainant relies on the following documents:
 - a. List of lot balance and allocated lots;
 - b. Letter from Gopal to the Complainee dated 15th July 1990;
 - c. Backing of Title.

7. The Complainant submits that he has *locus standi* by virtue of the letter nominating him to take over Gopal's membership. He also states that the member was his grandfather, the late Gopal and so he has authority to come to this Tribunal to seek recourse.
8. It is submitted that he is not statutory barred to make this application because as per Section 9 of the Limitation Act 1971, he is a beneficiary under a trust. There was either fraud or a fraudulent breach of trust to which the Complainee was a party or privy to or to recover from the Complainee the said membership. The Complainant further states that he has equitable right and interest on the estate of Gopal by virtue of the said letter.
9. Further, the Complainant submits that the application has merit as they have an equitable claim in the matter and that the Complainee had failed to transfer the share and interest of Gopal to the Complainant.

Complainee's Submission

1. This Tribunal has also considered all the evidence and submissions in support of the Complainee's position. The following are some of the salient of the features of the evidence and submissions.
2. The Complainee states that the letter is fabricated and that it did not receive it at all. Further, the Tribunal should not consider the letter as it has just been introduced after 32 years. Also that there is no evidence of follow up to the letter. The said letter was certified a true copy in 2016 which the Applicant submits would mean that the letter would have been in the possession of the Respondent at all material time.
3. The late Gopal passed away in 1990 and did not leave any nomination and as such the membership was terminated or forfeited under the bylaws The Complainee cannot grant membership to anyone after 32 years.

4. The Complainee submits that the Complainee seeks to distract the Tribunal's attention as the lot of land which the Complainant's claims fraud is not linked in any way to the late Gopal whom it states is not even the biological grandfather of the Complainant.
5. The Complainee submits that the principle issue is membership and to that the Complainant has no *locus standi* as he is not a member nor does he have the legal authority to claim through a deceased person as he is neither the Executor nor Administrator of the estate of the late member, Gopal.
6. Further, the Complainant submits that the application lacks merit and is bound to fail.

Analysis

7. Section 115 of the Cooperative Act of 1996 states:

(1) If a dispute concerning the by-laws, election of officers, conduct of meetings, management or business of a co-operative arises-

(a) among members, past members and persons claiming through members, past members and deceased members;

(b) between a member, past member or persons claiming through a deceased member, and the co-operative, its Board or any other officer of the co-operative;

(c) between the co-operative or its Board and any other officer of the co-operative;

(d) between the co-operative and any other co-operative,

such dispute may be referred, after due attempts to settle the issue by local informal mediators, to the Registrar or directly to the Co-operative Tribunal constituted under Section 116 of this Act for decision.

(emphasis added)

8. As a quasi-judicial body, when compared to a court of law, there is a limitation to the ambit and parameters of the Tribunal's functions and powers. Being an administrative tribunal, the Tribunal can decide claims and disputes arising in connection with the administration of legislative schemes¹. Section 15 (1)(b) as mentioned above, which is the relevant legal mandate for the issue at hand, makes this clear.

¹ Oxford Dictionary of Law, 2018, Oxford University Press (9th Edition).

9. After considering all the material submitted by both parties, there are several issues pertaining to the application. However, the fundamental issue that the Tribunal will be focusing on is – **should the Complainee accept the Complainant as a member by virtue of the letter?**
10. But before delving into the issue, I would like address the issues of *locus standi* and statutory bar.

Locus Standi

11. The argument advanced by the Complainant is that a reading of the emphasised portions of Section 115 of the Cooperative Act above expressly indicates a wide range of persons that may qualify as persons claiming through a deceased member. The Complainee however avers that not all persons can claim through a deceased member. It needs to be person with some legal authority such as an Administrator or Executor of an estate.
12. The Supreme Court adopted in **SCC v RB Patel [2014] FJSC 7** the decision set in the authority of **Nokes v. Doncaster Amalgamated Collieries Ltd. [1940] 3 All ER 549 at 55:**

"The golden rule is that the words of a statute must prima facie be given their ordinary meaning. We must not shrink from an interpretation that which will reverse the previous law, for the purpose of a large number of our statute law is to make lawful that would not be lawful without the statute, or conversely, to prohibit results which would otherwise follow.... At the same time, if the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of legislation, we should avoid a construction that would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

13. In adopting this approach to interpreting the provision in question, that is section 115, it is therefore prudent to accept that any person, really, can claim through a deceased

member when disputing a cooperative's management of nominations. As such, I find the Complainant has *locus standi* in this matter.

Statutory Bar

14. Both parties have based their arguments on subject provisions in the Limitation Act 1977. However, it is imperative to note that these provisions relate to the term 'actions'. So in order for the subject provisions in the Limitation Act to apply, there must be an action first.

