

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. 162 of 2019

BETWEEN : **JOHN LAL** of 23 Padamlala Road, Namadi Heights, Suva as the
Chairman and Board member of RA NAARI PARISHAD.
FIRST PLAINTIFF

AND : **VIRENDRA KUMAR** of 34 Panaprisa Road, Namadi Heights, Suva
as the **EXECUTIVE MEMBER OF RA NAARI PARISHAD**
SECOND PLAINTIFF

AND : **NILA RAO** of Caulasi Rakiraki as the **EXECUTIVE MEMBER**
OF RA NAARI PRAISHAD
THIRD PLAINTIFF

AND : **KALA WATI** as the **TRUSTEE OF RA NAARI PARISHAD**
FIRST DEFENDANT

AND : **SANDHYA KRISHNA** as the **TRUSTEE OF RA NAARI**
PARISHAD
SECOND DEFENDANT

AND : **URMILA DEVI** as the **TRUSTEE OF RA NAARI PARISHAD**
THIRD DEFENDANT

Appearances : **Mr. Niven Ram Padarath** for the plaintiffs
Mr. Ravneet Charan for the defendants

Hearing : **Wednesday, 07th August 2019**

Ruling : **Friday, 13th September 2019**

RULING

(A) BACKGROUND

- (01) The matter before me stems from an application filed by the plaintiffs seeking the following orders;

- (a) *A declaration that the defendants had no right or power to dissolve the Executive Board of RNP.*
- (b) *That by taking such an act, the defendants are in breach of the adopted Constitution dated 3rd August 2018 and the executive board can move to remove the defendants from the position of Trustee pursuant to Section 7.6.10 of the adopted constitution dated 3rd August 2018.*
- (2) The application was made by ‘Originating Summons’ dated 28th June 2019, and supported by an affidavit sworn on 27.06.2019 by Mr. John Lal, the executive board member and Chairman of the ‘Ra Naari Parishad’ (for the purpose of convenience, clarity and consistency I shall hereafter wherever possible refer to as “RNP”).
- (3) The application was opposed. An affidavit in opposition sworn on 11.07.2019 by defendants was filed followed by an affidavit in reply.
- (4) The supporting affidavit which is as follows sets out sufficiently the facts surrounding this case.
1. *I am an executive Board Member and Chairman of the Ra Naari Parishad (herein referred to as “RNP”) by virtue of my position I make this Affidavit.*
 2. *I make this affidavit on my belief and personal knowledge and all the information contained in this affidavit are true to the best of my knowledge, information and belief.*
 3. *RNP was established in 1989 to aid and assist rural Fijian woman of Indian descent in the rural community of Ra.*
 4. *RNP undertakes the following projects to pursue the spirit of the organization.*
 - 4.1 *Fish Farm in Mailau – Grant given by the Ministry of Fisheries*
 - 4.2 *Organic Nursery in Penang – Grant given by Australia International Volunteers.*
 - 4.3 *Two Bee Farms in Nanuku and one Bee Farm in Duavavaatu – Grant Given by Fiji Women Fund*
 - 4.4 *Various income generating project ran by individual Mother Clubs – Grant Given by Vishwa Goundar.*
 5. *RNP has recently gone under a re-structure to allow for a corporate style of management. This was done for ease of management and to secure funding from international Donors. A proper management structure was required by certain international Donors when they pledge Funds for operational or project costs.*
 6. *This re-structure took some time to organize and finalize, however, after many discussion and drafts, RNP, on or about the 3rd August 2018 adopted its current constitution. Exhibited hereto and marked with the Letter “JL-1” is a copy of the said constitution and minutes of the meeting.*

7. *After the adoption of the amended constitution on 3rd August 2018 the following is the new corporate and organizational structure of RNP.*
 - 7.1 *The RNP legal capacity is held with the Trustee, who are appointed under Chapter 3 of the amended Constitution. Currently RNP have three Trustee, they are*
 - 7.1.1. *Kala Wati*
 - 7.1.2 *Sandhya Krishna*
 - 7.1.3. *Urmila Devi*
 - 7.2 *The administrative arm of RNP is the responsibility of the executive Board. The board is comprised of 5 people. The Executive board is appointed pursuant to Chapter 4 of the amended constitution.*
 - 7.3 *The executive arm of RNP is the responsibility of the executive committee, the committee is appointed at every annual general meeting of RNP. The Executive committee is run and governed by Chapter 6 of the Amended constitution.*
 - 7.4 *The last arm of RNP is its employee, who is employed under Chapter 5.*
8. *The Basic structure is that the executive committee along with the employers is responsible for the running of the organization and all its projects. The executive committee is then required to report to the executive Board, the Board is responsible to assess and evaluate whether the executive committee and the employers are conducting themselves and running the organization properly and according to what is required under the constitution.*
9. *Similarly, the executive Board is overseen by the trustee. The trustee can ask the executive board to explain whether the organization and its various projects are running properly.*
10. *I was appointed to the executive board and became the chairperson on 30th May 2017. Exhibited hereto and marked with the letter "JL-2" is a copy of the minutes of the meeting held on 30th May 2017.*
11. *Since my appointment the executive board along with all other members and committee has been working on securing Finding from international donors. One of the requirements for funding was to have a clear organization structure. Hence why RNP went under a re-structure.*
12. *After the adoption of the amended constitution by the executive Board on 3rd August 2018. A copy was sent to our international donors for funding. This new constitution was accepted, and funding was approved.*
13. *Thereafter, RNP has been running smoothly. However, on or about the 14th June 2018 I received an email from the Trustee of RNP. In the email is was started that the trustees are relying on the constitution which was made in 2015, and according to that the trustee have moved to dissolve the Board. Exhibited hereto and marked with the letter "JL-3" is a copy of the email dated 14th June 2019 at 4.03 pm.*

