IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 144 of 2013

BETWEEN : **MELI TORA** (for and on behalf of Nadi Rugby Union, President) and **NADI RUGBY UNION**

Plaintiff

AND : **MANASA BARAVILALA** and **VILIKESA RINAVUAKA** of the Fiji Rugby Union, Chief Executive Officer and Operations Manager respectively.

First Defendant

AND : **FIJI RUGBY UNION**

Second Defendant

RULING

INTRODUCTION

[1]. This case was first called before me on Friday afternoon 09 August 2013 on the plaintiff's urgent *ex-parte* application seeking the following Orders:

(i) that the first and second defendants, their affiliates, servants and/or agents be restrained from organising or playing the sponsored Digicel Cup 2013 semi finals scheduled for Saturday 10 August 2013 at Lawaqa Park between Nadroga and Namosi Rugby Teams and the second semi final to be played on 17 August 2013 in Suva between Suva and Nadi Teams until the resolution of the dispute between the plaintiff and the defendants is amicably resolved.

(ii) that this interim order does not affect the Under 20 semi finals play offs to be held at Lawaqa Park on Saturday 11 August 2013.

(iii) that the police in Sigatoka and Central Police Station, Suva, assist in the execution of the Order.

[2]. After hearing counsel, Mr. Eroni Maopa, I refused to grant the relief sought and promised to give my reasons later. I then adjourned the case to Wednesday 14 August 2013 for mention and ordered that all documents be served on the defendants.

[3]. For the record, on Wednesday 14 August, Mr. Maopa appeared before me again for the plaintiffs and Mr. Anu Patel for the defendants. Mr. Maopa indicated in Court that his client was not pursuing any further injunctive Orders as the semi

final game between Nadroga and Namosi had been played out and that the Nadi team is now deep in preparation for the second semi final game against Suva this next Saturday 17 August 2013.

[4]. Having said that, below are my reasons for refusing to grant the interim injunction.

BACKGROUND

[5]. The plaintiff's Motion was supported by an affidavit that he swore on 09 August 2013. The plaintiff is the President of the Nadi Rugby Union (**"NRU"**).The Fiji Rugby Union (**"FRU"**) is the governing body for the sport of rugby union in Fiji. FRU comprises 36 affiliated provincial unions and associations. To develop the sport in Fiji, FRU has, over the years, organised and developed various competitions amongst the affiliated provincial unions. The Digicel Cup competition has been the main competition running at provincial level over the last two or three years. This competition is played on a round-robin basis with the top four provincial teams playing in a semi final/final series.

NRU's GRIEVANCE

[6]. NRU's grievance stems from a rugby game held on 18 May 2013 between the Nadi Team and the Vatukoula Rugby Team. That game was played as part of Round 6 of the 2013 Digicel Cup season. The game was won by Vatukoula. Immediately after, NRU lodged a complaint against Vatukoula to the FRU. Its (NRU's) point of grievance was that Vatukoula had fielded an overseas-based player without proper clearance (an official written release) from that player's overseas club. The player concerned was Seremaia Burotu, a well known Fijian player who is based in France.

FRU GAMES COMMITTEE

[7]. Pursuant to NRU's complaint, the FRU's Games Committee was to meet to hear the matter. The Committee found that the Vatukoula Rugby Union (VRU) had

not obtained any clearance for Burotu which was a breach of Rule 6.10.6 of the Digicel Cup Rules and Regulations 2013 and which also contravened the IRB player transfer requirements. The Committee concluded that Burotu was **"never eligible to take the field for Vatukoula in the match against Nadi"**. The Games Committee then ruled pursuant to Regulation 6.10.6 that the Vatukoula Team forfeit its points and then declared Nadi the winner. The Games Committee then communicated its decision to VRU vide a letter dated 20 June 2013.

Ad-Hoc TRIBUNAL

[8]. It appears that the VRU was not happy with the Games Committee's decision. The affidavit filed does not say what exactly the VRU did. All that the affidavit says is that the FRU did convene an *ad hoc* Tribunal on 25 July 2013, which Tribunal then met and overturned the ruling of the Games Committee.

NRU's REACTION (ALLEGATIONS OF "UNCONSTITUTIONALITY" & DENIAL OF NATURAL JUSTICE)

[9]. NRU's main point of grievance is that the Tribunal's decision to reverse the Games Committee's ruling cost the Nadi team its position at the top of the points table after the round robin competition. The Nadi team had to be relegated to 3rd position.

[10]. This relegation to third spot meant that, while Nadi retained a semi final position, it lost its right to host its semi final play off in Nadi. This will prove costly for NRU, as it has corporate sponsors on standby ready to support its anticipated hosting of a semi final. Tora deposes at paragraph 13:

> Since Nadi team was on top of the table after the round robin competition, we the officials and sponsors of Nadi Rugby Team were making and arranging preparation to host the first semi finals this Saturday 11 August 2013. However all our preparations are in doubt and losses are anticipated.

[11]. NRU is also most unhappy with the way the Tribunal proceeded to deal with VRU's appeal. NRU alleges that the FRU's *ad hoc* Tribunal deliberated on the issue without giving NRU an opportunity to be heard.

