

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

Civil Action # HBC 364 of 2017

IN THE MATTER of the Companies Act
2015.

AND

IN THE MATTER of an application by the
Plaintiffs to have the register of members of
Nair's Transport Co. Ltd ("the Company")
rectified and other reliefs.

BETWEEN:

PUSHPA DEVI of Lot 4 Manuka Street, Nakasi Park Estate,
Domestic Duties as Executrix and Trustee of the **ESTATE OF**
NARAYAN NAIR aka **NARAIN NAIR**.

First Plaintiff

AND:

AVISHESH NAVNIT NAIR of Lot 4 Manuka Street, Nakasi
Park Estate, Clerk as Executor and Trustee of the **ESTATE OF**
NARAYAN NAIR aka **NARAIN NAIR**.

Second Plaintiff

AND:

WASU DEWAN NAIR aka **VASU DEWAN NAIR** aka
BASUDEWAN NAIR of 5987 Leonardo Way, Elk Grove, CA
95757, Retired Machine Operator.

Third Plaintiff

AND:

NARAINI NAIR of Vitogo, Lautoka, Domestic Duties.

Fourth Plaintiff

AND:

NAIR'S TRANSPORT CO. LTD a limited liability company
having its registered office at Lot 81, 9 miles, Nasinu (alongside
Kings Road – Wainibuku Road Junction).

First Defendant

AND:

KUNJAN NAIR of Lot 81, Wainibuku Road, 9 Miles, Company
Director.

Second Defendant

AND:

VINOD NAIR of 1 Corin Road, Manurewa, Auckland, New
Zealand, Retired.

Third Defendant

AND: **SARITA DEVI NAIR** of Lot 81, Wainibuku Road, 9 Miles, Nasinu, Domestic Duties as the trustee of the Estate of **RAJESHWAR NAIR.**

Fourth Defendant

AND: **KUNJAN NAIR** of Lot 81, Wainibuku Road, 9 Miles, Company Director as the Trustee of the Estate of **SARADA NAIR** aka **SHARDA DEVI NAIR** aka **SARDA DEVI NAIR.**

Fifth Defendant

Representation/Appearances

Plaintiffs: Mr. V. Singh (Parshotam Lawyers)

1st Defendant: Ms. Cava & Ms. S. Ben (S Nand Lawyers)

3rd Defendant: Ms. M. Pillai (Moharsh Pillai Lawyers)

4th Defendant: Ms. A. Singh (Kohli & Singh)

2nd and 5th Defendants: Ms. L R Silatolu (Fiji Public Trustee Corporation Ltd)

Date of Trial: 16th, 17th and 18th July 2024.

Judgment

A. Introduction

[1] The Plaintiffs filed originating summons on 22nd February 2018 seeking the following reliefs:

“A. *That the register of members of the First Defendant be rectified to the following:*

- (a) *1 share to Kunjan Nair.*
- (b) *1 share to Vinod Nair.*
- (c) *1 share to Naraini Nair.*
- (d) *1 share to Vasu Dewan Nair.*
- (e) *1 share to the Estate of Sarda Devi Nair.*
- (f) *1 share to the Estate of Narayan Nair.*
- (g) *1 share to the Estate of Rajeshwar Nair.*

- B. *A declaration that the purported resolution of directors of the First Defendants dated 1 August 2016 is null and void and contrary to the Articles of Association of the First Defendant.*
- C. *A declaration that the purported resolution of directors of the First Defendant dated 22 April 2016 is null and void and contrary to the Articles of Association of the First Defendant.*
- D. *A declaration that the allotment of shares of the First Defendant on or about 6 May 2015 is null and void and contrary to the Articles of Association of the First Defendant.*
- E. *A declaration that the Form A11 dated 30 January 2017 is null and void and filed contrary to the Articles of Association of the First Defendant.*
- F. *An order that the Defendants provide the Plaintiffs access to the First Defendant's:*
 - (a) *Members register;*
 - (b) *Minutes of Annual General Meetings held from 1 January 2002*
 - (c) *Financial books and/or statements from 1 January 2002*
- G. *Such further or other reliefs as this Honorable Court deems fit and proper.*
- H. *Costs of this action."*

[2] On 28th August 2020, the Plaintiff's filed a Statement of Claim. A Statement of Defence and Counter Claim of the First Defendant was filed. The Plaintiff's filed a Reply to Defence and Defence to Counter Claim. The Third Defendant filed a Statement of Defence. **The 3rd and 4th Defendants agreed with the Plaintiff's claim.** The 4th Defendant on her own free will gave evidence for the Plaintiffs. The 2nd and 5th Defendants were represented by the Fiji Public Trustee Corporation Pte Limited. They had accepted documents and service on behalf of the Defendants. They attended to the PTC for the 2nd and 5th Defendants.

