

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

Civil Action No.: HBC 154 of 2017

**BETWEEN** : **FIJI CHESS FEDERATION** an unincorporated association of  
Suva

**PLAINTIFF**

**AND** : **FIJI ASSOCIATION OF SPORTS AND NATIONAL**  
**OLYMPIC COMMITTEE** a Charitable Trust Incorporated  
under the provisions of the Charitable Trust Act

**DEFENDANT**

**Counsel** : **Ms. S. Devan for the Plaintiff**  
**Mr. M. Chand and R. Singh for the Defendant**  
**Date of Hearing** : **24<sup>th</sup> July, 2017**  
**Date of Judgment** : **20<sup>th</sup> February, 2018**

**JUDGMENT**

**INTRODUCTION**

1. This is a purported action filed by an unincorporated body by way of Originating Summons seeking orders for determination as to their suspension from the Defendant. The said suspension was due to the non-compliance of the directions of the Defendant, as per its previous correspondence of 18<sup>th</sup> March, 2017 and or failure to hold an AGM of the Plaintiff. The Plaintiff state that the said directions were unreasonable and it had taken all the steps to hold an AGM. The Plaintiff also allege that the Defendant is unlawfully interfering with the functions of Plaintiff. The crux of the matter is admitted inappropriate behaviour of Plaintiff's members including President, during an international event. The admitted inappropriate behaviour had also included a complaint by a female participant of harassment. She had also complained this to the Defendant directly. The lack of transparency in to the investigation of the serious complaints received by the Plaintiff, had resulted some displeasure to the victims and participants at that event. The membership of the Plaintiff comprised of both adults and minors of both sexes. The Defendant had initially

let the matter resolve through internal mechanisms in Plaintiff, but in the absence of satisfactory investigation by an independent body had resulted the Plaintiff being suspended from the membership of the Defendant

2. The said inappropriate behaviour had resulted some of the members including the victim calling for an EGM (1<sup>st</sup> EGM) and the refusal of the said request on the ground that it had not contained required number of signatures of the 'members', but had instead agreed to call an EGM on a different date. This EGM (2<sup>nd</sup> EGM) was to discuss the issue of the inappropriate behaviour including some harassment to a female participant. The one of the signatories to the said request for 2<sup>nd</sup> EGM was the person who was accused and a day before the event, the requests were withdrawn for 2<sup>nd</sup> EGM.
3. Despite the recalling of requests for 2<sup>nd</sup> EGM on 22<sup>nd</sup> November, 2016, certain members of the Plaintiff conducted the said 2<sup>nd</sup> EGM and had taken certain decisions. Later these members who participated in the said 2<sup>nd</sup> EGM were expelled from the Plaintiff and their actions were held illegal by the Plaintiff.
4. There is an issue of membership. There is a complaint that no receipts were issued for payment of the membership fees. At the same time 2<sup>nd</sup> EGM is also a bone of contention. The originating summons does not seek order as to legality of 2<sup>nd</sup> EGM or the expulsion of membership of said participants of 2<sup>nd</sup> EGM.
5. The purported Originating Summons sought following orders
  - (i) **Declaration** that Defendant's decision to suspend the Plaintiff from its membership is unlawful and/or wrongful
  - (ii) An Order that the Plaintiff be **reinstated** to Defendant's membership unconditionally
  - (iii) A **Declaration** that the membership of Plaintiff for the annual general meeting shall be as at the approved register of members on 17 March 2017

