

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No. HBC 194 of 2012

**BETWEEN** : **PHILIP SATYANAND MADHAVAN, PITA CILI, VILIAME**  
**VAKASAU and PRITAM SINGH, TRUSTEES for the**  
**GENERAL CONFERENCE OF THE ASSEMBLIES OF GOD OF**  
**FIJI**

**1<sup>ST</sup> - 4<sup>TH</sup> PLAINTIFFS**

**AND** : **THE GENERAL CONFERENCE OF THE ASSEMBLIES OF**  
**GOD OF FIJI**

**5<sup>TH</sup> PLAINTIFF**

**AND** : **AISAKE KUNANITU, TRUSTEE for the EVERGREEN**  
**CHRISTIAN CENTRE OF THE ASSEMBLIES OF GOD OF FIJI**

**1<sup>ST</sup> DEFENDANT**

**AND** : **WILLIAM GREEN KUNANITU TRUSTEE for the EVERGREEN**  
**CHRISTIAN CENTRE OF THE ASSEMBLIES**  
**OF GOD OF FIJI**

**2<sup>ND</sup> DEFENDANT**

**AND** : **RUSIATE TABUTABU TRUSTEE for the EVERGREEN**  
**CHRISTIAN CENTRE OF THE ASSEMBLIES OF GOD OF FIJI**

**3<sup>RD</sup> DEFENDANT**

**AND** : **NAIBUKA MATAINAVORA TRUSTEE for the EVERGREEN**  
**CHRISTIAN CENTRE OF THE ASSEMBLIES OF GOD OF FIJI**

**4<sup>TH</sup> DEFENDANT**

**AND** : **EVERGREEN CHRISTIAN CENTRE OF THE ASSEMBLIES OF**  
**GOD OF FIJI**

**5<sup>TH</sup> DEFENDANT**

**AND** : **THE REGISTRAR OF TITLES**

**6<sup>TH</sup> DEFENDANT**

**CORAM** : The Hon. Mr Justice David Alfred

**Counsel** : Mr I Fa for the Plaintiffs

Mr A Naco for the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants  
Ms S Ali for the 6<sup>th</sup> Defendant

**Date of Hearing** : 7 March 2016  
**Date of Judgment** : 22 July 2016

## **JUDGMENT**

1. This Notice of Motion was filed by all the Plaintiffs who sought, inter-alia a number of Orders against the Defendants, including Declarations and Injunctions and for a date to be fixed for the Plaintiffs to formally prove their claim.
2. The Application was made pursuant to Order 19 rule 7 of the Rules of the High Court (RHC) and the inherent jurisdiction of the Court.
3. The said Order 19 rule 7 provides that where the plaintiff makes a claim, of a description not mentioned in rules 2 to 5, then if the defendant/s fails to serve a defence within the requisite period, the plaintiff may apply to the Court for judgment.
4. The Affidavit in Support of the Motion by one, Ashneel Joseph stated that each of the Defendants had not filed a defence even though by that time almost 3 years had elapsed.
5. The Affidavit in Reply was deposed by the 2<sup>nd</sup> Defendant, one of the Trustees of the 5<sup>th</sup> Defendant, on behalf of the 1<sup>st</sup> to 5<sup>th</sup> Defendants. He said the defence had not been filed due to an oversight by their Counsel. He believed they had a credible defence and therefore asked the Court to allow them to file their defence.
6. In the body of this judgment “Defendants” do not include the 6<sup>th</sup> Defendant.



