

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 157 of 2012

BETWEEN : **VATURU TIKINA INVESTMENTS LIMITED** a limited liability company having its registered office in Sabeto, Nadi.

PLAINTIFF

AND : **ULAIYASI NAVOSA** and **ULAIYASI DEMESI** both of Vaturu Village, Nadi, Farmers, Retired.

FIRST DEFENDANTS

AND : **MITIELI DOIDOI** and **ISAIA RAVAELE** and **PENIONA SENIANITU** all of Vaturu Village, Nadi, Farmer.

SEOND DEFENDANTS

R U L I N G

BACKGROUND

1. In the itaukei socio-political structure, a group of neighboring villages or *koro* will congregate to form a *tikina* which, in effect, is a sub-district. One such *tikina* in the district of Nadi is the one known and registered as Vaturu.
2. Some years back, Vaturu *tikina* did set up a limited liability company, namely the Vaturu Tikina Investments Limited (“VTIL”) to be the vehicle for various school and church projects that the *tikina* was committed to. With that purpose in mind, VTIL invested with Fijian Holdings Limited (“FHL”) and also with Amalgamated Telecom Holdings Limited (“ATHL”). The idea was to apply the returns from these investments towards meeting the *tikina*’s commitments.

ABOUT THIS CASE

3. The plaintiff company sues the defendants alleging that between 2005 to 2007, they acted in concert with the first named first defendant, Ulaiyasi Navosa, in orchestrating various illegal moves to put them at the helm of VTIL. It is alleged that, once they achieved that, the defendants then abused their position to benefit personally at the expense of VTIL. In

doing so, they acted in breach of their fiduciary duties as directors of VTIL¹.

4. Before me, is a Notice of Motion by the plaintiff company seeking the fully orders:
 - a) An order by way of injunction that the Defendant forthwith return all assets and documents of Plaintiff and in particular the Defendant's steel cabinet, common seal, letterheads, receipts, letters sent and received and statements of accounts from Fijian Holdings Limited, Amalgamated Telecom Holdings Limited, Cane Farmers Co-operative Savings and Loans Association Limited, Westpac Banking Corporation, Merchant Finance and other accounts relating to repair and running of Toyota Hilux registered number ES470 until further order and the Police to assist in the enforcement of this order.
 - b) An order by way of injunction restraining the Defendants from representing in any manner howsoever that they are Directors or authorized officers of the Plaintiff in any manner whatsoever until further order.
 - c) An order by way of injunction that the Defendants provide accounts of income earned from their utilization of Toyota Hilux registered number ES470 and disbursements of such income until further order.
 - d) Costs of this application be in the cause.

¹The full particulars of the allegations as set out in paragraph 10 (i) to (vi) of the statement of claim:

10. In breach of their said fiduciary duties the First Defendants in a period of 26 months from 2005 to 2007;
 - (i) Took possession of Plaintiff's assets in the possession of Plaintiff's then Treasurer Iliaseri Rasaro being one steel cabinet with all its contents of Plaintiff's documents including Plaintiff's letterheads, common seal and cheque books.
 - (ii) With such items operated the Plaintiff's business with no consultation with other Directors by operating Plaintiff's Westpac Bank account and using money therefrom, used Plaintiff's letterheads to transact with Fijian Holdings and ATH.
 - (iii) Purported to appoint Apisalome Sausau to hold positions in the Plaintiff as Managing Director, first named Second Defendants as Chairman, second named Second Defendant as Secretary and third named Second Defendant as Treasurer.
 - (iv) Changed the name and style of Plaintiff's account with CCSLA from "Vaturu Tikina Investments Limited" account to Ulaiyasi and Others Vaturu Tikina Investments Limited" and drew out monies from such account with first named First Defendant, first named Second Defendant, second named Second Defendant signing withdrawals from such account.
 - (v) Bought a Toyota Hilux registered number ES470 in Plaintiff's name under Bill of Sale to Merchant Finance with two monthly payments paid in advance from the Plaintiff's account with Westpac Bank including other costs like insurance and bill of sale costs.
 - (vi) From or about October 2005 diverted dividends from Fijian Holdings to Merchant Finance to pay off bill of sale installment payments on the said vehicles and used income from the said vehicle for their own use.

