

LEPANI MATEA and Anor v TEVITA KOROI and Ors (HBC0209R of 2002S)

HIGH COURT — APPELLATE JURISDICTION

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JITOKO J

8 October 2004

10 **Practice and procedure — pleadings — strike out — reasonable cause of action — association's constitution — power to impose fees and levies on the members — power to alter fees, subscriptions and contributions — High Court Rules O 18 r 18(1)(a)(c)(d) — Trade Union Act (Cap 96).**

15 This was an application by the first Defendant to strike out the Plaintiffs' action under O 18 of the High Court Rules.

The Plaintiffs who were members of the Fijian Teachers Association (FTA) were levied under clause 9 of the association's constitution a membership fee of \$8.67 each per month which was deducted at source by the first Defendant who were president, general secretary and treasurer respectively of the association. In 1997, a resolution was passed during the
20 FTA's general annual meeting which established the FTA housing scheme. It was also agreed at the meeting for a compulsory deduction of \$5 (which later became \$6) per member each month.

The Plaintiffs sought before the court a declaration that the levy of \$5 per month was null and void and that the FTA and Ministry of Education to repay them under the housing scheme since 1997 together with interest.

25 The Defendants objected and sought to strike the Plaintiffs' action on the ground that the Plaintiffs' action was scandalous, frivolous and vexatious and that there was no cause of action.

The Plaintiffs contended that its membership had been forced upon them and that the compulsory \$6 monthly deduction on each of them was illegal despite the provisions of
30 the association's constitution. The Plaintiffs likewise argued that the fund established under the scheme was null and void because the branch chairman and secretary did not give authority in writing or sign them for the voting of the delegates, contrary to the provisions of the constitution. The Plaintiffs further argued that members were not informed of the establishment of the scheme fund and the same was not passed on any branch resolutions for the annual general meeting (AGM) of 1996.

35 On the other hand, the Defendants submitted that the Plaintiffs failed to demonstrate any breach or threat of future breach of their legal rights to empower the court to exercise its discretion to intervene. Rather, the Defendants submitted, that the matters and issues complained of by them were private law matters which were within the powers of the AGM.

40 **Held** — (1) The constitution of the association is the principal instrument that aids and decides the actions and rights of its members. Thus, in case of dispute, the members may resort to the procedures and mechanisms provided in the constitution and may make changes to the administration of their association including changes to the rules and provisions of the constitution. Based on the evidence produced before the court, there was
45 no showing of any serious effort to challenge or change the decision of the AGM of 1997 on the housing scheme and its funding through levy. Further, minutes of past meetings showed that there were motions regarding the change but were later withdrawn and appeared again the next year. The Plaintiffs were not able to prove to the court that they exhausted all available remedies that their constitution provided to bring about the changes they wanted. Only then will the court intervene when all the remedies available
50 within the organisation were exhausted.

Application granted.

Cases referred to

5 *Davey v Bentinck* [1893] 1 QB 185; [1891–4] All ER Rep 691; *Drummond-Jackson v British Medical Association* [1970] 1 WLR 688; [1970] 1 All ER 1094; *Moore v Lawson* (1915) 31 TLR 418; *Wenlock v Moloney* [1965] 1 WLR 1238; [1965] 2 All ER 87, cited.

Gouriet v Union of Post Office Workers [1978] AC 435; [1977] 3 All ER 70, considered.

P. Madanavosa for the Plaintiffs

10 *T. Malifa* for the first Defendants

M. Raikadroka for the second Defendant

15 **Jitoko J.** This is the application by the first Defendants to strike out the Plaintiffs' action under O 18 of the High Court Rules. In particular, the application is made pursuant to O 18 r 18(1)(a)(c) and (d) of the Rules, namely that it:

- 20 (i) discloses no cause of action;
 (ii) is scandalous, frivolous and vexatious; and
 (iii) is an abuse of the process of the Court.

