

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 157 of 2010

BETWEEN : **SAUNAKA LAND PURCHASE CO-OPERATIVE SOCIETY**
Plaintiff

AND : **AFIZ MOHAMMED**
First Defendant

AND : **RAKESH KUMAR, VIDYA WATI, KRISHNA MURTHI,**
AVINESH VERMA, BERNADETTE SHANKARAN, MOREEN
Second Defendant

AND : **THR DIRECTOR/REGISTRAR OF CO-OPERATIVES**
Third Defendant

AND : **THE ATTORNEY-GENERAL OF FIJI**
Fourth Defendant

Counsel : Mr. E. Maopa for the Plaintiff
Mr. V. Mishra for the 1st Defendant
Mr. Pickering for the 2nd & 3rd Defendants

RULING

INTRODUCTION

1. For many years, there have been some on-going disputes and tension between, on the one hand, the board of a certain co-operative society registered under Fiji's Co-operative Societies Act and, on the other, some stakeholders who are not members of the society. This all culminated at a meeting 05 August 2010 when the entire board of the society in question, namely, the Saunaka Land Purchase Cooperative Limited ("**SLPCL**"), was ousted by the appointment of an interim board. That meeting involved mostly non-member stakeholders. And the interim board appointed thereunder comprised mostly, non-member stakeholders. It is this meeting, and the actions, decisions and resolutions taken and passed in it, that are at the heart of the substantive matter in this case.
2. If I may digress a little, stakeholders who are not members of their co-operative society will usually have very little recourse in airing their

grievances on matters to do with the management and governance of the society, in terms of the Co-operatives Act 1996 and the By-Laws of the society. This is because, by virtue of their not being members, they will be precluded from participation in General Meetings of their societies.

3. However, there is a dispute resolution mechanism under sections 115(1)(a) and 116 of the Act which may be available to them. On my reading, these provisions appear to make mediation a mandatory primary step. It is only if mediation is not successful, will the secondary ADR mechanism (involving the Registrar and/or a Co-operative Tribunal) can be invoked. For one reason or another, this option was not exercised in this case. Instead, the Registrar would orchestrate the 05 August 2010 meeting, which is being challenged here.
4. The main issue between the parties is whether or not the old board was validly ousted? The following questions arise out of this main issue:
 - (i) whether or not the meeting of 05 August 2010 was validly constituted?
 - (ii) whether or not it was within the powers of the persons who orchestrated and caused the meeting of 05 August 2010 to do so?
 - (iii) whether or not, in any event, the persons who were appointed into the interim board are eligible for such appointment in terms of the criteria prescribed by the SLPCL by-laws?

RELIEF SOUGHT

5. The following relief is/are being sought:
 - (i) general damages
 - (ii) a declaration that the appointment of the second defendant as interim officers for the plaintiff is null and void and thus illegal
 - (iii) a declaration that the decision made by the third defendant, his agent and servant, is null and void thus illegal.
 - (iv) a declaration that the first defendant is not the registered member of the plaintiff
 - (v) a declaration that the ousted elected Board and officers of the plaintiff are the lawful officers of the plaintiff.
 - (vi) an injunction order restraining the first defendant and second defendants, his servant and agent whatsoever from interfering in the administration and operation and or on the affairs of the plaintiff.
 - (vii) an injunction restraining the first and second defendants from collecting any fund whatsoever, accessing or withdrawing any fund from the plaintiff's bank account.
 - (viii) cost

PRELIMINARY ISSUE

6. Meanwhile, Mr. Mishra, for the first defendants, seeks to strike out the SLPCL's claim on a preliminary point. He alleges that the person who is really behind the filing of the claim in the name of SLPCL is one Anil Nandan, who was the Secretary of the ousted board. Nandan does not refute the allegations. As I observed in my earlier ruling in **Saunaka Land Purchase Cooperative Ltd v Mohammed** [2012] FJHC 837; HBC157.2010 (3 February 2012):

[3]. Anil Nandan is actually behind the filing of the writ of summons and the statement of claim. He was the Board Secretary for sometime. It is an issue between the parties as to whether or not he is still the secretary. Nandan was also behind the interim injunction application in the name of the society. That interim injunction was granted by Mr. Justice Fernando on 12 August 2010.