7. On 14 October 2015, both Counsel appeared before me. The defence had not been filed and the Defendants' Counsel asked for another extension of time.
8. After hearing both Counsel and after perusing the proposed defence, I was of opinion that an extension of time could not be granted. Instead I granted the Plaintiffs' prayer No. 3 in their Motion, that a date be fixed for the Plaintiffs to formally prove their claim, and I fixed 7 March 2016 as that date.
9. On 7 March 2016, Counsel for the Plaintiffs said at the outset, the Defendants had broken away from the General Conference of the Assemblies of God of Fiji (AOG) and started the Evergreen Christian Centre of the Assemblies of God of Fiji (Evergreen Centre) (the 5<sup>th</sup> Defendant). The Plaintiffs' action is only to stop the Defendants from using the "Assemblies of God" name and for a declaration to that effect.
10. The hearing commenced with Viliame Vakasausau the 3<sup>rd</sup> Plaintiff (PW1) giving evidence. He said he is the General Secretary and a trustee of the 5<sup>th</sup> Plaintiff. It is affiliated with and part of the World Assemblies of God Fellowship. The AOG was formally established in Fiji in 1952. The other Plaintiffs are also trustees of the 5<sup>th</sup> Plaintiff. He tendered the following documents:
  - (a) Exhibit P1: Memorial of the current Trustees.
  - (b) Exhibit P2: The Constitution of the AOG (2007).
  - (c) Exhibit P3: The Amended Constitution (2013).
11. PW1 said the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants were former Ministers of the AOG who were running the Evergreen Centre. About 2011, these 4 Ministers had broken away from the General Conference as a result of a dispute and they were under discipline by the Church. He tendered Exhibit P4, the letter of severance of these Defendants dated 4 October 2011.
12. The Plaintiffs do not approve of the Defendants breaking away, nor of them using the AOG name. They tried to reconcile with these Defendants and asked them to stay within the Church. The Defendants' response was they wanted to

run their own organisation. The Plaintiffs advised them not to use the AOG name in their organisation but they did not agree.

13. The Plaintiffs objected to them using the name of AOG, because the Plaintiffs did not want the people to be confused by another organisation using their same name. This is a passing off of the 5<sup>th</sup> Plaintiff's name by these Defendants.
14. Under cross-examination by Counsel for the Defendants, PW1 confirmed the name AOG belongs to a denomination which is linked to the world body of AOG. He is the representatives of the world body in Fiji. They get that name by affiliation with the world body. The issue is the name of AOG in Fiji. It is not a question of doctrinal differences but of constitutional violations by the Defendants. The issue of discipline came to the knowledge of the general body of the Church.
15. In re-examination, PW1 said when the memorial dated 21 February 2008 was done, these Defendants were still part of the AOG Fiji. Only after they severed ties, was the current action filed. This was only to stop the Defendants using the name and does not relate to doctrinal and disciplinary issues.
16. The next witness was the 1<sup>st</sup> Plaintiff, Philip Satyanand Madhavan (PW2). He said he had been a trustee since 1970 and was aware of the working of the General Conference and that the Defendants had formed the Evergreen Centre. In 2011 they broke away and formed their own church and one of the reasons was the 1<sup>st</sup> Defendant was disciplined by the church. They broke away of their own doing. The Plaintiffs did not support the use of the name by the Defendants because they defected and refused to abide by the Constitution of the AOG Fiji. He said the use of AOG Fiji or AOG will cause confusion among the people. The world body does not affiliate with anybody except the General Conference represented by the Plaintiffs. The properties are those of the 5<sup>th</sup> Plaintiff.



