

IN THE HIGH COURT OF FIJI AT LAUTOKA
CIVIL JURISDICTION

HBC No: 64 of 2003

BETWEEN : **JOHN LINDSAY PERRY** also known as **JOHN PERRY** of Suva, Fiji, Pastor, **CORALIE PERRY** of Suva, Fiji, Domestic Duties, **OSEA WAQAMATE** of Suva, Fiji Retired, **SULIANA RADINIMABUA** of Suva, Fiji Domestic Duties and **LUKE ROKOBUTA** also known as **LUKE JACK ROKOBUTA** of Perth, Australia, Pastor, as Trustee of the **POTTER'S HOUSE PENTECOSTAL CHURCH OF FIJI** a Religious Body duly registered under the provisions of the Religious Bodies Registration Act; Cap 68.

PLAINTIFFS

AND : **LAWRENCE GREGORY** of 14 Potts Street, Kashmir, Lautoka, Fiji, Pastor, **RATU ANTHONY DOVI TAVUTAVUVANUA** of Malolo Street, Lautoka, Fiji, Social Worker, **JAI PRAKASH** (father's name Hari Prasad) of Navula, Vaivai, Lautoka, Fiji, Farmer and **ROHIT KUMAR SHARMA** (father's name Brij Ram) of Marlow Street, Drasa/Vitogo, Lautoka, Fiji, Accounts Clerk.

DEFENDANTS

Counsel Appearing : Mr. Stanton SC & Mr. Prasad for the Plaintiffs
Ms. Devan & Ms. Chetty for the Defendants
Trial Dates : 27/07/15, 28/07/15, 29/07/15 & 30/07/15
Date of Judgment : 23 November 2021

J U D G M E N T

INTRODUCTION

1. This is my final judgment following a trial de novo in 2015. The matter was first tried before Madam Justice Phillips on 22 October 2007.
2. The following witnesses gave evidence at trial. For the Plaintiffs:
 - PW1 John Lindsay Perry
 - PW2 Robert Neil McGuinness
 - PW3 Phoebe McGuinness
 - PW4 Ross Alexander Hounslow
 - PW5 Keith Adrian Nicely
3. For the Defendants:
 - DW1 Lawrence Gregory
 - DW2 Pastor Brown
 - DW3 Mrs. Sue Allen Brown

4. The dispute is about a certain “church property” (“**property**”) situated in Lautoka. This property is all comprised in State Lease No. 391971. Presently, it is registered in favour of the Potters House Pentecostal Church of Fiji which is based in Suva (“**Suva Church**”).
5. However, as I explain below, this registration in favour of the Suva Church is irregular.
6. The Suva Church is a religious body. It was registered under the Religious Bodies Registration Act (“**RBR Act**”) in 1991. Sections 5 and 7 provide that the trustees of any religious body registered under the Act should hold property on its behalf. These Trustees are formalized through the registration of a Memorial of Trustees which sets out their names and other details and which must be registered with the Registrar (section 3).
7. Section 5 provides:
 5. All grants of land heretofore issued to any persons on behalf of any religious body shall be held by such persons in trust for the said religious body, and on the registration of trustees as provided in this Act, certificates of title may be issued to such trustees in lieu of any grant or certificate of title issued before the commencement of this Act, subject however to any existing leases or encumbrances affecting the land comprised in any such grant or certificate of title.
8. Section 7 provides:
 7. The registered trustees of any religious body under this Act shall for all purposes of dealing with any land under the provisions of the Land Transfer Act be treated as the proprietors, lessors or otherwise according to their interest in the land intended to be dealt with:

Provided always that their interest in such land shall in no case devolve on their personal representatives.
9. Section 2 provides that any legal suit or proceeding instituted or brought by or against any religious body shall be instituted or brought by or against its registered trustees.
 2. All suits and proceedings at law instituted or brought by or against any religious body shall be instituted or brought by or against the persons registered as hereinafter provided as trustees for the time being of such religious body and any such suit or proceeding shall be carried to its final termination notwithstanding any alteration in the registered trustees of such religious body while such suit or proceeding is pending.
10. It follows from these provisions that registration *per se* under the RBR Act does not confer a juridical personality on a religious body. As such, a religious body registered under the RBR Act must hold property through its trustees.
11. In this case, there are two boards of trustees embroiled in a dispute as to which of them should be registered on the property in question as the legal owner. The plaintiffs wish to be registered as owner because they are the trustees for the Suva Church. The defendants wish to be registered as proprietors because they constitute the Board of Trustees for the **Lautoka Church**. At the time the property was acquired, both churches were affiliated to a wider international network of churches called the Christian Fellowship Church Inc. (“**CFCI**”).