- (iv) a Declaration that **clause 5.2 of the Defendant's Charter is void for uncertainty and be set aside**<sup>1</sup>
  - (v) an **Order** that Defendant by itself or by its servants, agents and/or associates or howsoever immediately **reinstate the Plaintiff to the Defendant's membership** until the determination of this action
  - (vi) an Order that the Plaintiff **be allowed to without interference of FASANOC, its servants, agents and/or associates or howsoever,** convene an annual general meeting in accordance with its Constitution within 14 days of an Order being made in this action
6. Simultaneously, the Plaintiff had also filed *inter partes* notice of motion seeking following interim reliefs
- (i) The Defendant immediately reinstate the Plaintiff to the Defendant's membership until determination of the substantive originating summons process;
  - (ii) The Plaintiff be allowed to without interference from Defendant convene an annual general meeting in accordance with its Constitution within 14 days of an order made by this court.
7. Plaintiff filed an affidavit of Calvin Prasad filed on 29 May 2017 in support of Originating Summons as well as summons seeking injunction. **A purported affidavit in reply of Calvin Prasad filed on 4 July 2017, which bears the stamp of the court that it was received by the court for filing.** Even though no objections were raised, this document cannot be considered as evidence, even as unsworn statement. I call this a purported affidavit, as there is no attestation from a commissioner of oaths and there is no signature of the deponent. So the purported reply is disregarded. I am left with are the affidavit in support by Calvin Prasad, and the Defendant's affidavit in opposition by Lorraine Mar, filed on 29 June 2017.

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<sup>1</sup> In the Originating Summons there is no (iv) but only (v) and this is considered a mistake and corrected.

8. The Plaintiff is the national federation for the sport of chess in Fiji and is regulated by its constitution. It is an unincorporated association.
9. The Plaintiff is a member of Defendant. In terms of Clause 5.2 of the Charter of Defendant, a member can be terminated or suspended and or such other sanction (including a fine) can be imposed.
10. On 13 April 2017 Defendant suspended Plaintiff from its membership. This was a precipitation of admitted inappropriate behaviour of the officials of the Plaintiff and actions and recommendations suggested by the Defendant.
11. Fiji Chess team participated in the 42<sup>nd</sup> World Chess Olympiad on 6-9 September 2016 in Baku, Azerbaijan. There were serious allegations against some officials of the Plaintiff. These include annoying and harassing female members of the Fiji Team. Though there are no details of exact behaviour in this application it is an admitted fact that behaviour of officials of the Plaintiff, including then President of the Plaintiff were found wanting.
12. The President had admitted his inappropriate behaviour and had attributed it to 'Alcohol' and apologised to one of the female participants on 10<sup>th</sup> September, 2016 in following manner  
*Reading through your email. I am disgusted at my behaviour. I can only imagine the hurt and distress I have caused you.*  
*Alcohol is the reason, but not the excuse. I'm embarrassed and accept responsibility.*  
*I can't undo what I have done but can take substantive action to prove my remorse is genuine. The following sanctions will be imposed on me.*  
*Suspension from position of President.*  
*Suspension from participation in FCF events.*  
*Any other sanctions the FCF board considers necessary*  
*I hope you can forgive me.*

13. The author of the email, did not step down and several members including the complainants sought an Extraordinary General Meeting (1<sup>st</sup> EGM) on 21.10.2016. This was due to the manner of appointment of a committee to those allegations. Calvin Prasad participated in the appointment of the committee that would investigate himself. So, the victim as well as some of the participants sought 1<sup>st</sup> EGM and they had detailed the need and reasons for such a meeting. This attempt was not successful as the President had communicated, that there were only 8 signatories who were paid members of the Plaintiff.
14. It stated
- The Executive Board met to consider the same on 27/10/16  
Eight members signed your requisition, therefore it did not fulfil the  
criteria specified in clause 4-5 of Federation Constitution*
- However, the Executive Board thought appropriate to convene  
an EGM as soon as possible to address current issues. We have  
since secured the written requisition of ten members and sent  
notice of an EGM scheduled for 23/11/2016.*
15. The 1<sup>st</sup> EGM was not held but a 2<sup>nd</sup> EGM was proposed on 23.11.2016 in the same letter that rejected the 1<sup>st</sup> EGM.
16. 2<sup>nd</sup> EGM was called off as the members who requested it had withdrawn their requests.
17. Some members on 23/11/2016 conducted a purported 2<sup>nd</sup> EGM despite cancellation and certain decisions were taken therein.
18. The Executive Board of the Plaintiff, then expelled said members who participated in 2<sup>nd</sup> EGM.
19. The Defendant on 23 November 2016 wrote a letter to the President of the Plaintiff and inter alia stated
- a. That Plaintiff would convene an independent committee to review the complaints

