

IN THE HIGH COURT OF FIJI
AT SUVA

WINDING UP CAUSE NO. 37 OF 2013

IN THE MATTER of NAINASO I RA HOLDING LIMITED: a limited liability company having its Registered office at 33 Raojibhai Patel, Suva, Fiji (“The Respondent Company”)

AND

IN THE MATTER of the COMPANIES ACT 1983

BEFORE : Hon. Justice Kamal Kumar

COUNSEL : Mr A. Rayawa for the Applicant/Petitioner
Mr I. Fa for the Respondent/Company

DATE OF HEARING : 15 August 2013

DATE OF RULING : 24 June 2014

RULING

1.0 Introduction

1.1 On 9 July 2014 the Company (hereinafter referred to as **“the Applicant”**) filed Application by way of Summons seeking following Orders:-

- “(a) That a Stay Order be issued against all proceedings in Winding Up Cause No. 37 of 2013 and the Petitioner or his agents and servants be restrained from interfering in the affairs of NAINASO I RA HOLDING LIMITED.*
- “(b) That an Order be issued Restraining Mr Isireli Fa and his law firm FA & Co Barristers & Solicitors from representing the Petitioner Ratu Waisea Tuiteci Ratubusa aka Ratu Waisea Ratubusa Tuiteci and his agents and/or servants in Winding Up Cause No 37 of 2013 and any other proceedings involving NAINASO I RA HOLDING LIMITED.*
- “(c) That Costs of this application be paid by the Petitioner Ratu Waisea Tuiteci, Ratubusa aka Ratu Waisea Ratubusa Tuiteci to NAINASO I RA HOLDING LIMITED within 7 days from the date of the Order; and*
- “(d) For such other Orders as the High Court of Fiji deems equitable and just.”*

1.2 On 1st August 2013, Court directed parties to file Affidavit and Submissions in respect to the Stay Application and for Mr Fa and his firm to be disqualified from acting for the Petitioner (hereinafter referred to as **“the Respondent”**) and adjourned the Application to 15 August 2013 at 9.30am for hearing.

1.3 Following Affidavits were filed by the parties:

For Applicant

- (i) Affidavit of Ilaitia Tuiteci in Support sworn and filed on 9 July 2013 (hereinafter referred to as **“Ilaitia’s 1st Affidavit”**);
- (ii) Affidavit in Reply of Ilaitia Tuiteci sworn and filed on 13 August 2013 (hereinafter referred to as **“Ilaitia’s 2nd Affidavit”**).

For the Respondent

Affidavit of Waisea Ratu Busa Tuiteci also known as Waisea Tuiteci Ratu Busa sworn and filed on 5 August 2013 (hereinafter referred to as **“Waisea’s Affidavit”**).

1.4 Both Applicant and Respondent filed Submissions.

2.0 Disqualification of Legal Practitioner

2.1 Applicant relied on Rules 1.3 and 3.4 of Rules of Professional Conduct in Schedule to Legal Practitioners Decree 2009.

2.2 Rule 1.3 provides:-

“On becoming aware of a conflict of interest between clients a practitioner shall forthwith:

- (a) advise all clients involved in the matter of the situation;*
- (b) continue acting for all clients only with the consent of all clients and only if no actual conflict has occurred;*
- (c) decline to act further for any party where so acting would disadvantage any one or more of the clients.”*

2.3 Rule 3.4 provides:-

“A practitioner shall not save in exceptional circumstances, continue to act for a client in a matter in which the practitioner is likely to be a witness.”

2.4 It is obvious that for Mr Fa to withdraw or to be disqualified from acting for the Respondent pursuant to Rule 1.3 the Applicant must establish that Mr Fa gave advise or acted for the Applicant/Company in relation to the subject matter of this proceedings.

2.5 At paragraph 7 to 9 of Ilaitia’s 1st Affidavit he states as follows:-

“7. THAT the Petitioner Ratu Waisea Tuiteci Rabusa aka Ratu Waisea Raturubusa Tuiteci is also a Director of a rival Company namely MATAQALI NAINASO I RA HOLDINGS LIMITED (hereinafter referred to as the “rival company”).

8. THAT the Petitioner is the Chairman of the Board of Directors of that rival Company.

9. THAT on the instruction of the Chairman and the Board of the rival company Samuel K. Ram Lawyers filed a Winding Up Petition against the respondent company last year on 27th day of February 2012.”