15. The term 'actions' is defined in section 2 of the Limitation Act as "*includes any proceedings in a court of law.*" While the Tribunal has yet to see an expressed definition of 'a court of law', I have had to turn to the term 'court' which in my respectful view is a short term of 'court of law'.

16. Section 2 of the Limitation Act is limited in its definition as it defines 'court' as "*in relation to an action, means the court in which the action has been, or is intended to be, brought*". However, the Interpretation Act 1967 gives a bit more light to the classification by stating that it is a "*court in Fiji of competent jurisdiction.*" The Civil Evidence Act 2002 though does include a tribunal into the definition of a 'court'. But more recently, the Oxford Dictionary of Law has defined a court as "*a body established by law for the administration of justice by a judge or magistrate.*"²

17. From these definitions and in absence of any assistance from the parties, I choose to err on the side of caution and find that, in this matter, a tribunal cannot be defined the same as a court of law and as a result of this, the essence of its matters do not qualify as actions.

18. Therefore, the Tribunal will allow the letter that was supposedly written 32 years ago.

² Oxford Dictionary of Law, 2018, Oxford University Press 9th Edition.

Should the Complainee accept the Complainant as a member by virtue of the letter?

19. To address this issue, the circumstances surrounding the origins of the letter must be accounted for. As is, the original form of the letter is not before the Tribunal nor is there any explanation as to its existence. A copy of the certified copy of the letter is submitted with the evidence of Rohit Dayal in that he certified the said copy of the letter. The Complainant relies on both this evidence. I therefore accept the letter as a certified true copy of the letter. The question that follows is - what weight should the Tribunal give to this copy?

20. We will look to the Civil Evidence Act 2002. By virtue of Section 2 of the Civil Evidence Act³, the Tribunal has jurisdiction to refer to its provisions. Now the author of the letter, the late Gopal has passed on. This means that the content of the letter would be perceived as hearsay evidence. Given that the letter is hearsay evidence, the Tribunal will be guided by Section 6 of the said law which looks at some safeguards to consider when deciding how much weight should actually be given to the letter. This is the test of reliability.

21. The considerations with the Tribunals observations are as follows:

(a) *Whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;*

In this matter, Gopal is deceased.

(b) *Whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;*

The Complainant has not adduced any evidence at all describing the circumstances of how contemporaneous was Gopal's original statement to nominate the Complainant was made with what was contained in the letter. This would have assisted the Tribunal in determining the nexus in time between the original statement and the occurrence and to rule out any

³ "civil proceedings", in addition to civil proceedings in any of the ordinary courts of law, includes -
(a) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply

delay, which is at the moment too wide open for the Tribunal to even consider.

(c) *Whether the evidence involves multiple hearsay;*

The evidence does not involve multiple hearsay.

(d) *Whether any person involved had any motive to conceal or misrepresent matters;*

The Complainee has adduced evidence in terms of the Complainant's character. The Tribunal, as can be noted above, has not delved into it as it considers the above issues as the pertinent issues to be addressed. However, given that this is a circumstance required by this provision, then it is imperative to note that the Complainee views the Complainant as a person with motive to misrepresent matters. The Complainee has had previous dealings with the Complainant and views him as a person who does not have good character. The basis and reasons of the Complainee's stance includes the Complainant's tendency to mislead. The Complainee has even gone further to state that it will not allow membership to the Complainant in any event due to his character.

(e) *Whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;*

The parties have not submitted any evidence on this.

(f) *Whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.*

a. The Complainant not producing the original form of the letter and not providing any explanation as to its absence.

b. The production of this letter after 32 years it was written.

c. The absence of any endorsement signature or mark on the letter to show that it was actually dispatched or served to the Complainee.

d. The Complainee confirming that the letter was neither received at its office nor is there any record that the letter was processed at their office.

22. The cardinal facts here is that the Complainant did not do anything for the past 32 years. It is also rather difficult to accept the proposition, as well, that the Complainant

followed up with letters to the Complainee as the copies of the letter do not bear any acknowledgement from the Complainee confirming receipt of the follow up letter(s).

23. In considering all the circumstances surrounding and pertaining to the emergence of this letter, it begs the question as to why be suddenly robust with the nomination in that letter when he (the Complainant) had all this while from 1990 to actively pursue the nomination. And so it follows that these real doubts when weighed with the above considerations, I decide to give nil evidential weight to the letter.


Decision

24. Therefore, given the above, the Tribunal is of the view that the Complainant has not made out his case on a balance of probability.

25. The Complainee therefore, should not and is not to accept the Complainant as a member by virtue of the letter. There will be no transfer of the membership of the late Gopal to the Complainant by virtue of the letter.

26. The application has been heard and is hereby dismissed.

27. There will be no order as to costs.



Joseph Daurewa

Co-operative Tribunal

27th October 2023

