

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

**CIVIL ACTION NO: HBC 253 of 2016**

**BETWEEN** : **ASHOK PRASAD** elected President and Trustee of Shree Ram Krishna Mandir and Vatuwaqa Ramayan Mandali a religious body incorporated under the Religious Bodies Registration Act of Fiji Chapter 68.

**PLAINTIFF**

**AND** : 1. **VIKASH RAJ** of 3 Miles, Nabua, Ratu Mara Road.

**1<sup>ST</sup> DEFENDANT**

2. **ASHWANT SINGH** of Kaunitoni Street, Vatuwaqa, Suva, Driver of Bank of Baroda.

**2<sup>ND</sup> DEFENDANT**

3. **VIREN SINGH** of Mali Place, Resivor Road, Suva, Taxi Driver.

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

4. **AJAY BAHADUR SINGH**, Vice President, of 7 Kahmendra Street, Vatuwaqa, middleman selling fish at Kahmendra Street, Vatuwaqa.

**4<sup>TH</sup> DEFENDANT**

5. **RAJENDRA PRASAD**, Vice President, of 2 Daya Street, Vatuwaqa, unemployed.

**5<sup>TH</sup> DEFENDANT**

6. **RAM ROOP**, Trustee of Shree Ram Krishna Mandir and Vatuwaqa Ramayan Mandali, but now resides abroad for over 20 years.

**6<sup>TH</sup> DEFENDANT**

7. **ATTORNEY GENERAL OF FIJI** of Suvavou House, Suva.

**7<sup>TH</sup> DEFENDANT**

**COUNSEL** : Mr. Sunil Kumar for the Plaintiff  
Mr. Shelvin Singh with Ms. Lynette Bali for the 1<sup>st</sup>, 2<sup>nd</sup>,  
3<sup>rd</sup> and 5<sup>th</sup> Defendants  
Ms. R. Pranjivan for the 7<sup>th</sup> Defendant

**Date of Hearing** : 25 January 2017

**Date of Ruling** : 17 July 2017

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## **RULING**

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### **Introduction and Background**

- [1] This is an application made by the Plaintiff by way of an Originating Summons.
- [2] In terms of the Summons, which was filed on 6 October 2016, the Plaintiff seeks the following Orders:
- A. An injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants by their servants and agents from appointing another President until determination of this matter/or until such time this Honourable Court may determine;
  - B. An injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants by their servants and agents from making any other decisions against the Plaintiff and his role as President and Trustee of Shree Ram Krishna Mandir and Vatuwaqa Ramayan Mandali;
  - C. An injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants by their servants and agents from registering new Trustees of Shree Ram Krishna Mandir and Vatuwaqa Ramayana Mandali in the Register of Religious Bodies and Charitable organization at the Companies Office;
  - D. Declarations that the decision of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants by their servants and agents to suspend the Plaintiff was made in breach of the Rules of Natural Justice and therefore making of the decision is null and void;

- E. That the Defendants by their servants and agents be ordered to return to the Plaintiff all the properties of Shree Ram Krishna Mandir and Vatuwaqa Ramayana Mandali including all accounts, books, money collected in its name thereof;
- F. Declaration that the meeting of 22<sup>nd</sup> May, 2016 is unconstitutional as per Shree Ram Krishna Mandir and Vatuwaqa Ramayan Mandali's Constitution and subsequent meetings and activities arising from 22<sup>nd</sup> May, 2016 meeting null and void abinito;
- G. An injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants operating the bank account of the Shree Ram Krishna Mandir and Vatuwaqa Ramayana Mandali (stopped from operating) until determination of this action;
- H. An order that the Defendants by their servants and agents complains against the Plaintiff be heard and determined at the Annual General Meeting or an Independent Arbitrator or alternatively this Honourable Court hears the allegation;
- I. If there is a serious dispute of fact then this action shall continue as if the cause or matter had been begun by Writ of Summons, with affidavit in support shall stand as pleadings in accordance with Order 28, Rule 9(1) of High Court Rules, 1988.
- J. Legal Cost at the rate of \$300.00 per hour plus disbursement and VAT;
- K. Such other Orders that his Honourable Court deems just and equitable.

[3] The Originating Summons was supported by an Affidavit deposed to by the Plaintiff Ashok Prasad.

[4] At the same time, an Ex-Parte Summons was filed by the Plaintiff, in terms of the provisions of Order 29, Rule 1 of the High Court Rules, 1988, seeking the following interim orders:

- A. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants either by themselves or by their servants, agents or otherwise howsoever be restrained from acting as the Office bearers of the Shree Ram Krishna Mandir and Vatuwaqa Ramayan

Mandali or council management meetings or any meetings and from dealing with the financial and administrative affairs of the Shree Ram Krishna Mandir and Vatuwaqa Ramayan Mandali whatsoever until further order of the Court.

