

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CIVIL APPEAL NO.ABU 0087 of 2019**  
**[High Court Civil Case No. 04 of 2017]**

**BETWEEN** : (1) JOHN LAL  
(2) VIRENDRA KUMAR  
(3) NILA RAO

**Appellants**

**AND** : (1) KALA WATI  
(2) SANDHYA KRISHNA  
(3) URMILA DEVI

**Respondents**

**Coram** : Guneratne, P  
Lecamwasam, JA  
Dayaratne, JA

**Counsel** : Mr N. R. Padarath for the Appellants  
Mr G. O'Driscoll for the Respondents

**Date of Hearing** : 08 November, 2022

**Date of Judgment** : 25 November, 2022

## **JUDGMENT**

### **Guneratne, P**

[1] I agree with the judgment of His Lordship Justice Dayaratne including the reasons, conclusions and the proposed orders.

### **Lecamwasam, JA**

[2] I agree with the reasons and the conclusions arrived at by Dayaratne, JA.

### **Dayaratne, JA**

[3] This is an appeal against the Ruling of the High Court of Suva dated 13 September 2019.

#### **The case in the High Court**

[4] The Appellants commenced proceedings by way of originating summons and sought the following reliefs against the Respondents;

“(a) *A declaration that the Defendants had no right or power to dissolve the Executive Board of RNP*

“(b) *That by taking such an act, the defendants are in breach of the adopted Constitution dated 3 August 2018 and the Executive Board can move to remove the Defendants from the position of Trustee pursuant to section 7.6.10 of the adopted Constitution dated 3 August 2018*”.

[5] The first Appellant filed a detailed affidavit where amongst others, he stated that they were members of the ‘Executive Board’ (of which he was the Chairman) and that the Respondents were the Trustees of a Charitable Trust by the name of Ra Naari Parishad (RNP).

[6] The original Constitution of RNP had been adopted in 2015 (2015 Constitution) and was in operation at the time of RNP’s registration as a corporate body in terms of Section 3 of the Charitable Trusts Act 1945. However, in 2018 a new Constitution (2018 Constitution)

had been adopted in place of the 2015 Constitution. Copies of the 2015 and the 2018 Constitutions have been produced along with his affidavit.

- [7] The Respondents by email sent on or about 14 June 2018 informed the Appellants that the term of the Management Board has expired and that accordingly they had dissolved it. They had further mentioned that an AGM will be called for the purpose of ‘making new or re-appointments’. They had indicated that they were taking such steps in terms of the provisions contained in the 2015 Constitution. A letter too had been attached to the said email, the contents of which were identical. This letter has been produced in the High Court and is admitted by the Respondents. (The Respondents refer to the Appellants as members of the ‘Management Board’ since there was no ‘Executive Board’ in terms of the 2015 Constitution).
- [8] The Appellants protested against this decision of the Respondents and had taken up the position that the 2015 Constitution was not applicable since it had been replaced in 2018 and that there was no provision in it for the Respondents to dissolve the Executive Board. The Appellants had in turn claimed that the Executive Board was entitled to remove the Respondents in view of their actions. The acrimony between the parties has thus created an impasse.
- [9] This prompted the Appellants to go before the High Court by way of originating summons seeking the declarations as referred to earlier.
- [10] In their ‘affidavit in opposition’ filed in the High Court, the Respondents took up the position that they were *‘not involved in the creation of the unregistered constitution’* (a reference to the 2018 Constitution) and further contended that they were not privy to any correspondence the Appellants had exchanged with donors where reliance had been placed on the 2018 Constitution.
- [11] They opposed the application of the Appellants on the basis that they had decided to dissolve the Management Board acting in terms of the 2015 Constitution since the two year term of the Management Board had expired. They further contended that they were unable

to produce the letter of appointment of the Management Board since that letter was in the office of the RNP and that the Appellants had prevented their access to the office.

### **The Ruling of the High Court**

[12] In his Ruling, the learned High Court Judge observed that “*The 2018 constitution has not been sent to the Registrar of Titles for registration in accordance with the provisions of Section 4 of the Charitable Trusts Act [Cap 67]. Therefore, the governing document of ‘RNP’ is 2015 Registered Constitution. The affairs of the ‘RNP’ and its property should be administered in accordance with the provisions of the 2015 registered constitution*” (at para 5 under the heading ‘Discussion’). He then goes on to hold that “*The Constitution adopted in 2018 is of no force or effect since it is not registered with the Registrar of Titles in accordance with the provisions of Section 4 of the Charitable Trusts Act (Cap 67)*” (at para (1) under the heading ‘Conclusion’).

[13] He also held that the Respondents had failed to establish that the term of the members of the Management Board was two years and further that in any event they could not have dissolved the Management Board on grounds of having completed their term and therefore the decision of the Respondents was ‘*illegal and void*’. He has however observed that the Respondents could have dissolved the Management Board on other grounds as morefully provided in the 2015 Constitution upon being satisfied that such grounds exist.

