

IN THE CO-OPERATIVE TRIBUNAL

CENTRAL DIVISION

COT 05 of 2021

BETWEEN: SATYA NAND

COMPLAINANT

AND: NASINU LAND PURCHASE CO-OPERATIVE LIMITED

COMPLAINEE

For the Complainant (Respondent): Mr. O'Driscoll

For the Complainee (Applicant): Mr. R. Singh

RULING ON MOTION TO STRIKE OUT APPLICATION

The Complainant filed his application for referring a dispute to this Tribunal on 10th June 2021 (hereinafter referred to as "the Application"). The nature of the dispute is that the Complainee did not transfer the membership of his late grandfather, Gopal, to him in person.

In the course of proceedings, the Complainee (hereinafter referred to as the "Applicant") filed a Notice of Motion and Affidavit in Support of Mr. Satya Narayan on 5th January 2022 seeking that application be struck out and/or dismissed with costs on an indemnity basis because the application is frivolous and vexatious; and the application is an abuse of process.

The Complainant (hereinafter referred to as the "Respondent") filed its Affidavit in Opposition of Mr. Satya Nand on 28th January 2022 seeking for the said Motion to be dismissed with costs. The Applicant filed its Affidavits in Reply of Mr. Satya Narayan and Mr. Rohit Dayal on 11th February 2022. The Respondent also filed an additional Affidavit of Ms. Kala Singh on 11th February 2022.

The Applicant was then granted leave to amend the said Motion by adding to that the application be struck out as it is statutory barred. The Respondent filed an Affidavit in

Response of Mr. Satya Nand on 24th February 2022. The Applicant filed its Affidavit in Reply Mr. Satya Narayan on 4th March 2022.

The Applicant's Submission

The Applicant seeks to have the Application struck out because it is statutory barred, frivolous and vexatious; and an abuse of process. In support of these grounds, the Applicant submits the following:

1. *Locus Standi*

The Respondent has no *locus standi* as he is not a member nor is he claiming through a deceased person as he does not have the authority to do so given that the Respondent is neither the Executor nor Administrator of the estate of the late member, Gopal.

2. Statutory Barred

The Application is based on a letter of nomination dated 15th July 1990, which is about 32 years ago. The letter basically says inter alia that Gopal, the Respondent's grandfather, as a member of the Nasinu Land Purchase & Housing Cooperative Society Limited with account number 140759-7 (fully paid) has transferred his membership to his grandson, the Respondent. This is the first time the letter has come to light and that there is no evidence that the Respondent followed up on the letter since 1990 to date. The said letter was certified a true copy in 2016 which the Applicant submits would mean that the letter would have been in the possession of the Respondent at all material time.

The late Gopal passed away in 1990 and did not leave any nomination and as such the membership was terminated or forfeited under the bylaws. The Applicant cannot grant membership to anyone after 32 years and therefore, the application is statutory barred.

3. Frivolous and Vexatious/Abuse of Process

The application lacks merit and is bound to fail and therefore should be struck out.

The Respondent Submission

1. *Locus Standi*

The Respondent has *locus standi* as by virtue of the said letter he was appointed by his grandfather, the late Gopal, to assume membership of Nasinu Land Purchase & Housing Cooperative Society Limited account number 140759-7 (fully paid).

2. Statutory Barred

The Respondent relies on Section 9 of the Limitation Act in saying that he is not statutory barred because as a beneficiary under a trust there was either fraud or a fraudulent breach of trust to which the Applicant was a party or privy to or to recover from the Applicant the said membership. The Respondent further states that he has equitable right and interest on the estate of Gopal by virtue of the said letter.

3. Frivolous and Vexatious/Abuse of Process

The application has merit as they have an equitable claim in the matter and that the Applicant had failed to transfer the share and interest of Gopal to the Respondent.

Law

1. Magistrates Court Act

Section 61B(4) states:

Any order, award, decision, finding, judgment or ruling made by a Magistrate in the exercise of the powers and the performance of duties and functions of any statutory tribunal under this Part, shall be enforced or implemented in accordance with the written law and any rules and regulations made therein which established that statutory tribunal, provided however if the written law and any rules and regulations made therein which established that statutory tribunal do not contain any provision for enforcement or implementation, then any such order, award, decision, finding, judgment or ruling made by a Magistrate under this Part shall be enforced in accordance with the provisions of this Act.