B. That the Defendants pay the cost of and occasioned by this application.

- [5] The Plaintiff submitted that, at the hearing of this application, he intends to rely upon the Affidavit filed by him in support of the Originating Summons and any other Affidavit filed before the date of the hearing of this application.
- [6] Court made order for the said Summons to be made Inter-Partes and for notices to be issued on the Defendants, returnable on 13 October 2016.
- [7] When the matter came up before me on the said day, Mr Shelvin Singh submitted to Court that Notices have not been duly served on the 4<sup>th</sup> and 6<sup>th</sup> Defendants. The 6<sup>th</sup> Defendant is said to be residing overseas. As such, he was only appearing for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants. Counsel for the Plaintiff, Mr Sunil Kumar, submitted that he would be making a formal application seeking the leave of Court to have the Summons served on the 6<sup>th</sup> Defendant, outside the jurisdiction of this Court.
- [8] The Plaintiff filed an *inter-parte* Summons, along with an Affidavit in support, to serve the Summons and other documents, on the 6<sup>th</sup> Defendant outside the jurisdiction of this Court.
- [9] However, when this application was next called before me, on 21 October 2016, Counsel for the Plaintiff moved to withdraw the said *inter-parte* Summons, to serve Notices on the 6<sup>th</sup> Defendant outside the jurisdiction of this Court. He submitted to Court that the Plaintiff will be proceeding against the other Defendants.
- [10] On 4 November 2016, the 2<sup>nd</sup> Defendant filed his Affidavit in Opposition to this application. On 14 November 2016, Mr Deo Narayan (on behalf of the Plaintiff), filed an Affidavit in Answer, to the said Affidavit in Opposition filed by the 2<sup>nd</sup> Defendant.

[11] This matter was taken up for hearing before me on 25 January 2017. Both Counsel for the Plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants were heard. The parties also filed written submissions, and referred to case authorities, which I have had the benefit of perusing.

### **The Affidavit in Support filed by Ashok Prasad**

[12] The main issues that have been raised by the Plaintiff are found in the Affidavit in support filed by him in support of this application. The contents of the Affidavit, showing the very long history of these proceedings, can be summarised as follows:

1. The Plaintiff states that the Shree Ram Krishna Mandir and Vatuwaqa Ramayan Mandali (herein after referred to as the “Mandali”) is a religious body incorporated under the Religious and Charitable Bodies Registration Act of Fiji (Chapter 68).
2. He has been involved with the Mandali for over 40 years. He deposes that he is oldest member of the Mandali. His family have contributed immensely towards the growth of the said Mandali.
3. He alleges that some members of the Mandali, who are the Defendants in this action, have come together as a group and elected their own President and Committee Members. This matter has been ongoing for a long time. They have gone against the boundary zone and violated the Constitution of the Mandali.
4. He deposes that he had been elected as President and was appointed Trustee, as the incumbent Trustee was abroad for more than 20 years. Since 17 June 2013, he had held both positions.
5. The Plaintiff states that he had tendered his resignation from the post of President on 16 October 2015. However, on the following day, 17 October 2015, ten members of the Mandali wrote to him requesting him to continue as President. Surprisingly, the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Defendants were part of the group of members who requested him to continue as President.

6. However, on 22 May 2016, the Defendants suspended him illegally without following proper procedures as laid down in the Constitution. He alleges that he was not accorded his right to respond to the allegation that was levelled against him, thereby, denying him the rules of natural justice.
7. The Plaintiff deposes that he then decided to call a meeting of members to settle the differences. However, the 1<sup>st</sup> to the 6<sup>th</sup> Defendants boycotted the meeting.
8. The Plaintiff had written back to the 1<sup>st</sup> to the 6<sup>th</sup> Defendants stating that he was still the lawfully elected President and Trustee of the Mandali and as such could only be removed by an Annual General Meeting.
9. He alleges that the Defendants are continuing their illegal activities regardless of being advised by him. He is of the opinion that the decisions made at the various meetings conducted after his suspension were unconstitutional.
10. The Plaintiff states that the 1<sup>st</sup> to the 5<sup>th</sup> Defendants have staged a “coup-de-tart” against him. The reason for this according to him, was because he was constantly putting pressure on them to have the accounts of the Mandali ready so as to call for an Annual General Meeting on or before 13 June 2016, when his term as President would have expired.