The Plaintiff's action is by originating summons seeking from the court the following reliefs:

- 25 (a) A declaration that the compulsory deduction of \$5.00 per member a fortnight for the Housing Assistance Scheme is null and void.
 (b) For an Order that Fijian Teachers Association and Ministry of Education repay to the Plaintiffs under the Housing Scheme since 1997 together with interest at the rate of 13.5% from 1997 till date of judgment.

Background

30 The first Defendants are president, general secretary and treasurer respectively of the Fijian Teachers Association (FTA) a body corporate registered under the Trade Union Act (Cap 96). FTA membership, according to its Constitution, is open to:

35 all workers who are Fijian teachers and teachers of Fijian descent, Rotumans or of Rotuman descent, Banaban or of Banaban descent and others, approved by the Annual General Meeting recognised, licensed or registered who are employed in Government or private schools or other education institutions and who are residents in the Republic.

40 The Plaintiffs are members of the FTA and are levied under clause (9) of the Association's Constitution, a membership fee of \$8.67 each per month. The amount is, with arrangement with the Ministry of Education, the second Defendant, deducted at source.

45 In 1997, at the FTA's annual general meeting, a resolution was passed which established the FTA Housing Scheme. According to the Defendants, the resolution was unanimously adopted by the meeting. Also agreed to at the said meeting, was a compulsory deduction of \$5 per member each month (now \$6), which deduction, again at source, had been in place since.

The establishment of a housing scheme by the FTA is in accordance with Pt II ("Objects") of its Constitution and specifically cl (4)(l) stating that one of the objects of the union shall be:

- 50 (l) To provide for the establishment of a Housing Scheme for the benefit of its members subject to the availability of funds.

There is no question therefore of the legality and status of the FTA Housing Scheme. What however, the Plaintiffs' contend is that its membership had been forced upon them, and that the compulsory \$6 monthly deduction on each of them is illegal and contrary to the provisions of the Association's Constitution. In any case, the Plaintiffs argued, the fund established under the scheme was null and void because, *inter alia*:

- (a) As required by the Constitution, Branch Chairman and Secretary [sic: had] given no authority in writing nor signed by them for delegates to vote.
- 10 (b) That prior to the establishment of "the scheme fund" members were not informed of the "scheme fund."
- (c) That the issue of "the scheme fund" was not on any branch resolutions for the Annual General Meeting of 1996 that was passed on the official branch meetings.

15 **The FTA Constitution**

Part III of the Constitution deals with membership. Oddly, there is no definition of the membership per se of the Association. Clause (5) of Pt III merely states that "all FTA members shall be members of FTA Welfare Society paying
20 the required welfare levy above his or her FTA membership fee and housing levy". As to how such membership is acquired, this is not defined, although the class and generic of persons contemplated can be gleaned from Pt II (Objects) of the Constitution and in particular clause (4)(a) thereof.

Clauses (6)–(8) of Pt III defines and limits special membership, membership
25 of persons between the ages 16 and 21, and honorary members.

The power to impose fees and levies on the members is contained in clause (10). It states:

- 30 (10) The Annual or an Extraordinary General Meeting of the Union shall have powers to alter all fees, subscriptions and contributions and to impose additional fees, subscriptions and contributions for the purpose of providing further benefits for members.

The business of the annual general meeting or an extraordinary general meeting is conducted and voted upon by delegates from branches who through
35 the agency of proxy, cast votes on behalf of all their voting members; such authority having been given in writing to the secretary general before the meeting.

The agenda of the annual general meeting is required under clause (23) to be published in two (2) newspapers, not less than 14 days before the meeting.
40 Clause (25) is also relevant in the court's consideration of the Plaintiffs' application, which stipulates that:

- (25) Where any change in the rule of the Union is contemplated such change be specifically stated in the Agenda of the Annual General Meeting or the Extra-Ordinary General Meeting.

