

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**WESTERN DIVISION**

**HBC 187 of 2013.**

**BETWEEN** : **IQBAL KHAN** of Lautoka, Barrister and Solicitor.

**PLAINTIFF**

**AND** : **RAJESH PATEL** and **BOB KUMAR** as the President and the Chief Executive Officer respectively of **FIJI FOOTBALL ASSOCIATION**

**DEFENDANT**

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# **R U L I N G**

## **BACKGROUND**

1. Mr. Iqbal Khan is a barrister and solicitor in Lautoka. He has been nominated by the Navua Football Association (“NFA”) for the position of Vice President of the Fiji Football Association (“FFA”). FFA is the official governing body of the sport of football in Fiji. It has twenty three district affiliates.
2. The FFA’s Annual General Meeting is scheduled for 9.30 a.m. later this morning (Wednesday 09 October 2013). Amongst the items on the agenda, is the election of three Vice Presidents, one for the FFA’s Northern Branch, one for the Eastern Branch, and the third for the Western Branch. Mr. Khan is worried that his nomination might be declared invalid at the AGM later today.

## **URGENT APPLICATION**

3. At 3.00 p.m. yesterday, Mr. Khan filed an Originating Summons and an urgent ex-parte Notice of Motion in this court. He seeks an injunction *ex-parte*, not to stop the AGM entirely, but rather, to stop the AGM only from going ahead with the business of appointing the Vice Presidents pending determination of the following questions:
  - (i) whether or not his (Khan’s) nomination for the position of Vice President (West) is valid. He is seeking a Declaration that his nomination for the position is valid.
  - (ii) whether or not he can contest the FFA position of Vice President (West). He seeks an Order that he be permitted to contest.

4. For the *ex-parte* injunction, Khan relies on the same affidavit that he has filed for the substantive Originating Summons which he swore yesterday, 08 October 2013.

### **KHAN'S AFFIDAVIT**

5. Khan deposes that on 01 October 2013, his nomination for the post of Vice President (West) for the Fiji Football Association was filed. His nomination was moved by the President of the NFA and seconded by the NFA Secretary<sup>1</sup>. Prior to the filing of his nomination, NFA had written to FFA on 1 October 2013 to withdraw its (NFA's) earlier nomination of one Jitendra Prasad (JK) whom it had nominated for the FFA Vice Presidency (West) and one Girja Prasad whom it had nominated for the position of FFA Vice President (North)<sup>2</sup>.
6. On 03 October 2013, Mr. Khan wrote to the CEO of FFA seeking clarification about the validity of his nomination. His letter<sup>3</sup> states inter alia:

We are informed and verily believe that your office has advised that our Mr Iqbal Khan's nomination cannot be valid because Navua Football Association cannot withdraw their nomination which they had made earlier.

We put you on notice if you could kindly advise us as a matter of urgency whether our Mr Khan's nomination is valid and we seek your response by 2.00 pm this afternoon, failing which we shall make an urgent application to the High Court for certain directions.

7. The FFA responded to Khan's letter on the same day, 03 October 2013. FFA's letter<sup>4</sup> states inter alia:

At this stage, the issue of the validity of the nomination is an internal matter to be determined by the Fiji Football Association. As a potential nominee, your function is to consent to the nomination. The validity is an issue between Navua Football Association and Fiji Football Association. This will be dealt with in accordance with the Fiji FA Statutes, Regulations and other laws as approved by the Congress (being the supreme authority of FijiFA We will be guided by FIFA regulations.

Given that you have threatened to take the matter to court, your letter has been handed to our lawyers for their legal opinion. They will be writing to you shortly.

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<sup>1</sup> A copy of his nomination is annexed and marked "A".

<sup>2</sup> A copy of the said withdrawal of nomination dated 01 October 2013 is annexed and marked as "B" to Khan's affidavit.

<sup>3</sup> A copy of the said letter is annexed and marked as Annexure "C" to Khan's affidavit.

<sup>4</sup> A copy of the said letter is annexed to Khan's affidavit and marked "D".

8. On 04 October 2013, FFA's lawyers, Messrs Samuel K Ram, wrote to Khan to reiterate FFA's legal position on the issues<sup>5</sup>. Mr. Khan however deposes in his affidavit as follows:

.....I am not a member of Fiji Football Association and as such I am not bounded by the Fiji FA and FIFA statues as it only applied to the members of the Fiji Football Association and as such I am entitled to seek the High Court's assistance under the common Laws and under the Provisions of the 2013 Fiji Constitution when the Fiji Football Association breaches any law.

9. Mr. Khan deposes that the FFA has neglected to confirm whether his nomination is valid.

10. On 07 October 2013, a second correspondence from the office of Mr. Samuel K Ram<sup>6</sup> advised Khan as follows:

...we note your client has presented no legal basis for taking our client to court. Our client is not saying that they will not provide a response. Hence your allegation of lack of transparency is baseless. Our client is simply saying that they will not let you dictate their deliberation process or pressure them to do it in a hasty manner.

Navua Football Association ("NFA") has by their letter dated 1<sup>st</sup> October 2013 purported to withdraw their nomination of previous candidates. In that letter they have asked our client whether their letter is "technically and legally in order". NFA is a member of our client and they will seriously consider this and give them a response. Such last minute withdrawal is unprecedented and there is no express procedure provided for it in Fiji FA Statutes.

We, however, do note paragraph numbered 5 of your letter. You suggested that NFA would have no say in relation to your nomination as they have "legally" nominated you and you have consented to it. If we follow this logic the candidate that they had nominated before you can make the same argument. Hence NFA could not withdraw the nominations as they no longer would have a say in relation to the candidate's nominated by them before you.