[4]. According to the statement of claim, the society is aggrieved about the Registrar of Cooperatives' action in appointing the second defendants as its Board members in a meeting on 05 August 2010. The 05 August meeting also effectively dissolved the old Board. It is alleged that these changes have hindered the society's development plans - causing it to suffer losses and damages. General damages as well as various declaratory and injunctive orders are being sought to invalidate the new appointments and to restore the status quo.

[5]. From the pleadings and affidavits filed, I gather that the composition of the Board was changed amidst allegations of fraud within the old Board. In his submissions, Mr. Mishra goes to great lengths in emphasizing that the society cannot sue its own board members. There is merit in this submission.

[6]. In his affidavits, Nandan is adamant that the ousting of the old Board and the appointment of the new – was improper as the proceedings were not carried out in accordance with the society's constitution. He also argues that the new appointees (2nd defendants) were not registered members of the plaintiff co-operative society and that the Registrar of Cooperatives breached and abused his statutory powers in making the appointments.

7. There is indeed merit in Mr. Mishra's argument. However, in the particular circumstances of this case, I think it would be best if I were to first determine the substantive issue of whether or not the old board was validly ousted. My reasons shall become clear later.

BACKGROUND

8. The SLPCL is registered under the Cooperatives Act (1996). By virtue of section 14 of the Act, that fact of SLPCL's registration gives it full legal

personality by rendering it a body corporate, with perpetual succession and a common seal, with power to hold property, and the capacity to institute and defend legal actions.

9. The SLPCL was formed in the late 1960s, probably then as an unincorporated association and later by registration pursuant to Fiji's Co-operative Societies Act (Cap 250) which has now been repealed by the 1996 Act. Amongst the SLPCL's core objectives as stated in its By-Law, are the following:
 - (a) To purchase from Mrs. Ferrier Watson all that piece of freehold land contoured (sic) in Lot 10, DP 2679, C.T. 1089 (56 acres) for use and benefit of the members of the Co-operative.
 - (b) To arrange for sub-division, survey and distribution of holding among the members so as to provide one holding but no more than one holding for each member, upon such terms and conditions as the general meeting shall determine, and to enter into an agreement with each member accordingly in for annexed as Schedule "a" to these by-laws.
10. The SLPCL did purchase from Mrs. Ferrier-Watson the land described above and in July 1970, it became the registered proprietor of all that land. In this case, the parties all accept that SLPCL is required under its By-Laws to formally sub-divide the land into separate smaller freehold lots, with each individual member to be given a lot apiece.

Dispute

11. Over the last forty-five years or so since the SLPCL acquired the land, no subdivision work has ever been carried out. At some point after acquiring the land, SLPCL did carve it up into several un-surveyed holdings. It then allocated apiece each to every individual member. However, this allocation was for their use and benefit "for the time being" only.
12. It is always understood by the members and stakeholders alike that SLPCL would, sooner than later, arrange for the land to be formally surveyed and subdivided into separate little freehold lots. These lots would then be distributed apiece to every member.
13. However, for one reason or another, the SLPCL board has been rather remiss in beginning this exercise, let alone carrying it to completion.
14. Over the years, this would prove to be a major bone of contention, and caused many anxieties between non-member stakeholders on the one hand

and the board, on the other. The parties' anxieties would only spark and goad many allegations and cross-allegations of impropriety between them.