2. Magistrates Court Rules 1945

Order 3 Rule 2 states:

Subject to any particular rules, the court may, in all causes and matters, make any interlocutory order which it considers necessary for doing justice, whether such order has been expressly asked by the person entitled to the benefit of the order or not.

Order 3 Rule 8 states:

In the event of there being no provision in these Rules to meet the circumstances arising in any particular cause, matter, case, or event, the court and/or the clerk of the court and/or the parties shall be guided by any relevant provision contained in the High Court Rules 1998.

Order 26 Rule 1 states:

Interlocutory applications made by made by motion at any stage of a cause or matter.

3. High Court Rules 1988

Order 18 Rule 1 states:

The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

- (a) it discloses no reasonable cause of action or defence, as the case may be;*
- or*
- (b) it is scandalous, frivolous or vexatious; or*
- (c) it may prejudice, embarrass or delay the fair trial of the action; or*
- (d) it is otherwise an abuse of the process of the court;*

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

4. Co-operatives Act 1996

Section 30 states:

Transfer of interest on death of a member

30.-(1) On the death of a member a co-operative may transfer the share or interest of that member to the person nominated in accordance with Section 31 of this Act or if there is no person so nominated, to the person as may appear to the Board to be the heir or personal representative of the deceased member, or pay to such nominee, heir or personal representative, as the case may be, a sum representing the value of the member's share or other interest in the capital of the co-operative as determined in accordance with the regulations or the by-laws of the co-operative.

(2) A co-operative shall pay all moneys due to the deceased member from the co-operative to the heir, legal representative or nominee, as the case may be.

(3) All transfers and payments made by a co-operative in accordance with the provisions of this Section shall be valid against any demand made upon the co-operative by any other person.

Section 31 states:

Appointment of nominee

31.-(1) Every appointment of a nominee by any member of a registered co-operative for the purposes of Section 30 of this Act shall be made in writing signed by the member in the presence of two attesting witnesses.

(2) No member of a registered co-operative with the share capital shall be entitled to appoint more than one nominee, unless that member holds more than one share.

(3) In any case where more than one nominee is appointed by any member, the number of shares to be transferred or the exact proportion of the amount available that is to be transferred to each of these nominees shall be specified at the time of the appointment.

(4) Every appointment of a nominee shall be recorded in the register of members.

(5) For the purpose of a transfer to a nominee, the value of any share or interest shall be represented by the sum actually paid for the share or interest by the member holding it, unless the by-laws of the registered co-operative otherwise provide.

Section 115 states:

(1) If a dispute concerning the by-laws, election of officers, conduct of meetings, management or business of a co-operative arises-

(a) among members, past members and persons claiming through members, past members and deceased members;

(b) between a member, past member or persons claiming through a deceased member, and the co-operative, its Board or any other officer of the co-operative;

(c) between the co-operative or its Board and any other officer of the co-operative;

(d) between the co-operative and any other co-operative,

such dispute may be referred, after due attempts to settle the issue by local informal mediators, to the Registrar or directly to the Co-operative Tribunal constituted under Section 116 of this Act for decision.

...(3) The Registrar shall, on receipt of a reference under subsection (1) of this Section have regard to the nature and complexity of the dispute, and decide whether-

(a) to settle the dispute himself or herself; or

(b) to refer the dispute to the Co-operative Tribunal.

...(6) Where the parties to a dispute refer a case to the Co-operative Tribunal directly according to the provisions of subsection (1) of this Section the Co-operative Tribunal shall deliberate on the case and make a decision within two months and that decision shall be final and conclusive.

5. Limitation Act Cap 35

Section 2 states:

2.-(1) In this Act, unless the context otherwise requires-
des any proceedings in a court of law;

Section 9 states:

9.-(1) No period of limitation prescribed by the provisions of this Act shall apply to an action by a beneficiary under a trust, being an action-

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

Analysis

Before delving into the issues identified by the parties at the outset of this Ruling, it is fundamental to assess and determine whether this Tribunal has jurisdiction to strike out an application that was instituted under Section 115 of the Cooperatives Act. Should this Tribunal find that it possesses jurisdiction, then it will examine whether the Respondent has the *locus standi* to lodge the application to this Tribunal. It will then determine whether the application is actually statutory barred by virtue of the Limitation Act. Finally, it will assess and decide whether the application is frivolous and vexatious; and an abuse of process.

