

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action No. HBC 111 of 2023

BETWEEN : **AJAL KUMAR** of Lot 10, Paul Sloan, Bayview Heights, Suva, Senior Lecturer
as the intended lawful attorney of Khelawan being the Trustee of Shri
Sanatan Dharam Vishnu Mandir

PLAINTIFF

AND : **ATUN KUMAR** of Vuniuto, Nasarowaqa, Bua, Occupation Unknown.

FIRST DEFENDANT

AND : **REGISTRAR OF TITLES** of Civic Tower, Suva.

SECOND DEFENDANT

AND : **ATTORNEY-GENERAL** of Suvavou House, Suva, Fiji.

THIRD DEFENDANT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Nair D.** for the Plaintiff

Mr. Kumar Y. with Reddy J. for the first Defendant

No Appearance of the second and third defendants

DATE OF JUDGMENT: 01st August, 2025

JUDGMENT

[Ex-Parte Summons and Substantive Originating Summons]

Introduction

1. The Plaintiff filed two (2) applications:
 - (a) Originating Summons seeking for the following orders:
 - (i) A Declaration that the First Defendant (Atul Kumar) has no right to call any Annual General Meeting and or any other meeting dealing with Shri Sanatan Dharam Vishnu Mandir of Nasarowaqa, Bua, Vanua Levu;
 - (ii) A Declaration that the administration of the Shri Sanatan Dharam Vishnu Mandir of Nasarowaqa, Bua, Vanua Levu be run and conducted by the Trustee or his lawful attorney until the registration of its Constitution;
 - (iii) Any person, except the Trustee or his lawful attorney, is not allowed to hold or conduct any Annual General Meeting and or any other meeting regarding the administration of the Shri Sanatan Dharam Vishnu Mandir of Nasarowaqa, Bua, Vanua Levu;
 - (iv) The election of the committee members of Shri Sanatan Dharam Vishnu Mandir of Nasarowaqa, Bua, Vanua Levu be held after the registration of its Constitution.
 - (v) Costs of this Application be paid by the First Defendant;
 - (vi) Any other Orders this court deems fit and appropriate.
 - (b) Ex-Parte Summons together with an affidavit seeking for the following orders:
 - (i) The First Defendant (Atul Kumar) be refrained from holding/ organizing/ conducting the Annual General Meeting or any other meeting dealing with Shri Sanatan Dharam Vishnu Mandir until the determination of the substantive action.
 - (ii) The Annual General Meeting that is suppose to take place on 16th April 2023 at this Shri Sanatan Dharam Vishnu Mandir be cancelled.
 - (iii) A copy of this Order to be placed on the walls of the Shri Sanatan Dharam Vishnu Mandir.
 - (iv) The First Defendant to return the keys of the Shri Sanatan Dharam Vishnu Mandir.
 - (v) Costs of this Application be cost in the cause.
2. The Interlocutory Ex-Parte Summons was withdrawn by the Plaintiff on 30th May 2024 and dismissed in its entirety without any costs.
3. The Substantive Originating Summons was heard on affidavit evidence together with written and oral submissions.

Plaintiff's Contention

4. Sought for declaratory and injunctive relief relating to the administration and governance of the Shri Sanatan Dharam Vishnu Mandir, Nasarowaqa, Bua, Vanua Levu.
5. The Mandir holds an iTaukei Lease No. 25133 granted to five named Trustee. However, only one trustee remains alive as of now.
6. The Plaintiff has been appointed by the surviving Trustee and empowered through Power of Attorney dated 22nd March 2022 and authorized to manage the Mandir's affair.
7. The First Defendant was part of an interim committee and since has resigned.
8. Despite this, the First Defendant had unilaterally issued a Notice for an Annual General Meeting on 24th March 2023, without authority, Constitutional basis or Consultation with the Trustee or interim officials.

The First Defendant's Contention

9. The written submissions filed by the First Defendant is seeking to strike out the Plaintiff's Originating Summons, raising issues whether the Plaintiff was appointed as a trustee according to law, has a Cause of Action and/or *Locus Standi*.
10. Cites Section 3 of the Religious Bodies Regulation Act.
11. Three (3) Trustees have been elected, Prem Vikash Nand, Ganeshwar Lal and Satish Chandra for these trustees to be registered, the First Defendant being the President of the Mandir should call an Annual General Meeting pursuant to Section 3 of the Religious Bodies Act, 1881.
12. Cites Clause 10 and 10(ii) of the Constitution of the Shri Sanatan Dharam Vishnu Mandir, Nasarowaqa, Bua, and submits the procedure involved in the appointment of the Trustee.
13. Appointing the Plaintiff as a trustee through an expressed authority by way of a letter is contrary to Clause 10(ii) and is unconstitutional.
14. The first Defendant also cited Cites Clause 17 of the Constitution of the Shri Sanatan Dharam Vishnu Mandir, Nasarowaqa, Bua, and dealing with the procedure of holding an Annual General Meeting.
15. Clause 17 does not state that the President of the Mandir does not have the powers to call an Annual General Meeting. The Plaintiff does not want this Annual General Meeting to take place.

Second and Third Defendant's

16. The Second and Third Defendants are nominal Defendants.
17. The Interlocutory Summons seeking for injunctive orders was withdrawn by the Plaintiff and therefore, Second and Third Defendants appearances were excused. The substantive matter - Originating Summons stood between the Plaintiff and the First Defendant only.

Analysis and determination.

18. Foremost, the question that arises in mind is that the Plaintiff was very much aware of the fact that there is an ongoing dispute as to the appointment and election of office holders of the Shri Sanatan Dharam Vishnu Mandir at Nasarowaqa, Bua.
19. Should he then have commenced these proceedings via an Originating Summons? An Originating Summons is just a summary proceedings. Having disputes over the election of trustees and President of the Mandir cannot just be resolved and determined by this Court on affidavit evidence, written and oral submissions. There are triable issues raised within the hearing of Originating Summons.
20. Further questions on Law and Constitution of the Mandir governing the appointment of the Trustees of the procedural election and appointment of office bearers [Trustees] have been raised and that needs to be heard and determined.
21. I find there are triable issues in this proceedings which can only be heard and determined by calling witnesses and hear viva voce evidence and determine the matter accordingly. It cannot be determined by summary proceedings via an Originating Summons as it may cause injustice to parties.
22. No application was made by either party to the proceeding to convert the Originating Summons into a Writ Action and the Statement of Claim as per Order 28 Rule 8 of the High Court Rules 1988.
23. Accordingly, I have no alternative but prompted to proceed to dismiss the Plaintiff's Substantive Originating Summons in its entirety. The Plaintiff's Originating Summons is dismissed in its entirety.

Costs


24. Each party to bear their own costs at the discretion of this Court.

Orders

- (i) The Plaintiff's Originating Summons filed on 6th April 2023 is dismissed in its entirety.
- (ii) Each party to bear their own costs at the discretion of this Court.
- (iii) File Closed.

Dated at **Suva** this **01st** day of **August** ,2025.




VISHWA DATT SHARMA
PUISNE JUDGE

cc. **Sairav Law, Suva**
Jiten Reddy Lawyers, Nakasi
Registrar of Titles, Suva
Attorney General Chambers, Suva