PLAINTIFF'S CASE

5. According to the affidavits filed by one Letia Nasaku for the plaintiff company, Ulaiyasi Navosa (1st defendant) was secretary of VTIL. At some point when VTIL's Treasurer became sick (now deceased) Navosa took possession of some company assets that used to be in the possession of the Treasurer. The items he took were, a steel cabinet together with all VTIL documents contained therein, VTIL letter heads, VTIL common seal and VTIL cheque books.
6. Once he took possession of these items, Navosa then began to run VTIL without any involvement of the other Directors. It is alleged that he operated VTIL's Westpac Bank and used VTIL letterheads on certain transactions with FHL and ATH. It is also alleged that he used money from VTIL's Westpac Bank account. This, he was able to do by, to quote from the first affidavit sworn by one Ilaitia Nasaku for the plaintiff:

.....[changing] the name of the CCSLA account into the name and style of "Ulaiyasi and Others Vaturu Tikina Investments Limited" and drew out the monies in such account. Ulaiyasi Navosa (1st named Defendant), Isaia Ravaele (2nd named Defendant), and Peniona Senianitu (5th named Defendant) were signing the CCSLA account for withdrawals. Attached marked "LN 1" is a true copy of a CCSLA statement showing such style and name.
7. Navosa then formed a new committee. He appointed four other new Directors namely Apisalome Sausau as Managing Director, Isaia Ravaele (4th defendant) as Chairman, Peniona Seanianitu as Secretary and Mitieli Doidoi (2nd defendant) as Treasurer.
8. Then, in a move to gain support and validation, Navosa took it upon himself to inform (and account to?) the *Lotu ni Turaga ni Yavusa* (a church gathering of all male-members of the Yavusa), that VTIL would purchase a vehicle. The vehicle was to be used for hire to transport food produce from the village plantations to the markets. And the debt was to be paid off from income earned through that service.
9. Nasaku further deposes that:

The registered Directors of the company were not informed of this except the 3rd Defendant who had joined them.

10. Nasaku says that Navosa then bought a Toyota Hilux registered number ES470 on 02 May, 2005 in the name of VTIL under bill of sale to Merchant Finance with two monthly payments paid in advance from VTIL's account with Westpac Bank including insurance and bill of sale costs. Later, after that purchase, Nasaku brought the vehicle to Nagado Village where he then told the three surviving Directors who were not part of his group that they had been replaced and a new committee from his group was to operate the company henceforth.
11. According to Nasaku, Navosa, upon query, denied that VTIL funds was used to purchase the vehicle.
12. Nasaku says that VTIL's dividends from FHL has been \$6,054.00 per year. But all this is now being redirected entirely towards paying off the VTIL debt to Merchant Finance while income from the vehicles is applied for Navosa's own personal use. In other words, the returns on that investment is not being applied towards the purposes of VTIL.
13. According to Nasaku, at a shareholders' meeting of 05 July 2007, a resolution was passed to terminate the **"2nd and 3rd named Defendantsfrom their position as Directors as well as 2nd, 4th and 5th from their purported Directorship"**. A new list of Directors was then filed with the Registrar of Companies as chosen from each Yavusa in the district of Vaturu. However:

.....the Defendants continued to use company letterhead in their possession as well as the company common seal by writing to the Manager CCSLA by letter dated 7th August, 2007 that only they be treated as directors of the company. Attached marked "LN4" is a true copy of said letter. We however managed to persuade CCSLA that we were the registered Directors of the company and the name of "Ulaiyasi and Others" were deleted from the company account and the company name is now on the CCSLA account.

....the only company asset released by Defendants to us was the said vehicle and they refused to hand over to us the other company assets they took possession of from the said deceased company treasurer despite court order given by the Nadi Magistrate Court when we took proceedings against them on 19th November 2007.

....the Defendant are still saying in the village that they have authority as Directors as they are still receiving statements and the key to the company Box 252 at Sabeto Post Office is still in their possession.

