

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 166 of 2018

BETWEEN

AISAKE KUNANITU of Laqere, Nasinu, **WILLIAM GREEN KUNANITU** of
Lot 1 Tokai, Matana Street, Nakasi, **KINI TUIDRIVA** of Suva and
JIOSEFATI VAKALOLOMA of Suva, Ministers of Religion and
Trustees of the Evergreen Christian Centre
Assemblies of God International.

FIRST – FOURTH PLAINTIFFS

AND

EVERGREEN CHRISTIAN CENTRE ASSEMBLIES OF GOD INTERNATIONAL
a Religious Body registered pursuant to the Religious Bodies Registration Act
[Cap 68] and having its principal place of business located at Joyce Place
(off Piling Road), Laqere, Nasinu.

FIFTH PLAINTIFF

AND

PHILIP SATYANAND MADHAVAN of Suva, Minister of Religion and
Trustee for the General Conference of
The Assemblies of God of Fiji.

FIRST DEFENDANT

AND

PITA CILI of Suva, Minister of Religion and Trustee for the
General Conference of The Assemblies of God of Fiji.

SECOND DEFENDANT

AND

VILIAME VAKASAUSAU of Suva, Minister of Religion and Trustee for the
General Conference of The Assemblies of God of Fiji.

THIRD DEFENDANT

AND

PRITAM SINGH of Suva, Minister of Religion and Trustee for the General
Conference of The Assemblies of God of Fiji.

FOURTH DEFENDANT

AND

THE GENERAL CONFERENCE OF THE ASSEMBLIES OF GOD OF FIJI a Religious

Body registered pursuant to the Religious bodies Registration Act and
having its principle place of business at 85 Robertson Road, Suva.

FIFTH DEFENDANT

Counsel : Ms L. Jackson for the Plaintiffs
Mr I. Fa for the Defendants

Date of Hearing : 17th July 2020

Date of Ruling : 07th August 2020

RULING

[1] The defendants filed this summons pursuant to Orders 32(1) and 33(3) of the High Court Rules 1988 to have the following issues determined as preliminary issues:

1. Whether:

- (i) The 1st – 4th plaintiffs as former members of the 5th defendant by virtue of their voluntary actions to sever ties with the 5th defendant on 25.09.11 and to set up their own church outside the 5th defendant are entitled to lay beneficial claim in law to the church properties, in particular CT 13441 being Lot 36 on DP No. 3291 and CT 13442 being Lot 37 on DP 3291 and any improvements thereon, used by the 1st – 4th plaintiffs being members of a local church under the 5th defendant?
- (ii) The 5th plaintiff, a church set up by the 1st – 4th plaintiffs on 10.12.13 outside and independent of the 5th defendant's Constitution, is entitled to lay any beneficial claim in law to the church properties, in particular in particular CT 13441 being Lot 36 on DP No. 3291 and CT 13442 being

Lot 37 on DP 3291 and any improvements thereon, used by the 1st – 4th plaintiffs being members of a local church under the 5th defendant?

2. That in the event that the court finds in favour of the defendants in matter set out paragraphs 1(i) and (ii) above, the defendants seek orders that the plaintiffs claim be dismissed forthwith, with costs on an indemnity basis.

[2] The plaintiffs instituted these proceedings seeking the following reliefs:

- (a) An injunction restraining the defendants whether by themselves or their agents or servants or otherwise from proceeding to execute the Order of the Master of Suva High Court made on 15 February 2018 in Civil Action No. 39 of 2016 and Civil Action No. 40 of 2016 and taking possession of and evicting the plaintiffs from the properties situated at Joyce Place (off Pilling Road), Laqere, Nasinu contained in Certificate of Title No. 13441 being Lot 36 on Deposited Plan No. 3291, Viti Levu, Naitasiri and Certificate of Title No. 13442 being Lot 37 on Deposited Plan No. 3291, Viti Levu, Naitasiri, respectively until the final determination of the Plaintiff's claim herein;
- (b) An injunction restraining the defendants whether by themselves or their agents or servants or otherwise from selling, transferring, assigning, charging, mortgaging, encumbering, or otherwise alienating or otherwise dealing with properties situated at Joyce Place (off Pilling Road), Laqere, Nasinu contained in Certificate of Title No. 13441 being Lot 36 on Deposited Plan No. 3291, Viti Lev, Naitasiri and Certificate of Title No. 13442 being Lot 37 on Deposited Plan No. 3291, Viti Levu, Naitasiri, respectively until the final determination of the Plaintiff's claim herein;
- (c) A declaration that the fifth plaintiff is the rightful beneficial owner of properties situated at Joyce Place (off Pilling Road), Laqere, Nasinu contained in Certificate of Title No. 13441 being Lot 36 on Deposited Plan No. 3291, Viti Levu, Naitasiri and Certificate of Title No. 13442 being Lot 37 on Deposited Plan No. 321, Viti Levu, Naitasiri, respectively;

