

**IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 95 OF 2022**

**BETWEEN** : **KHALID AHMED ALI** of Vutuni, Ba, **SALIM KHAN** of Sarava, Ba and **MOHAMMED TAZIM** of Valele, Ba

**PLAINTIFFS**

**AND** : **HAFIZUD DEAN KHAN** of Denarau Island, Nadi, **SAIYAD HUSSAIN** of 171 Ratu Mara Road, Samabula, **RIYAZ AHMED** of 171 Ratu Mara Road, Samabula as Trustees of Office Bearers and as Council Members and as members of the Working Committee of the Fiji Muslim League, a body registered under the Religious Bodies Registration Act of 171 Ratu Mara Road, Suva

**1<sup>ST</sup> DEFENDANTS**

**AND** : **SADIQ MOHAMMED** of Karavi Ba and **KAMAL NABI** of Namosau, Ba

**2<sup>ND</sup> DEFENDANTS**

**AND** : **FIJI MUSLIM LEAGUE BA BRANCH** a branch of Fiji Muslim League a body duly registered under the Registration of Religious Bodies Act

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

**BEFORE** : Hon. Mr. Justice Mohamed Mackie

**APPEARANCES** : Mr. R. Charan, for Second and Third named Plaintiffs  
Mr. S. Singh, for the 2<sup>nd</sup> & 3<sup>rd</sup> named First Defendants, Second Defendants and Third Defendants.

**HEARING ON** : 22<sup>nd</sup> August, 2022.

**DATE OF DECISION** : 12<sup>th</sup> October, 2022

**RULING**

**A. Introduction:**

1. This is an application supported by a joint Affidavit of **KHALID AHAMED ALI**, of Vutuni, Ba, Cultivator, **SALIM KHAN** of Sarava, Ba Cultivator and **MOHAMMED TAZIM** of Valele, Ba, Taxi Driver, moving for interim injunction orders.
2. By the ex parte summons filed, dated and supported on 01<sup>st</sup> April, 2022 ("the application"), the plaintiffs/applicants ("the applicants") sought the following orders:

- a. *The first Defendants, second Defendants and third Defendant and/or their servants and/or their agents or otherwise howsoever be restrained from stopping the Plaintiffs and/or any other financial members whose name appears in the branch and/or Fiji Muslim League register of financial (permanent) members from attending the Annual General Meeting scheduled for 2nd April 2022 at Ba Muslim Primary School or subsequently in any Special General Meeting thereafter until the determination of this matter.*
  - b. *The first Defendants, second Defendants and third Defendant and/or their servants and/or their agents or otherwise howsoever be restrained from conducting the election for the post of Chairman for the third Defendant Organization in its Annual General Meeting scheduled for 2nd April 2022 at Ba Muslim Primary School or subsequently in any Special General Meeting on the nomination filed by the second Defendants until the determination of this matter.*
  - c. *The third Defendant's financial members whose names appear in the branch and/or Fiji Muslim League register of financial (permanent) members do elect an interim committee during the Annual General Meeting scheduled for 2nd April 2022 at Ba Muslim Primary School to run the affairs of the third Defendant until the final determination of this matter.*
  - d. *The first Defendants, second Defendants and third Defendant and/or their servants and/or their agents or otherwise howsoever be restrained from appointing an interim committee for the operation of the third Defendant.*
  - e. *The first Defendants, second Defendants and third Defendant and/or their servants and/or their agents or otherwise howsoever be restrained from postponing the Annual General Meeting scheduled for 2nd April 2022 at Ba Muslim Primary School.*
  - f. *The second defendants be restrained from contesting and/or election for any executive position in the interim committee to be elected by the financial (permanent) members during the Annual General Meeting scheduled for 2nd April 2022 at Ba Muslim Primary School until the final determination of this matter.*
  - g. *The first Defendants, and/or their servants and/or their agents or otherwise howsoever be restrained from interfering with the day to day operation of the third Defendant by the interim committee elected during the Annual General Meeting scheduled for 2nd April 2022 at Ba Primary School until the determination of this matter.*
  - h. *The first Defendants and second Defendants and/or their servants and/or their agents or otherwise howsoever do handover all books, receipts, cheque books, keys, appliances and all other items belonging to the third Defendant to the interim committee elected during the Annual General Meeting scheduled for 2nd April 2022 at Ba Muslim Primary School immediately after the elections.*
  - i. *The first Defendants do pay the Plaintiffs the costs of this application on full indemnity basis.*
3. When the learned Counsel for the Plaintiffs supported the matter ex-parte on 1<sup>st</sup> April, 2022, the court granted the reliefs, by way of temporary injunction, as prayed for in paragraphs (a) and (b) above, however subject to condition that the Orders granted shall not bind the conduct of the Annual General Meeting or other activities of the Defendants and the Orders to be in force till the next date.