CFCI -FELLOWSHIP IN FIJI

12. The CFCI-fellowship is headquartered in Prescott Arizona in the United States of America. There are local congregational churches throughout the US and in other parts of the world which are affiliated to the CFCI-fellowship.
13. The churches which I refer to in this case (i.e. the Arizona Church, Suva Church, Lautoka Church, Perth, Melbourne and Guam) were all affiliated to the CFCI-fellowship at all material times. Except the Lautoka Church, all have maintained their affiliation to this day.
14. The CFCI fellowship was founded by a Pastor Wayman Mitchell. At the time material to this case, he was the President of the entire CFCI-fellowship.
15. The Arizona Church is governed in accordance with a set of By-Laws. These By-Laws (“**Arizona By-Laws**”) set out the purpose of the Arizona Church and its governing structure. All CFCI-affiliated pastors regard the Arizona By-Laws as the governing instrument of the wider CFCI-fellowship.
16. Article 2 of the By-Laws provides that the “planting” and establishing of member churches both in the US and abroad are part of the core functions of the Arizona Church as well as the CFCI. This core function would be carried out by the CFCI’s ordained Ministers.
17. CFCI-ordained Ministers have established many churches all over the world. Among these is a church in Melbourne and also one in Guam. The Melbourne church would go on to establish a church in Perth. In 1991, the Perth Church established the Suva Church in Fiji.
18. The Suva Church’s first Memorial of Trustees was registered with the Registrar of Religious Bodies on 6 June, 1991. In 1994, Pastor Brown (**DW2**) became the Pastor of the Suva Church. On 24 September 2001, the Suva Church registered its second Memorial of Trustees. This notified the Registrar that the plaintiffs had been appointed Trustees. As I have said, this Suva Church is currently registered as the proprietor of the property in question.
19. CFCI’s presence in Lautoka began in May 1996. That was the year when a missionary by the name of Pastor Lawrence Gregory (**DW1**) arrived here in Fiji. Gregory was in fact commissioned and launched by the Guam Church to plant a church in Lautoka. This, he did in 1996 shortly after he arrived here.
20. The church which Pastor Gregory set up was originally known as the Potters House Christian Church of Lautoka. Its name was subsequently changed to Victory Christian Centre. For convenience, I shall, henceforth, refer to this church as the “**Lautoka Church**”.
21. From 1996 to 2001, the Lautoka Church functioned as a local CFCI-affiliated congregational church.
22. At some point after he arrived in Fiji, the idea of acquiring a property was birthed in Pastor Gregory. That vision came into fruition in 1998 when the property in question was purchased. His vision was to purchase a property to be used by the Lautoka congregation as a place of worship. Ideally, the property would have enough extra space for Pastor Gregory to reside in.

23. As it turned out, a property was in fact purchased. It is not in dispute that Pastor Gregory and the rest of the defendants, as well as the congregants of the Lautoka Church, all made substantial financial and non-financial contributions to the acquisition of the property.
24. However, in 2001, the Lautoka Church disaffiliated itself from the CFCI fellowship. It was then that the dispute arose as to the beneficial entitlement to the property.
25. Notably, from the time the property was acquired in 1998 until today, the Lautoka Church has been in continuous uninterrupted occupation of it.

ACCOUNTABILITY STRUCTURE WITHIN CFCI - FELLOWSHIP – GOLD SHEETS

26. All witnesses acknowledge that the Arizona By-Laws bind all CFCI-affiliated churches all over the world. In her cross-examination of **PW5**, Ms. Devan asked whether that bond is a legal one. Ms. Devan suggested that the CFCI-fellowship is just **“a loosely affiliated group of churches tied together by a common broad vision and relationship”?**
27. The CFCI-By-Laws of Arizona sets out a system of upward accountability within its ranks. In this hierarchy, CFCI-Arizona is placed at the apex.
28. Every Pastor running and maintaining a church within the fellowship is required to keep account of all financial matters (rent, tithes, offerings and other income and expenses) as well as spiritual matters. At the end of every month, every Pastor must complete in triplicates and submit a report. **PW5, DW2** and Pastor Gregory all referred to this Report in their evidence as the *Gold Sheets*.
29. The first copy of the Gold Sheet is retained by the local Pastor’s church. The second copy is forwarded to its mother church, and the third copy is sent to CFCI-Arizona.
30. Pastor Gregory gave evidence that under the *Gold Sheets* system, he would retain the first copy of the Lautoka Church monthly report. He sent the second copy to Guam because Guam was the church which launched Pastor Gregory to establish the Lautoka Church. The third copy, he sent to CFCI-Arizona. A certain percentage of all monies (tithes and offerings etc.) collected in Lautoka is sent to Guam and also to CFCI-Arizona. Notably, Pastor Gregory was never accountable to Suva/PHPCF.
31. The Suva Church’s line of accountability is firstly to its mother church in Perth, Australia and ultimately to CFCI-Arizona.

PLAINITIFFS’ POSITION

32. The plaintiffs appear to capitalise on the fact and of the existence of the wider CFCI-fellowship structure and its presence in Fiji and on the fact that all those who collaborated in cash and kind towards the acquisition, were affiliated to the CFCI fellowship at the time.
33. The argument is that the property would have been acquired for the benefit of the wider CFCI fellowship or, alternatively, for local “arm” of the CFCI.

34. The Suva Church is the sole remaining CFCI-affiliate in Fiji. Since the plaintiffs are the trustees of the Suva Church, the property therefore, should revert to the plaintiffs to hold on trust for the benefit and purpose of the CFCI-fellowship.
35. The plaintiffs seek the following Orders:
 - (i) a declaration that they were the trustees of PHPCF and as such, the lawful proprietors of the property.
 - (ii) an Order that the Registrar of Titles correct Crown Lease No.391971 and Mortgage No .447318 by recording the Plaintiffs' names as proprietors in their capacity as the trustees of Potters House Pentecostal Church of Fiji.
 - (iii) an order that the defendants deliver vacant possession of the said property.