[12]. Also, NRU alleges that the FRU Constitution makes no provision for the convening of an *ad hoc* Tribunal in such circumstances as an "appellate" or a "review" body above the Games Committee. The NRU insists that, under the constitution, the decision of the Games Committee is meant to be final.

[13]. Meli Tora deposes that the said Tribunal:

> ....was unconstitutional and those who sat to hear complaints did not have any authority to do so. Their authority derives from the quorum in a proper constituted general meeting.

[14]. Tora also alleges that a scheduled FRU Special General Meeting for 25 July 2013 was cancelled due to lack of forum. He appears to say that a Tribunal could only have been validly constituted on the authority of a properly convened SGM.

URGENT EX-PARTE INJUNCTION APPLICATIONS

[15]. Interim injunctions are powerful remedies and not lightly granted. An injunction application may be made by a party before or after trial[1]. The application may be made *ex parte* if there is urgency. In other words, if to proceed normally (i.e. *inter partes* by Notice of Motion or Summons) would be a delay entailing irreparable or serious mischief, (see Order 29 Rule 1(2) as amended in 1991 in LN 61/91)[2]. Megarry J in **Bates v. Lord Hailsham [1972] 1 WLR 1373; [1972] 3 All ER 1019** resonated the principles as follows:

> "An **injunction** is a serious matter and must be treated seriously. If there is a plaintiff who has known about a proposal ... for nearly four weeks in detail and he wants an **injunction** to prevent effect being given to it at a meeting of which he has known for well over a fortnight, he must have a most cogent explanation if he is to obtain his **injunction** on an ex parte application made two and a half hours before the meeting is due to begin." (1380 A); and

[1] **Order 29 Rule 1(1)** of the **High Court Rules 1988**) reads:
"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 the party's writ ..."

[2] **Order 29 Rule 1 (2)** (which was amended in 1991 **– LN 61/91**) reads:
"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."

> "Ex parte **injunctions** are for cases of real urgency where there has been a true impossibility of giving notice of motion ….. Accordingly, unless perhaps the Plaintiff had had an overwhelming case on the merits I would have refused the **injunction** on the score of insufficiently explained delay alone." (my emphasis).

(see also Fiji Court of Appeal in **Fiji Public Service Association v Chetty [2005] FJCA 38; ABU0061J.2003S (4 March 2005)**).

OBSERVATIONS, COMMENTS & CONCLUSION

[16]. To succeed, Tora and the NRU must establish (i) that there are serious issues to be tried (ii) that damages would not be adequate and (iii) that the balance of convenience favours an *ex-parte* urgent interim injunction. The test is that which Lord Diplock formulated in **American Cyanamid** as follows:

> The Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.
> So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

[17]. Even if this had been an *inter-partes* hearing, there still would have been no need for me to assess where the preponderance of evidence might lie, assuming there had been a clash of affidavit evidence. I need only look at the whole case and have regard to the relative strength of the claim as well as the defence before deciding what is best done.

[18]. In this case, argued ex-parte before me, I had refused, on Friday 09 August 2013, to grant the injunction and had given my reasons verbally in Court. Below are my reasons:

(i) Nadi is still in contention for the Digicel Cup. It will play Suva in the second semi final. Had the Tribunal's decision resulted in Nadi being out of the semi finals, then, that would have justified an *ex-parte* Order to halt things in order to resolve first whether or not Nadi deserves a semi-final spot. Even if the Tribunal's decision did cost the Nadi Rugby Union to loose revenue from corporate sponsorships and/or gate takings etc, these are losses that are compensable in damages. The balance of convenience

favours not granting an injunction, in my view, as the three other unions involved in the semi finals (namely Nadroga, Suva and Namosi) were not affected by the issues between Nadroga and Vatukoula.

(ii) in light of that, it would appear to me then that all that remains of NRU's allegations concern the constitutionality or otherwise of the *ad hoc* Tribunal. For the record, I did specifically request, Mr. Maopa for a copy of the FRU-constitution on Friday 10 August at the *ex-parte* hearing. He was unable to place a copy before me. Nor does he refer to any provision of the FRU- constitution in his submissions.

(iii) without the FRU-constitution, I was unable to form a *prima facie view* that the *ad hoc* Tribunal was unconstitutional, let alone, that there is, prima facie, a serious issue to be tried, let alone, that the NRU has *"an overwhelming strong case on the merits"* (to borrow the phraseology of Megarry J in **Bates v. Lord Hailsham** (supra). Frankly, there was no concrete basis for the allegation that the *ad hoc* Tribunal sitting was unconstitutional. But even if there was, I still would have refused the injunction on *balance of convenience* considerations, as stated above.

(iv) while I do not treat lightly the NRU's allegation that it was not given a right to be heard by the *ad hoc* Committee, at the end of the day, the Nadi team is still in contention for the Digicel Cup, as stated.

(v) The allegation of being denied a right to be heard, by all accounts, is relevant in the substantive matter between the parties, but is not enough to, on its own, justify even an *inter partes* interim injunction.

.....

Anare Tuilevuka

JUDGE

15 August 2013