Mr. Afiz Mohammed

15. A Mr. Afiz Mohammed (“**Mohammed**”) has been at the forefront of this melee. Over the last few years, Mohammed has written numerous letters and made countless telephone calls to the Ministry for Trade & Co-Operatives, the Permanent Secretary, and even to the Attorney-General, to complain about the manner in which the SLPCL is being run by its board.
16. Initially, the Ministry had simply tiptoed around Mohammed’s complaints. This attitude on the part of the Ministry was probably well-advised. As Mohammed was not an SLPCL-member, the By-Laws and the 1996 Act would preclude him from any involvement in the affairs of the SLPCL.

Ministry Entertains Mohammed

17. Later, the Ministry would relent from that standoffish approach. It began to take Mohammed a little bit more seriously perhaps, because Mohammed would prove unrelenting and, more so, because of the gravity of his complaints. Hence, on 11 March 2010, the Registrar of Co-Operatives would write a letter to Mohammed requesting him to arrange for a meeting of stakeholders to be held on **20 March 2010**.
18. Acting on that, Mohammed, would have a notice drawn up and hand-delivered to stakeholders and members alike.
19. The reason why the Department took this step was explained by a Ms. Ana Rokovau in Court. Ms. Rokovau is an officer with the Department of Co-Operatives. She says that the Department was facilitating a forum for dialogue between members and stakeholders in order to better equip itself to deal with the issues.

Meeting of 20 March 2010

20. The 20 March 2010 meeting did happen. At the outset, vide an email he sent on 18 March 2010, the Registrar took pains to set out clearly to Mohammed that the meeting was not an SGM or a GM and would have no bearing on any development in progress.

21. Twenty three people attended the meeting. This included some members of the Police Force and the Royal Fiji Military Forces who were there to diffuse the high tension between the attendees. The main points of grievance were the long overdue formal subdivision of the land and the fact that the growing brood of non-member stakeholders were without a voice as both the SLPCL By-Laws and the 1996 Act would only allow members to speak (and vote) at any AGM and SGM. There were also allegations of some underhanded dealings involving certain board members purportedly in collusion with certain officers of the Registrar of Co-Operatives.
22. It was suggested, and agreed at this meeting that a joint-SGM between this group and other members of SLPCL be held so the issues could be resolved.

Anil Nandan-Cohorts' Petition

23. Meanwhile, on the same day, 20 March 2010, a petition of 10 members of the SLPCL including Anil Nandan was presented to the Registrar. By that petition, the signatories were registering their concern over the involvement of Mohammed in calling meeting of 20 March 2010. They say that the above meeting was unconstituted and was convened in utter disregard and violation of the 1996 Act.

Meeting of 29 June 2010

24. A little more than a week after the above meeting, Anil Nandan and his group would convene a meeting at the residence of one Bal Krishna. This meeting was attended by nine board members altogether, including the host. Some non-members also attended but they were not allowed to speak. Also in attendance were the Registrar and some of his officers, the then Administrator of Nadi Town Council, and the District Officer, Nadi.
25. According to the Minutes, the main purpose of this meeting was to look into the many grievances of stakeholders and to suggest solutions to the Registrar. At the end of the meet, it was resolved that an SGM be convened on 27 July 2010 to be open to every person claiming a right in any holding, or, in any portion of any holding in the SLPCL estate. These persons would have to produce every supportive documentation so that their respective claim could be verified and assessed.

27 July SGM

26. It is not clear to me whether or not a joint-SGM was indeed convened as resolved in the 29 June 2010 meeting. At the trial before me, Mr. Anil Nandan said in evidence that an informal stakeholders' meeting was indeed held on 27 July 2010.