4. The application is made under Order 29 Rule 1 of the High Court Rules 1988, as amended (“HCR”)
5. All the Defendant/ Respondents (“the respondents”) have opposed the Application. It is to be observed that, as the learned Counsel for the Plaintiffs and the Defendants informed the Court on the date of the hearing into the application, the 1<sup>st</sup> named first Plaintiff, namely, KHALID AHAMED ALI and the 1<sup>st</sup> named First Defendant, namely HAFIZUUD DEAN KHAN, have passed away, the hearing was conducted only in relation to the remaining parties represented by the respective Counsel.

**B. Background**

6. I have gathered the background facts from the joint affidavit of the Applicants filed in support and the statement of claim.
7. However, I shall disregard the averments in the Affidavit in support and the Statement of Claim that pertain to the deceased 1<sup>st</sup> named Plaintiff and those in respect of the deceased 1<sup>st</sup> named First Defendant, as the application in hand on behalf of them is not pursued with.

**Parties.**

8. The 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs are permanent and financial members of the 1<sup>st</sup> Defendant Fiji Muslim league. The 2<sup>nd</sup> and the 3<sup>rd</sup> named Plaintiffs were the vice President and a Committee member of the 3<sup>rd</sup> Defendant, Fiji Muslim League Ba Branch, respectively, elected through the election at the annual general meeting ( AGM) held in the year 2018.
9. The 1<sup>st</sup> named 2<sup>nd</sup> Defendant was the elected vice president of the 3<sup>rd</sup> Defendant in the year 2018 and the current acting chairman thereof being appointed at a Special Management Committee meeting of the 3<sup>rd</sup> Defendant held on the 11<sup>th</sup> March, 2021 at the Ba Mosque and the 2<sup>nd</sup> named 2<sup>nd</sup> Defendant was the secretary of the 3<sup>rd</sup> Defendant elected at the AGM 2018.
10. The 2<sup>nd</sup> named 1<sup>st</sup> Defendant SAIYAD HUSSAIN is the General Secretary of the 1<sup>st</sup> Defendant Fiji Muslim League, and the 3<sup>rd</sup> named 1<sup>st</sup> Defendant RIYAZ AHAMED is the General Treasure thereof, who are the Trustees of the 1<sup>st</sup> Defendant Fiji Muslim League (FML). They are also the Council members and members of the working Committee of the FML.
11. AGM of the 3<sup>rd</sup> Defendant was scheduled for Saturday, 2<sup>nd</sup> April, 2022 as per the notice advertised in the Fiji Sun on 16<sup>th</sup> March, 2022, wherein the position of Chairman was to be contested, of which the Plaintiffs became aware through other branch officials as the circular was not posted on the Notice Board of the 3<sup>rd</sup> Defendant by the branch Secretary, the 2<sup>nd</sup> named 2<sup>nd</sup> Defendant, which subsequently on 17<sup>th</sup> January, 2022 was seen posted on the Notice Board of the 3<sup>rd</sup> Defendant.

**Nomination by the Plaintiffs:**

12. THAT the 2<sup>nd</sup> named Plaintiff SALIM KHAN, filed his nomination for the post of Chairman and sent to the 1<sup>st</sup> Defendant.
13. THAT the 1<sup>st</sup> Defendant responded to the 2<sup>nd</sup> named Plaintiff, SALIM KHAN, by its letter dated 23<sup>rd</sup> March, 2022 marked as A-8 informing him that his nomination has been declined, without giving any reason for refusal. Then he wrote to the 1<sup>st</sup> defendant by letter dated 24<sup>th</sup> March, 2022 marked as A-9 enquiring the reason for declining his nomination, but it was neither acknowledged nor responded by the 1<sup>st</sup> Defendant.
14. THAT the 3<sup>rd</sup> named Plaintiff also filed his A-10 Nomination for the post of Chairman by sending it to the 1<sup>st</sup> Defendant on 18<sup>th</sup> January, 2022.
15. THAT the 1<sup>st</sup> Defendant responded to the 3<sup>rd</sup> named Plaintiff MOHAMMED TAZIM by his letter marked as A-12 and dated 23<sup>rd</sup> March, 2022 stating that his nomination has been declined, wherein the 1<sup>st</sup> Defendant failed to provide any reason for refusal. He then wrote the letter dated 24<sup>th</sup> March, 2022 marked as A-13 seeking for the reasons for refusal, but so far the 1<sup>st</sup> Defendant has failed to acknowledge the same or respond to the said letter.
16. THAT the persons allowed to contest the election for the position of the Chairman at the AGM are the 2<sup>nd</sup> Defendant, SADIQUE MOHAMMED, the current acting President and KAMAL NABI, the Secretary respectively.
17. THAT the election for the post of Chairman was to be held in 2020 and since then no AGM of the 3<sup>rd</sup> Defendant has been held. The actions of the 1<sup>st</sup> Defendant are in breach of the constitution of the Organization and I breach of Natural Justice.
18. THAT they have been informed that the 1<sup>st</sup> Defendants now intend to appoint an interim Committee with the 2<sup>nd</sup> Defendants leading the interim Committee. They need an interim Committee to be appointed for the smooth running of the affairs of the 3<sup>rd</sup> Defendant.
19. THAT the rest of the averments in the Affidavit in support from paragraph 37 onward are in relation to the now deceased 1<sup>st</sup> named Plaintiff. They aver further that if the injunction order is not granted, then their entire application / action will be rendered nugatory .

