

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 178 of 2019

Mohammed Khateeb

Plaintiff

v

Hafizud Dean

First defendant

Saiyad Hussain

Second defendant

Mohammed Haroon Hakim

Third defendant

Counsel: Mr Anand Singh for the plaintiff
Mr Shelvin Singh for the defendants

Date of hearing: 16th August, 2019

Date of Ruling : 27th September, 2019

Ruling

1. The plaintiff, the President and committee members of the FML, Suva Branch, (FMLS) were suspended by the Fiji Muslim League,(FML). The defendants are trustees of the FML. The plaintiff, in his originating summons, seeks:
 - i. an order that the suspension is tainted with procedural unfairness and impropriety and in breach of the principles of natural justice;
 - ii. an order that the suspension be stayed; and,
 - iii. a declaration that the suspension is unlawful, in that it was made without adequate cause, notice of the allegations and an opportunity to be heard.

2. In the interim, the plaintiff seeks an injunction to restrain the defendants from:

- (a) *appointing and/or sanctioning an appointment or continuing with an appointment of a successor or an interim successor or an interim or substantive successor to the suspended Plaintiff's position as President of the Fiji Muslim league Suva branch and or dealing with an appointee to the office of the suspended President and or delegating or continuing to appoint or sanction the appointment thereof of the position of President previously held by the Plaintiff until further order of the Court.*
- (b) *suspending or continuing to suspend the Plaintiff as the elected President of FML Suva Branch or further or alternatively that suspension of the Plaintiff as President be stayed until further order of the Court.*

3. The plaintiff, in his affidavit in support states that he has been suspended without the alleged charges being notified to him nor been given an opportunity to defend himself. He has been effectively denied the process of referral to an internal dispute resolution committee and a right of appeal to the FML Council,(Council). The Constitution of FML,(Constitution) provides that the resolution of the Council is final. He does not have a right of appeal nor any other redress. The defendant has "*purported*" to make "*interim appointments*" to the position of President and other members of a successor committee. The interim committee is not authorized to act after usurping the authority of duly elected officials. The FML indicated a willingness to discuss the suspension with his solicitors, but this did not eventuate and in reality, it was taking steps to implement its suspension. The plaintiff states that unless members of the interim committee are restrained, they will continue to hold their positions unlawfully, while the duly elected officials will remain suspended.

4. The second defendant, General Secretary of the FML in his affidavit in opposition states that the defendants rely on grants by the Ministry of Education to operate the Suva Muslim Primary School and Suva Muslim College. An investigation conducted on the issue of grants found that "*Construction works, payments and purchases*" had been made in schools for unauthorized purposes. The plaintiff had a duty not to misuse grants. These are serious matters for which the defendants have power to suspend members and branch officials. The Council has the power of suspending members where misuse of funds are in issue.

The determination

5. Mr Anand Singh, counsel for the plaintiff submitted that the plaintiff was not given notice of the alleged charges nor given an opportunity to defend himself. Suspension without notice is unfair. There was no evidence that he misappropriated funds. He is liable to be suspended for 7 years under clause 78 of the Constitution. It is tantamount to a final decision, in terms of clause 80. It cannot be challenged. He is exposed to expulsion. There is a serious issue to be tried.
6. Mr Shelvin Singh, counsel for the defendant stated that the “*Report on Financial Anomalies at SMC by (FMLS)*” is damaging. The FML has power to suspend the plaintiff under clause 80 of the Constitution. There is no serious issue to be tried. The plaintiff has the right to address his grievances to the Council. He submitted further that the plaintiff has not claimed that he will suffer any loss, pecuniary or otherwise.
7. The FML’s letter of 2nd May, 2019, states that a decision was made to suspend the plaintiff and his committee members, as an investigation revealed that the FMLS had incurred expenditures from grants from the Ministry of Education contrary to financial regulations and standard procurement procedures, and as President, he “*failed and or neglected to comply with the Ministry’s requirements when incurring such expenditures*”. The Report on Financial Anomalies concludes that there are serious breaches by the FMLS.
8. The correspondence between the plaintiff’s solicitors and the defendants depict that the defendants were willing to discuss the suspension. On 13th May, 2019, the second defendant informed the plaintiff’s solicitors’ in reply that any further decision can only be made by the Council, which made the decision and sought time. The plaintiff was prepared to grant additional time up to 27th May, 2019. On 17th May, 2019, the second defendant sought time till after the Council meeting in early July, 2019, stating that the Council does not meet during Ramadhan. On 21st May, 2019, the plaintiff’s solicitors stated that they are aware of the sensitivities, but wanted the matter resolved prior to 27th May, 2019.
9. There followed the originating summons filed on 6th June, 2019, and this application for interim relief on 19th July, 2019.