WHAT THE DEFENDANTS SAY

14. Ulaiyasi Navosa's affidavit sworn on 08 November 2012 asserts that he is still the proper and lawful director of VTIL. He admits he was the secretary of VTIL but denies the allegations by Nasaku. He says whatever he did after the passing of the late former treasurer of VTIL was lawful as, to use his words, "**reflected in the minutes of that period**". He asserts that all decisions and actions were taken with the consent of, and after consultation with, the other directors of VTIL.
15. To explain the allegation that he and his supporters changed the VTIL account for their benefit, Navosa says:
-apart from admitting that we were the named signatories but the same was as Trustees for the plaintiff company as was the requirement of the bank and we were required to comply with their procedure and we did not bring about this change on our own and all payments from this account was for the plaintiff and Vanua and not for ourselves personally.
16. Concerning the purchase of the vehicle, Navosa deposes:
- "...that I personally purchased the vehicle ES 470 as stated in paragraph (10) of the deponents affidavit as the same was approved by the Directors (and the same is minuted) and was only purchased after consultation with members of the Vanua.
-as to the contents of paragraph (11) of the said affidavit I dispute the same and state that we informed all the Directors and members of the Vanua that the vehicle was bought without a deposit and that installment payments would be made from income earned through use of the vehicle on commercial basis and that if necessary supplemented from fundraising and the funds received from the cane tonnage contribution and the same was also supported by the Turaga ni Yavusa and shareholders.
17. To explain why dividends from FHL investments were being diverted to Merchant Finance, Navosa deposes:
- the portion of the income earned through Fijian Holdings was diverted towards payment of installments on the vehicle as it was in the garage for repairs and income was not being earned and merchant finance required the arrears to be paid and this was our last resort and was agreed by all as the purchase of the vehicle was a decision of the Vanua and it is denied that we at any time used the income from the vehicle of the vehicle for our personal use.
18. On the purported 05 July 2007 shareholder's meeting which passed a resolution to terminate his and others' directorships, Navosa deposes:
4.I admit that a meeting as stated in paragraph (14) of the said affidavit was held but that the meeting was unlawful and improper and not in line with the

Memorandum and Articles of Association of the plaintiff and therefore all proceeding conducted therein is illegal and unlawful.

19. Navosa denies that Nasaku and his friends are the lawful directors of VTIL:
5.I dispute the claim by the deponents that they are the lawful Directors of the plaintiff and state that we have always requested the deponent and his group that disputes can be resolved through a proper Annual General Meeting of the plaintiff but the deponent and his group have instead chosen to litigate wasting the funds and resources of the plaintiff and the Vanua knowing full well that they lack mandate from the majority of the shareholders of the plaintiff.

AFFIDAVIT IN REPLY OF LETIA NASAKU

20. In his affidavit in reply sworn on 25 January 2013, Nasaku asserts that he is a director and the current chairman of VTIL. The particulars of directors of the company filed with the Registrar of Companies proves that he was so appointed on 26 January 2010. He maintains that, at no time did the Board ever authorize Navosa to take the items into his possession.
21. On the formation of a new committee and appointment of new directors, Nasaku deposes that:
- “....no minutes were ever read to us as members of Board of Directors and voted on as true record of meetings of our Board of Directors that allowed formation of a new Committee nor appointment of new Directors.
22. On Nasau’s explanation that the Bank requires the names of the trustees to be placed before the company name in the Accounts, Nasaku deposes”
- “....no Bank or CCSLA requirement has been given to us as Directors to change the name of the account to “Ulaiyasi and others “as a name in front of plaintiff company’s name nor has Ulaiyasi Navosa exhibited such a requirement in the affidavit.
23. On Navosa’s allegation that he and his friends are lawful directors, Nasaku deposes:
- “....the “Directors” referred were not properly appointed nor registered as Directors in Companies Office in Suva.
1. That paragraph 13 of the Affidavit is denied:
- a) We are the Directors registered with Registrar of Companies were not informed.
The First named defendant had acted with people he called “Directors” appointed by himself.