2.6 At paragraphs 22 and 23 of Ilaitia’s 1st Affidavit he states as follows:-

“22. THAT a meeting held at the office of the iLTB National Operations Manager’s office namely Mr Nata, we were informed that our re-entered lease has been offered to another Company namely CAPITAL GROUP

INVESTMENT (FIJI) LIMITED). The two shareholders of this Company are Mr Isireli Fa and his wife Mrs Selai Fa. They are also the only two Directors of this company (hereinafter referred to as “FA company”).

23. *THAT we have filed a civil action against ITLTB for specific performance in civil action number 152 of 2013 at the Suva High Court and a copy of the writ is attached as annexure marked “IT-4”.*”

2.7 Further at paragraphs 31 to 34 of Ilaitia’s 1st Affidavit he states as follows:-

“31. *THAT I also reasonably believe that this Winding Up action is brought by Isireli Fa of FA & CO because he will financially benefit from the Winding Up of the respondent company which is our company.*

32. *THAT Isireli Fa also represents one Anwar Khan a Director of YASAWA PROJECTS LIMITED. Mr Anwar Khan had been instrumental in the setting up of the rival company. He worked closely with Ratu Waisea Tuiteci Ratubusa aka Ratu Waisea Ratubusa Tuiteci and the Directors of the rival company in forcefully seizing 3 acres of our company land and later started building concrete residential structures under the name of YASAWA PROJECTS LIMITED. Mr Isireli Fa FA & CO continues to represent Anwar Khan in other cases involving the Fiji Development Bank.*

33. *THAT the Fa Company has been offered a lease by ITLTB on the same land that our company the respondent company held under the agreement to lease attached as annexure marked “IT-5”.*

34. *THAT the first winding up action filed in Lautoka was engineered by the same group of people and companies that just want to steal and deprive our company of the single property that will ensure our advancement as a village owned company. This same group of people and companies after being unsuccessful in their first attempt to wind up our company (the respondent company) have now tried again through this current winding up petition.”*

2.8 The previous Winding-up proceedings referred in Ilaitia’s 1st Affidavit is Lautoka Winding-up Action 5 of 2012 in which Mataqali Nainoso Holdings Limited (“**MNHL**”) is the Petitioner.

2.9 The Petitioner in this proceedings is Director of MNHL.

2.10 There is no evidence produced to Court and there is nothing in the paragraphs quoted above which suggest that:-

(i) Mr Fa gave any advise to the Applicant; or


- (ii) Mr Fa acted for the Applicant in any matter.
- 2.11 Except for the fact that Mr Fa and Mrs Fa for a period of time were directors and subscribers of Capital Group Investment Limited (**CGIL**) to which iTaukei Land Trust Board (iTTLTB) had offered to lease three acres of land that was subject to Applicants lease which had been re-entered by iTTLTB to CGIL. This does not in itself create a conflict of interest.
- 2.12 The Winding-up proceedings by the Respondent is in respect of alleged debt in which the Respondent has to establish that the Applicant is indebted to him and that the Applicant is insolvent as defined in s121 of the Companies Act.
- 2.13 I cannot see how Mr Fa being a shareholder or subscriber in CGIL and being adviser to Anwar Khan of Yasawa Projects limited would create a conflict of interest with the Applicant when Mr Fa has not acted for the Applicant in any matter.
- 2.14 Also no leave has been sought to call oral evidence in this proceedings and such this proceedings will be determined on the basis of Affidavit evidence filed.
- 2.15 There is also no evidence to suggest why Mr Fa would be called as a witness in this Winding Up proceedings.
- 2.16 The mere fact that a party alleged that a Legal Practitioner may be called to give evidence without stating the basis of such allegation does not attract the provision of Rule 3.4 of the Rules of Professional Conduct.
- 2.17 Having analysed the Affidavit evidence I am of the view that there is no conflict of interest as between Mr Fa and the Applicant and Applicant has failed to establish the basis for calling Mr Fa as witness in this proceedings.

3.0 Conclusion

- 3.1 I make following Orders:
 - (i) Company/Applicant's Application to Restrain Mr Isireli Fa and his law firm, Fa & Co., Barristers and Solicitors from representing the Petitioner, Ratu Waisea Tuiteci Ratubusa aka Ratu Waisea Ratubusa Tuiteci in this proceedings by Summons dated 9 July 2013 is dismissed and struck out;
 - (ii) Costs of the Application be costs in the cause;

- (iii) Summons dated 9 July 2013 be listed for mention on 27 June 2014 at 9.30am to fix hearing date in respect to prayer (a) of the Summons.




Kamal Kumar
JUDGE

At Suva
24 June, 2014

Solicitors for the Applicant/Petitioner: Messrs Rayawa Law
Solicitors for the Respondent/Company: Messrs Fa & Company