[14] On that basis he refused the relief sought by the Appellants.

### **The Grounds of Appeal**

[15] The grounds of appeal urged by the Appellants are as follows;

1. *That the learned Judge erred in law at paragraph 5 under the heading discussion and at paragraph 2 under the heading conclusion by holding that the constitution adopted on 3<sup>rd</sup> August 2018 was of no effect because of lack of registration when*

- i. *Section 4 of the Charitable Trusts Act did not make any specific requirement to register any changes made to a document which contained the rules and regulations of any charitable organization.*
  - ii. *The ambit of section 4 was limited to making of an application in writing, to the satisfaction of the Registrar for the purpose of creating a body corporate pursuant to section 3 of the Charitable Trusts Act, the provision did not require that all changes made to any document be resubmitted to the Registrar.*
2. *The learned Judge erred in law by holding that the constitution adopted on 3<sup>rd</sup> August 2018 was of no effect, when the entire membership of Ra Naari Parishad accepted the constitution at its annual general meeting held on 31<sup>st</sup> January 2019.*
3. *The learned High Court Judge erred in law by holding that the management Board is required to file with the Registrar of Titles any changes to the existing constitution, when the Charitable Trust Act does not provide for any such provision or requirement.*

### **Has the 2018 Constitution actually been adopted?**

[16] I will first consider ground 2 since that in my view goes to the root of the matter to be determined. This ground has been framed by the Appellants on a wrong premise. The learned High Court Judge did not decide that the 2018 Constitution was of no force or effect on the basis that it has not been accepted by the membership but purely on the ground that it has not been registered in terms of the Charitable Trusts Act (Act).

[17] In fact in arriving at that conclusion, he assumed that the 2018 Constitution has been adopted because the words used by him are ‘*The Constitution adopted in 2018 .....*’ However, the learned High Court Judge has not discussed as to how he came to such conclusion.

[18]. In the light of the objection raised by the Respondents in their ‘affidavit in opposition’ that a constitution has not been adopted in 2018, it was incumbent on the learned High Court Judge to have first inquired into that. Needless to say, if a constitution had not been properly adopted in 2018, there was no question of relying on it.

[19]. At the hearing before us, this position was put to the learned counsel for the Appellants and he agreed that this matter should have been gone into at the very beginning. In view of this ground of appeal, court also sought clarification from learned counsel for the Appellants as to what evidence his clients had placed before the High Court to establish that the 2018 Constitution had been adopted by the membership of RNP. He pointed out to paragraph 6 of the affidavit of the first Appellant where he has said; *‘This re-structure took some time to organize, however, after many discussions and drafts, RNP, on or about 3<sup>rd</sup> August 2018 adopted its current constitution. Exhibited hereto and marked with Letter “JL-1” is a copy of the said constitution and minutes of meeting’* (page 516 of the copy record). He also said that the minutes referred to therein are to be found at page 523 of the copy record. I quote below the relevant part of those minutes which is under the heading *‘Signing of the Constitution’*. It reads as; *‘Famiza Moahmmed outlined that the organization constitution was still under review by the board to ensure all elements were included. The staff were waiting upon the board to pass and approve the constitution that will take place early this year. The constitution as it currently is, was passed by the President, Damienti Reddy and Asha of Dugapatu Mother’s Club’*.

[20] The above minutes clearly reveal that the purported constitution has not even been finalized let alone being adopted. Not even the ‘board’ has approved it. This fact was then pointed out by this court to learned counsel for the Appellants and he replied that there had been no discussion thereafter about adopting the 2018 Constitution and that no evidence had been placed before the High Court to support the assertion contained in the second ground that *‘the entire membership of Ra Naari Parishad accepted the constitution at its annual general meeting held on 31<sup>st</sup> January 2019’*. He however contended that they considered

it to be adopted in view of it being applied, particularly with regard to the obtaining of funding for the Trust. When pointedly asked as to whether, the 2018 Constitution has been adopted in the manner spelt out in clause 8.1 of the 2015 Constitution, he replied in the negative and conceded that in such context, it would not be possible for the Appellants to argue that the 2018 Constitution ‘has been adopted’. I wish to acknowledge here that this court appreciates the forthrightness displayed by Mr. Padarath, learned counsel for the Appellant in this regard.

[21]. The 2015 Constitution bears out that it has been adopted on 12 May 2015 at a Special General Meeting and clause 8.0 states that *‘The organization shall be guided in all respects by its constitution to be agreed upon by all members’*. The 2015 Constitution specifically spells out the manner in which amendments can be made to it. Clause 8.1 (a) states that *‘Any amendment to the constitution shall be carried out only during the annual general meeting or a special general meeting by including the proposed amendment within the notice of meeting’* whilst Clause 8.1 (b) states that *‘The amendments shall be carried by 2/3 majority of all members present at the meeting’*. Admittedly, this procedure has not been followed in the so called adoption of the 2018 Constitution.