05 AUGUST 2010 MEETING

27. This is the meeting where the old SLPCL Board was dissolved and a new one appointed on an interim basis for three months only. The main issues in this case all center around this particular meeting.
28. This 05 August meeting was attended by a host of people including the Registrar of Co-Operatives and two of his officials.
29. Anil Nandan wrote a letter dated the same day by which he tendered his resignation from the position of Secretary. The Minutes record that Nandan did request at the meeting for the appointment of a new secretary. Upon that request, Raja Kumaran was then appointed secretary.
30. However, shortly after tendering his resignation, on the same day, Nandan would withdraw his resignation. In court, Nandan offered an explanation for his actions. He said he had earlier received notification by his employer that he was to be transferred to Suva. This prompted him to tender in his resignation as Secretary from SLPCL. He says that he later withdrew that resignation after his employer relented to his request to remain in Nadi.
31. There is something amiss in that account. Whatever his reason, the saga surrounding his tendering and withdrawing his resignation will only have a bearing on the issue of whether or not he can validly institute this action in the name of SLPCL.
32. Afiz Mohammed agreed that this meeting was merely a stakeholders' meeting and not a General Meeting. He said he did not put up an advertisement in compliance with the mode stipulated by the SLPCL By-Laws. All he did was draw up and pass around by hand a circular on the instructions of the Permanent Secretary.
33. Notably, the Minutes of the Meeting record that an official of the Office of the Registrar of Co-Operatives, a Mr. Are Wakowako, had intimated that the

new Board:

- (a) will meet Govt Officials to facilitate development
 - (b) must give indemnity to the Ministry for Co-Operatives
 - (c) must address development issues
 - (d) must come up with a proposal in near future
 - (e) must finalise the proposal at a General meeting
34. It was then agreed that a Board Meeting be convened on 19 August 2010 and a Special General Meeting on 26 August 2010.
35. As it turned out, the above meetings would not take place on account of an intervening *ex-parte* injunctive Order granted by Mr. Justice Fernando on the urgent application of Anil Nandan.

WAS MEETING OF 05 AUGUST 2010 VALIDLY CONSTITUTED?

36. To reiterate, this particular meeting is the most controversial of all. It was in it that the old board was completely ousted and replaced by an interim board.
37. Anil Nandan argues that the meeting as well as the interim board appointed, were not properly constituted. The meeting, he says, was merely a stakeholders' meeting. Stakeholders, he submits, have no power to appoint the board of a legally constituted cooperative registered under the Cooperatives Act. He argues that only a properly constituted meeting of members can appoint a Board¹.
38. At paragraph 10 of the statement of claim, he alleges:
- ..the second defendant was unlawfully appointed by the third defendant on 05th August 2010. The purported treasurer, purported secretary and two purported board members appointed by the third defendant are not registered members of the plaintiff.
39. At paragraph 11 of the claim, an allegation of negligence is pleaded against the Director and Registrar of Cooperatives and Small Businesses and the Attorney-General of Fiji. Below I reproduce in full the particulars of negligence pleaded:
- (i) failure to advise the plaintiff and the registered members of his purported action.
 - (ii) failure to comply with provisions of the Act and the bylaw of the plaintiff to make

¹ The statement of claim alleges inter alia that these changes have hindered the society's development plans, causing it to suffer losses and damages. General damages as well as various declaratory and injunctive orders are being sought to invalidate the new appointments and to restore the status quo.

decisions

- (iii) failure to give proper and lawful advice to the plaintiff and its registered members
- (iv) failure to give considerations to the plaintiff and the majority registered members view
- (v) failing to abide and follow the provisions of the Cooperative Society Act and the By Law of the plaintiff.
- (vi) making unlawful decision in a gathering held on 29th July 2010.
- (vii) making unlawful decision in appointing the first and second defendants as interim officers of the plaintiff

40. The Ministry's involvement in this meeting is revealed in an affidavit sworn on 16 November 2010 by the then Registrar of Co-Operatives, Mr. Sevanaia Bilivalu (now deceased):

That I did not make any appointment to the Interim Committee but merely supervise (sic) and facilitate (sic) election process as directed by my Permanent Secretary and the 4th Defendant.

41. Mr. Bilivalu had deposed that the steps taken by the Department was unprecedented:

[the Registrar and Attorney-General] had taken an unprecedented course of action of conducting the informal discussions with all parties who have issues regarding the current administration of the Plaintiff Association.