DEFENDANTS' POSITION

36. The defendants' claim is based on two assertions. Firstly, they argue that the property was acquired specifically for the benefit of the Lautoka Church. This is a particular congregational church existing in a particular locality. Although this church is part of the CFCI-fellowship, the property was not acquired for the benefit of the global hierarchical CFCI fellowship.
37. Secondly, and in any event, the defendants and the congregants of the Lautoka Church made substantial financial contribution, and contribution in kind, towards the purchase of the property. Accordingly, they have an equitable beneficial interest in the property.

THE EVIDENCE

38. Below, I set out the background. This is based on what I consider to be the uncontroverted facts from the evidence given at trial.

Pastor Lawrence Gregory

39. In the mid-1980s, Lawrence Gregory (**DW1**) regularly attended the Potter's House Church in Long Beach California. Pastor Nicely (**PW5**) was pastoring this church at the time. Gregory had a desire to become a Pastor, and **PW5** was aware of this. At some point, **PW5** sent Gregory to assist in a church in San Pedro. I gather this was part of the grooming process.
40. Like the church in Long Beach, the San Pedro Church was also affiliated to the CFCI-fellowship.
41. In 1987, **PW5** went to Guam to start a church. This church was later incorporated there in Guam on 02 May 1992 (as the Victory Church Incorporated ("**Guam Church**").
42. After some time in San Pedro, Gregory would follow **PW5** to Guam to assist him there. Then, after about a year or so in Guam under **PW5**'s tutelage, Gregory was sent back to San Pedro for further exposure and grooming. He came to Fiji after a short while in San Pedro.
43. It was while Gregory was back in St Pedro from Guam that he was ordained as a CFCI- Pastor.

44. Gregory's ordination marked his elevation from the laity. He was given a Ministerial License by the CFCI-Board in Arizona. This license was his formal "authority" to, *inter alia*, "plant" and pastor a church anywhere in the world. There is an unspoken expectation that any church he plants and pastors would be affiliated to the CFCI-fellowship.
45. In 1996, Pastor Gregory was commissioned to Fiji by **PW5**. At the time, **PW5** was still pastoring in Guam where he was being assisted by Pastor Robert Neil McGuiness (**PW2**) and Mrs. McGuiness (**PW3**).

Immigration

46. In 1996, Pastor Gregory found himself seeking entry to Fiji pursuant to his commission. At the time, there was in place here a government moratorium ("**freeze**") on the registration of any new religious organization. This meant that Pastor Gregory would not be able to enter Fiji to start a new church. He would only be allowed entry if he was to be attached to a church which was already registered here at the time.
47. Because the Suva Church was already registered under the RBR Act at the time, Pastor Brown (**DW2**) who was then its Head Pastor, would assist Pastor Gregory with obtaining immigration clearance. Thus, in all official immigration forms, Pastor Gregory identified himself as a missionary for the Suva Church. He also named the Suva Church as his "employer".
48. I find that **DW2** and the Suva Church assisted Pastor Gregory in obtaining a work permit because of Suva's and Guam's common and shared affiliation to the CFCI fellowship. I also find that the Suva Church did so because Pastor Gregory was sent to Fiji by Guam to establish a church in Lautoka. I also find that the Suva Church was never Pastor Gregory's employer at any time whatsoever.

Establishing Lautoka Church

49. Upon his arrival in Fiji, Pastor Gregory immediately set about embarking on his missionary work. In time, he would attract a steady gathering of followers which eventually became the Lautoka Church.
50. As I have said, the church was initially known as the *Potters House Christian Church in Lautoka*. This name was chosen for its similarity to the *Potters House Pentecostal Church of Fiji* (Suva Church). The evidence is clear though that Pastor Gregory was never accountable to the Suva Church through the Gold Sheets. He was accountable to Guam and ultimately to Arizona. The church he had in Lautoka was a completely different and independent entity from the Suva Church, albeit they share a common affiliation to the CFCI-fellowship.
51. Apart from assisting in Pastor Gregory's immigration clearance, PHPCF played no role whatsoever in the running of the Lautoka Church. However, I also accept that, until he broke away from the CFCI fellowship in 2001, Pastor Gregory was a CFCI-ordained Minister and that the Lautoka Church was a CFCI -affiliate.

52. After the moratorium was lifted, Pastor Gregory would register the Lautoka church as the Victory Christian Centre. He did this, apparently, to pay homage to the Victory Chapel in Guam which had launched him to Fiji.

Guam Support

53. From 1996 to 2001, Guam supported Pastor Gregory and the Lautoka Church. Guam's support was in the form of payments for (a) Pastor Gregory's remuneration and housing allowance (b) the Lautoka Church's utilities, overheads and (c) other general expenses associated with the running of the church. Guam also sent money occasionally to cover for the Lautoka Church's crusades and preaching outreach.
54. **PW5** said that the decision to support Pastor Gregory and Lautoka was entirely at Guam's discretion. There is no requirement under the Arizona By-Laws that a mother church must support its *progeny*. Guam initially provided USD\$1,200 per month. This amount gradually declined after some time. In 2001, Guam was only giving \$200 per month. **PW5** said this was because Guam expected Lautoka to be standing on its own two feet after some time.
55. Pastor Gregory said that the decline in Guam's support happened sooner because of some differences he had with **PW5**. These differences arose because **PW5** did not acquiesce to certain spending and/or demands of Pastor Gregory.