[22]. I do not think a lengthy discussion on the importance and effect of a constitution of any organization is required here but at the least it must be said that a constitution of an organization is the principal document that will govern the affairs of such organization and will bind its membership.

[23]. The learned counsel for the Appellants has relied on the judgment of the High Court in the case of **Singh v Reddy [2014] FJHC 724; HBC123.2011 (6 October 2014)** which makes reference to several decisions of superior courts in many jurisdictions. Whilst it appears that he places reliance on a passage therein which states that it would amount to acquiescence if rules have been followed by the members without objection for a prolonged period, I find that the more important issue highlighted in those authorities is that a constitution of any club or organization can be amended or replaced only in the manner

expressly provided for. Needless to say, such dicta would go against the clients of Mr. Padarath.

- [24]. For the reasons enumerated above, I hold that the 2018 Constitution has not been validly adopted and therefore cannot be relied upon. As such, this matter should end there and the question as to whether its registration was required in terms of the Act would not arise. However, for purposes of completeness I will consider that aspect as well since the first and third grounds of appeal have been raised in that regard.

### **Was registration required for a new Constitution in terms of the Charitable Trusts Act?**

- [25]. Section 3 of the Act deals with regard to ‘Incorporation of trust boards’ and reads as follows;

*‘It shall be lawful for the trustees or trustee for the time being of any charity for religious, educational, literary, scientific or charitable purposes, to apply to the Registrar for a certificate of registration of the trustees of any such charity as a corporate body; and if the Registrar having regard to the extent, nature and objects, and other circumstances of the charity, shall consider such incorporation expedient, he or she may grant such certificate accordingly, subject to such conditions or directions as he or she shall think fit to insert into such certificate relating to the qualification and number of trustees, their tenure or avoidance of office, the mode of appointing new trustees, and the custody and use of the common seal; and thereupon the said society or trustees shall become a body corporate under the name set forth in the certificate’.*

- [26] Section 4 of the Act spells out the manner in which such application is to be made to the Registrar and applicants are expected to provide the particulars as morefully set out in Schedule 1. The Registrar is empowered to call for any declarations or other evidence of verification if he so desires. Section 6 states that once the Registrar issues a certificate in the form contained in Schedule 2, that is conclusive evidence that the trust has been duly incorporated. That is all what Sections 3 and 4 require in registering a Charitable Trust as a body corporate.

- [27] It would be desirable to pay attention to the provisions contained in Section 29A of the Act as well. The continuing requirements to be met by a charitable trust consequent to



registration is spelt out therein. In terms thereof, every charitable trust is required, at least once every year, to make a return to the Registrar, containing names and addresses of all trustees, board members and office bearers and a copy of the audited annual accounts. This list is exhaustive and thus would not require the submission of any further documents to the Registrar.

[28] Therefore, it is clear that after the documents as required under section 4 are submitted to the Registrar at the stage of the application for registration as a corporate body, it is not incumbent on a charitable trust to submit any further documents for registration and this undoubtedly includes a constitution that a charitable trust may adopt after its incorporation. I do not think any further analysis is necessary in order to determine that issue and hence the learned High Court Judge clearly was in error when he held that the 2018 Constitution had '*no force or effect since it is not registered with the Registrar of Titles....*'. The first and third grounds of appeal therefore will succeed.

## **Conclusion**

[29] In view of my finding that the 2018 Constitution has not been validly adopted, it is clear that the 2015 Constitution will continue to govern the affairs of the RNP. The learned High Court Judge having arrived at the same conclusion albeit for different reasons, has concluded that; '*The defendant's decision to dissolve the Management Board of RNP on the basis that the term has expired was illegal and void*'. He has further observed that the Trustees may dissolve the Board of Management according to the relevant provisions contained in the 2015 constitution if the events envisaged therein are present. I am in agreement with that observation.

[30] The ultimate decision of the High Court was to refuse the grant of relief as prayed for by the Appellants. Although I have determined grounds one and three in favour of the Appellants, in view of my determination in respect of the second ground as aforesaid, the Appellants would not have been entitled to the relief they sought from the High Court.

[31] I have given my mind to Section 13 of the Court of Appeal Act as well as Rule 15 (1) of its Rules (Cap 12) and am confident that this judgment is consonant with those provisions.

**Orders of Court**

1. Appeal dismissed.
2. Costs \$2,500 payable to the Respondents by the Appellants.

Hon. Dr. Almeida Guneratne P  
PRESIDENT COURT OF APPEAL

Hon. Justice S. Lecamwasam  
JUSTICE OF APPEAL

Hon. Justice V. Dayaratne  
JUSTICE OF APPEAL