B. Pre-trial Conference

[3] The pre-trial conference minutes was filed on 20th April 2023. It is signed by the lawyers representing each party in this matter. I therefore find that there is no issue about representation of a party. The parties **agreed** on certain things which included that the 1st and 2nd Plaintiffs are the Executors and Trustees of the Estate of Narayan Nair. Narayan Nair being the 1st Plaintiff's husband and 2nd Plaintiff's father. The 3rd Plaintiff (Vasu Dewan Nair) is Narayan Nair's brother. The 4th Plaintiff, Naraini Nair was married to Vijay Govind Nair, a brother of Narayan Nair. The 1st Defendant, Nair's Transport Company was incorporated on 14th August 2001. The shareholders being Vinod Nair and Kunjan Nair. Mr. Sanguni Nair had 6 children, one of them was Raghwan Nair aka Raghwan Madhwan Nair. Raghwan Nair died leaving a will dated 14th July 1977. In his will, Raghwan Nair bequeath his estate to his wife (Sarda Devi Nair) and his sons, Vinod Nair, Kunjan Nair, Vijay Govind Nair, Rajeshwar Nair, Narayan Nair, and Basudewan

Nair. Vinod Nair and Kunjan Nair were appointed as Executors and Trustees of the Estate of Raghwan Nair.

C. Witnesses

- [4] The Plaintiffs called 10 witnesses. They were Avishesh Navnit Nair, Pushpa Devi, Vasu Dewan Nair, Savita Devi Nair, Yogesh Shalen Nair, Mohammed Iliaz Moen Khan, Preetika Ashni Singh, Samuela Veitala, Usenia Bela Hoyt, and Adi Ema Navono. Ritesh Rishi Nair gave evidence for the 1st Defendant.

D. Determination

- [5] The parties at the PTC identified 27 issues that were to be determined by the Court. I would deal with each issue in relation to the evidence in turn and where the need arises in groups. One of the issues the Defendants have raised is the locus of the Plaintiffs. I would address this first, before dealing with the identified issues.

- [6] The submission for the 1st Defendant is that the "*Plaintiffs do not have any locus to sue as they are not members of the Company as required under Section 175 and 176 of Companies Act 2015.*" Section 175 of the Companies Act deals with members' access to minutes, while Section 176 provides for grounds for court order. Section 177 provides the orders the Court can make. The relevant section that deals with locus is Section 178 of the Companies Act. All the Plaintiffs are beneficiaries under a deceased persons will and that person had a share in NTCL. In the case of the 1st and 2nd Plaintiff, they are beneficiaries and/or Executors and Trustees of the Estate of Narayan Nair. The 3rd Plaintiff is a 'shareholder' and beneficiary in the Estate of Raghwan Nair. The 4th Plaintiff is a 'shareholder', beneficiary and Sole Executor and Trustee in the Estate of Vijay Govind Nair. Section 178 (c) and (d) of the Companies Act which applies to the Plaintiffs, respectively, provide that a person has locus if "*a person who has ceased to be a member of the company if the application relates to the circumstances in which they ceased to be a member*" and "*a person to whom a share in the company has been transmitted by will or operation of law.*" According to Section 178 (c) and (d) of the Companies Act 2015 the Plaintiffs have locus.

- [7] **(i) Whether on or about 1 September 1964 Mr. Sanguni Nair had registered a sole proprietor business called S. Nair Transport?**

Plaintiff's Exhibit 3 was an application for registration by an individual. It is the business name registration of S. Nair Transport by Sanguni Nair on 1st September 1964. This evidence is unchallenged.