- b. Calvin Prasad would remove yourself from any decision making in regard to these complaints.
  - c. Calvin Prasad would step down as President as per your email apology to Ms. Hilda Vukikomoala of Sept 10, 2016.
  - d. That EGM would be held as requested by the members for the specific purpose as requested.
20. The said letter also raised following concerns the Review Committee report of the Plaintiff which had recommended certain measures regarding the complaints by participants at the international event. They are
- a. That **Defendant's Vice President, Mr. Manasa Baravilala is listed as an observer on the Review committee but had never been invited to the Committee's meeting and therefore did not observe its deliberations.**
  - b. That the **President, did not remove yourself from all decision making in regards to the complaints and was involved in the appointment of the review committee,** which was specifically formulated to inquire into the allegations against the President as well as some other participants including Deputy President.
  - c. That by not precluding yourself in all decision making in regards to the complaints, the process of a **fair hearing was placed in jeopardy.**
  - d. That the **President had disputed the membership status of some of the members who requested the EGM. including a Life Member.**
21. The Plaintiff replied to the said letter of the Defendant by its letter dated 6<sup>th</sup> December, 2016 (annexed CPI6 to the affidavit in support) and it stated inter alia, as follows,
- a. Reiterated the position that 2<sup>nd</sup> EGM of 23<sup>rd</sup> November, 2016 as invalid under the constitution of the Plaintiff.
  - b. The actions of the members that conducted 2<sup>nd</sup> EGM on 23<sup>rd</sup> November, 2016 had wilfully infringed the constitution of Plaintiff, and the Executive Board could approve suspension
22. According to the communication sent by Deputy President on 8<sup>th</sup> January, 2017, the members who conducted EGM on 23<sup>rd</sup> November, 2016 were expelled by

the Executive Board. The said letter does not indicate on the date on which the Executive Board met and decided and no attachment of such a decision by Executive Board.

23. By letter dated 19<sup>th</sup> February, 2017 Fiji National Sport Commission had written to state that the 2<sup>nd</sup> EGM held on 23<sup>rd</sup> November, 2016 was legal due to lack of communication to all the members of its cancellation a day before it was scheduled.
24. The Plaintiff's Executive Board announced that will be held on 18 March 2017. At the time, some members were expelled from the participating in AGM on the basis that they had conducted an illegal 2<sup>nd</sup> EGM, but Fiji National Sports Commission had stated that the 2<sup>nd</sup> EGM was not illegal. So, at that point of time there was an issue of membership of the Plaintiff of the expelled members. On the day of the AGM, the Police had informed that they needed prior approval for such a gathering and such permit was not obtained. So, AGM was not held and "incorrectly called off" by Police (see Annexed CP14).

#### **Preliminary Issue-locus standi**

25. The FCF has issued the Applications as the "Fiji Chess Federation an unincorporated association of Suva".
26. It is trite law that only legal persons have the standing to institute actions in its name. An unincorporated association cannot sue or be sued in its own name.
27. Though this is a curable defect it should have been cured before the end of the hearing. The action is an Originating Summons and the hearing had concluded. It is fatal to the action including interim relief. The Plaintiff cannot resort to Order 2 of the High Court Rules of 1988 for rectification, but could have rectified any time before the conclusion of the matter.

28. *Halsbury's Laws of England* Volume 6 Fourth Edition 2003 Reissue at paragraph 172 states:

*"172. Unincorporated members' clubs. An unincorporated members' club, not being a partnership or legal entity, cannot sue or be sued in the club name, nor can the secretary or any officer of such a club sue or be sued on behalf of the club, even if the rules purport to give him power to sue and provide for his being sued, unless this is permitted by statute. Service of the claim form on the secretary, in a claim against the club, is bad.*

*Where numerous persons have the same interest in the proceedings, the proceedings can be begun and, unless the court orders otherwise, continued by or against one or more of the club members as representatives of the other members or some of them. A judgment in representative proceedings binds the members represented but may not be enforced against any member who is not a party to the proceedings, except with the permission of the court*