17. The Plaintiffs seek a declaration that the use of AOG Fiji and AOG in the name of the 5<sup>th</sup> Defendant is null and void as it is a passing off of the name of the 5<sup>th</sup> Plaintiff.
18. The Plaintiffs also seek an injunction to restrain the 1<sup>st</sup> to 5<sup>th</sup> Defendants from using the name of AOG of Fiji or AOG in the name of the 5<sup>th</sup> Defendant and for the 6<sup>th</sup> Defendant to strike out the name of AOG Fiji or AOG from the name of the 5<sup>th</sup> Defendant.
19. Under cross-examination, PW2 said the AOG is a denomination and membership is fellowship voluntarily entered.
20. Counsel for the Plaintiffs now submitted. He said he relied on Kotigalage J's decision herein on 26 March 2015, and on the 2 cases he cited. He was only seeking an Order in Terms of prayers (a), (b) and (c) of the Motion and NOT for prayers (d) and (e).
21. Counsel for the Defendants then submitted. He said the Defendants were following the constitutional provisions of the AOG in respect of their differences and their decision to sever. The name was used to the advantage of the 5<sup>th</sup> Defendant's organisation.
22. Counsel for the Plaintiffs replied that the Defendants' submission should be disregarded as they did not lead any evidence.
23. At the conclusion of the hearing I informed I would take time to consider my decision.
24. Having perused the Writ and Statement of Claim, the Exhibits, the cases cited and the relevant law, I now proceed to deliver my Judgment.
25. In my opinion this is not a complex matter and the relevant facts are contained within a small compass. This litigation does not stem from the reasons for the decision of the Defendants to sever their affiliation with and membership of the

5<sup>th</sup> Plaintiff which is contained in the letter dated 4 October 2011 on the 5<sup>th</sup> Defendant's headed notepaper addressed to the General Secretary of the AOG (Exhibit P4) (the letter).

26. The letter states a number of reasons for the rupture including what I think is really the major reason, which is the General Conference's stand in approving divorce and remarriage.
27. But this is not an Ecclesiastical court. This is a civil court and it is not the province of a civil court to adjudicate upon doctrinal issues of any religious body.
28. However, it is as plain as a pikestaff, that the issues before me are, in reality, purely temporal in nature, for the litigation is caused by the Defendants continuing to use the name of the AOG, even after they have broken away from the 5<sup>th</sup> plaintiff.
29. Since the break-away occurred in 2011, I find it necessary to only examine 2 Articles of the Constitution 2007, amended 2009 and 2010. Article 1, NAME The corporate name is The General Conference of the Assemblies of God of Fiji (A/G Fiji).  
Article VIII. Membership Section 1. The relevant part of this for our present purposes is the following: "It shall consist of all members of Local Assemblies which have been duly set in order by the Assemblies of God of Fiji, and which Assemblies shall have been granted Certificates of Affiliation."
30. By the letter, the 5<sup>th</sup> Defendant has stated unequivocally that it has decided "*to sever our affiliation with or membership of the General Conference of the Assemblies of God of Fiji with effect from 1<sup>st</sup> October, 2011.*" This decision has been accepted by the Plaintiffs. Therefore from this date, it ceased to be a member of the 5<sup>th</sup> Plaintiff. Did this, ipso facto, result in the 5<sup>th</sup> Defendant ceasing to have any legal right or entitlement to use the name of the 5<sup>th</sup> Plaintiff or to have the name of the 5<sup>th</sup> Plaintiff as part of or in the name of the 5<sup>th</sup>



Defendant? In other words is there thereafter a passing off of the 5<sup>th</sup> Plaintiff's name by the 5<sup>th</sup> Defendant?

31. To decide this question, I have considered the following authorities.
32. The starting point is the decision of the High Court of England in: *British Diabetic Association v Diabetic Society Ltd and Others*: [1995] 4 All ER Ch D 813. Robert Walker J held:

*“(1) The scope of a passing-off action was wide enough to include deception of the public by one fund-raising charity in a way that tended to appropriate and so damage another fund-raising charity’s goodwill, namely the other charity’s ‘attractive force’ in obtaining financial support from the public; Purcell v Summers (1944) 145 2d 979 and Holy Apostolic and Catholic Church of the East (Assyrian) Australia NSW Parish Association v A-G (NSW), ex rel Elisha (1989) 18 NSWLR 291 followed.*

*(2) On the balance of probabilities, the plaintiff did not enjoy reputation and goodwill in any name other than ‘British Diabetic Association’ and ‘Diabetic Association’.*