10. In my view, the plaintiff has not exhausted the internal remedies available to him under the Constitution. He has failed to take up his grievance before the Council. The defendants state that a member of his committee had appeared before the Council and accepted the allegation and suspension.
11. I refer to the case of *Mistry v Chandar* [2009] FJHC 236; HBC149.2009L (23 October 2009) cited by Mr Shelvin Singh. That case concerned a dispute over the election of the office bearers of a religious organisation, which ran schools. Officers of the management committee of two schools sought an order requiring the President, Manager and Secretary of the national committee to step down and call a special general meeting to re-elect office bearers of the national committee. Interim relief was sought to restrain the defendants from interfering with the management of the schools. Inoke J citing several decisions of this Court said:

The underlying principle in those decisions is that the remedy to disputes over election of office bearers is to be found in the association's constitution and not in the Courts.. They could have requisitioned the Council, Board or the members for a special meeting. They should have done that first before coming to Court.

Further, this is a matter of private law and not public law. The Articles clearly, in my view, give absolute authority to the Council and the Board. They have the power to change the Articles and hence the power to validate any election procedure or result. The Plaintiffs .. are bound by the Articles. This Court should be loath to rewrite those Articles which have been adopted by consensus of the members. This Court should also be loath to interfere with the use of any such powers, unless there is a clear case of fraud or abuse and the majority of the members want the Court to interfere. The facts in this dispute fall far short of that.

..the first place to look for the solution to disputed election results is the association's constitution. A properly drawn up constitution should set out a procedure by which such disputes are to be resolved. Whether the procedure is specific or general, as in the current case, does not matter. But it should be followed. Indeed, I will go as far as to say that, if that procedure is not used first before the aggrieved members come to Court, the Court will not entertain their application, even if it is a clear and blatant case of fraud or abuse of power. It is up to the members whether to accept it or not and if the majority of the members accept the result that should be the end of the matter, in my view. The Court has far better use of its limited resources than be the supervisor of private elections.
(emphasis added)

12. In my view, the “*Report on Financial Anomalies at SMC by (FMLS)*” reveals that there were reasonable grounds for the suspension. The defendants state the education of many children could not be risked if the Ministry suspended funding. There is no requirement for notice of alleged charges or a hearing before suspension.
13. The plaintiff seeks to restrain the defendants from appointing a successor to his position. But a president has already been appointed. He also seeks to restrain the defendants from continuing to suspend him or alternatively, that his suspension be stayed. That is one of the final reliefs he seeks .
14. In *Wakaya Ltd v Chambers*, (Civil Appeal No. CBV0008/11) the Supreme Court held that the grant of the interim injunction “*virtually brought about the final relief that the Petitioner wanted*”, as it had prevented the respondent from carrying out what he intended to do.
15. In *Digicel(Fiji) Limited v Fiji Rugby Union and Vodafone Fiji Ltd*, (Civil Appeal No. ABU 21 of 2014) the Court stated :
- Had the interim injunction been granted to the Appellant, the case would in effect have been virtually brought to an end ... (vide: Wakaya v Chambers [2012] FJHC 9).*
16. The plaintiff, in his reply adds that he has been informed by several members of the defendant that if he appears before the Council, he will not have a fair hearing. He will be disciplined further for bringing the defendant into disrepute and probably be expelled. These allegations have not been substantiated.
17. In my view, there is no serious issue to be tried. The principles in the *American Cyanamid* apply if the applicant establishes an imminent threat of the infringement of his rights. The plaintiff has not established that there is any imminent threat against him nor alleged that he is suffering any loss as a result of the suspension.
18. I would also note that the plaintiff has not given sufficient evidence of his assets.

19. In my judgment, there is no basis for the grant of interim relief. In the result, the application is declined.

20. **Orders**

- (i) The application for interim relief is declined.
- (ii) The plaintiff shall pay the defendant costs summarily assessed in a sum of \$ 1500 within 15 days of this Ruling.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam
JUDGE

27th September , 2019