

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: 6th February, 2020

Date of Ruling: 19th August, 2020

Ruling

1. The plaintiff has filed a summons for my recusal from this case on account that I am "*functus officio and or has decided on the material matters in controversy, thereby... unable to decide on the issue afresh or vary (my) findings or decide or determine the issues .. impartially on the ground of apprehended bias and or pre-determination of the issue in dispute*".
2. 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 an order that the suspension is tainted with procedural unfairness and impropriety and in breach of the principles of natural justice; the suspension be stayed; and, a declaration that the suspension is unlawful.

3. In the interim, the plaintiff sought an interim injunction to restrain the defendants from appointing an interim or substantive successor to the plaintiff's position and continuing to suspend the plaintiff or alternatively that his suspension be stayed.
4. The plaintiff states that my finding that the "*Report on Financial Anomalies at SMC by (FMLS)*" reveals that there were reasonable grounds for the suspension and there was no requirement for notice of alleged charges or a hearing before suspension, disposes of the substrata of the originating summons.
5. The ground for my recusal is that I am "*functus officio*" and decided the matters in controversy on the ground of apprehended bias.
6. Mr Anand Singh, counsel for the plaintiff submitted that I have prejudged the issue .
7. Mr Shelvin Singh, counsel for the defendants submitted that the plaintiffs should have appealed my Order. No objection was raised by the plaintiff to the disclosure of the Report by the defendants.
8. In an application for an interim injunction, the Court is required to consider the affidavits and attachments filed by the parties to determine whether there is a serious issue to be tried.
9. In the present case, the interim relief sought required me to consider whether there were reasonable grounds for the suspension and a requirement for notice of the alleged charges or a hearing.
10. I need hardly state that it is an elementary principle of law that interim orders do not determine the rights of parties finally.

11. In *Commissioner of Police v Wehrenberg*, [2013] FJCA 114; ABU0024.2007(1 November, 2013) the appellants argued that the learned trial Judge was *functus officio* after making his interim Judgment. The Court stated at paragraph 34:

Although the learned trial Judge in the course of his interim judgment dealt with the matters set out in the affidavits of the parties he did not make final conclusive orders regarding the declarations and the damages sought by the Respondents.

12. The cases cited by Mr Anand Singh in his written submissions on the principle of *functus officio* have no application, as they deal with final orders made disposing of the substantive matter.

13. I would conclude with an excerpt from a judgment of the High Court of Australia in *Ebner v. Official Trustee*, (2000) 205 CLR 337 at 348 on the duty of judges:

Judges have a duty to exercise their judicial functions when their jurisdiction is regularly invoked and they are assigned to cases in accordance with the practice which prevails in the court to which they belong. They do not select the cases they will hear, and they are not at liberty to decline to hear cases without good cause. Judges do not choose their cases; and litigants do not choose their judges. If one party to a case objects to a particular judge sitting, or continuing to sit, then that objection should not prevail unless it is based upon a substantial ground for contending that the judge is disqualified from hearing and deciding the case.

....if the mere making of an insubstantial objection were sufficient to lead a judge to decline to hear or decide a case, the system would soon reach a stage where, for practical purposes, individual parties could influence the composition of the bench. That would be intolerable.
(emphasis added)

14. In my judgment, no grounds for my disqualification exist in fact or in law.

15. *Orders*

- (a) The application for my recusal is declined.
- (b) The plaintiff shall pay the defendants 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**

19th August, 2020