**The Affidavit in Opposition filed by Ashwant Singh (The 2<sup>nd</sup> Defendant)**

[13] In the Affidavit in Opposition filed by the 2<sup>nd</sup> Defendant he submits as follows:

1. The 2<sup>nd</sup> Defendant states that he is now the President of the Mandali and that he is duly authorised by the Mandali and its members, in particular the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants, to make this Affidavit on their behalf.

2. The 2<sup>nd</sup> Defendant deposes that the Plaintiff is not the President of the Mandali. He had been interim President of the Mandali and was required to have an Annual General Meeting conducted during his Presidency so that elected members could take over the running of the Mandali.
3. He denies that the Plaintiff was the Trustee of the Mandali, nor was he ever elected to this position. Mr Ram Roop, the 6<sup>th</sup> Defendant, continues to be the sole Trustee of the Mandali.
4. He also states that the Mandali is not registered under the Religious Bodies Registration Act.
5. The 2<sup>nd</sup> Defendant further denies that the Plaintiff is the oldest member of the Mandali. He states that there are other members older than him.
6. He deposes that all new membership to the Mandali have been approved in accordance with the Constitution and in consultation with all members of the Mandali.
7. The Plaintiff was suspended on 22 May 2016. The Plaintiff was to be accorded a fair hearing, as indicated in the letter of 22 May 2016, prior to his suspension. However, the Plaintiff chose to dictate over the decision by himself, by attempting to call a meeting at his business premises to decide on the issue.
8. In July 2016, a proper election was conducted and new executive members have been elected. There is nothing illegal about calling an Annual General Meeting by the members and having new executive members appointed. Accordingly, he has been elected as the President of the Mandali, while Avichal Prasad has been elected as Treasurer.

9. Accordingly, he moves that this application of the Plaintiff be dismissed with costs.

### **Legal Provisions and Analysis**

[14] This application is made pursuant to Order 29, Rule 1 of the High Court Rules, 1988. Order 29 is reproduced below in its entirety:

*“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”.*

[15] In the case of ***Mataqali Namatua v Native Lands and Fisheries Commission (NLFC) and 3 Others*** [2005] FJCA 85 (4 March 2005); the Fiji Court of Appeal held that the principles for granting interlocutory injunctions are set out in ***American Cyanamid Co v. Ethicon Ltd*** [1975] AC 396; and which have been applied in Fiji are:

- (a) The Plaintiff must establish that there is a serious question to be tried.
- (b) The inadequacy of damages to compensate the Plaintiff by the Defendant.
- (c) If the Plaintiff satisfies the tests, the grant or refusal of an injunction is a matter for the exercise of the Court's discretion on the balance of convenience.

[16] It is clear from the annexure marked as "AP 4", which is a letter dated 22 May 2016, that the decision to suspend the Plaintiff had been taken by 17 committee members of the Mandali. It is stated therein, that the executive members of the Mandali have found out that the Plaintiff has on numerous occasions betrayed the trust reposed in him as per the Constitution of the Mandali. As such the committee, have no other option but to suspend him from participating in any executive meetings, special meetings, AGM and restricts him from signing any legal documents belonging to the Mandali.

[17] It is clear that the decision to suspend the Plaintiff was taken on 22 May 2016. In July 2016, a proper election was conducted and new executive members have been elected to the Mandali. The Plaintiff has filed this action to challenge the said decision in October 2016.

[18] It is the opinion of this Court, that from the facts and circumstances of this case, the Plaintiff has failed to establish that there is a serious question to be tried. It is also the view of this Court that the balance of convenience in this case lies firmly with the Defendants.

[19] Furthermore, the Plaintiff has failed to submit an undertaking as to damages with his application for interim injunction. The Counsel for the Plaintiff submitted that in cases such as this involving religious and charitable organizations there is no requirement to provide an undertaking as to damages. However, this Court cannot agree with this contention.

## Conclusion

[20] For the aforesaid reasons, this Court is not inclined to grant the relief prayed for by the Plaintiff in his ex-parte Summons seeking that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants either by themselves or by their servants, agents or otherwise howsoever be restrained from acting as the Office bearers of the Shree Ram Krishna Mandir and Vatuwaqa Ramayan Mandali or council management meetings or any meetings and from dealing with the financial and administrative affairs of the Shree Ram Krishna Mandir and Vatuwaqa Ramayan Mandali whatsoever until further order of the Court.

[21] Accordingly, I make the following Orders:

## ORDERS

1. The application made by the Plaintiff for an interim injunction in terms of his ex-parte Summons is refused.
2. The Plaintiff shall pay the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants costs summarily assessed at \$2500, within 30 days of this Order.

Dated this 17<sup>th</sup> day of July 2017, at Suva.



Riyaz Hamza

**JUDGE**

**HIGH COURT OF FIJI**