*A representation order may be made in a claim for tort, provided that the members whose names appear on the claim form are persons who may fairly be taken to represent the body of club members, and that they and all other club members have the same interest in the proceedings. The order will extend only to those persons who were members at the time when the cause of action arose."*

29. Representative action are instituted in terms of Order 15, rule 14 of the High Court Rules of 1988. Order 2 of the High Court Rules cannot cure this defect after conclusion of the hearing specially when there is a dispute among the members and the status of the person who had sworn the affidavit in support.
30. In *Fiji Video Library Association v Attorney General* [2000] FJHC 97 decided on 30<sup>th</sup> August, 2000 Justice Fatiaki said:

*"I cannot ignore the fact that the Plaintiff Association has had an official letterhead which it has used in its various correspondence since March 1999 (i.e. over 12 months) and yet is unable to produce to the Court a certificate of registration or incorporation or any evidence that it is in the process of obtaining the same nor has leave been sought by anyone under Or.15 r.14 (3) to commence these proceedings in a representative capacity*



*The absence of legal personality in this case has particular significance having regard to the nature of the declarations sought and, more especially, in the present application, to the ability of the plaintiff Association to furnish an enforceable undertaking in damages as is the almost universal practice where an interlocutory injunction is granted ... In the circumstances I uphold the third Defendant's submission that the plaintiff Association has no locus standi to issue the Originating Summons and a fortiori to apply for interlocutory relief."*

31. The Originating Summons and Motion seeking injunctive relief is struck off.
32. Even if I am wrong, on the above merits of this Originating Summons are considered below considering importance of judicial pronouncement on the issue.
33. The Plaintiff's position is that Defendant's decision to suspend the Plaintiff from its membership is unlawful or wrongful. For the said contention, first the Plaintiff state that clause 5.2 of the Defendant's Charter is void for uncertainty.

#### **Clause 5.2 of Defendant's Charter**

34. Before venturing in to clause 5.2 it is pertinent to consider the Preamble of the Defendant's charter which states as follow

*'We the Fiji Association of Sports and National Olympic Committee of the Republic of Fiji, and organization belonging to the Olympic Movement, duly represented by the undersigned, hereby undertake to respect the provisions of the Olympic Charter and the World Anti-Doping Code and to abide by the decision of the IOC.*

*We undertake, in accordance with our mission and role at the national level, to participate in actions to promote peace and to promote women in sport We also undertake to support and encourage the promotion of sports ethics to fight against doping and to demonstrate a responsible concern for environmental issues. (emphasis is mine)*

35. One of the objectives of Defendant is to take 'actions against' all 'forms of discrimination'. Any harassment to a female player is a discrimination based on gender.

36. The clause 5.2 of the Charter of the Defendant reads as follows

*'5.2 TERMINATION OR SUSPENSION OF MEMBERSHIP  
Membership of an individual member or a National Federation of FASANOC may be suspended or such other sanction (including a fine) imposed as the Executive Board may in its absolute discretion determines and a member will also be liable to expulsion from membership by a two thirds majority at a Board of Management Meeting.*

- a. Upon dishandment of the National Federation to which the member belongs.*
  - b. Upon resignation or death;*
  - c. Upon expulsion by Board of Management on the advice of the Executive Board of FASANOC for any of the following reasons*
    - 1. Non-payment of annual subscription or any fees or monies due and payable to FASANOC.*
    - 2. Infringement or noncompliance of this Charter, the Olympic Charter, the Commonwealth Games Federation Constitution, the Pacific Games Charterer its own constitution.*
    - 3. Non submission to FASANOC of its Annual Report, Annual General Meeting Minutes, Annual Audited Accounts on an annual basis.*
    - 4. In the opinion of FASANOC Executive Board, bringing disrepute to FASANOC and /or officials by his/her actions or utterances whether verbal or written.*
- Clause 5.3 reads 'Any member whose membership to FASANOC is terminated or suspended in accordance with Article 5.2 of this Charter shall have the right to appeal to the Appeals Tribunal'*