The Decision to Acquire the Property

56. The idea to acquire a property was birthed in Pastor Gregory some time after he settled in Fiji. His vision was to acquire the property for the benefit of the Lautoka Church. At the time, he was still a CFCI – ordained Pastor. His Lautoka Church was also then still affiliated to the CFCI.
57. Sometime between 1997 and 1998, Pastor Gregory was drawn to a mortgagee-sale advertisement which the ANZ Bank had placed over the property in question. He desired the property, and discussed his plans with President Wayman Mitchell (Arizona), **PW5** (Guam) as well as **DW2** (Suva). The land had a building already erected on it. This was ideal because the building could serve as a center for worship with enough extra space for him (Pastor Gregory) to reside in.
58. And so, in pursuit of his vision, Pastor Gregory would consult his co-CFCI-associates and affiliates for assistance and support. He never sought assistance from anyone outside that circle.

Suva's Assistance In the Acquisition

59. **DW2** and his Suva Church trustees assisted Pastor Gregory in the acquisition. They did so by writing and co-signing various letters of support.
60. The first letter was dated 29 January 1998. This letter stated that all local churches of the fellowship working together in Fiji had the right to borrow money from lending institutions in Fiji. At the time, the only two local churches of the fellowship existing in Fiji were the Suva Church and the Lautoka Church.
61. The second letter was dated 05 March 1998.

62. **PW5** agreed in cross-examination that these letters were written to enable the Lautoka Church to apply for a loan to buy the property. They were part of Pastor Gregory's supporting documentation when applying for finance on 30 March 1998.
63. Pastor Gregory said he only sought Pastor Brown's assistance because of their friendship. However, I believe he would have been compelled to seek assistance from whoever was in charge of Suva Church at the time considering:
- (i) that the Lautoka Church was then not registered under the RBR Act while the Suva Church was.
 - (ii) that the Lautoka Church's trustees were therefore not in a position to acquire property in the name of the Church, let alone enter into a loan agreement and/or an agreement to raise a mortgage for that purpose in the name of the Lautoka Church.
 - (iii) that the moratorium was still in place, and
 - (iv) given that the Lautoka Church and the Suva Church's common affiliation.

Guam's Assistance In The Property Acquisition

64. In addition to its monthly support to the Lautoka Church from 1996 to 2001, Guam also contributed specifically towards the purchase of the property. For example, **PW5** wrote a letter dated 05 March 1998 and also another on 30 March 1998 to support Pastor Gregory's acquisition of the property. **PW5** also sent funds from Guam to Pastor Gregory as deposit for the purchase.
65. **PW5** was shown a letter dated 31 March 1998 by Young & Associates, the solicitors for ANZ Bank, addressed to Pastor Gregory. The said letter required Pastor Gregory as purchaser to pay a deposit of \$8,400 (eight thousand four hundred dollars) on the execution of the agreement. Following this letter, Guam then arranged to borrow \$8,400-00 deposit was in fact borrowed from one Mr. Herbert Lundin. I understand Lundin was also affiliated to the CFCL.
66. Whether or not Mr. Lundin has been fully repaid that \$8,400, and if he has been, who paid him back, is not clear from the evidence. In the absence of clear evidence, I find that the deposit is/was part of Guam's contribution to the acquisition of the property.
67. There is no clear evidence as to whether Guam made any further specific financial contribution towards the purchase. It is common ground though that Guam continued to support the Lautoka Church through its monthly contributions until 2001. As I state below, the amount of money that Guam paid monthly to the Lautoka Church would decline gradually.

Application For Loan, Loan Agreement, Mortgage & Personal Guarantee

68. The property was actually purchased with finance from Home Finance Company Limited ("**HFCL**"). It was Pastor Gregory and the defendants who actually applied for that finance.
69. On the *Loan Application Form*, Pastor Gregory and the defendants provided the following as *Particulars of the Applicant*:

Potters House Christian Church,
P.O Box 105, Lautoka.

70. On a section where the Form asks "*Who Will Occupy The Property*", they entered the following:
- Church/Pastor's Residence.
71. HFCL's Acceptance Note was actually addressed to Pastor Gregory and the defendants in their purported capacity as trustees of the Suva Church. The Loan Agreement which followed the Acceptance Note also identified and described Pastor Gregory and the defendants as the borrowers.
72. As security for the loan, the defendants executed a mortgage in favour of HFCL. Again, they did so in their purported capacity as trustees of the Suva Church. In addition to the mortgage, the defendants also each gave a **personal guarantee** to HFCL.
73. As I have said, at no time whatsoever before or after that loan agreement, were the defendants ever appointed as trustees of the Suva Church. The plaintiffs rather were the trustees of the Suva Church then and now.