- [8] **(ii) Whether upon his death Sanguni Nair's business was given to his sons; Appu Nair, Madhwan Nair and Raghwan Nair?**

The evidence of Avishesh Navnit Nair (PW 1) was that Sanguni Nair was his great grandfather and he had set up S. Nair Transport. Upon the demise of Sanguni, his 3 sons, Appu Nair, Madhwan Nair and Raghwan Nair were given the business. This evidence was unchallenged.

- [9] **(iii) Whether Appu Nair and Madhwan Nair had their own businesses and S Nair Transport was at all times operated by Raghwan Nair who later acquired the interests of Appu Nair and Madhwan Nair?**

The evidence of Avishesh Navnit Nair was that Appu Nair and Madhwan Nair took their interests and moved on. Raghwan Nair took management of S Nair Transport with his sons until he passed away in 1980's. This evidence was unchallenged.

- [10] **(iv) Whether the initial shareholding in NTCL was for incorporation purposes only and whether Vinod Nair and Kunjan Nair held any shares in trust for the Estate of Raghwan Nair?**

(v) Whether the incorporation of NTCL was to take over the business operation of S. Nair Transport or as a separate entity under the NTCL Articles of Association?

I would deal with the 2 above-mentioned issues together. Plaintiff's Exhibit 5 (PE #5) was a declaration by Kunjan Nair and Vinod Nair as Executors and Trustees of the Estate of Raghwan Nair giving notice of cessation of S. Nair Transport. The notice was registered on 17th July 2001. Plaintiff's Exhibit 6 was company records of Nair's Transport Company Limited (NTCL). The records showed that the Memorandum and Articles of Association of NTCL was lodged on 17th July 2001. It is the date on which S. Nair Transport ceased operation. This shows that upon ceasing of S Nair Transport, Nair's Transport Company Limited (NTCL) came into effect. In effect NTCL took over the business operation of S. Nair Transport. PE#5 was verified and confirmed by Ms. Preetika Ashni Singh an Executive Officer from the Companies Office. The changes were made simultaneously to continue the operations and that it would not have any effect on the operation of the company.

- [11] Plaintiff's Exhibit 9 is the minutes of the meeting of Board of Directors of Nair's Transport Company Limited of 21st November 2001. It records that on *"20th March 2001 the ANZ Bank wrote to us requiring the business to be restructured. Options were to either dissolve the Estate or to form a Limited Liability Company. We chose to form a company and Nair's Transport Company Limited was duly registered on 14th August 2001."*

- [12] It is clear from the minutes of the 21st November 2001 meeting of the Board of Directors the business needed to be restructured. There were 2 options. The option exercised was the formation of a Limited Liability Company. This gave rise to NTCL. The option to dissolve the Estate was not exercised. Plaintiff's Exhibit 4 is the Probate of Raghwan Nair. The Executors and Trustees of the Estate were Kunjan Nair and Vinod Nair. Kunjan Nair and Vinod Nair as Executors and Trustees of the Estate of Raghwan Nair had ceased S. Nair Transport.

- [13] The purpose of incorporation of NTCL was to restructure S. Nair Transport. A new company as created which was NTCL. Kunjan Nair and Vinod Nair who were Executors and Trustees of the Estate of Raghwan Nair incorporated NTCL. Basically, NTCL took over S Nair Transport. As Trustees of the Estate of Raghwan Nair, Kunjan Nair and Vinod Nair were acting in the interest of the Estate. They held the shares of the beneficiaries of the Estate of Raghwan Nair in trust when they restructured from S Nair

Transport to NTCL. The evidence shows that the intention with the incorporation of NTCL was to take over the business of S. Nair Transport. The other evidence that I note is correspondence by Kunjan Nair, Managing Director of NTCL dated 19th June 2003 to Fiji Islands Customs Service (PE # 24), which is after NTCL was incorporated stating that NTCL originated from one family business entity, S. Nair's Transport. This evidence was not challenged.

[14] The other important evidence that relates to this issue is that relating to Crown Lease No. 2064 (PE #25). The land was initially owned by Sanguni Nair. Later it was held by Kunjan Nair and Vinod Nair as Executors and Trustees of the Estate of Raghwan Nair. CL 2064 was surrendered (PE # 26) in 2012 (Surrender No. 762046). The Residential Lease was rezoned to Heavy Industrial Purposes – Bus Depot in the name of Nair's Transport Company Limited (NTCL). This is further evidence of incorporation of NTCL to take over the affairs of S Nair Transport. No evidence of the Plaintiff's on this issue was discredited or challenged.