14. *In addition, a letter was attached to the email dated 14th June 2019, in the letter it was stated that the trustee decision to dissolve the management board still stands. Exhibited hereto and marked with the letter "JL-4" is a copy of the said letter.*
15. *The trustee again wrote to me on 17th June 2019. In this letter it was acknowledged that I had donated some items to RNP. Furthermore, it was put that on the word of one Virendra Kumar I will be taking the items I donated back. It was further confirmed in this letter that the Trustee have dissolved the Board. Exhibited hereto and marked with the letter "JL-5" is a copy of the said letter.*
16. *On or about the 18th June 2019, I wrote a letter addressed to all the three trustees. In this letter it was highlighted that the trustee are acting contrary to the Constitution of RNP. In addition, the trustee was put on notice that there is an independent investigation being carried out. Exhibited hereto and marked with the letter "JL-6" is a copy of the said letters.*
17. *The investigation undertaken is focused on financial account of the organization and the abuse of trustee powers. This is still on going.*
18. *In addition, the trustees after sending the letter dated 14th June 2019, had directed the staff stationed that the RNP office to not allow any board member access. This resulted in the staff not following lawful orders of the board members who wanted access to assess what the trustee had done.*
19. *As a result it was decided to replace the staff who were found to be not following lawful orders and were insubordinate.*
20. *Currently, the RNP office is being run with the assistance and guidance of the Executive Board.*
21. *A meeting was convened on 21st June 2019, the purpose of this meeting was to inform all the mother clubs and all associates of RNP what the Trustee had done and to determine a further course of action.*
22. *At this meeting it was decided to hold the Annual General meeting in accordance with the constitution. The purported annual general meeting is to take place within 21 days.*
23. *There is an impasse between the trustee and the executive board in relation to the running of RNP.*
24. *Essentially, the trustees are relying on an Constitution which is no longer effective. RNP at its AGM and subsequently by the endorsement of the executive Board. Adopted and accepted the current constitution which is marked at Paragraph 6 of this affidavit.*
25. *The executive board is acting under the powers and duties provided by the constitution adopted on 3rd August 2018.*
26. *Due to the above interference by the Trustee in the management and operations of RNP, there is a danger that certain funding which was anticipated may be stopped.*

27. *RNP is working with Habitat for humanity Fiji (herein referred to as HFHF) to secure more funding and grants. Due to the actions of the trustee, the board had to inform HFHF about the impasse. The representative of HFHF wrote back to me and stated that the Fund allocation transfer has been held off until the Partner Compliance Assessment is complete. Exhibited hereto and marked with "JL-7" is a copy of the said email dated 19th June 2019 at 11.12 am.*
28. *If the Trustees are not restrained from interfering with the running of RNP, this will have a negative impact on the Partner Compliance Assessment, and this may result in the complete stop of the Fund allocations.*
29. *In the event, that happens RNP will lose the ability to fund its various projects and operations. In addition, it will affect all the mother clubs and its associates.*
30. *I seek that the trustee be restrained from interfering and/or disrupting the management and running of RNP.*
31. *In addition, I seek that the executive board be allowed to manage and run the affairs of RNP, until the annual general meeting is held.*

Financial Position

32. *I am the Managing Director of Fuji Xerox Business Center and have a stable financial background.*
33. *I further own a property at 23 Padamalala Road, Namadi Heights Suva. This property is valued approximately at \$800,000. Exhibited hereto and marked with the letter "JL-8" is a copy of the Title.*

Undertaking as to damages

34. *I, in my personal capacity hereby undertake to abide by any order the court may make as to damages in case this court should hereafter be of the opinion that the Defendants shall have sustained by any reason of the order sought by us and which we ought to pay.*
35. *I humbly seek order in terms.*

(B) DISCUSSION

- (1) RNP is a registered charity. A registered charity is an organization established and operated for charitable purposes. It must devote its resources to charitable activities. **RNP is registered in accordance with the provisions of Section 4 of the Charitable Trust Act (Cap 67).** It is issued with the 'Certificate of Incorporation' [Annexure marked T-2 referred to in the affidavit in opposition of the defendants]. Its key document is the Constitution Adopted on 12/05/2015. **The key document is registered in accordance with the provisions of Section 4 of the Charitable Trust Act (Cap 67) on 30.06.2015.**

- (2) In June, 2019, the Trustees of RNP resolved to dissolve the Management Board. The e-mail dated 14.06.2019 (Annexure marked SL – 3 referred to in the affidavit in support of John Lal sworn on 27.06.2019) reads as follows;

“Dear John Lal

Please read letter attached.