11. Mr. Khan deposes that he has given FFA over six (6) days to respond to his request for clarification as to the validity of his nomination but to no avail.

He says FFA:

....is trying to use delaying tactics in not responding as they would be able to rule my nomination invalid during the election and that I would have no remedy thereafter.

....the Annual Congress is set down for 9<sup>th</sup> day of October and the elections for the position of Vice President would be held on 9<sup>th</sup> October 2013 and unless this Honorable Court grants me an injunction, deferring the elections of the Vice Presidents pending my application to this Honorable Court, the Fiji Football Association may rule that my nomination is invalid and this would prevent me from contesting for the position of the Vice President (West).

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<sup>5</sup> A copy of S.K Ram's letter is annexed to Khan's affidavit and marked "E".

<sup>6</sup> A copy of the said letter is annexed to Khan's affidavit and marked "F".

....my case is one of urgency and the delay caused by proceeding in the ordinary way would entail serious mischief and unfairness and as such my humble request to this Honourable Court to grant me an Interim Injunction pending the determination of my application.

12. Mr. Khan further deposes as follows:

I am informed and verily believe that the current sitting Vice Presidents **JITENDRA PRASAD (JK)** and **GIRJA PRASAD** have several nominations by other districts and by allowing my nomination to be valid, would not in any way prejudice the other two nominees.

13. Mr. Khan then gives “my usual undertaking as to damages”.

### **URGENT EX-PARTE INJUNCTION APPLICATIONS**

14. Interim injunctions are a powerful discretionary remedy. But they are not lightly granted. They are granted *ex parte* only if there is urgency. In other words, if to proceed normally (i.e. *inter partes* by Notice of Motion or Summons) would be a delay entailing irreparable or serious mischief, (see Order 29 Rule 1(2) as amended in 1991 in LN 61/91).

15. The applicant must show a strong enough case to justify the Court not hearing the other side’s case. Usually, to show “urgency”, the applicant must show that, unless the court intervenes with a restraining order, he has a legal right in the subject-matter of the case which is under an immediate threat of being violated. Apart from that, the applicant must convince the court that the balance of convenience favours the granting of the injunction *ex-parte*.

16. The applicant must also disclose all relevant facts to the Court, including any matters favourable to the other side. The fact that the relief is ‘discretionary’ does not mean that the court can grant it at its leisure. Rather, the judge is under a duty to exercise that discretion judicially and judiciously.

17. Megarry J in **Bates v. Lord Hailsham [1972] 1 WLR 1373; [1972] 3 All ER 1019** resonated the principles as follows:

An injunction is a serious matter and must be treated seriously. If there is a plaintiff who has known about a proposal ... for nearly four weeks in detail and he wants an injunction to prevent effect being given to it at a meeting of which he has known for well over a fortnight, he must have a most cogent explanation if he is to obtain his

injunction on an ex parte application made two and a half hours before the meeting is due to begin. (1380 A);

And:

Ex parte **injunctions** are for cases of real urgency where there has been a true impossibility of giving notice of motion ..... Accordingly, unless perhaps the Plaintiff had had an overwhelming case on the merits I would have refused the injunction on the score of insufficiently explained delay alone (my emphasis).

(see also Fiji Court of Appeal in **Fiji Public Service Association v Chetty [2005] FJCA 38; ABU0061J.2003S (4 March 2005)**).

## **COMMENTS & CONCLUSION**

18. Having carefully considered the application, I am of the view that, on the facts presented before me, the *ex-parte* injunction must be refused. My reasons follow:
- (i) Mr. Khan has not convinced me that he has a legal right which is under an immediate threat of being violated.
  - (ii) it is the Navua Football Association which had nominated Khan. The NFA, and not Khan, is a member of the FFA. The NFA's nomination of Khan is currently being considered by the FFA.
  - (iii) Mr. Khan has not showed me that the FFA is answerable, not just to NFA, but to him (Khan) as well.
  - (iv) Mr. Khan was also unable, after I asked him in Court, to show me any provision of the FFA constitution/statutes which says squarely that FFA is under a legal duty to inform NFA, let alone Mr. Khan, prior to the AGM, as to the validity or otherwise of the NFA's nomination of Khan for Vice Presidency (West).
  - (v) the election of office bearers (or any leadership, management and/or governance issue for that matter) in a private organisation such as the FFA, is governed solely by the organisation's constitution/statutes. Courts will only interfere if there has been a clear flouting of the organisation's own constitution/statutes.
  - (vi) as stated, Mr. Khan has not convinced me that, the FFA is legally obliged to answer his questions and, in refusing to answer his questions, the FFA is flouting any provision of the FFA

constitution/statute, let alone, that such flouting is a threat to any legal right of Mr. Khan, if at all he has a legal right (which he has also failed to convince me so).

(vii) in any event, if the FFA was to declare Mr. Khan's nomination invalid later today, the NFA (and/or Khan) could then validly contest that decision in court, if it seriously maintains the view that the decision is invalid.

19. For the record, Mr. Khan did say in court that he does not mind losing the election. He just wants the right to contest protected. But whether or not he has that right in the first place, and if so, whether that right has been compromised one way or another, are matters for the FFA to determine first.

**ORDERS**

20. The application is dismissed. The case is adjourned to 28 October 2013 for mention before me at 9.30 a.m. The plaintiff is to serve all documents to the defendants in 14 days.

.....

Anare Tuilevuka

**JUDGE**

09 October 2013

At 8.30am