37. The Plaintiff in the written submission stated that 'clause 5.2 of Defendant Charter is void for uncertainty as on reading, the clause relating to "termination or suspension of membership", the article is vague as to whether Defendant can suspend a member outright in its absolute discretion or whether suspension is on grounds listed in clause 5.6 (c) ( i) to (iv),(sic)<sup>2</sup>'

<sup>2</sup> There is no clause 5.6 in Defendant's Charter

38. The Clause 5.2 (c) (i) to (iv) lays down grounds on which a member can be suspended or such other sanction. The word 'absolute discretion' is applicable to the options of the sanctions and not for the grounds stated therein. So there is no ambiguity as to the said section. The Defendant in its absolute discretion impose a fine, or other sanction, or expulsion instances stated in Clause 5.2(c)(i) to (iv). So discretion will confine to selection of sanctions. The grounds upon which such sanction is exercised are stated in from Clause 5.2 (c)(i) to (iv).

**Non-Disclosure of Facts (Suppression of Facts)**

39. A discretionary remedy like an injunction can be dismissed if there is suppression of material fact. This is more important in *ex parte* applications at the same time this should not be used as a path of least resistance to set aside an injunctive relief unjustifiably. In my judgment, when the facts and circumstances support the grant of injunctive relief it can be granted even if there is suppression. Injunctive relief is a discretionary remedy and an equitable remedy. The importance of disclosure in an injunction is a policy that should not be eroded, but it cannot be the sole determinant factor, when there are important issues that favours the grant of injunction. The requirement of full and frank disclosure in an equitable remedy cannot be carried to extreme lengths, so as to forget the reason of granting equitable remedy such as an injunction.

40. In W Vs H [2001] 1 All ER 300 at 316 it was held,

*Let me make it clear that the salutary principle of public policy set out in the long line of cases, of which the two I have mentioned are only two examples, is a principle as applicable in the Family Division as in any other place. In the Family Division as elsewhere, those who seek relief ex parte are under a duty to make full and frank disclosure of all the material facts. Those who fail in that duty, and those who misrepresent matters to the court, expose themselves to the very real risk of being denied interlocutory relief whether or not they have a good arguable case or even, as Behbehani's case [1989] 2 All ER 143 at 146, [1989] 1 WLR 723 at 726, shows, a strong prima facie case. On the other hand, as Balcombe LJ pointed out in the Brink's-MAT Ltd case [1988] 3 All ER 188 at 194, [1988] 1 WLR 1350 at 1358, this rule must not be allowed*

*itself to become an instrument of injustice nor, as Stubb LJ ([1988] 3 All ER 188 at 194, [1988] 1 WLR 1350 at 1359) pointed out in the same case, must the application of the principle be carried to extreme lengths. In every case the court retains a discretion to continue or to grant interlocutory relief even if there has been non-disclosure or worse.* (emphasis added)

41. The responsibility to disclose full and frank disclosure cannot be used as sole criterion for the convenience as an 'instrument of injustice' to reject an injunction.
42. The Defendant state that non-disclosure of the President's admission of inappropriate behaviour and also the report of the Committee appointed to investigate , complaints regarding participants of 42<sup>nd</sup> Chess including the President at the event. This report is a confidential report and it is a property of the Plaintiff. Since there is no proper authority to President to institute action, this report could not have been submitted for Originating Summons. It should also be noted that there was no authority, to seek injunctive relief by the Plaintiff. Calvin Prasad had not denied his behaviour and the material annexed to the affidavit indicate that there were serious complaints against him.
43. It was also revealed from the affidavit in support that the 1<sup>st</sup> EGM was called by a section of members as they were not satisfied with the appointment of a committee to investigate the allegations by a body which comprised Calvin Prasad.
44. The annexed CP 15 to affidavit in support indicate a letter of the Defendant addressed to Calvin Prasad which stated that he 'would step down as President **as per your email apology** to Ms. Hilda Vukikomoala of Sep 10, 2016'.
45. So, there was evidence available in the affidavit in support that indicated that there was an **email apology by Calvin Prasad** to the complainant regarding his behaviour at the event. So, non-production of **email apology** cannot be

considered as suppression of material fact to reject the motion seeking interim relief on the basis of suppression of material fact.