We the trustees is using constitution which is registered in register of titles, dated 30th June 2015.

In 2017 annual report it is written the date 2nd May where management board term started.

Based on it, the term expired. We all appreciate your hard work and in order to move organization forward, we had to dissolve the Board to call the AGM. For new or reappointment to happen.

*Yours sincerely
Kala Wati
Sandhya Krishna
Urmila”*

- (3) This is what triggered this application. To vitiate the impugned decision of the Trustees, the plaintiffs say in their affidavit that; (reference is made to paragraphs (24) and (25))

24. *Essentially, the trustees are relying on a Constitution which is no longer effective. RNP at its AGM and subsequently by the endorsement of the Executive Board, adopted and accepted the current constitution which is marked at Paragraph 6 of this affidavit.*

25. *The executive board is acting under the powers and duties provided by the constitution adopted on 3rd August 2018.*

- (4) In their affidavit in opposition, the defendants say that; (reference is made to paragraphs (5) and (7.2))

(5) *We are unaware of the contents of paragraphs 7, 8, 9 and 12 as we were not involved in the creation of the unregistered constitution exhibited and marked as “JL-1 ” nor were we involved in the documentation sent to donor funders.*

7.2 *By our letter of 10 May 2019 Exhibited hereto marked as T-5 signed by only two of us as Trustee, Urmila Devi was unavailable, we dissolved the Management Board. To our knowledge and information the Board's two years term expired on 3 May 2019. Unfortunately, we are unable to exhibit the two years appointment documents as the First Plaintiff, John Lal had locked the RNP office on 18 June 2019 and dismissed the staff, see paragraph 7.3 below.*

- (5) I agree with the defendants affidavit that the constitution adopted on 03.08.2018 [annexure JL – 1 in the affidavit in support of John Lal , sworn on 27/06/2019] is of no force or effect. **The 2018 Constitution is not sent to the ‘Registrar of Titles’ for registration in accordance with the provisions of Section 4 of the Charitable Trust Act [Cap 67]. Therefore, the governing document of ‘RNP’ is 2015 Registered Constitution. The affairs of the ‘RNP’ and its property should be administered and managed in accordance with the provisions of the 2015 registered Constitution.**
- (6) The appointment of the Management Board, the duties of Board Members and the manner in which the appointment may be terminated is set out in the 2015 Constitution.

The term of office of the Board Members is not specified in the Constitution. The term of office or length of service of Board Members should be set out in the RNP’s governing document. In the 2015 Constitution, there is no fixed term. The board is not formed for a fixed term. According to the Constitution, it is an open ended term. Therefore, it is not permissible for the defendants to dissolve the Management Board on the basis that the term has expired. However, upon happening of events set out in article 4.3 (c) of the 2015 Constitution, the defendants have power to dissolve the Management Board.

The defendants say that the term of office of the board members is 02 years. The defendants have failed to provide documentary evidence to show the term of office of the Board Members. This court has not been provided with documentary evidence to show that the board is formed for a fixed term.

(C) **CONCLUSION**

- (1) The governing document of RNP is the Constitution registered in 2015 in accordance with the provisions of Section 4 of the Charitable Trust Act, (Cap 67). The Constitution adopted in 2018 is of no force or effect since it is not registered with the Registrar of Titles in accordance with the provisions of Section 4 of the Charitable Trust Act, (Cap 67).
- (2) The defendants’ decision to dissolve the Management Board of RNP on the basis that the term has expired was illegal and void. The Management Board is allowed to manage and run the affairs of RNP in accordance with the provisions of the 2015 Constitution which is registered under Section 4 of the Charitable Trust Act, (Cap 67). Once the charitable Trust and its Rules or the Constitution is registered with the Registrar of Titles under the provisions of Section 4 of the Charitable Trust Act,(Cap 67), the Management Board is required to file with the Registrar of Titles any changes to the existing Constitution. This has not been done in the case before me.
- (3) I desire, however, to say that the defendants have powers and discretions to dissolve the ‘Management Board’ upon happening of events set out in article 4.3 (c) of Constitution registered in 2015.

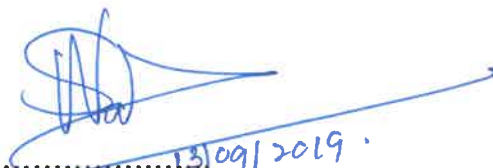
- (4) For these reasons, the plaintiffs are not entitled to a declaration that;
- (a) *The Defendants had no right or power to dissolve the Executive Board of RNP.*
 - (b) *That by taking such an act, the Defendants are in breach of the adopted Constitution dated 23rd August 2018 and the executive board can move to remove the defendant from the position of trustee pursuant to section 7.6.10 of the adopted constitution dated 3rd August 2018.*

ORDERS

- (i) The declaratory orders refused.
- (ii) I make no order as to costs.



**At Lautoka
Friday, 13th September, 2019**


.....13/09/2019
**Jude Nanayakkara
Judge**