**C. The Law**

20. The HCR, Order 29, Rule 1 provided:

“Application for injunction (O 29, R 1)

*1 (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.*

*(2) Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made ex parte on affidavit but except as aforesaid such application must be made by notice of motion or summons.*

*(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit."*

**D. The governing principles**

21. The governing principles to be applied in an application for interim injunction as explained in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER are as follows:
- a. Is there a serious question to be tried?
  - b. Are damages an adequate remedy?
  - c. Where does the balance of convenience lie?
  - d. Are there any special factors?

**E. The Evidence:**

22. For the purpose of this application, the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs rely on their joint affidavit in support sworn on 31<sup>st</sup> March, 2022 and filed on 1<sup>st</sup> April, 2022 together with the annexures thereof and on their affidavit in reply filed on 16<sup>th</sup> May, 2022 .

**F. Discussion & Determination**

23. The 2<sup>nd</sup> and the 3<sup>rd</sup> named Plaintiffs apply for an interim injunction while filing the statement of claim against the Defendants. The allegation by the 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs, as per paragraphs 24 to 26 and paragraphs 28, 29 and 30 of the Affidavit in support is that the 1<sup>st</sup> Defendant declined their Nomination for the Position of Chairman and despite sending a letter enquiring for reason for declining their Nominations, the 1<sup>st</sup> Defendant failed to acknowledge, to respond to the said letter and to provide reasons for their decision.
24. Accordingly, the 2<sup>nd</sup> and the 3<sup>rd</sup> named Plaintiffs allege that the actions of the 1<sup>st</sup> Defendants are in breach of the Constitution of the 1<sup>st</sup> Defendant Organization and in breach of Natural Justice.
25. An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ or originating summons, counterclaim or the third party notice as the case may be (see O 29, R 1(1), HCR).
26. In determining the application, I intend to apply American Cyanamid principles

**Is there a serious issue to be tried?**

27. The substantive claim is stemmed from the allegation of declining the Nomination of the 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs for the position of Chairman and failure to provide reason for such declining is said to be in breach of the Constitution of the 1<sup>st</sup> Defendant Organization and in breach of Natural Justice. Accordingly, the 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs, in their Statement of claim, have moved for the following reliefs;
- a. A declaration that decision of the 1st Defendant by its letter dated 20th April 2021 in suspending the 1st named Plaintiff indefinitely is null and void.*
  - b. A declaration that decision of the 1st Defendant by its letter dated 23rd March 2022, in declining the nomination of the 2nd and 3rd named Plaintiff for the position of Branch Chairman/ Presidency, is null and void.*
  - c. An order for the 1st Defendant to process the nomination of the 1st named Plaintiff.*
  - d. An order for the Plaintiffs to contest for the position of the Branch Chairman/ Presidency in the AGM.*
  - e. The Defendants do pay the Plaintiffs the damages.*
  - f. The first Defendants do pay to Plaintiffs the costs of this action on indemnity basis.*
28. At this stage of the litigation, it is not a part of court's function to try and resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor decide difficult question of law, which calls for detailed argument and mature consideration (see 407H, American Cyanamid).
29. The substantive reliefs prayed for by the Plaintiffs, as per paragraphs (a) and (c) of the prayers to the Statement of claim, are in relation to the 1<sup>st</sup> named Plaintiff, who has passed away and whose action is not proceeded with any more. Accordingly, his application for injunctive reliefs does not warrant any consideration.
30. The reliefs (b), (d), (e) and (f) above are in relation to the 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs, out of which reliefs (e) and (f) are for damages and costs respectively.
31. The stern position of the learned Counsel for the Defendants at the hearing and in his written submissions is that the Plaintiffs should have resorted to the internal Dispute Resolution Mechanism enshrined as per clauses 56, 76 and 77 in pages 15, 20 and 21 respectively of "The Constitution and Rules of FIJI MUSLIM LEAGUE", a copy of which has been tendered to Court by none other than the Plaintiffs themselves marked as "A" and annexed to their Affidavit in support. .
32. When there is such an inbuilt mechanism for dispute resolution enshrined in the very Constitution of the 1<sup>st</sup> Defendant FML, which in my view is comprehensive one, the

