

**IN THE HIGH COURT OF THE REPUBLIC OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 64 OF 2014**

**BETWEEN** : **ABDUL RAHIMAN ALI** and **MOHAMMED IMTIAZ** and  
**MOHAMMED HARUN** of Nadi, Fiji, former Committee  
Members of Nadi Airport Islamic Society.

**Plaintiff**

**AND** : **MOHAMMED JAMAL** of Martintar, Nadi, Fiji, Chairman  
of Trustees, Nadi Airport Islamic Society.

**1<sup>st</sup> Defendant**

**AND** : **HAJI ROSHAN ALI** and **HAJI MOHAMMED AIYUB**  
**KHAN** of Martintar, Nadi, Fiji, Trustees of Nadi Airport  
Islamic Society.

**2<sup>nd</sup> Defendant**

**Counsel:**

Mr S Faizal Koya for the plaintiff  
Ms L Tabuakuro for the defendant

**Date of Hearing** : 8 August 2014  
**Date of Ruling** : 17 November 2014

**R U L I N G**

**Introduction**

[1] This is an application for discovery.

[2] By summons for discovery filed on 11 June 2014 ('the application') plaintiff seeks the following orders:

1. *That the defendants do within 14 days disclose by affidavit copies of Minutes of the Special General Meeting held on the 16<sup>th</sup> day of February 2014 and/or Special General Meeting held after 30 days from the time the Executive Secretary received the request and if the Defendants have parted with them, when they parted with them and what has become of them.*
2. *That the defendants do within 14 days disclose by affidavit copy of the Notice published by the Executive Secretary that a Special General Meeting will be called after 30 days from receiving the request and if the defendants have parted with them, when they parted with them and what has become of them.*
3. *That the defendants do within 14 days disclose by affidavit copy of the document raising the issue of a Special General Meeting to be called by the full financial Members and if the Defendants have parted with them, when they parted with them and what has become of them.*
4. *That the Defendants do within 14 days disclose by affidavit copy of the amended constitution and if the Defendants have parted with them, when they parted with them and what has become of them.*
5. *That the Defendants do within 14 days thereafter make available such documents or copies of them for inspection on behalf of the Plaintiff.*
6. *That the Defendants do file and deliver interrogatories and that the Defendants do answer the interrogatories in the form annexed to the affidavit of Mohammed Imtiaz by affidavit by filing and serving a copy thereof to the Plaintiffs within 14 days from the service of the Order to be made hereon.*
7. *That the Defendants do pay costs of this application.*

[3] The application accompanies affidavit of Mohammed Imtiaz sworn on 9 June 2014 ('the supporting affidavit').

[4] This application is made pursuant to Order 24 of the High Court Rules 1988 and the inherent jurisdiction of this Court. It is to be noted that the application does not state which rule of O.24 it has been filed under.

[5] Defendants oppose the application. They filed an affidavit of Mohammed Jamal ('affidavit in opposition') sworn on 15 July and filed on 17 July 2014.

[6] At hearing both parties tendered their respective written submissions.

### **Background**

[7] On 25 April 2014 the plaintiffs filed a writ against the defendants seeking damage for defamation allegedly published by the defendants. It is alleged the defendants had acted fraudulently and maliciously in convening a special meeting for the review of the conduct of the plaintiffs as Committee Members and publishing a notice highlighting the alleged defamatory comments. The plaintiffs are former committee members of the Nadi Airport Islamic Society and the first defendant is the Chairman of the Trustees of the said committee. The defendants filed their statement of defence on 16 May 2014. The plaintiffs did not file reply to the statement of defence. Instead, they have filed the application for discovery. They filed the application on 11 June 2014.

### **Plaintiffs' contention**

[8] Counsel for the plaintiffs, Mr Faizal Koya submitted that, the discovery asked for is essential to the claim for damage that the plaintiffs seek in their claim. Indeed the defendant bound to have disclosed them as they are relevant documents which will reflect on the question of damage. The plaintiffs are entitled to all information that relates to the case.