- b) The Vanua is Tikina of Vaturu and consists of villages of Nagado and Natawa and decisions at Vanua level consists of meeting of this two villages and eight Yavusa involved in the formation of plaintiff Company. No such Tikina meeting was called nor consent given to vehicle purchase.
- c) This is also the first time for me to hear of such information being given which is denied.

24. On the allegation that the Vanua had endorsed the purchase of the vehicle and the diversion of the FHL dividends towards the resulting debt with Merchant Finance, Nasaku deposes:

"... the Vanua never decided that Fijian Holdings dividend be used for the payments of arrears to Merchant Finance. The deponent of the Affidavit never annexed any minute of shareholders nor our minutes as Directors of the Plaintiff Company to agree to diversion of said dividends.

...I refer to Annexure "LN2" of my earlier affidavit of First Defendant's instructions to Fijian Holdings to channel May dividends in 2006 to Merchant Finance. From 2006 to 2010 no dividend came from Fijian Holdings to Plaintiff's Westpac account as they all went to Merchant Finance from 2006 to 2010. The Fijian Holdings dividend was \$6054.00 per annum and the last payment of dividend to Plaintiff of \$6054 was on 2nd November, 2005. Attached marked "LN5" is a true copy of Plaintiff's Bank account with the deposit of said sum highlighted in yellow. The first payment of \$6054.00 to Merchant Finance was on 28th April, 2006 with 9 nine payments of such sum from 1st November, 2006 to 4th May, 2010. Attached marked "LN6" is a true copy of Merchant Finance statement of account in Plaintiff's name.

25. To reassert the validity of the 05 July 2007 shareholders' meeting and in defence of the resolution passed therein to remove the defendants as directors of VTIL, Nasaku deposes:

"...the extraordinary general meeting of the Plaintiff was convened by three Directors of Plaintiff. As allowed by the Articles of Association of Plaintiff which required only one Director to convene such a meeting. It was myself, Josua Vunibuka and Aminio Nasea who convened the meeting in accordance with Articles of Association of Plaintiff. Attached marked "LN7" are pages 16 to 22 of articles of Association of Plaintiff. The Deponent of the Affidavit was present and resigned as Director and Secretary.

- 2. That as to paragraph 20 of the Affidavit the matter cannot be sorted out at Vanua level. The shareholders have met in the Special General meeting of shareholders on 5th July, 2007 where the deponent of the affidavit resigned and Court assistance is sought.

24. Nasaku also filed a supplementary affidavit which he swore on 20 May 2013. In this affidavit, he further clarifies why he says that the defendants were never lawfully appointed as directors:

- 2. That as to paragraph 2 of the supplementary affidavit none of the persons purporting to be the Director in Annexure UN1 of the supplementary affidavit

was ever registered with the Registrar of Companies as a Director except for Demesi Ulunisau.

- a) This Demesi Ulunisau was later decided by the Board of Directors to be dismissed with Demesi Ulunisau and their Yavusa to appoint replacement as well as for deceased Asalusi Dawai and Peniona Senianitu.
- b) Demesi Ulunisau was replaced by Laisenia Leanakuru whose name as a Director is registered with the Registrar of Companies today.
- c) Asalusi Dawai was replaced by Irami Vonowale who is registered with Registrar of Companies today.
- d) Peniano Senianitu was replaced by Aporosa Namaqa who is registered with Registrar of Companies today.
- e) Ulaiyasi Navosa the deponent of the supplementary affidavit was replaced by Jone Nagaisauwai who is registered with Registrar of Companies today.

25. According to Nasaku, eight *yavusas* own YTIL, each of which *yavusa* appoints its own representative to the Board of Directors. Nasaku says that Navosa's Annexure UN3 only makes reference to three purported Directors but says nothing of other Yavusa representatives.

26. Nasaku further says :

3. That Jone Nagasauwai is a Director of Plaintiff Company registered with Registrar of Companies and is also Turaga ni Yavusa Noi Tubai. I am member of Yavusa Nanuku and represent it on the Board of Directors registered with Registrar of Companies.
4. I am one of the Directors registered with Registrar of companies. All of us registered with Registrar of Companies were appointed by our own individual Yavusas. The Defendants were not so registered at the time we the registered Directors took possession of motor vehicle ES470 with assistance of law enforcement agencies. The registered Directors of the Company are entitled to control of the Plaintiff Company.