Plaintiffs could not have sought the assistance of the Court for relief, if any, that they are entitled to. These provisions are included in the Constitution of the bodies of this nature for the purpose of resolving the disputes amicably, without wasting time and scarcely available funds, on which the smooth function of such bodies and organizations depend.

33. The 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs, who complain in paragraph 33 of their Affidavit in support that the actions of the 1st Defendant are in breach of the Constitution of the Organization and in breach of Natural Justice, seem to have failed to recognize and appreciate that the clauses 56, 76 and 77 of the very constitution provide the dispute resolution mechanism for them to have resorted.
34. In view of the above, I evaluate the likelihoods for the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiff's action to proceed for trial and their chances of success, if proceeded, is almost nil or very poor. However, for the present purpose, I am satisfied that there is no serious question found be tried at the trial.
35. In the light of my above findings on the question of serious issues to be tried, I need not delve in to the other questions involved in the test, namely, the adequacy of damages and/ or the balance of convenience.
36. However, before I conclude, it must be stated as a special factor that the 1<sup>st</sup> Defendant is a duly registered national religious body to preserve, promote and safeguard the welfare of the Muslim community in Fiji and for the several other objectives as listed in its Constitution. It engages in various educational, social, cultural and other welfare activities for the benefit of, not only the Muslim Community, but also of the public at large in this Country. This Organization and its activities are governed by its own Constitution and its journey on the very provisions of the Constitution should not be derailed or disturbed by the intervention of Court, unless it is warranted under any special circumstances.
37. The Plaintiffs, being aware and/ or who should have been aware of the above inbuilt provisions for dispute resolution in the constitution itself , have come to Court seeking redress by relying on the very constitution as averred in paragraph 33 of their Affidavit in support . In view of the above, the Court should not extend its helping-hand to the plaintiff by granting injunctive Orders. Instead, I am of the view that a considerable amount should be ordered to be paid as costs unto the 1<sup>st</sup> Defendant as they are compelled to spend further and go for a special General meeting for the election of the Chairman of the 1<sup>st</sup> Defendant, which was restrained by the temporary injunction issued at the inception of this matter.

**G. Conclusion:**

38. For the reasons, which I have given above and in the exercise of my discretion, in accordance with the principles laid down by American Cyanamid, I decide not to grant further interim injunction orders as prayed for by the Plaintiffs.

Further, I decide that a reasonable amount should be ordered to be paid as costs by the 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs unto the 1<sup>st</sup> Defendant. Accordingly, I make an order that the 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs must pay a summarily assessed costs of \$3,500.00, (Three Thousand Five Hundred Fijian Dollars) unto the 1<sup>st</sup> Defendant Fiji Muslim League, within 21 days from the date of this ruling.

**H. The Result:**

- a. The temporary injunction orders granted on 1<sup>st</sup> April, 2022 in terms of paragraphs 1 and 2 of the Ex-parte Summons are hereby discontinued.
- b. The Application for interim injunction orders, in terms of the Summons, is hereby refused and struck out.
- c. The 2<sup>nd</sup> and 3<sup>rd</sup> named Plaintiffs shall pay the 1<sup>st</sup> Defendant \$3,500.00, being the summarily assessed costs, within 21 days from today.
- d. The matter shall take the normal course, in the event the Plaintiffs decide to proceed with the substantial matter.
- e. The substantive matter is returned to the registry for taking its normal course.
- f. The Parties shall appear before the Master as and when noticed.



  
**A.M. Mohamed Mackie**  
Judge

At High Court Lautoka this 12<sup>th</sup> day of October, 2022.

**SOLICITORS:**

For the Plaintiff: Ravneet Charan Lawyers

For the Defendants: Shelvin Singh Lawyers