Transfer of Lease To PHPCF

74. On 06 August 1998, the property was transferred to the Suva Church. The instrument of transfer records that ANZ was transferring to Potter's House Pentecostal Church of Fiji (Suva Church) the property described as Lease No. 39171 pursuant to the sale and purchase agreement dated 24 April 1998, and in consideration of the sum of \$85,000. As I have said, the registration under the Lands Transfer Act in favour of the Suva Church is irregular.

All Crucial Documents Were Executed By the Defendants

75. The following documents pertaining to the conveyance of the property and the raising of security were all executed by the defendants and/or addressed to them:
- (i) a letter of offer to purchase the property by the defendants to ANZ (being then the mortgagee over the property) and the acceptance of the offer from ANZ
 - (ii) the loan application to HFCL for finance, the offer letter from HFCL, and the acceptance of the HFCL-offer
 - (iii) the agreements by which the defendants offered security to HFCL in the form of (a) the mortgage in favour of HFCL and (b) the defendants pledging their personal guarantee and
 - (iv) the statutory declaration in the *Application for Exemption From Stamp Duties* and the *Instrument of Transfer*.
76. As I have said, during the entire time when the conveyancing process was unfolding, the moratorium was still in place and the Lautoka Church was yet to be registered under the RBR Act.
77. This meant that the Church did not have any registered trustees who could enter into any sale and purchase agreement for the property, or any loan agreement to raise finance for the purchase, or any mortgage agreement to give security for the loan. The Suva Church, on the other hand, had already been registered under the RBR Act.

LAUTOKA CHURCH – DISAFFILIATION FROM CFCL-FELLOWSHIP

78. Guam's overall support for the Lautoka Church declined between 1996 to 2001. As this happened, the relationship between **PW5** and Pastor Gregory also began to sour. **PW5** said in cross-examination, that their relationship soured in late 1999. This would have been about a year or so after the property was purchased.
79. Some emails between Pastor Gregory and **PW5** were shown to **PW5** during cross-examination. These tend to show (i) that Pastor Gregory was not happy with Guam's declining financial support (ii) that Pastor Gregory then alleged that **PW5** was misusing funds in Guam (iii) that **PW5** had responded with cross-allegations about Pastor Gregory being spontaneous with his financial decisions in Fiji without prior consultation with Guam.
80. From that point onwards, Pastor Gregory's and **PW5**'s relationship only regressed beyond recovery. This led **PW5** to communicate with Pastor Wayman Mitchell in Arizona and to recommend that Pastor Gregory be repatriated to either Guam or mainland United States. However, before any repatriation happened, Pastor Gregory resigned as a Minister of the CFCL-fellowship and severed all ties with the fellowship. This all happened in September 2001.
81. The entire Lautoka Church followed suit and disaffiliated itself from Guam.
82. At the time when all this was happening in 2001, **PW1** had already replaced **DW2** as Senior Pastor of the Suva Church.

CAVEAT

83. After Pastor Gregory's and the Lautoka Church's disaffiliation, **PW1** had a discussion with Pastor Mitchell about the situation in Lautoka. Later, **PW1** received a letter from Pastor Mitchell. In that letter, Pastor Mitchell directed **PW1** to "**protect the church in Lautoka**". Acting on that direction, **PW1** then placed a caveat on the property on 12 September 2001.

SOME COMMENTS

84. **PW5** and the defendants intended to purchase the property for the benefit of the Lautoka Church. Clause 5 of the Arizona By-Laws provides that all properties will be purchased in the name of the member church.
85. Clearly, they could not purchase the property in their names. For one reason or another, they found it convenient to use the Suva Church as conduit for the acquisition.
86. As to why the defendants were made to execute the documents purporting to be trustees of the Suva Church, one can only speculate. Why did not the plaintiffs execute the documents?
87. From one point of view, the arrangement to have the defendants execute all conveyancing documents gave the Lautoka Church some measure of protection from being gazumped by the Suva Church. This is always a risk in any such situation. In addition, it would seem to give the plaintiffs and the Suva Church some measure of insulation from possible creditor action by HFCL, in the event the Lautoka Church and the defendants were to default in their servicing of the mortgage.

88. Another view is that the property was acquired for the benefit the Suva Church hence it was registered in the name of the Suva Church.
89. I do not accept PW1's suggestion at cross-examination that the recording of the names of the defendants on the relevant documents was a result of a mistake. A commercial bank such as HFCL would have carried out all due diligence to find out who the actual registered trustees of the Suva Church were at the time. I believe that the arrangement to have the Suva Church registered on the title, was one that did not pose any particular risk to HFCL. While the registration was an irregularity, that irregularity did not dilute in any way whatsoever the HFCL's rights as mortgagee.
90. In my view, the evidence is stronger that the intent all along was that the property was to be acquired for the benefit of the Lautoka Church.

SERVICING OF LOAN

91. The evidence is that the defendants and the congregants of the Lautoka Church serviced the most part of the loan. I acknowledge that Guam supported the Lautoka Church financially between 1996 to 2001. However, this dwindled gradually between 1996 and 2001. PW5 said Guam was only contributing US\$200-00 (two hundred dollars) per month in 2001 before the Lautoka Church broke away from the fellowship.
92. PW5 said that while Guam had secured the deposit, the Lautoka Church was mainly responsible for servicing the loan as the church had become established and was getting a steady stream of income through tithes and offerings from its congregants. He said the following in cross-examination:

I guess it was. But that could be part of the money that we sent every month or part of what we sent for the down payment. I don't know. Larry was there for a long time. And the church grew up and had money coming in as well. So that's the normal process of making the payments.