SUPPLEMENTARY AFFIDAVIT OF ULAIYASI NAVOSA

25. The supplementary affidavit of Ulaiyasi Navosa sworn on 06 May 2013 deposes as follows:

1. That I was the Managing Director of the Plaintiff Company and was duly authorized by the other 6 Directors being the majority of the Directors of the Plaintiff Company to make and swear this Affidavit on behalf of the Plaintiff Company. (Annexed herein and marked with letter "UN1" is a copy of authority from other 6 Directors.)
2.
3.
4. That I was appointed as the Managing Director of the Plaintiff Company in a Directors meeting held at Nagado Village on 5th August, 2000. (Annexed herein and marked with letter "UN3" is a copy of the Notice of Change of Directorship.)

5. That sometimes in September, Jone Nagasauwai formed a disgruntled group purporting to represent the Plaintiff in the action herein and called a meeting between the Board of Directors of the Plaintiff Company and the general public of Vaturu at the Nagado Village Community Hall. The then Board of Directors of the Plaintiff Company attended the meeting wherein I explained in detail the operations of the Plaintiff Company with supporting evidence in order to substantiate my report.
6. The Plaintiffs present purported directors have forcibly taken over control of the Plaintiff Company holding themselves out as Plaintiffs representing the people of Vaturu and forcibly seized the motor vehicle ES 470. The then Board of Directors of the Plaintiff Company including myself felt threatened and decided to hand over keys to the persons holding themselves out as representing the Plaintiffs in order to avoid confrontation and conflict.
7. That on or about 26th September, 2005 a meeting was arranged by the then Board of Directors of the Plaintiff Company at the Nagado Village Community Hall wherein I explained to the people of Vaturu who attended in majority in respect of the operation and the purpose of the Plaintiff Company. At the end of the meeting the majority of the people of Vaturu supported the Board of Directors of the Plaintiff Company and the persons purporting to represent the Plaintiff Company had to return the vehicle ES 470 to the Board of Directors as they could not substantiate their claim against the Board of Directors and myself. We assured the members that we would act in the best interest of the shareholders.
8. That the Board of Directors then convened a meeting and had fresh elections on the following day wherein I was again appointed as the Managing Director, Peniona Seniyaitu as Secretary, Mitieli Doidoi as Treasurer and Viyagoivaitu, Tubai Rabaraba and Yalatina as Trustees.
9. That it was unanimously agreed amongst the Board of Directors that the vehicle ES 470 continued to be in my possession as Managing Director.
10. That sometimes in April, 2006, the disgruntled group with the assistance of the Corporal 954 Taniela of Sabeto Police Station illegally and unlawfully seized the vehicle ES 470.
11. That on 27th April, 2006 the Defendants as the lawful group then representing the Plaintiff Company instructed its Solicitors Messrs Pillai Naidu & Associates to issue a Notice to the Sabeto Police Station for the release of the vehicle ES 470. (Annexed herein and marked with letter "UN4" is a copy of the letter from the Solicitor for the Plaintiff to Sabeto Police Station which was also copied to the Commissioner of Police and Divisional Police Commissioner Western).
12. That the vehicle ES 470 was returned to me as in the capacity of the Managing Director of the Plaintiff Company after the Police determined that the Defendants had no rights to the same.
13. That on the 1st day of May 2006, the Defendants as the persons in control of the Plaintiff Company again instructed its Solicitors requesting for the reasons as to why the vehicle ES 470 was seized. (Annexed herein and marked with letter "UN5" is a copy of the letter.)
14. That again sometimes in June, 2007 the disgruntled group purporting to be the Plaintiffs with assistance of a Military Officer namely Tomasi Misipeka illegally seized the vehicle from me.
15. That on the 31st day of July, 2007 the Defendants as the lawful representatives of the Plaintiff Company instructed its Solicitors to write a letter for the release of

the vehicle to the Complaints Section of the Fiji Military Forces. (Annexed herein and marked with letter "UN6" is the said letter.)

