

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO. HBC 87 of 2014

BETWEEN : JIMILAI WAINIBALAGI *Plaintiff*

AND : REVEREND SETAREKI TUILOVONI *1st Defendant*

AND : REWA DIVISIONAL METHODIST COMMITTEE *2nd Defendant*

Counsel : Ms. N. Karan for the Plaintiff
Mr. S. Valenitabua for the Defendants

Date of Hearing : 16th April, 2014

Date of Judgment : 2nd May, 2014

JUDGMENT

[1]. Plaintiff has filed an originating summons against two defendants and sought for the following reliefs:

- a. *That the Divisional Meeting of the Methodist Church of Rewa Division to be held at Nakorovou Village on or about first or second week of May 2014 is stayed and that the said meeting if continued, to be held in another village.*
- b. *A Declaration that the present Divisional Meeting of the Methodist Church of Rewa Division that will be held at the Village of Nakorovou, Dreketi Rewa, to*

be moved to another village to avoid any confrontation or dispute among members of the village.

- c. *That the Plaintiff is requesting for the said Divisional Annual General Meeting to be held in another Village to prevent any further violent situations in the Village of Nakorovou.*
- d. *Any other order this Honourable Court deems fit.*

[2]. When the matter was mentioned before me the defendants informed that they will only file written submission as they intend to take only legal objection to the maintainability of the action. Accordingly no affidavit in opposition was filed but both counsel have filed their written submissions. The defendant filed his written submission on 10.4.14. the plaintiff was given time till 11.4.14 to file the written submissions, however, the plaintiff failed to file the written submissions on the given date but with consent of the defendant it was filed on 16.4.14.

[3]. On the day of the hearing Counsel informed that they will rely on the written submissions and made an application for court to give an order on the written submissions.

[4]. The plaintiff's counsel submitted to court that as the second defendant is not a legal entity they are not pursuing the action against the second defendant and made an application to strike out the second defendant.

Affidavit of the Plaintiff

[5]. In the affidavit in support the plaintiff among others has deposed.

- *That the plaintiff is in the village of Nakorovou in the Yavusa of Wainasue and Mataqali Wainasue.*

- *The said village is one of the five villages in the District of Dreketi in the province of Rewa.*
- *The deponent further deposes that the present chief of the Yavusa after being traditionally installed proclaimed himself to be the chief of a different Yavusa.*
- *The deponent further deposes that due to this, a division had been created and now there are two faction in the village of Nakorovou.*
- *That the church Minister in the Nakorovou village has split the church and deposes that the deponent and a small group have to exercise their rights to worship from a small shed.*
- *The deponent deposes that a letter had been sent by Talatala Quse Rewa stating that the annual divisional meeting would be shifted from the Nakorovou village unless the village reconcile and that a meeting with both disputing parties had been summoned.*
- *It is deposed that the meeting between the waning factions has not been successful.*

Determination

- [6]. I have considered the affidavit of the plaintiff, brief oral submissions of the defendant and the written submissions of both parties.
- [7]. As submitted in the affidavit in support of the summons it appears that there is an ongoing dispute in the plaintiff's village. As a result of this dispute the village is divided into two factions.

- [8]. It was submitted that the summons seeking to stay a divisional meeting of the Methodist church and an order to move the said meeting to another village is a result of this dispute between the two factions.
- [9]. The plaintiff alleges that this dispute has created a violent situation in the village and has annexed correspondence written by the plaintiff with regard to this dispute.
- [10]. The plaintiff also has submitted a police report purported to be relevant to this issue. However the said report does not show a rivalry between the members of the Yavusa.
- [11]. The defendant opted not to file an affidavit in opposition and answer the allegations but filed submissions stating his opposition is a legal opposition.
- [12]. The defendant has objected to the locus of the plaintiff to file this action or to swear an affidavit in this action. It is submitted that the originating summons is silent pertaining to the capacity, the plaintiff has instituted this action, namely whether the plaintiff is suing in a personal capacity or on behalf of the clan.
- [13]. The originating summons has been filed pursuant to the inherent jurisdiction of the court. In the supporting affidavit the plaintiff stated that he is swearing the affidavit on behalf of the members of the Yavusa Wainasue but has failed to produce any written authority or document to show he is empowered to file this action or to swear the affidavit on behalf of the Yavusa.
- [14]. The defendant objected to the locus standi of the plaintiff and submitted that the action has to fail as the plaintiff has no locus standi to file the action, and raised an opposition under Order 15 Rule 14.
- [15]. It was further submitted that if the plaintiff was concerned about the safety of the attendees to the proposed meeting, the defendants were ready to give an undertaking to get police protection.