But I was concerned that we were – that Guam was the guarantee of whatever happened. If everything failed, then I was still responsible because that was our church.

93. PW5 was cross-examined on a letter dated 07 August 1998 signed by the trustees of the Suva Church addressed to the defendants. By the said letter, the defendants (trustees of the Lautoka Church) were being reminded that the mortgage installments had fallen due in September 1998. In response to the assertion that the letter provided that the Lautoka Church was servicing the loan, PW5 offered the following:
- A. *I do not remember when they were able to make the payments. We gave the money to secure the loan, and I think we made some payments after that. And then they began to have more money coming in. I don't remember the exact figures.*
- Q. *So, when the church became established, it started getting tithes from its congregation, it then used those monies to pay off the loan repayments and other expenses for the property; isn't that correct?*
- A. *Yes. And as long as Larry was still there, we were still supporting him and paying for that. When you partner together, you – what he had would come in would support part of it, and I would pick up the rest. And so that's how we establish churches.*

- Q. And Suva was not – the Suva Church – when I say the Suva Church, I mean the Potter’s House Pentecostal Church of Fiji that was established in Suva – they did not contribute any monies towards the loan or the loan repayments; is that correct?*
- A. No. It was either Guam or the money that they raised at Lautoka.*

94. **PW5** said that although Guam did not sign any legal document to buy this property, Guam did send money and trusted that Pastor Gregory would be honest. He said:

“...we knew that we were the guarantee of the church because we were the one that sent it there and financed everything to support Larry (Pastor Gregory) and the church and the equipment and the cars and everything else. And so if you look at our documents of how much money we already had invested, you don’t invest something like that to just let somebody else have it. That’s not normal business”

95. Arguably, it is open to the defendants to raise the same argument.

Setting-Up Board of Trustees for Lautoka Church

96. On 30 March 1998, Pastor Gregory set himself up along with the defendants as Board of Trustees for the Lautoka Church. He did so after obtaining support from Guam and Suva. Notably, it was only in 2001 after the moratorium was lifted that the Lautoka Church was registered under the RBR Act and a Memorial of Trustees filed with the Registrar of Titles.

Pastor Gregory Settled Balance of Loan

97. After Pastor Gregory’s falling out with Pastor Nicely (**PW5**), Pastor Gregory would then pay off the balance of the mortgage loan out of money he borrowed from a third party specifically for that purpose. I assume that the Lautoka Church would have repaid that money. According to Pastor Nicely (**PW5**), Pastor Gregory did so in order to “steal” the property.

Property Has Always Been Occupied by Lautoka Church

98. It is common ground that the Lautoka Church has enjoyed uninterrupted occupation of the property in question from the time it was purchased in 1998 right up to the present time.

FINDINGS – MATERIAL FACTS

99. I find the following to be established on the balance of probabilities from the evidence. They constitute what I find to be the material facts and upon which my analysis is based.
- (a) Pastor Gregory was commissioned and launched to Fiji in 1996 by **PW5** and the Guam Church on a CFCI-global evangelism platform
 - (b) after a short time in Fiji, the idea of acquiring property was birthed in Pastor Gregory. He wanted a property for the Lautoka Church. At the time, he was a CFCI-ordained missionary
 - (c) in the CFCI-fellowship hierarchy, Pastor Gregory was accountable to **PW5** and ultimately to Pastor Wayman Mitchell. With that in mind, Pastor Gregory broached the idea of acquiring property with **PW5** and Pastor Mitchell who gave their blessings.

- (d) the By Laws of Arizona provides that member churches must acquire property in their own name.
- (e) the property could not be acquired in the name of the Lautoka Church or in the name of its trustees because of the moratorium that was in force at the time which prevented Pastor Gregory from registering the Lautoka Church under the RBR Act for many years until 2001.
- (f) and so, after purchase, the property was registered in the name of the Suva Church. The registration of the Suva Church on the title is an irregularity, but was (most likely) a deliberate move for convenience.
- (g) the property was purchased with the joint financial contribution of Pastor Nicely (PW5) backed by the Guam Church on the one hand, and the defendants backed by the Lautoka Church on the other. The defendants and the Lautoka Church paid all outgoings on the property and all mortgage installments. They continue to pay all outgoings up to this day after the mortgage was cleared.
- (h) Pastor Gregory carried out all negotiations and formalities connected with the acquisition.
- (i) there was no financial contribution from any other branch of the CFCI-fellowship.
- (j) there is no express trust impressed on the property.
- (k) it was never the intention of anyone that the Suva Church or its trustees should benefit from the property
- (l) although it is now twenty years exactly since the Lautoka Church severed its links with the CFCI, the Church has remained in occupation of the property. In fact, the Church has enjoyed uninterrupted occupation of the property from 1998 right through to this very day.
- (m) following from the above, and there being no evidence from the plaintiffs to assert otherwise, I find that the defendants and the Lautoka Church have maintained all utility bills and outgoings and charges on the property throughout the years of their occupation.