46. The motion seeking injunction is struck off as Originating Summons is struck off for want of locus standi as stated earlier.
47. Even if I am wrong on that, overall balance of convenience and overall justice will not favour granting injunctive relief. Calvin Prasad has participated in the process of appointment of committee to investigate and recommend regarding complaints where some serious accusations were levelled against him. These complaints included some serious complaints of harassment to a female participant, under influence of liquor.
48. At the same time there was an unresolved issue of expulsion of certain members for conducting 2<sup>nd</sup> EGM and this was held valid by National Sports Commission by their letter dated 19<sup>th</sup> February, 2017(CP-17 of the annexed to affidavit in support)
49. The complainant who was subjected to harassment of Calvin Prasad along with some members of the Plaintiff had clearly indicated their displeasure in the appointment of the Committee and had sought 1<sup>st</sup> EGM. Calvin Prasad or the Board of Plaintiff, did not rectify the said defect even after notification.
50. Harassment to a female participant is a serious matter and since it was admitted it should be dealt by an independent body to impose an appropriate sanction that can be recommended in transparent manner.

**Reasonableness of the Defendant's action**

51. The Plaintiff allege that the Defendant's decision to suspend the Plaintiff from its membership was unreasonable.
52. The Defendant had not intervened with the Plaintiff's affairs, despite them receiving serious complaints about the behaviour of participants including

President and Deputy President at World Chess Olympiad. This was an event where Fiji Chess Team participated. So, it was not an event where members of the Plaintiff participated in their private capacity. So conduct of President and Deputy President of the Plaintiff was found wanting. Some serious allegations were made to their behaviour in public at the event, including harassment to a female participant of Fiji Chess Team and also manhandling another foreign player at the event.

53. The allegations against Calvin Prasad are serious. He had apologized to Ms Hilda Vukikomoala on 10<sup>th</sup> September, 2016 through an email and had stated that he was '**disgusted**' with his 'behaviour' and had attributed this behaviour to 'alcohol'. So there is admission that Calvin Prasad had consumed alcohol and had caused 'hurt' and 'distresses' to a female participant. This alone is sufficient for further investigation by an independent body and intervention of the Defendant in terms of its broader vision to promote female participation in sport and its goal to prevent all kinds of discrimination.
54. This kind of harassment would not only discourage present players but also future players from participating in international level. This is specially so considering the perpetrator being the President of Plaintiff. By not allowing the views being expressed on the matter in an EGM the victim as well as some other members became suspicious about the outcome of the committee report.
55. The Defendant having a vision to promote female participation in sport and having that included in their Preamble to the Charter, must investigate and take appropriate action as regards to its member bodies. Any kind of harassment to a female member of Fiji Chess Team that participated in World Chess Olympiad cannot be swept under the carpet.
56. So, initially the Defendant had advised the Plaintiff as to appointment of an independent committee. Such a serious allegation should not be investigated by a committee appointed by a body that comprised Calvin Prasad. Apart from the harassment to female participant there were some other allegations including

manhandling and also some inappropriate behaviour. These are serious allegations and if true should be dealt with appropriate sanction for the individual rather than blaming availability of alcohol and lack of code of conduct, at the event.

57. Every human behaviour cannot be explicitly stated in a code of conduct and any player representing a country is an ambassador in the respective field of sport and their bad behaviour is bad reflection to the country they represent. So, the involvement of Defendant regarding the complaint they received as to the behaviour of the participants at the said event, is not unreasonable.
58. Having decided that Defendant's involvement is reasonable, I have to consider the manner in which they got involved. First the Defendant had let the matter to be solved within the Plaintiff and had even guided them by advising to appoint an independent body. The Plaintiff had not followed these and continued with the committee appointed by a body that comprised Calvin Prasad.
59. The Defendant had even warned the Plaintiff and had even offered to mediate, but again Calvin Prasad did not participate in the said mediation effort. So having exhausted all the options the Defendant had suspended the membership of the Plaintiff.
60. If the Plaintiff was not satisfied with the suspension there is an appeal process under the Charter of Defendant, but so far that had not been explored by the Plaintiff.
61. Calvin Prasad allegedly physically and verbally harassed female members of the Fiji Team while representing Fiji at the 42<sup>nd</sup> Chess Olympiad. He had admitted that he behaved in disgusted manner and that it had caused the female member hurt and distress to said complainant. The Plaintiff, was only able to participate at the Olympiad through and as a representative of Defendant. The event was an international event and Calvin Prasad's behaviour found wanting