The Motion to Strike out the Application was made under Section 115 of the Cooperatives Act. However, Section 115 of the Cooperatives Act provides for general types of disputes that this Tribunal can hear and decide upon. There is no enabling power given to this Tribunal in that provision that allows for a Motion to be instituted and dealt with by this Tribunal. The broader provisions in the Cooperatives Act with its Rules and Regulations are also silent on any rules or procedure involving instituting actions by way of Motions. If there is nothing in the Cooperatives Act that gives the Tribunal power to hear Motions, in particular, then where can this Tribunal look to?

Section 61B(4) of the Magistrates Court Act provides that should the Cooperatives Act be silent on how to deal with Motions then this Tribunal shall make its decision under the provisions of the Magistrates Court Act with its rules. This means that the Tribunal maintains the same processes and offer the same, but qualified, relief under the Magistrates Court Act with its rules, which the Magistrates Court is mandated by and relies on.

Order 26 Rule 1 of the Magistrates Court Rules provides for Motions such as this and so the Tribunal will be applying this rule and other pertinent provisions when determining the issue at hand, which is, does the Tribunal have jurisdiction to hear this Motion to strike out the Application?

The Magistrates Court Rules allows for limited circumstances in which a striking out application can be entertained. First, Order 25 Rule 2 says that the Magistrates Court or Tribunal for this matter may strike out or permit to be amended any interrogatory which, in the opinion of the Tribunal, is scandalous or irrelevant, or not bona fide for the purposes of the action, or not sufficiently material, or in any other way objectionable. Secondly, Order 30 Rule 2 outlines that if the plaintiff does not appear, the court shall, unless it sees good reason to the contrary, strike out the cause, and make such order as to costs, in favour of any defendant appearing as seems just. Third, Order 30A provides that if the Tribunal is satisfied that there has been unreasonable delay in the conduct of any civil proceedings, the Tribunal may give notice to the parties to show cause as to why the proceedings should not be struck out. But the issue before the Tribunal is an application to strike out the Application because the contents raised therein are statutory barred, frivolous and vexatious; and an abuse of process. With respect, none of these meet the parameters and essence of the aforesaid rules in Order 25 Rule 2, Order 30 and Order 30A.

Does the Magistrates Court, a creature of statute and a court of summary jurisdiction possess the ability to look to the High Court Rules 1988 if the Magistrates Court Rules does not provide the needed relief? Order 3 Rule 8 assists in this regard by providing that in the event of there being no provision in the Magistrates Court Rules that meet the circumstances stemming from a particular matter then the Magistrates Court or Tribunal shall be guided by the High Court Rules 1988. However, in this matter, the relief sought is for the Application to be struck out. Strike out provisions does exist in the Magistrates Court Rules as aforementioned and explained. His Lordship Mr. Justice Amaratunga stated in the binding authority of **Land Transport Authority v Shahid Logging Supplies [2018] FJHC 1140 (30 November 2018)**

“High Court Rules can be applied in the Magistrates’ Court when there is a lacuna in the Magistrates Court Rules 1945 in terms of Order 3 rule 8 of the said rules.”

But if this Tribunal for some reason or way could still refer to the High Court Rules 1988 for guidance and application to the Motion before it, this Tribunal is still bound by a pre-emptive authority in **Chang v Primetime Properties Ltd [2022] FJHC 152; HBA29.2020 (24 March 2022)** where His Lordship Mr. Justice Seneveratne decided:

“Order III rule 8 of the Magistrates Court Rules is very clear in that the Magistrate’s Courts are only guided by the High Court Rules 1988 and it cannot be understood to mean that it

confers on the Magistrate's Court to strike out a claim relying on the provisions of Order 18 rule 18 of the High Court Rules 1988."

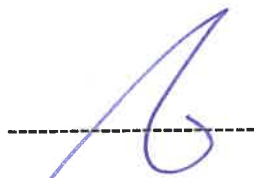
Therefore, this Tribunal cannot apply the provisions of the said Order 18 Rule 18 as it only serves as a guide.

In light of the above mentioned, the Tribunal is of the view that it does not have jurisdiction to strike out the Application.

The other issues raised by the Applicant can be determined at the substantive hearing of the Application.

Orders

1. The Notice of Motion and Affidavit in Support filed on 5th January 2022 Motion is dismissed.
2. I make no order as to costs.



Joseph Daurewa

Co-operative Tribunal

14th April 2023