- [16]. In replying to the opposition pertaining to locus the plaintiff submitted that this application is filed as one of the clan members of the Yavusa Wainasue and also on behalf of the other members.
- [17]. While observing that the plaintiff has the right to file this application on his own behalf court observes that if the plaintiff is filing this application on behalf of the clan members of the Yavusa, the plaintiff has failed to submit any written authority empowering the plaintiff to prosecute this action on behalf of the clan. Also the plaintiff has failed to submit any independent supporting affidavits from the other Yavusa members to substantiate plaintiff's version. The plaintiff has failed to produce any independent evidence to show that the proposed church meeting was going to cause serious disharmony among the villagers or a threat to the peace of the community.
- [18]. The plaintiff has failed to submit any evidence to show that the members of the Yavusa Wainasue has authorized the plaintiff to file this application or to show that the members of the Yavusa are of the same view as the plaintiff pertaining to the proposed meeting.
- [19]. The defendant submitted that if the intention of the plaintiff in seeking the relief sought in the originating summons is to preserve and protect the peace or to prevent any alleged communal disharmony then they were willing to take the assistance of the police force and also to ensure there is a police presence to preserve the peace during the proposed meeting. However the plaintiff's counsel submitted to court that even if the defendants get the assistance of the police force, still the plaintiff wanted to pursue with orders sought in the summons to stay the proposed meeting or to shift it to another village. At this stage it is pertinent to note that this submission creates a doubt as to the intention and the genuineness of this action.
- [20]. The defendant has submitted that there is no legal basis for this application and has challenged the plaintiff's reliance on inherent jurisdiction of the court to obtain the relief sought.

[21]. In reply the plaintiff submitted that the application is based on Order 7 Rule 2. Even though the originating summons procedure is under Order 7, I find the plaintiff has made this application pursuant to the inherent jurisdiction of court.

[22]. In view of the opposition raised, the plaintiff has failed to give any explanation as to the legal basis this application has been made or as to why the plaintiff is attempting to invoke the inherent jurisdiction of this court.

Conclusion

[23]. The plaintiff has failed to demonstrate any direct nexus between the incidents that are referred in the affidavit in support and the proposed divisional meeting of the Methodist Church.

[24]. The defendant submitted that the decision to hold the proposed divisional meeting of the Methodist Church was not taken by the first defendant but by the Methodist Church of Fiji and that they are not a party to the opposition. The plaintiff has failed to give an explanation as to why the proper parties are not being brought before court in this application. Also the plaintiff has failed to demonstrate to this court, that the decision to have the meeting sought to be stopped was taken by the first defendant or that the first defendant was the organiser of the said church meeting. The defendant submits that this action has been filed not in accordance with the provision of the Registration of Religious Bodies Act.

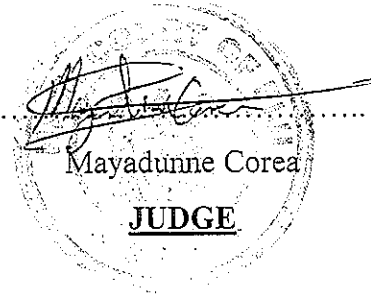
[25]. As submitted if the decision to hold the church meeting is not taken by the first defendant and if the meeting is held by the Methodist Church of Fiji, then the plaintiff obtaining any relief against the first defendant would be futile.

[26]. The plaintiff made an application to strike out the second defendant on the basis that it is not a legal entity.

- [27]. In view of the unopposed submission that the decision to hold the proposed meeting was taken by the Methodist Church of Fiji and not by the first defendant and the fact that the church was conducting the said meeting, I hold that the plaintiff has failed to satisfy this court as to the relevance of seeking the orders in the summons against the first defendant.
- [28]. In the absence of any explanation to this submission from the plaintiff this court is inclined to accept the defendants' opposition to this issue.
- [29]. The plaintiff has failed to establish any nexus between the possible confrontation or dispute among members of the village and the proposed divisional meeting of the Methodist Church.
- [30]. As a settlement when the defendants' counsel gave an undertaking to have the police presence at the meeting to avoid any fears of a possible confrontation the plaintiff submitted, that whether the police presence was there or not the plaintiff wanted to pursue with the originating summons. This creates a serious doubt as to the intention and the genuineness of the application.
- [31]. Plaintiff has failed to satisfy court as to the requirement of having the proposed meeting moved to another village.
- [32]. As per the plaintiff's own affidavit in support the apparent dispute between the factions of the village had commenced with the appointed Chief of Yavusa Wainasue allegedly proclaiming himself as the Chief of Yavusa Vuniyavu.
- [33]. The plaintiff has failed to adduce any independent evidence to show the nexus between the said dispute and the proposed divisional meeting of the Methodist Church.
- [34]. For the above stated reasons the plaintiff has failed to satisfy court to obtain the reliefs sought in the originating summons dated 27.3.14 and the court is not inclined to grant the said orders.

[35]. Accordingly I make following orders:

- a. *The name of second defendant is struck out from the originating summons.*
- b. *The originating summons dated 27.3.14 is dismissed and struck out.*
- c. *Cost summarily assessed at \$600 in favor of the first defendant.*



02.05.2014