42. He then explained that the reason why the Department took these unprecedented steps was to get to the bottom of the issues in the SLPCL:

Furthermore, government took into consideration the following deep seated differences and long running problems besieging the Association and the action we took was a genuine desire to resolve once and for all the same, namely,

- (a) To tabulate all issues affecting the Association and to work towards creating a durable solution.
- (b) That the meeting considered the history of the Association in the past 40 years, and the divergence and conflicting views existing between the members, inclusive of other stakeholders on and apparent disquiet legal with the conduct of the current Executives.
- (c) That apart from the members of the Plaintiff Association, there were other stakeholders whose beneficial interests need to be considered also, namely former members who live on the Project site.
- (d) That we strongly believe that there would always be disruptions to the development progress if the registered 14 members continue with the current pace of development and it was necessary to consider all issues affecting their interests before the Association move forward.

43. Mr. Bilivalu then explained the spirit of the meeting thus:

The election of the interim committee was made in the spirit of co-operation of all

members and non-members who were present, towards attaining the ultimate objective of land subdivision and distribution of titles through the inclusion of membership of all.

.....

That the 1st Defendant was never elected to the Interim Committee thus could not make any decision in relation to the Plaintiff and its asset, and

That the informal meeting created a spirit of reconciliation amongst all parties to a point that fully agree to the new membership for non-members of the Association and it was never the intention of all to undermine the objectives of the Association..

44. The Statement of Defence filed by the Office of Attorney-General pleads in paragraphs 5, 6(h) and 7 as follows:

5.the 3rd and 4th Defendant had taken an unprecedented course of action

6. h) that the Ministry is mindful that given the current situation, strict compliance with the legal process would not produce a long term and sustainable amicable solution for SLPCCL.....

7.the approach taken by the 3rd Department (sic) was an innovative and necessary

45. The question that arises is whether or not the Ministry has power to take such a course?

General Comment

46. A meeting can validly transact any business if certain requirements are satisfied. The meeting must have been convened by a proper authority and that proper notice should have been given to all those who are concerned with the business of the meeting. Also, a quorum must be present and the meeting must be presided by the Chairperson or, in her absence, by another who is appropriately authorised under the rules governing the entity in question. Lastly, there must be a minutes of the meeting concerned. All these requirements are reflected in the various provisions of the By-Laws and also of the Act. The issues in this case center mainly around the first.

SLPCL By-Laws & 1996 Act

47. Strictly, if judged by the provisions of the By-Laws and the 1996 Act, the meeting of 05 August 2010 was clearly un-constituted. The General Meeting is the central decision making organ of the SLPCL. This is provided by Article 13 of the SLPCL by-laws². The meetings of the GM (i.e. AGMs, OGMs

² The section provides:

and SGMs) must be convened and conducted in terms of Articles 15, 16, 17 and 18 of the by-laws. These provisions are further supported by sections 54, 55 and 56 of the 1996 Act.

48. I observe that in all of these, it is the board (or the members in certain situations) which is the authority to convene any meeting.
49. The voting rights in these meetings are, of course, reserved to members. Article 19 of the by-laws provide that:

Every member shall have one vote in the affairs of the Co-operative, irrespective of the number of shares a member holds and such votes shall be exercised in person and not by proxy.

50. The above is further reinforced by section 38 of the Act, in particular section 38(c), which provides for the rights of members as follows:

Rights of members

38. Every member of a co-operative shall have the right to-
 - (a) participate in the general meetings, in decisions taken at such meetings and in voting;
 - (b) use the services and facilities of the co-operative in accordance with its by-laws;
 - (c) be elected to the organs of the co-operative namely the Board, the Supervisory Committee and any sub-committees subject to the provisions of this Act and the by-laws of the co-operative;
 - (d) be informed by the members of the Board during general meetings or other meetings about the functioning of the co-operative;
 - (e) consult, at the registered office, the co-operative's by-laws, rules, registers, minutes of general meetings, annual reports and balance sheets, audit reports and the inventory;
 - (f) call for a Special General Meeting according to the provisions of Section 56 of the Act;
 - (g) call for an inquiry to be held into the constitution, organisation, working and financial situation of the co-operative, according to the provisions of Section 85 of this Act;
 - (h) participate, under the conditions and according to the modalities set out in the by-laws, in the distribution of surplus, if any, at the end of the financial year;
 - (i) withdraw from the co-operative in accordance with the provisions laid down in this Act and the by-laws of the co-operative;
 - (j) claim refund of his or her share or shares upon termination of membership; and
 - (k) any other rights provided for in the by-laws of the co-operative.

51. Section 56(1) and (2)(f) of the Act provides:

The General Meeting shall be convened by the Board and shall be the supreme organ of deliberation and decision-making of the co-operative and its decisions shall be binding on all members, even on those absent or dissenting. At least 21 days notice shall be given by public notice at the co-operative's registered office, by personal invitation or any other methods that guarantee that all members have been duly notified.

Special General Meeting

56.-(1) A Special General Meeting may be convened whenever the Board or the Supervisory Committee, if any, deems it necessary for the smooth running of the co-operative, and it shall also be convened when,

(a) in the case of a registered co-operative having forty members or less at least, one half of its members or ten members whichever is the less; and

(b) in the case of a registered co-operative having more than forty members at least one-fourth or one hundred members whichever is the less, so requested in writing.

(2) The Special General Meeting may decide on the following matters:

(e) election of new Board members in case of vacancies in the Board, if the number of Board members fall below a critical number to be set in the by-laws;

52. Clearly then, it is the SGM which is the lawful forum within which the business of the election of new board members is dealt with. And because the meeting of 05 August 2010 was not an SGM, it could not have been validly constituted under the SLPCL's By-Laws or under the 1996 Act. The question which then arises is whether or not the meeting could have been validly constituted under any other law? I have heard no submissions on this point and will not rule on it either. What I am inclined to do at this point, is to highlight the alternative dispute resolution that could have been invoked but which were not in this case. These I do so below.

Inquiry

53. The Act makes provision for when an inquiry might be conducted into the affairs of any co-operative society in various situations where its management and governance are under query. Section 85³ provides that an inquiry might be carried out should there be reason to believe that:

³ Section 85 provides:

Inquiry

85.-(1) Should there be reason to believe that mistakes are made in the management of a co-operative showing incompetence of the members of the Board, an infringement of provisions of this Act or any other law or the by-laws of a co-operative or serious disrespect of the interests of the co-operative, an inquiry shall be carried out upon a written request of at least ten percent of the registered members or delegates of the co-operative, or upon such a resolution at a General Meeting or on the initiative of the Supervisory Committee.

(2) The Supervisory Committee shall start the inquiry within a period of not more than two months from the date of receipt of the request or ask the Registrar to conduct an inquiry according to the provisions of Section 86 of this Act.

(3) Where the Supervisory Committee is conducting the inquiry itself it may, for this purpose, appoint a Commission of Inquiry of not less than two competent and authorised persons who may be non-members, at least one of whom shall be designated by those making the request, and negotiate the cost of the inquiry, which shall be borne by the co-operative:

Provided that in case of an inquiry upon request of a group of members in accordance with subsection (1) of this Section, the Supervisory Committee may refuse to start inquiry proceedings, if the reason for the inquiry is considered to be frivolous and in this event, the requesting members may start the inquiry by themselves at their own expense and their expenses may be refunded, if the results of the inquiry prove to the General Meeting that their request was justified.

(4) At the end of an inquiry, a Special General Meeting may be convened to hear the report of the Commission of Inquiry or the Supervisory Committee, to deliberate on appropriate measures to be taken or to decide on the election of new members of the Board, before the end of the current term of service of the members of the Board.

(5) An inquiry may cover the organisation, management, working and the financial situation of the co-operative.