ISSUES

- 100. The registration of the property in the name of the Suva Church is irregular. Who then, between the plaintiffs on the one hand and the defendants on the other, should be registered as proprietor in *lieu* of the Suva Church?
- 101. If there is an express trust impressed on the property, then undoubtedly, the above question will be resolved by the provision of the express trust.
- 102. The difficult question becomes, what analytical approach should this court adopt to determine beneficial entitlement in the absence of an express trust? Should that be determined in terms of the parties' financial contribution towards the purchase, or should that be determined in terms of the hierarchical structure of the CFCI-fellowship? Could I still then adopt the approach in Overtoun [1904] and Attorney-General v Pearson (1817) which appear to be premised on the existence of

an express trust? Or, I should adopt the approach in Calverley v Green [1984] which lays emphasis on the purchase money –resulting trust?

ANALYSIS

103. Generally, disputes which engage religious doctrinal differences are not justiciable (see the English Supreme Court judgment in Shergill v Khaira [2014] UKSC 33 (as per Lord Neuberger, Lord Sumption and Lord Hodge (with whom Lord Mance and Lord Clarke agreed, see also Free Church of Scotland v Overtoun [1904] AC 515, at page 643, Lord Davey; Blake v Associated Newspapers Ltd [2003] EWHC 1960 (QB); Secretary of State for Education and Employment ex parte Williamson [2005] UKHL 15; HH Sant Baba Jeet Singh Ji Maharaj v Eastern Media Group & Anor [2010] EWHC 1294 (QB); Shergill v Purewal & Anor [2010] EWHC 3610 (QB).
104. However, religious issues are usually intertwined with private rights and obligations and may have civil consequences. If a claimant seeks to enforce such a private right or obligation, the judge will have to determine the issues objectively by looking at the case through the lenses of contract law or trust law. For example, the issue may be about enforcing the contractual rights of members of a community against other members or its governing body even in an unincorporated religious organisation or, the case may be about ensuring that church property held on trust is used for the purposes of the trust.
105. As the English Supreme Court said in Khaira:
45. *This distinction between a religious belief or practice and its civil consequences underlies the way that the English and Scottish courts have always, until recently, approached issues arising out of disputes within a religious community or with a religious basis. In both jurisdictions the courts do not adjudicate on the truth of religious beliefs or on the validity of particular rites. But where a claimant asks the court to enforce private rights and obligations which depend on religious issues, the judge may have to determine such religious issues as are capable of objective ascertainment. The court addresses questions of religious belief and practice where its jurisdiction is invoked either to enforce the contractual rights of members of a community against other members or its governing body or to ensure that property held on trust is used for the purposes of the trust. We consider each circumstance in turn.*
46. *The law treats unincorporated religious communities as voluntary associations. It views the constitution of a voluntary religious association as a civil contract as it does the contract of association of a secular body: the contract by which members agree to be bound on joining an association sets out the rights and duties of both the members and its governing organs. The courts will not adjudicate on the decisions of an association's governing bodies unless there is a question of infringement of a civil right or interest. An obvious example of such a civil interest is the loss of a remunerated office. But disputes about doctrine or liturgy are non-justiciable if they do not as a consequence engage civil rights or interests or reviewable questions of public law.*
106. Thus, when the Court sits to determine religious issues objectively, the court is not stepping in to resolve the religious dispute. Rather, the Court is stepping in to keep the parties to their contract or bargain. (Dawkins v Antrobus [1879] 17 Ch D 615).

107. As the English Supreme Court said in **Khaira**, when a religious authority sets up a trust to govern the purposes for which property is to be acquired and held, the religious authority is performing a juridical act which creates interests which the civil law and the courts will protect.
49. *We turn to the court's enforcement of trusts. The courts have jurisdiction to determine disputes over the ownership, possession and control of property held on trusts for religious purposes. Where people set up a trust to govern the purposes for which property is to be acquired and held, they are performing a juridical act which creates interests that the civil law will protect. The courts have repeatedly exercised jurisdiction in disputes over the ownership of property which were caused by religious disagreements. Many of the cases date from the 19th century and are Scottish, because of the propensity towards schism of the Scottish Presbyterian churches at that time. But the same principles applied in English law and, subject to the statutory jurisdiction of the court to approve cy-près schemes, which we discuss below, they remain valid in both jurisdictions.*
50. *In a series of cases in which, as a result of a schism, parties disputed who had the beneficial interest in property which was held in trust for a religious community, the rule was established that the civil courts would ascertain the foundational and essential tenets of a faith in order to identify who was entitled to the property. This rule replaced the former rule, which applied at least in Scotland, that the courts would not investigate the religious grounds of a schism but would give effect to the majority view within the religious community.*
108. Accordingly, if, as a result of a schism within a church, a dispute were to arise as to which faction is beneficially entitled to church property which is held in trust for the religious community, the civil courts will first ascertain the foundational and essential tenets of the faith in order to identify who is entitled to the property. The property will go to the faction which adheres to the church's fundamental religious principles, "as identified in its contract of association", that is, in the church's constitution or its governing instrument (**Craigdallie v Aikman** (1813) 1 PC Dow 1, 14-16 Lord Eldon).
109. In **Attorney-General v Pearson** (1817) 3 Mer 353, [1817] EngR 645, (1817) 3 Mer 353, (1817) 36 ER 135, Lord Chancellor Eldon said:
- 'if any persons seeking the benefit of a trust for charitable purposes should incline to the adoption of a different system from that which was intended by the original donors and founders; and if others of those who are interested think proper to adhere to the original system, the leaning of the Court must be to support those adhering to the original system, and not to sacrifice the original system to any change of sentiment in the persons seeking alteration, however commendable that proposed alteration may be.'*
110. Furthermore, as Lord Eldon also said:
- [W]here a congregation has become dissentient among themselves, the nature of the original institution must alone be looked to ... and., to refer to any other criterion - as to the sense of the existing majority - would be to make a new institution, which is altogether beyond the reach, and inconsistent with the duties and character, of this court.*
111. Lord Davey's sentiments in **General Assembly of Free Church of Scotland v Overtoun** [1904] AC 515