and in the eyes of international Olympic sporting community. This gave Defendant, as the umbrella body of Plaintiff, the ability to recommend suitable actions to the Plaintiff.

62. Considering the circumstances of the action of the Defendant to suspend the Plaintiff from its membership cannot be considered as an unreasonable action

63. The Defendant also state that Originating Summons was inappropriate for this action. Order 5 rule 1 states that an action can be instituted either by writ of summons or originating summons. Order 5 rule 4 states as follows:

*"4.-(1). Except in the case of proceedings which by these Rules or by or under any Act are required to be begun by writ or originating summons or are required or authorised to be begun by petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.*

*(2) Proceedings -*

*(a) in which the sole or principal question at issue is, or is likely to be, one of the construction of an Act or of any instrument made under an Act, or of any deed, will, contract or other document, or some other question of law, or*

*(b) in which there is unlikely to be any substantial dispute of fact,*

*are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ."*

*(emphasis added)*

64. So, the selection of mode of institution of an action is with the Plaintiff. The Plaintiff sought declaration that clause 5.2 of the Charter of Defendant is void for uncertainty and this is the provision that dealt with suspension of members including the Plaintiff. This is a matter that can be dealt by Originating Summons and I have earlier in this decision held that it was not vague or uncertain.

65. Apart from validity of clause 5.2 of Defendant's charter the Plaintiff's main relief is concerned with the reasonableness of the Defendant's decision to suspend the



Plaintiff. This is again a matter that can be dealt by Originating Summons. Though the exact harassment and details of the behaviour of Calvin Prasad is not known at this moment it is an admitted fact that he had behaved in 'disgusted' manner by his own words and had caused 'hurt' and 'distress' to said female player. Since these facts are admitted by Calvin Prasad in his email dated 10<sup>th</sup> September, 2016 that was sufficient for the actions of the Defendant to intervene. The committee appointed to investigate was not done in transparent manner and its credibility is in question as the main perpetrator had involved in the appointment of the said committee. This was the reason for the call of 1<sup>st</sup> EGM by some members including the victim of 'hurt' and 'distress' through actions of Calvin Prasad.

66. There is an issue as to the membership of the Plaintiff that cannot be determined by Originating Summons as these are based on disputed facts. Without determining membership an AGM cannot be held as there is an issue as to who are eligible to participate. This needs to be resolved first. Then an AGM can be held according to the constitution of the Plaintiff.

## CONCLUSION

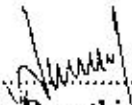
67. The complaints made against the Plaintiff's officials including the President and others are serious and they involve among other things, harassment of female participant and also consumption of alcohol. Such incidents should be properly investigated and proper sanctions be imposed on the relevant persons irrespective of their standing in the sport. The ranking of a player is not an immunity to harass a female player. If that was due to alcohol, again it cannot be a mitigating factor, as such factors are self-inflicted by them. The Defendant had not initiated any investigations and had allowed the Plaintiff to resolve its matters internally. The Plaintiff had failed to address the complaints in a transparent manner, by appointing an independent body. This had resulted chain of events. First was the request for 1<sup>st</sup> EGM. The Originating Summons and motion seeking injunction is struck off. The cost of this action is summarily assessed at \$2,000.

**FINAL ORDERS**

- a. The Originating Summons and the Motion seeking injunctive relief are struck off.
  
- b. The cost is summarily assessed at \$2,000.

Dated at Suva this 20<sup>th</sup> day of February, 2018



  
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**Justice Deepthi Amaratunga**  
**High Court, Suva**