- (i) mistakes are being made in the management of a co-operative showing incompetence on the part of the board, or
 - (ii) there has been an infringement of the provisions of the Act or by-laws, or
 - (iii) there has been a serious disrespect of the interests of the co-operative.
54. However, an inquiry under section 85 is only convened upon either the written request of at least 10% of the registered members or delegates of the co-operative, or upon such a resolution at a GM. Nothing has been raised about whether or not such an inquiry was ever made.
55. Under section 86(1), the Registrar may also carry out an inquiry on his or her own motion:

The Registrar may, if there are suspected violations of this Act or the by-laws of a co-operative, on the written application of a majority of the members of the Board or on the request of the Supervisory Committee as provided for in subsection (2) of Section 85 hold an inquiry or direct any person authorised by him or her by order in writing on his or her behalf to hold an inquiry into the constitution, management, working and financial condition of the co-operative.

56. The section obviously confers a discretion to hold such an inquiry. Does the discretion become exercisable whenever there is a suspected violation of the Act or the by-laws, or, is the discretion exercisable only if the majority of the members have written an application to the Registrar, raising such a suspicion? This may be an issue for another day. Suffice it to say here that it is not part of the case of the defendants that the Registrar did indeed carry out such an inquiry.

Observations

57. The provisions of the 1996 Act and the By-Laws appear to acknowledge as valid, the type of interest that the most of the stakeholders in this case are claiming.
58. Section 30(1) of the Act, which is replicated in clause 12 of the By-Laws, provides:

Transfer of interest on death of a member

30.-(1) On the death of a member a co-operative may transfer the share or interest of that member to the person nominated in accordance with Section 31 of this Act or if

there is no person so nominated, to the person as may appear to the Board to be the heir or personal representative of the deceased member, or pay to such nominee, heir or personal representative, as the case may be, a sum representing the value of the member's share or other interest in the capital of the co-operative as determined in accordance with the regulations or the by-laws of the co-operative.

(2) A co-operative shall pay all moneys due to the deceased member from the co-operative to the heir, legal representative or nominee, as the case may be.

(3) All transfers and payments made by a co-operative in accordance with the provisions of this Section shall be valid against any demand made upon the co-operative by any other person.

(4) Where the member of a co-operative is or becomes of unsound mind the provisions of subsections (1), (2) and (3) of this Section shall apply.

(5) Every registered co-operative shall furnish to the Commissioner of Estate and Gift Duties, in the prescribed form, a return of all transfers and payments made by it under the provisions of this Section, without the production of probate or the letter of administration within two months of such transfers and payments having been made.

59. Section 115(1)(a) of the Act provides that:

115.-(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;

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.

60. Section 115(3) gives the Registrar a choice to either settle himself a section 115(1) dispute, or, to refer it to a Co-Operative Tribunal. In deciding which option to take, he shall be guided by the nature and complexity of the dispute in question⁴.

61. Section 115(4) stipulates:

(4) Where the Registrar decides to settle the dispute himself or herself and gives a ruling thereon which aggrieves a party to the dispute, that party may, within 30 days of the date of the Registrar's ruling, appeal to the Co-operative Tribunal and the Co-operative Tribunal shall make a decision within two months of receiving the appeal and that decision shall be final and conclusive.

62. The board itself acknowledges these types of interests are valid, as one gathers from the 29 June 2010 meeting (see above).

63. Why these stakeholders have yet to be co-opted into membership, is not entirely clear to me. Perhaps some of them have simply not applied.

⁴ This section provides:

(3) The Registrar shall, on receipt of a reference under subsection (1) of this Section have regard to the nature and complexity of the dispute, and decide whether-

(a) to settle the dispute himself or herself; or

(b) to refer the dispute to the Co-operative Tribunal.

Perhaps, most of them are so-precluded by the requirements of clause 6 of the By-Laws which stipulates that a member must *inter alia* be the holder of at least 2,600 shares in the co-operative.