[15] (vi) **Whether on or about 30 July 2002 the shareholding of NTCL was changed to the following:**

- (a) 1 share to Kunjan Nair (who passed away on 23 March 2020)
- (b) 1 share to Vinod Nair
- (c) 1 share to Vijay Govind Nair (Naraini Nair is the widow and Trustee of Vijay Govind Nair who passed away on 16 August 2009)
- (d) 1 share to Vasu Dewan Nair aka Basudewan Nair
- (e) 1 share to Sarda Devi Nair (Sarda Devi Nair passed away on 6 January 2011)
- (f) 1 share to Narayan Nair
- (g) 1 share to Rajeshwar Nair (Sarita Devi Nair is the widow and Trustee of Rajeshwar Nair who passed away on 12 March 2004)

(vii) **Whether any shares were transferred or allotted as reflected in the annual return filed on or about 30 July 2002 of NTCL.**

The issues raised in these questions were addressed by the evidence of Ms. Preetika Ashni Singh of the Companies Office. Her evidence in Court was that she had with her the records of NTCL. The date of registration was 14th August 2001. According to Ms. Singh at the point of incorporation the shareholders of NTCL were 1. Kunjan Nair, 2. Vijay Nair, 3. Narayan Nair, 4. Vinod Nair, 5. Vasu Dewan Nair, 6. Sarda Devi Nair and 7. Rajeshwar Nair. Each held a share. Ms. Singh referred to a document witnessed by Accounts Officer, Narayan Narsaiya where the 7 held a share each. It is exhibited as Plaintiff's Exhibit # 36.

[16] The first annual return of NTCL was filed in 2005. It is made up to 28th February 2005. The annual return of NTCL reflects the same 7 shareholders as stated above and they held the same number of shares, which is 1 each. From the time of incorporation of NTCL which is in 2001 and up to 28th February 2005 the shareholders of the company

according to the official records were: Kunjan Nair, Vinod Nair, Vijay Govind Nair, Rajeshwar Nair, Narayan Nair, Vasu Dewan Nair, and Sharda Devi Nair. Each held 1 share. (Refer to Plaintiff's Exhibit # 17). The shareholding of NTCL did not change from its incorporation in 2001 to 2005.

- [17] **(viii) Whether there was any change in shareholding on or about 30 July 2002, if so, was it done by the Trustees of the Estate of Raghwan Nair to comply with the Will of Raghwan Nair so that all beneficiaries under his Will would have an equal interest in the business that had been operated by Raghwan Nair.**

I have discussed this issue when I dealt with issues (iv) and (v). The Trustees of the Estate of Raghwan Nair in compliance with his will included the beneficiaries of his estate to be part of NTCL. Under the will of Raghwan Nair each beneficiary had equal interest in all real and personal property of Raghwan Nair. The shareholding of NTCL in 2001 referred to by Ms. Singh of Companies Office shows the 7 shareholders as per Plaintiff's Exhibit # 36.

- [18] **(ix) Whether the late Raghwan Nair had bequeathed in his Will any shares or interests in NTCL to any of the beneficiaries.**

The late Raghwan Nair had no specific bequeath in his will of any shares or interest in NTCL to any beneficiaries. What was bequeath by late Raghwan Nair was "*all [his] real and personal property of whatever nature or kind and wheresoever situate unto [the beneficiaries] in equal shares*".

- [19] **(x) Whether there was any change in the shareholding of NTCL on or about 30 July 2002 and 6 May 2015 in accordance with the Articles of Association and the Companies Act.**