45 **Court's consideration**

In the initial filing of submissions, there appeared to be some confusion on the part of defence counsel on the cause of action brought by the Plaintiffs. Much emphasis was placed by counsel on the issue of private versus public law on the
50 premise that the Plaintiffs were seeking judicial remedies in public law through judicial review. It was only after being pointed out that Plaintiffs were seeking

certain declarations through originating summons, were the submissions and arguments refocussed on the relevant issues and principles applicable in striking out applications.

5 The first issue raised by the Defendants is one of locus standi. There is however no doubt that the Plaintiffs, being fully-fledged financial and voting members of the FTA have the locus to bring this action. They cannot however claim a representative action on behalf of other members in the annexure although the decision at the end may also have a bearing on them.

10 The more important issue is in fact whether the Plaintiffs have a reasonable cause of action. The principles are well settled and fully canvassed by the Plaintiffs in their counsel's submission before this court. The *Supreme Court Practice (White Book)* 1985 ed summarised them as follows:

15 A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in *Drummond-Jackson v British Medical Association* [1970] 1 WLR 688; [1970] 1 All ER 1094 CA). But the practice is clear. So long as the Statement of Claim or the particulars (*Davey v Bentinck* [1893] 1 QB 185; [1891-4] All ER Rep 691) disclose some cause of action or raise some question fit to be decided by a Judge or jury,
20 the mere fact that the case is weak and not likely to succeed is not ground for striking out (*Moore v Lawson* (1915) 31 TLR 418 CA; *Wenlock v Moloney* [1965] 1 WLR 1238; [1965] 2 All ER 87 CA).

In this instance the Plaintiffs' case rests on the proposition that the AGM did not have the authority to impose a compulsory levy of \$6 per month on each
25 members of the association, to support the FTA Housing Scheme. It could only do so if the following prerequisites had first been complied with. First, that the matter appear specifically on the published agenda of the AGM as required under clause (23) of the Constitution. Second, that the Plaintiffs in turn empower their delegates as to how to vote on such item in the agenda so published, as required
30 under clause (50)(a) of the Constitution. The Plaintiffs claim that both clauses (23) and (50)(a) were not complied with.

It is to be presumed that, in the scheme of things as contemplated under the FTA Constitution, the purpose of publishing the agenda of the AGM not less than
35 14 days before the meeting, is not only to inform the membership of the nature of business that will be transacted, but also for the branch members to meet and discuss the items on the agenda that maybe of some interest to them. Whether the proxy that each delegate from the branch at the AGM, is authorised to cast include specific directions from the branch members on each of the items on the
40 agenda is not clear from one's reading of the Constitution. What however is clear is that clause (50)(a) quoted above, merely grants general authority to delegates to cast a proxy vote so long as authority in writing for them to do so from the branch chairman and secretary are given to the secretary-general of the FTA before the AGM. The authority, it should be noted, is not by the individual
45 members of a branch, but by its officials.

At the end, it is clear to this court, that in so far as the extent of authority given to branch delegates to the AGM from membership of the branch, the exercise of the proxy vote is in respect and on behalf of all its voting members. The branch delegates do not carry individual proxies for each of the members. This is
50 because more often than not, it is the collective position of a branch that its delegate brings onto the floor of the AGM.

There is also the requirement of clause (25) of the Constitution. It stipulates as follows:

- 5 (25) Where any change in the rules of the Union is contemplated such change maybe specifically stated in the Agenda of the Annual General Meeting or the Extra-Ordinary General Meeting.

The question is whether the imposition of the \$6 levy amounts to a change in the rules under clause (25), that would have required the matter to be specifically stated in the published agenda.

- 10 There is no definition of what constitutes a “rule” in the Constitution of the association, but it is reasonable to assume from one’s reading of the Constitution, that any mention of the term “rule” in the Constitution is a reference to its clauses or provisions. In so far as the imposition of levies, clause (9) of the Constitution dealing with monthly subscription of members, is the only provision in the document that imposes, apart from fines under clause (38), monetary contribution
15 on the members. Whether there is any intention to include the levy to the Housing Scheme as an amendment to the provisions of the Constitution or not, is not relevant for the moment, but what nevertheless is obvious, is that the levy for the Housing Scheme, did not necessarily have to be specified on the agenda since it did not amount to a change in the rules as required under clause (25).