Local Mediators & Dispute Resolution Process

64. In my view, while the non-member stakeholders might not be able to speak (let alone vote) at any General Meeting, they are certainly entitled to refer a dispute concerning the by-laws or the management or business of SLPCL to mediation, at first instance, in accordance with section 115(1)(a).
65. I observe that neither the Act nor the SLPCL By-Laws contains any further provision as to how the local mediator might be selected. Perhaps this will not be an issue anymore once Fiji's mediation center is fully up and running.
66. In any event, the mechanism already provided for in the Act is that, if mediation fails, the dispute may then be referred by the parties either to the Registrar or to the Co-operative Tribunal under section 115(1)(a). The Registrar may deal with the dispute himself and thereafter make a ruling under section 115(3) and (4) which, if he does, there is provision under section 115(4) for its appeal to the Tribunal.
67. While section 116(3) gives specific power to the Tribunal to call witnesses and demand the production of books, records and documents, the Act does not specifically empower the Registrar to do the same if he was dealing with the dispute himself. I do note though that the Registrar, under section 116, is one of three members of the Tribunal.
68. The tone of the affidavits filed for and on behalf of the Ministry is reminiscent of the tone in the affidavits that a court would expect from a minority shareholder application under section 212 of the Companies Act (Fiji).
69. I am not saying that the section is available to non-member stakeholders of SLPCL. I would be wrong to suggest that because section 120 of the Co-Operatives Act 1996 preclude the application of the provisions of the Companies Act to any co-operative⁵.
70. Rather, I merely draw attention to the similarities in the plight of the

⁵This section provides:

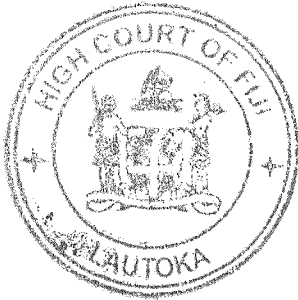
120. The provisions of the Companies Act shall not apply to co-operatives.

minority member of a company who applies under section 212, and the non-member stakeholders of SLPCL in this case, who does not have the benefit of an equivalent protective provision under the Co-Operatives Act 1996. Perhaps, this would have been a valid ground for a referral to the Registrar or to the Tribunal under section 115 (and 116) of the 1996 Act.

CONCLUSION

71. The meeting of 05 August 2010 was improperly constituted. Accordingly, all the decisions, actions, and resolutions passed and done at the meeting is null and void and I so declare accordingly. It follows then that the old board which existed immediately prior to 05 August 2010 must be restored, and I so declare and order accordingly.
72. The argument of Mr. Mishra to the effect the SLPCL cannot sue its own board members would appear to be redundant in the light of the above declarations and orders.
73. This argument might have been a valid point at one point in time, whilst this decision remained pending. Until the court declares who the lawful board members are, it was rather presumptive for Nandan and others to use the SLPCL's name as the vehicle for airing their grievances in court.
74. And yet, if I had entertained that argument and strike out the claim earlier, I would have been precluded from the real issues in this case and only succeeded in pushing the parties farther apart from any real closure.
75. After considering all, I think it best to let the matter rest there and not make any award for damages and/or costs in this case. I think the Ministry had noble and valid concerns in orchestrating the meeting. The board, after all, had been dilatory for some 40 years or so in carrying out the core objective of the SLPCL.
76. What the Registrar should have done instead of calling the 05 August 2010 meeting was to direct the parties to the section 115 and section 116 provisions and facilitate a referral to a mediator at first instance. The language of section 115(1) suggests that an attempt to settle the dispute by mediation must first be made before it (dispute) can then be referred to the Registrar or to the Tribunal.
77. Having said that, there is nothing to stop the stakeholders from invoking

these procedures in the future, should the board continue to be remiss in the business of sub-dividing the land, which, in my view, would be a valid “dispute” in terms of section 115(1)(a).



A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

.....
Anare Tuilevuka

JUDGE

02 December 2015