Plaintiffs Exhibit # 37 was the 2007 Annual Return of NTCL, PE # 38 the 2008 Annual Return and PE # 39 the 2009 Annual Return. The shareholding for these periods remained the same as was from 2001 to 2005. PE # 40 is the 2010 Annual Return. This report shows that the shares of Vijay Govind Nair were transferred to Naraini Nair. Each shareholder continued to hold 1 share. PE # 41 is the 2011 Annual Return. No changes were made to the shareholding. PE # 42, which is the Annual Return of 2012, shows a change of shareholding from Sarda Devi Nair to Estate of Sarda Devi Nair. PE # 43 is the 2013 Annual Return. There are no changes. No Annual Return for 2014 was in the records. Ms. Singh was shown a copy of 2014 Annual Return of NTCL. She informed me that the file record showed that a copy was received by them in 2019. She could not confirm if the same was misplaced. Annual Return for 2014 was not tendered. The next Annual Return for NTCL is for 2015 (PE # 44). It shows that the number of shares in the company to be 100. Previously the Company had 7 shares, which is from 2001 to 2013. According to the 2015 Annual Return, Kunjan Nair and Vinod Nair each hold 50 shares.

- [20] It is clear from the Annual Returns of NTCL filed with the Companies Office that when the Company was incorporated in 2001 it had 7 shares. It was held by 7 shareholders (1. Kunjan Nair, 2. Vijay Nair, 3. Narayan Nair, 4. Vinod Nair, 5. Vasu Dewan Nair, 6. Sarda Devi Nair and 7. Rajeshwar Nair). In 2014 the shareholding changed. It increased

to 100. These shares are shown to be only held by 2 persons, namely Kunjan Nair and Vinod Nair.

- [21] (xi) **Whether on 2 August 2016 the Resolution of Directors (“the Resolution”) lodged by the Second Defendant at the Registrar of Companies office was in accordance with the Articles of Association of NTCL and the Companies Act, 2015.**

This issue deals with a Resolution of Directors of NTCL. The Resolution is dated 1st August 2016. Section 174 (1) (b) of the Companies Act 2015 provides that “*a company must keep minute books in which it records within 28 days proceedings and resolutions of directors’ meetings, including meetings of a committee of directors*”. This is a mandatory provision. Section 174 (6) further provides that “*a minute that is so recorded and signed is evidence of the proceedings, resolution or declaration to which it relates, unless the contrary is proved.*” No minutes of the Company was produced on behalf of the Company.

- [22] The evidence of Avisesh Navnit Nair, son of Narayan Nair and his joint Executor and Trustee on the resolution was that he had seen the Resolution. It was signed by Kunjan Nair and Damodaran Nair as Secretary. Avisesh understood that it was the point when Kunjan Nair decided that all other shareholders, apart from Vinod Nair were illegitimate and prepared the document to remove all the beneficiaries. The beneficiaries of the Estate of Raghwan Nair were the beneficiaries. The Resolution was tendered as Exhibit # 32 by the Plaintiff’s. In cross-examination Avisesh confirmed that the 7 beneficiaries were the 7 shareholders. The evidence of Avisesh was unchallenged. No documents were produced or tendered on behalf of NTC, the 1st Defendant to support its position or refute the position or evidence of Avisesh.

- [23] NTCL, the 1st Defendant is guided and governed by the Companies Act 2015 and its Articles of Association. From the time NTCL was incorporated in 2001, it had 7 shareholders and members. This is noted from PE # 36 which shows the shareholding and the Annual Returns of NTCL filed for the number of years. This changed with the 2nd August 2016 Resolution by the Directors. Not only that, the resolutions that were made were made on basis of disingenuous information. It was misleading to resolve that Kunjan Nair and Vinod Nair were original shareholders. The resolution ignored the fact that Vijay Nair, Narayan Nair, Vasu Dewan Nair, Sarada Devi Nair and Rajeshwar Nair were also original shareholders. It is misleading to state that since 2005, the Annual Returns lodged with the Companies Office continuously show changes in shareholding. I have already set out earlier how and when the changes in shareholding took place. It is not in the manner as set out in the Resolution. The Resolution that Kunjan Nair and Vinod Nair were “*only legal shareholders*” was an attempt to spice up the Resolution. The Directors were trying to prepare a good serve. The Directors with ulterior motive left out 5 other “*legal shareholders*”. This was done to usurp other’s shares in NTCL. Certificate of Shares of Narayan Nair (PE # 2), Vasu Dewan Nair (PE # 33) and Rajeshwar Nair (PE # 34) were tendered. It is proof that they are shareholders in NTCL.