- (d) An Order that the defendants transfer the properties situated at Joyce Place (off Pilling Road), Laqere, Naisnu contained in Certificate of Title No. 13441 being Lot 36 on Deposited Plan No. 3291, Viti Levu, Naitasiri and Certificate of Title No. 13442 being Lot 37 on Deposited Plan No. 3291, Viti Levu, Naitasiri, respectively to the First, Second, Third and Fourth Plaintiffs to hold in trust for the Fifth plaintiff;
- (e) OR IN THE ALTERNATIVE TO (C) AND (D), compensation for monies expended by the members of the Fifth Plaintiff paid towards the purchase price of the properties, the improvements thereon and the furniture, fixtures and fittings in the sum of \$1,018,000.00 (One Million and Eighteen Hundred Thousand Dollars);
- (f) Costs of this action on a solicitor/client basis; and
- (g) Any such further order this Court deems just, fit and expedient.

[3] Order 33 rule (3) of the High Court Rules 1988 provides;

The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

[4] In the case of **Ernster v Denarau Corporation Ltd** [2016] FJHC 55; Civil Action 45.2011 (5 February 2016) Tuilevuka J held:

The general rule is that all questions of law and fact in any given case must be tried together at the trial.

In **Bidesi v Public Trustee of Fiji** [1975] FJCA; [1975] 21 FLR 65 (25 July 1975) the Court of Appeal held:

An order for the trial of some issues before others should, however, only be made in “exceptional and extraordinary cases” or where the Judge has serious reason to believe that the trial of the issue will put and to the action – per *Jessel M.R. in Piercy v. Young* 15 Ch. D 475 at 480.

Naqa v Fiji Electricity Authority [2005] FJHC 704; HBC0237.2002 (22 February 2005)

Winter J held:

The rule of law defines that courts exist for the finalizing of disputes between litigants and that in reaching that goal justice must be served. Litigants are not entitled to the uncontrolled use of a judge's time. Order 33 Rule 3 and 4 allow the court to isolate any particular issues or questions for separate trial thus eliminating or reducing the delay and expense in determining an entire matter where a preliminary decision might be decisive of the litigation.

Ashmore v Corp of Lloyd's [1992] 2 All ER 486 the House of Lords made the following observations:

The control of proceedings was always a matter for the trial judge and the parties were not entitled as of right to have their case tried to a conclusion in such manner as they thought fit and if necessary after all the evidence had been adduced and could have no legitimate expectation that such a course would be followed.

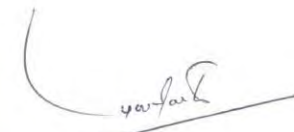
- [5] From the decisions cited above it appears that the courts are discouraged to a very great extent in having split trials. Courts are always encouraged to go through the full trial and determine all the issues between the parties.
- [6] The issues the defendants move the court determine as preliminary are whether plaintiffs, after leaving the church, are entitled to claim beneficial interest in the property and the 5th defendant, church established independently of the 5th defendant and outside the constitution of the 5th defendant.
- [7] The learned counsel for the defendants submitted that with the determination of these issues the entire matter could be concluded. The plaintiffs claim is based mainly in a constructive trust. They also have pleaded proprietary estoppel.
- [8] If the court determines the above two issues preliminarily and answers them in the affirmative the entire matter will come to an end but if the court answers the issues in the negative, the court will have to proceed to trial and hear the evidence which will cause unnecessary delay.

- [9] The learned counsel for the defendants cited the decision of the Court of Appeal in the case of **Rev. Sairusi Kamanalagi Sooeta & Ors v Rev. Paula Tikoinakau** High Court Civil Action No. 261 of 1992; Civil Appeal No. 21 of 1993. The dispute in that case is somewhat similar to the dispute before this court.
- [10] At this stage the court is not required decide the matter on its merits. The hearing was conducted to see whether the court should try the two issues raised by the defendant separately from the other issues.
- [11] In my view the court should not try issues as preliminary issues unless the entire matter could be disposed of whichever the way the issues are answered. As I said earlier if the court answers the two issues raised by the defendants in their favour the entire matter can be disposed but if the issues are answered in favour of the plaintiffs the court will have to conduct the trial to determine the other issues. It is therefore more convenient for the parties to have determined all the issues together in one trial.
- [12] For the reasons set out above the court makes the following orders.

ORDERS

1. The application to have the two issues as preliminary issues is refused.
2. The court will determined the two issues raised by the defendants at the trial of the substantive matter.
3. There will be no order for costs.




Lyone Seneviratne

JUDGE

07th August 2020