- 20 Finally, the authority of the annual general meeting to impose additional fees, subscriptions and contributions is not denied by the parties. Clause (10) of the Constitution empowers the AGM to do so.

- 25 The gist of the Defendants’ arguments in support of their motion to strike out is firmly based on the private law rights of the Plaintiffs to pursue an alternative cause of action before seeking public law relief in the form of a declaration of their rights. The law in this area is succinctly summarised in the House of Lords decision of *Gouriet v Union of Post Office Workers* [1978] AC 435; [1977] 3 All ER 70 per Lord Wilberforce (at AC 483; All ER 85):

- 30 [In] my opinion, there is no support in authority for the proposition that declaratory relief can be granted unless the Plaintiff, in proper proceedings, in which there is a dispute between the Plaintiff and the Defendant concerning their legal respective rights or liabilities either asserts a legal right which is denied or threatened or claims immunity from some claim of the Defendant against him or claim that the Defendant is infringing or threatens to infringe some public right so as to inflict special damage on the Plaintiff.

- 35 Lord Diplock in the same case, added, (at AC 500; All ER 99):

- [The] jurisdiction of a civil court to grant remedies in private law is confined to the grant of remedies to litigants whose right in private law have been infringed or are threatened with infringement. To extend that jurisdiction to the grant of remedies for unlawful conduct which does not infringe any right of the Plaintiff in private law, is to move out of the field of private into public law with which analogies maybe deceptive and where different principles apply.

Later at AC 501; All ER 100, Lord Diplock concluded that:

- 45 Relief in the form of a declaration of right is generally superfluous for a Plaintiff who has a subsistence cause of action. It is when the infringement of the Plaintiff’s rights in the future is threatened or when, unaccompanied by threats, there is a dispute between parties as to what their respective rights will be if something happens in the future, that the jurisdiction to make declarations or right can be most usefully invoked.

- 50 In this instance, the Defendants submit that the Plaintiffs have failed to show any breach or threat of future breach of their legal rights so as to enable the court in the exercise of its discretion, to intervene. Rather, the matters and issues they

complain of and the subject of their present action, are private law matters which are within the powers of the AGM of the association to deal with.

The evidence before this court tends to support the Defendants' contentions. The subject matter of the complaint and of this action is the Housing Scheme levy imposed by the annual general meeting of the FTA. The Constitution of the association is the primary instrument that guides and decides the actions including the rights of its members. Where dissatisfaction and/or dispute arise, members may avail themselves the procedures and mechanisms within the Constitution to show their displeasure and if necessary carry out changes to the administration of their association. The same is true in the case of changes to the rules and provisions of the Constitution. From the evidence produced there has clearly not been any serious efforts to challenge and more importantly, to change the decision of the AGM of 1997 to set up the Housing Scheme and the consequent funding through a levy. Frequently according to the minutes of past meetings, motions tabled on the matter are withdrawn without reasons given, until they appear again the following year. It would have been quite different if say, the management of the FTA had refused to allow the tabling of motions seeking the change to the 1997 AGM decision.

In the end the Plaintiffs have failed to satisfy this court that they have exhausted all available alternative remedies that the rules of their organisation provide them to bring about the changes they and their supporters wish to see. It is important, that before this court exercises its discretion in allowing this or any similar action where declaratory reliefs are sought for alleged breach of rights in what essentially is a private law matter, that the remedies that are available within the organisation, in this instance, the FTA, have been exhausted and in the end the Plaintiffs remain dissatisfied. Only then will the court be in a position to consider the exercise of its discretion.

Order is made for the Plaintiffs' originating summons to be struck out.

Costs of \$400 to the Defendants.

Application granted.