- [24] The Directors of every company are under a fiduciary duty to act in good faith and in the best interests of the company and its members. The duties of the Directors of a company are set out in sections 103 to 122 of the Companies Act 2015. These are comprehensive. These were to be followed by the Directors NTCL. It has been held by the Courts that the

duty to act in good faith in the best interests of the company means that the Directors must act in the best interests of the shareholders as a collective group: **Greenhalgh v. Arderne Cinemas Ltd [1951] Ch. 286**. I find that it is not in the shareholders' interests that their shares in the NTCL be nullified. All the shareholders in NTCL had inherited shares. For a couple of shareholders, being Directors of the Company to resolve and usurp the shares of other shareholders is not in the interests of shareholders. 2 Directors/Shareholders usurped 5 other members' shares. The powers conferred upon the Directors include the duty to act for proper purposes. Directors breach their fiduciary and statutory duty to exercise their powers for a proper purpose if they resolve as they did in this matter: **Ngurli Ltd v McCann (1953) 90 CLR 425** and **Howard Smith Ltd v. Ampol Petroleum Ltd [1974] AC 821**.

For the given reasons I find that the Resolution of 2nd August 2016 by the Directors is not in accordance with the Articles of Association of NTCL and the Companies Act 2015.

- [25] **(xii) Whether on or about 30 January 2017, 150,000 shares were issued to the second Defendant as reflected in Form A11 at the Registrar of Companies office in accordance with the Articles of Association and the Companies Act, 2015.**

The evidence of Ms. Preetika Ashni Singh was that on or about 30th January 2017, 150,000 shares were issued to the Second Defendant.

- [26] **(xiii) Whether on 13 February 2017 the Third Defendant transferred 50 shares to the Second Defendant pursuant to the instrument of transfer lodged with the Company's Office.**

The transfer of shares documents dated 13th February 2017 shows the Third Defendant transferring 50 shares to the Second Defendant. This was lodged with the Company's Office. It is part of PE # 44.

- [27] **(xiv) Whether on 7 November 2017, the Second Defendant transferred 20 ordinary shares to his eldest son, Ritesh Rishi Nair as reflected in the A11 form lodged with the Company's office.**

The Second Defendant on 7th November 2017 transferred 20 ordinary shares to Ritesh Rishi Nair. Evidence is part of PE # 8. This is unchallenged.

- [28] **(xv) Whether at any material time after the incorporation of NTCL on 14 August 2001 shares were issued to the Third Defendant and if he had received share dividends.**

Since the incorporation of NTCL shares were issued to the Third Defendant. I did not see any specific evidence on share dividends, However, PE # 9 showed beneficiaries drawing for the 2000, the Third Defendant was part of this Drawings. PE #12 contains minutes of meetings of Board of Directors of NTCL held on 16th July 2007. It referred to the Third Defendants wages after departure overseas.

- [29] **(xvi) Whether any shares in NTCL were transferred to the deceased persons on whose behalf the First, Second and Fourth [Plaintiffs] are claiming shares in the First Defendant.**

The First and Second Plaintiffs are representing the Estate of Narayan Nair. The shares of Narayan Nair were nullified following the Resolution of the Kunjan Nair and Vinod Nair and they taking over his and other shareholders shares. Narayan Nair had shares in NTCL, prior to that. The Fourth Plaintiff is the Executor and Trustee of Vijay Govind Nair. He passed away in August 2009. The 2010 Annual Return of NTCL reflect the Fourth Plaintiff as the person holding 1 share in NTCL.

- [30] **(xvii) Whether the deceased persons on whose behalf the First, Second and Fourth Plaintiffs are claiming shares in the First Defendant had bequeath in their last Will any shares in the First Defendant.**

The will of Narayan Nair has no specific reference to his shares. The will or Probate of Vijay Govind Nair was not before me. The Fourth Plaintiff already had Annual Returns tendered in Court showing that she held shares in NTCL.

- [31] **(xviii) Whether the Plaintiffs are entitled any shares in NTCL in accordance with the Articles of Association and the Companies Act 2015.**

I have found that the Resolution of 2nd August 2016 is not in accordance with the Articles of Association and the Companies Act 2015. The Plaintiffs are entitled to shares in NTCL in accordance with the Articles of NTCL and the Companies Act.

- [32] **(xix) Whether the deceased persons on whose behalf the First, Second and Fourth Plaintiffs are claiming shares had received share dividends.**

There was no evidence given on share dividends.