*(3) However, the words ‘association’ and ‘society’ were very similar in derivation and meaning and not wholly dissimilar in form and, in the particular circumstances of the case, it was clear that there was insufficient differentiation between the two words. Accordingly, the defendant society’s continued use of the name ‘British Diabetic Society’ would amount to deception (albeit unintended deception) calculated to damage the plaintiff’s reputation and goodwill. It followed that a final injunction would be granted in the same terms as (or similar terms to those of) the existing interlocutory injunction.”*

33. In the Australian case of: *Holy Apostolic & Catholic Church of the East (Assyrian) Australia New South Wales Parish Association and Others v Attorney-General*

(New South Wales) on the relation of Elisha and Others. [(1990) 18 NSWLR] 291, the Court of Appeal of New South Wales held:

*“Because a religious or charitable organisation may have attributed to it an element essentially indistinguishable from commercial goodwill, it is entitled to the protection of the law of passing-off in respect of the use of its name.”*

34. The Court of Appeal accepted the trial judge’s view that:

*“As a matter of general principle, I cannot see any reason why a religious organisation should not have the same protection as to the goodwill in its name as is afforded by the law to commercial organisations. Surely whilst religious organisations may not have ordinary commercial goodwill, they have something closely analogous thereto in that their reputation will be damaged by people falsely ascribing as an adjunct to them the organisation which is holding itself out by a deceptively similar name.”*

35. The Court of Appeal further accepted what had been said in an American case by Parker J in: *Purcell v Summers* 145 F 2d 979 (1944) at 985 that “We have no doubt that these principles ordinarily applied in the case of business and trading corporations are equally applicable in the case of churches and other religious charitable organisations.”

36. In *Aseri Sukunabulisau and ors and Semesa D Karavaki and ors And The Registrar of Titles: Civil Action HBC 136 of 2009* in the High Court of Fiji, Calanchini J, as he then was, said the *“fact that the First Defendant have led a break-away movement from the Church would not justify their use of the name “Seventh Day Adventist” when they named their break-away group. The right to use the name “Seventh Day Adventist” inheres in the institution, not in its members; and, when they formed their break-away organisation, use by them of the name is misleading, and, if such use causes injury to the Church, should be restrained.”* I find this decision is applicable to the instant case.



37. Finally, the judgment of the Fiji Court of Appeal in Civil Appeal No 21 of 1993: *Rev. Sairusi Kamanalagi Sooeta and Ors ... Appellants and Rev. Paula Tikoinaku and Ors ..... Respondents*, is followed.
38. In finding, as I hereby do, based on the evidence and the authorities, that the 5<sup>th</sup> Defendant having severed its relationship with the 5<sup>th</sup> Plaintiff, is therefore not entitled to use the name “Assemblies of God of Fiji,” I must hold that the Plaintiffs have proved their claim and I therefore enter Judgment for the Plaintiffs. They are thus entitled to be granted the Declaration they seek in para (a) and the ensuing orders.
39. In fine, I grant the following:
- (a) A Declaration that the use of the words “Assemblies of God of Fiji” in the name of the 5<sup>th</sup> Defendant is void and amounts to passing-off of the name of the 5<sup>th</sup> Plaintiff;
  - (b) An Injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants whether by themselves, their servants or agents or otherwise from using the name “Assemblies of God of Fiji” in the name of the 5<sup>th</sup> Defendant;
  - (c) An Order that the 6<sup>th</sup> Defendant strike out the name “Assemblies of God of Fiji” from the name of the 5<sup>th</sup> Defendant in the Memorial of the Names of Trustees registered by it under the Religious Bodies Registration Act Cap 68, on the 21<sup>st</sup> of February 2008;
  - (d) An Order that 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants are each to pay the 5 Plaintiffs the sum of \$400.00 as costs summarily assessed, making a total of \$2,000.00

**Delivered at Suva this 22<sup>nd</sup> day of July 2016**



DAVID ALFRED  
**JUDGE of the High Court of Fiji**