

**IN THE HIGH COURT OF FIJI**  
**CIVIL JURISDICTION**  
**AT LAUTOKA**

Civil Action No. HBC 117 of 2017

**IN THE MATTER** of the Companies Act 2015

**AND**

**IN THE MATTER** of an application under  
Section 176 of the Companies Act 2015.

**BETWEEN :** **VILIAME FINAU, JAI D SINGH, IVA LENOA, MOHAMMED F  
LATEEF, MANASA RATUVILI, KEVUELI TUNIDAU AND BOB  
TUILAKEPA** all of Nadi as Trustees of **THE ATS EMPLOYEES  
TRUST.**

**PLAINTIFF**

**AND :** **CIVIL AVIATION AUTHORITY OF FIJI** an authority  
incorporated under the Civil Aviation Act with office at Nadi  
Airport.

**1<sup>ST</sup> DEFENDANT**

**AND :** **THE ATTORNEY GENERAL ON BEHALF OF THE  
PERMANENT SECRETARY FOR ECONOMY** under the State  
Proceedings Act.

**2<sup>ND</sup> DEFENDANT**

**AND :** **AIR TERMINAL SERVICES (FIJI) LIMITED** a limited liability  
company with registered office at ATS Head Office,  
Cruickshank Road, PMB, Nadi Airport, Nadi.

**3<sup>RD</sup> DEFENDANT**

**AND :** **ALAN SUCHIN** of Nadi, Company Secretary.

**4<sup>TH</sup> DEFENDANT**

**Appearances** : Mr Vuataki K. for plaintiff  
No appearance for defendants

**Date of Hearing** : 27 September 2017

**Date of Ruling** : 27 September 2017

## **R U L I N G**

[On *ex parte* motion]

[01] This is an *ex-parte* application filed by the plaintiffs/applicants in conjunction with an affidavit sworn by Mr Manasa Ratuveli (“the Application”) seeking cancellation of the Annual General Meeting of the third Defendant (“AGM”) scheduled to be held at 12: 00 noon tomorrow – 28 September 2017. The grounds the application is based include:

- a. *The plaintiffs are trustees of the ATS employment Trust who hold 49% of shares in the company and 2<sup>nd</sup> and 4<sup>th</sup> Defendants removed two of their Directors and one alternate Director as Directors from the Board of Directors of the 3<sup>rd</sup> Defendant company.*
- b. *That the Annual General Meeting is between the shareholders holding 49% shares on behalf of the Plaintiff and the issue before the Court is whether the 1<sup>st</sup> or 2<sup>nd</sup> Defendant are the shareholders and until that is decided the proposed Annual General Meeting of the scheduled date of 28<sup>th</sup> September 2017 can be nullified.*
- c. *The Directors representing Plaintiff Trust will not be fully represented at the AGM and it would be prejudicial and unfair to the minority shareholders.*
- d. *That the issue of Directorship and Shareholder is before the Honourable Court and the Annual General Meeting should not proceed until this is dealt with.*

[02] This application is made pursuant to Order 29 Rule 1 (2) of the High Court Rules in the Inherent Jurisdiction of the High Court and Section 176, 177 and 178 of the Companies Act 2015.

[03] O.29, r. 1(2) states:

*“(2) 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”.*

[04] Section 176 of the Companies Act (“COM”) has set down grounds for certain orders the court can make under COM 177. The grounds for court orders include:

(1) The court may make an order under section 177 if-

*(a) the conduct of a company’s affairs;*

*(b) an actual or proposed act or omission by or on behalf of a company; or*

*(c) a resolution, or a proposed resolution, of members or a class of members of a company,*

*is either-*

*(i) contrary to the interests of the members as a whole; or*

*(ii) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members in that capacity or in any other capacity.*

*(2) For the purpose of this Part, a person to whom a share in the company has been transmitted by will or by operation of law is taken to be a member of the company.*

[05] The applicant alleges that the holding of the AGM would prejudice the outcome of the pending case where this court is to rule on the defendants’ applications for striking-out the actions.

[06] In an *ex-parte* application, promptness is very important. The applicant has received a notice dated 4 September 2017. It is obvious that the

applicant had been informed of the AGM well in advance. The applicant had written to Messrs Sherani & Co, the third defendant's solicitors requesting the cancellation of the AGM. However, the application for an injunction has been made in court one day before the AGM.

- [07] If the applicants were so interested in the cancellation of the AGM scheduled for tomorrow (28 September 2017), they should have made this application in court well before as they had notice of the AGM in the first week of this month. The applicants were not prompt in making this *ex parte* application for an injunction.
- [08] The pending action filed by the plaintiffs is facing severe attack by the defendants where they have made an application to strike out the action on the basis that it discloses no reasonable cause of action. The grounds include among other things limitation of the cause of action in that it is alleged that the claim is caught up by the Limitation Act.
- [09] I am not satisfied that the pending action would be prejudiced by the third defendant holding the AGM when the shareholders will be able to make decisions affecting the affairs of the company. Even if any resolution is taken at the AGM which is oppressive to, unfairly prejudicial to, or unfairly discriminatory against the rights of the minority shareholders, they may apply to the court to prevent the implementation of such resolution. Moreover, I am also not satisfied with the undertaking as to damages given by the applicant for seeking an *ex parte* order restraining the defendants from conducting the AGM tomorrow (28 September 2017). The applicants in their supporting affidavit state that the Trust's assets are its shareholding and that they are authorized on the strength of such assets to give an undertaking as to damages.

[10] For the foregoing reasons, I would refuse to issue the *ex-parte* orders sought by the applicants.

*M. H. Mohamed Ajmeer*

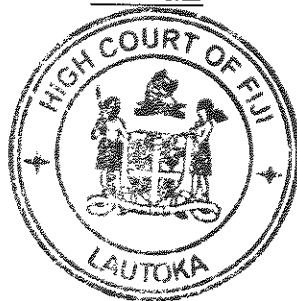
*27/9/17*

**M. H. Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**27 September 2017**



Solicitors:

For Plaintiff; M/s Vuataki Law, Barristers & Solicitors