- [33] **(xx) Whether First, Second and Fourth Plaintiffs had served notices pursuant to section 250 (9) of the Companies Act that they hold beneficial shares in NTCL, and the effect, if any, thereof.**

Plaintiff's Exhibit 19 is a letter from Munro Leys to the First Defendant in relation shares of late Narayan Nair. The letter raised a number of questions, informed about the share dealing and sought amicable solution. No other evidence was provided on this issue for me to make a determination.

- [34] **(xxi) Whether the Plaintiffs or the deceased persons on whose behalf the First, Second and Fourth Plaintiffs are claiming shares had filed any claim for shares or share dividend against the First Defendant since it was incorporated on 14 August 2001, and if not, the effect thereof.**

The Plaintiffs or the deceased persons on whose behalf the First, Second and Fourth Plaintiffs are claiming shares had not filed any claim for shares or share dividends against the First Defendant since its incorporation. The Plaintiffs are entitled to the shares of the deceased persons. It is up to them when to claim for it. The 4th Plaintiff held shares in the company. The 1st and 2nd Plaintiffs are entitled as beneficiaries under the deceased's estate. On the issue of claim for share dividends. It should be noted that as a general rule, shareholders cannot force a company to pay dividends even if it has sufficient surplus to do so: **Burland v. Earle [1902] AC 83.**

- [35] **(xxii) Whether the Third Plaintiff had filed any claim for shares or share dividend since the incorporation of the First Defendant on 14 August 2001, and if not, the effect thereof.**

No. I have dealt with the issues in dealing with issues in (xxi).

- [36] **(xxiii) Whether the record with the Registrar of Companies show that the Plaintiffs were issued with shares in NTCL.**

Yes, the records of the Company's Office shows that the Plaintiffs held shares in NTCL.

- [37] **(xxiv) Whether the Plaintiffs are attempting to acquire shares in NTCL by fraud and misrepresentation.**

No. What the Plaintiffs are claiming for is their entitlement under inheritance. They are neither fraudulent nor misrepresentation. Raghwan Nair gave his spouse and his 6 sons equal shares in his assets. He had owned S Nair Transport at the time of his demise. Upon his death his Executors and Trustees restructured the business to form a Company, NTCL. Following incorporation, the evidence shows that the spouse and 6 sons of Raghwan Nair as shareholders in NTCL. The Plaintiffs are attempting to regain their shares.

- [38] **(xxv) Whether the claim by the Plaintiffs is statute barred?**

The claim by the Plaintiff is not statute barred. PE # 36 showed that following the incorporation of NTCL there were 7 shareholders. The shareholding changed sometimes in August 2016 following the resolution by the Directors of NTCL to usurp the shares of the other shareholders. The 2013 Annual Return with Companies Office shows the 7 shareholders. It is public record. The notices of Meeting of Board of Directors of NTCL and Minutes which were tendered show that over the years since incorporation from 2001 the recognition of the 7 shareholders. The action by the Plaintiffs has been instituted within time.

- [39] **(xxvi) Whether the Plaintiffs are entitled to the reliefs sought in their statement of claim.**

The Plaintiffs are entitled to the reliefs they have sought in their statement of claim.

- [40] **(xxvii) Whether the First Defendant is entitled to the relief sought in their counter claim.**

The First Defendants counter claim is dismissed. The Annual Returns are public records filed at the Companies Office. These are filed on behalf of the company by its officers, which includes its Directors and Secretary. The Annual Returns are filed and it is not the Plaintiffs who did the filing. They are relying on what was filed on behalf of the Company, the First Defendant. The Plaintiffs hold shares in NTCL. The Plaintiff's claim is not statute barred.

- [41] I found the Plaintiff's witnesses credible. Some who were the family members, shareholders or beneficiaries were clearly aggrieved. They felt cheated and had their shares in NTCL taken away. It was their inheritance. I found all of them to be honest and I believe them. None of them made anything up. The evidence they gave was supported

by documentary evidence. The documents were not made by them. Most of the documents were from the NTCL Company file with the Company's Office. These were public records. These were mostly filed on behalf of NTCL, the 1st Defendant. The evidence given and the documents tendered on behalf of the Plaintiffs have been admitted in evidence and I found it all credible.