### **Defendants' contention**

[9] The essence of argument of Ms L Tabuakuro, counsel for the defendants is that, the application for discovery under Ord. 24 is premature. The statement of defence has not raised any new issue, it merely disputes the said allegations and maintains that the said meeting has been convened at the request of the members and Executive Secretary and the said comment qualifies a fair comment. The statement of claim has detailed and specifically stated the alleged

defamatory comments including references to sections of the Constitution of the said society. The defendants have been sued in their own personal capacity and the documents sought in this application are documents that belong to Nadi Airport Islam Society.

### **The Law**

[10] The application does not specifically state which rule of Ord. 24 it is made under. The application generally states that it is made under Ord. 24. Ord. 24 has 17 rules in it. The application seeks orders against the defendants to disclose certain documents mentioned therein and to state when they parted with them and what has become of them, if the defendants had parted with them. From the nature of the orders that the plaintiffs seek, it can be presumed that they are making this application under Ord. 24, r.7 of the High Court Rules 1988 ('the HCR'). That rule provides that:

#### ***'Order for discovery of particular documents (O.24, r.7)***

*7.-(1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power, when he parted with it and what has become of it.*

*(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.*

*(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.*

#### ***Discovery to be ordered only if necessary (O.24, r.8)***

*8. On the hearing of an application for an order under rule 3 or 7, the Court, if*

*satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs'.*

### **Determination**

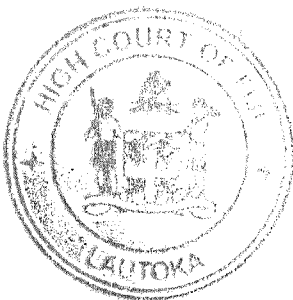
- [11] Presumably, the plaintiffs have made this application under Ord. 24, r.7 of the HCR and seek to discover particular documents stated in the application. The documents they seek to discover are: (a) copies of Minutes of the Special General Meeting (SGM), (b) the notice published by Executive Secretary that SGM will be called, (c) copy of document raising the issue of a SGM to be called by the Full Financial Members and (d) copy of the amended constitution.
- [12] An application under r.7 must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, see r.7 (3). The application filed by the plaintiffs is supported by affidavit of Mohamed Imtiaz, the second named plaintiff. Hence requirement of r. 7 (3) has been complied with.
- [13] The plaintiffs are former committee members of the Nadi Airport Islamic Society ('NAIS'). The defendants are sued in their individual capacity. The first defendant is the Chairman of Trustees of NAIS and the second defendants are Trustees of NAIS.
- [14] The plaintiffs' action derives from an alleged defamatory statement published by the defendants against them. They seek, inter alia, injunction and damage for the alleged defamation.
- [15] It is pertinent to note that the plaintiffs are not seeking a declaration that the SGM held on 16 February 2014 is invalid. Their concern is only damage for defamation.

[16] In my view, it is not appropriate to order the defendants to disclose documents that belong to NAIS, since they have been sued as their individual capacity and not as representative (official) capacity. The claim is damage for alleged defamatory notice. What is relevant in an action of nature is that the alleged notice contains defamatory statements and that refers to the plaintiffs. The documents such as copy of the Minutes of the SGM, copy of notice demanding such meeting and copy of the amended constitution are not relevant for disposing fairly of the cause. I am of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs. On the hearing of an application for an order under rule 3 or 7, the Court shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either disposing fairly of the cause of matter or for saving costs, see O. 24, r.8.

[17] For all these reasons, I would refuse the application for discovery filed by the plaintiffs with summarily assessed costs of \$300.00 payable by the plaintiffs to the defendants in 21 days.

**Final result**

[18] The final result is that the application filed on 11 June 2014 by the plaintiffs seeking orders for discovery is refused and struck out with summarily assessed costs of \$300.00 payable by the plaintiffs to the defendants in 21 days of this ruling. Order accordingly.



**At Lautoka**

**17/11/14**

*M.H. Mohamed Ajmeer*

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**M .H. Mohamed Ajmeer**  
**Puisne Judge**