16. That the vehicle ES 470 was not returned to the Plaintiff Company and/or to me as the Managing Director and then the Plaintiff again on the 9th August, 2007 instructed its Solicitors to write to the Complaints Section of the Fiji Military Forces for their intervention in respect for the release of the vehicle ES 470. (Annexed herein and marked with letter "UN7" is a copy of the said letter.)
 17. That Maciusela Susu No.II the Director of the Plaintiff Company instructed his Solicitors Messrs Suresh Verma & Associates and Messrs Puamau Law requesting me to release the Plaintiff Company's Stationaries and other items including cheque, deposit book and chart books. (Annexed herein and marked with letters "UN8" and "UN9" is a copy of the letter from Messrs Suresh Verma & Associates dated 27th August, 2007 and a copy of the letter from Messrs Puamau Law is dated 26th August, 2007.)
 18. That on 4th September, 2007 my Solicitor Messrs Pillai Naidu & Associates replied to Maciusela Susu No. II's allegation against me to his Solicitors Messrs Puamau Law. (Annexed herein and marked with letter "UN10" is a copy of the said letter.
 19. That the vehicle registration number ES 470 was purchased for the benefit of the people who are the shareholders of the company.
 20. That the vehicle ES 470 was under hire purchase agreement between Merchant Finance and the Defendants as members of the Plaintiff Company. (Annexed herein and marked with letter "UN11" is a copy of the hire purchase agreement.)
 21. That the Plaintiffs have sold the vehicle ES 470 to a third party for \$1000.00.
 22. That I believe that the purported new Directors and Members of the Company Plaintiffs main purpose was to collapse the Company which was formed as investment for the future generation of Tikina of Vaturu.
 23. That the purported new Directors and new members of the Company are after shares that are in Fijian Holdings Limited which presently worth more than \$250,000.00. Annexed herein and marked with letter "UN12" are copies of Certificate of Shares.
26. On 09 July 2013, Nasaku filed another supplementary affidavit which he swore on 08 July 2013 and in which he annexes searches from the Registrar of Companies which confirm :
1.
 2. That the defendants who are purported directors of the plaintiff are not duly registered with the Registrar of Companies. That a company's search was conducted by my solicitor's agent in Suva and a copy of the result of such search was sent to my Solicitors on 08/07/13 but has not been stamped with the seal of the Companies Registry. (Annexed herewith marked "LN1" is a true copy of the list of Directors duly registered with the Companies Registry)
 3. That in the minutes of a meeting on the 5th of July, 2007 recorded in the I-Taukei language outlines that Ulaiasi Navosa would be relieved of his duties and that he would provide a resignation letter. It was also noted in the same meeting that Ulaisi Demesi, Mitieli Doidoi and Isaia Ravaele would be relieved of their duties. (Annexed herewith marked "LN2" is a true copy of the minutes of meeting on the 5th July, 2007.

4. That in a Meeting Resolution on the 10th of September, 2007, it was agreed that Ulaiasi Navosa would be terminated due to his abuse of authority in running the company. Annexed herewith marked "LN3" is a copy of such Meeting Resolution signed by eligible members of **VATURU TIKINA INVETSMENT LIMITED**.

CERTIFIED TRUE COPY OF PARTICULARS OF DIRECTORS & SECRETARY

27. There is before me a supplementary affidavit filed by one Taraivina Ranadi Biu for the plaintiffs which annexes an extract of a Particulars of Directors and Secretaries for VTIL and which has been certified true by the Registrar of Companies and which appears to me to be the latest lodged at the Registrar of Companies Office for VTIL. The said document records the following:

| Name | Any former Forename or Names and | Nationality | Postal Address | Business Occupation and particulars of other directorships | Date of Birth | Changes |
|--|----------------------------------|--------------|------------------------------|--|---------------|-------------------|
| Peiona Seniyatu Nagado Village Vaturu | | Fiji Citizen | P O Box 243, Sabeto, Nadi | Villager | - | (Deceased) |
| Ulaiyasi Navosa Nagado Village Vaturu | | Fiji Citizen | P O Box 243, Sabeto, Nadi | Villager | - | Resigned 28/02/06 |
| Iliaseri Rasaro Nagado Village Vaturu | | Fiji citizen | P O Box 243, Sabeto, Nadi | Villager | - | (Deceased) |
| Letia Nasaro Nagado Village Vaturu | | Fiji citizen | P O Box 243, Sabeto, Nadi | Villager | - | |
| Josua Vunibaka Nagado Village Vaturu | | Fiji citizen | P O Box 243, Sabeto, Nadi | Villager | - | |
| Demisi Ulunisau Nagado Village Vaturu | | Fiji citizen | P O Box 243, Sabeto, Nadi | Villager | - | |
| Laisenia Lenakuru Nagado Village Vaturu | | Fiji citizen | P O Box 243, Sabeto, Nadi | Villager | - | |

COMMENTS

28. Generally, a company may sue an erring director if it has suffered some loss. And if a director has made some personal profit, he or she may be compelled by a Court Order to surrender that gain to the company. Certainly, a director who takes property belonging to a company is duty bound to return the property to the company. In that regard, the company

may seek an injunction to stop the director from carrying out or continuing with the breach or even restore the company's property.

29. In this case, the proceedings have been instituted in the name of VTIL by some persons who purport to constitute the current board and who rely on their purported power of management to enforce VTIL's right. Although the defendants do question the validity of their appointments, these persons instituting the claim in the name of VTIL are, according to official records kept at the Registrar of Companies, namely the current Particulars of Directors and Secretaries duly appointed directors.

30. **Section 202 (1)** of the Companies Act (Cap 247) requires every company to keep at its registered office a register of its directors and secretaries.

202.-(1) Every company shall keep at its registered office a register of its directors and secretaries.

(2) The register shall specify, with respect to each director, his present forename and surname, any former forename or surname, his postal address, his nationality, his business occupation, if any, particulars of all other directorships held by him and, in the case of a company subject to section 187, the date of his birth.....

31. **Section 202(4)** obliges the company to deliver to the Registrar of Companies for registration a return containing the particulars of its directors and secretary.

(4) The company shall, within the periods respectively mentioned in subsection (5), deliver to the registrar, for registration, a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change.

32. Section 385(3) of the Company Act provides that a copy of or a certified extract of any document kept and registered at the Registrar of Companies shall, in all courts be received as prima facie evidence of the facts stated therein and for the purposes of this subsection a person who appears from any return so lodged to be a director or secretary of a company shall be deemed to continue as such until by a subsequent return so lodged or by a notification of change in the prescribed form so lodged it appears that he has ceased to be such a director, manager or secretary.

385.-.....

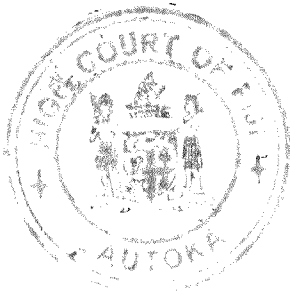
(3) A copy of, or extract from, any document kept and registered at the office of the registrar, certified to be a true copy under the hand of the registrar (whose

official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible as prima facie evidence of such documents or extract, as the case may be, and of the matters, transactions and accounts therein recorded

33. I accept the plaintiff's evidence with regards to the current management position of VTIL as set out in the certified extract of the Particulars of Directors and Secretary (see paragraph 27 above) as prima facie evidence of the matters, transactions and accounts recorded therein in accordance with section 385(3) of the Company Act. I note that with the exception of the 1st defendant, namely Ulaiyasi Navosa who is on record to have resigned as director of the VTIL on 28 February 2006, none of the other defendants' names appear on the official document in question.

CONCLUSION

34. For the above reasons, I accept the evidence of the plaintiff and grant Order in Terms of the application. I award costs in favour of VTIL which I summarily assess at \$1,000-00 (one thousand dollars) to be borne and shared equally by all defendants). Case is adjourned for mention to Friday 27 June 2014 at 10.30am.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

.....
Anare Tuilevuka
JUDGE
13 June 2014.