[42] The evidence of Ritesh Nair for the 1st Defendant, whom he represented did not discredit or counter the evidence of the Plaintiffs witnesses. His evidence was not helpful as he either did not know of many dealings of NTCL. It was done by his father. Ritesh's evidence was that he was carrying forward his father's legacy. The fact is that it was a family legacy. It was established by Sanguni Nair. Carried forward by Raghwan Nair. The benefits of which were to follow on equally to the sons of Raghwan Nair. One son of Raghwan Nair acted in his own interest and diverted all the shares towards his family. This was contrary to Raghwan Nair's intention. He wanted all his sons to benefit. It was a family business of Raghwan Nair, established by his father, not a family business of one of the sons of Raghwan Nair.

[43] For the reasons I have given I make the following orders:

(a) That the Register of Members of the First Defendant (Nair's Transport Co Ltd) be rectified to the following;

(i) 1 Share to Kunjan Nair.

(ii) 1 Share to Vinod Nair.

(iii) 1 Share to Naraini Nair.

(iv) 1 Share to Vasu Dewan Nair.

(v) 1 Share to the Estate of Sarda Devi Nair.

(vi) 1 Share to the Estate of Narayan Nair.

(vii) 1 Share to the Estate of Rajeshwar Nair.

(b) A Declaration that the purported Resolution of Directors of the First Defendant (Nair's Transport Co Ltd) dated 1st August 2016 is null and void and contrary to the Companies Act 2015 and the Articles of Association of the First Defendant (Nair's Transport Co Ltd).

(c) A Declaration that purported Resolution of Directors First Defendant (Nair's Transport Co Ltd) dated 22nd April 2016 is null and void and contrary to the Companies Act 2015 and the Articles of Association of the First Defendant (Nair's Transport Co Ltd).

(d) A Declaration that any other Resolution purportedly passed by the Board of the First Defendant (Nair's Transport Co Ltd) since 6th May 2015 is null and void and contrary to the Companies Act 2015 and the Articles of Association of the First Defendant (Nair's Transport Co Ltd).

(e) A Declaration that the allotment of shares of the First Defendant (Nair's Transport Co Ltd) on or about 6th May 2015 is null and void and to the Companies Act 2015 and the Articles of Association of the First Defendant (Nair's Transport Co Ltd).

(f) A Declaration that the Form A11 dated 30th January 2017 is null and void and filed contrary to the Companies Act 2015 and the Articles of Association of the First Defendant (Nair's Transport Co Ltd).

(g) The Defendants provide the Plaintiffs access to the First Defendant's (Nair's Transport Co Ltd);

(i) Members Register.

(ii) Minutes of Annual General Meetings held from 1st January 2002.

(iii) Financial Books and/or Statements from 1st January 2002.

(iv) Generally, any other Books and Records of the First Defendant (Nair's Transport Co Ltd).

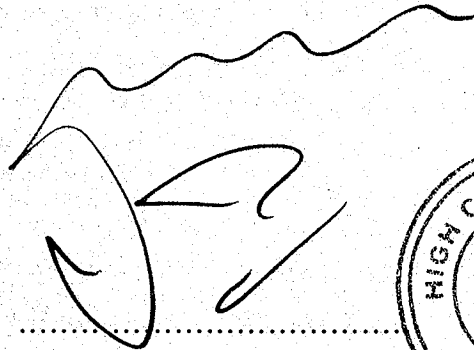
(h) The Plaintiffs and other members who are entitled are to be paid the Directors Fees since the last payment of such fees.

(i) The Plaintiffs and other members to be given a share of the profits in First Defendant's (Nair's Transport Co Ltd) since the last share of profits.

(j) The Plaintiffs and other Members are entitled to the benefits given to other Directors and Members of the First Defendant's (Nair's Transport Co Ltd) since the last payment of benefits, including remunerations as an employee of the First Defendants (Nair's Transport Co Ltd).

(k) Interests on the sums awarded from 6th May 2015 pursuant to Section 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act.

(l) The First Defendant is to pay each Plaintiff \$5000.00 as costs within 30 days. The Costs have been summarily assessed.



Chaitanya S.C. A Lakshman

Puisne Judge
25th November 2024