'The more humble, but not useless function of the civil court is to determine whether the trusts imposed upon the property by the founders of the trust are being duly observed. The question in each case is what were the religious tenets and principles which formed the bond of union of the association for whose benefit the trust was created?'

DOES THE CFCI SECT UP A TRUST TO GOVERN THE PURPOSES FOR WHICH PROPERTY IS TO BE ACQUIRED & HELD? IS THERE A TRUST IMPRESSED UPON THE PROPERTY IN QUESTION BY THE FOUNDERS?

112. Generally, an express trust is created in either of two methods. Firstly, it may be created by an express declaration of trust, or, secondly, by the transfer of property to the trustees subject to a direction to hold it upon trust for the beneficiaries (**Milroy v Lord** [1862] 31 LJ Ch 798, HC).
113. As to the first method, there was no evidence of any instrument containing an express declaration of trust over the property in question given to me at trial (for example a Deed of Trust).
114. There being no express declaration of trust, the question I then ask is whether an intention to create a trust can be imputed from any provision of the Arizona By-Laws?
115. Neither counsel has directed me to any provision in the Arizona By-Laws which recites an express trust in favour of the wider hierarchical church nor any other church within the hierarchy and which provision could be upheld as a stand-alone enforceable express declaration of trust.
116. The only provision in the Arizona By-Laws which is remotely relevant is Section 5 of Article VII relating to Finance. This section provides that:
- All properties shall be purchased in the name of the member church. All church properties shall remain as the property of the member church and not individually owned.*
117. However, section 5 clearly does not contemplate that an entire member church would completely disaffiliate itself from the fellowship - let alone, that a disaffiliating church would attempt to secure church property for itself. Otherwise, the drafters would have included in the By-Laws a specific provision which secures a right of reversion to the CFCI-fellowship or any other church within its hierarchy.
118. As to the second method, as I have said, the transfer and the registration of the property to the Suva Church is irregular. That irregularity aside, there is no evidence of any specific direction to either the Suva Church or its trustees to hold the property on trust for the benefit of the Guam Church or the wider CFCI-fellowship or even the Lautoka Church.

RESULTING &/OR CONSTRUCTIVE TRUSTS

119. In the absence of an express trust, and there being no specific provision in the Arizona By-Laws which recites any express trust, I may still engage the principles of implied, resulting or constructive trust to declare an equitable relief in this case, if the circumstances are appropriate.
120. As Lord Diplock said in **Gissing v Gissing**:

...to constitute a valid declaration of trust by way of gift of a beneficial interest in land to a cestui que trust the declaration is required by section 53 (1) of the Law of Property Act, 1925, to be in

writing. If it is not in writing, it can only take effect as a resulting, implied or constructive trust to which that section has no application.

121. The property was acquired through financial contributions from **PW5** and his Guam Church on the one hand, and the defendants and the Lautoka congregation on the other. Is this then an appropriate case to determine beneficial entitlement based on financial contribution? I ask this question, mindful that this approach is often applied in cases where cohabitants or couples (married or defacto) are seeking a determination from the Court as to their beneficial entitlement.
122. In **Calverley v Green** [1984] HCA 81; (1984) 155 CLR 242; 59 ALJR 111; 56 ALR 483 (6 December 1984), Gibbs C.J described the general rule as follows at paragraph 3 of their judgment:
3. *Where a person purchases property in the name of another, or in the name of himself and another jointly, the question whether the other person, who provided none of the purchase money, acquires a beneficial interest in the property depends on the intention of the purchaser. However, in such a case, unless there is such a relationship between the purchaser and the other person as gives rise to a presumption of advancement, i.e., a presumption that the purchaser intended to give the other a beneficial interest, it is presumed that the purchaser did not intend the other person to take beneficially. In the absence of evidence to rebut that presumption, there arises a resulting trust in favour of the purchaser.*
123. Gibbs CJ went on to say that where two or more persons have contributed towards the purchase price, it is presumed that the property is held by the purchasers in trust for themselves as tenants in common in the proportion of their contribution towards the purchase and there is no presumption of advancement with regards to the contribution of one in favour of the other.
3. *Similarly, if the purchase money is provided by two or more persons jointly, and the property is put into the name of one only, there is, in the absence of any such relationship, presumed to be a resulting trust in favour of the other or others. For the presumption to apply the money must have been provided by the purchaser in his character as such - not, for example, as a loan. Consistently with these principles it has been held that if two persons have contributed the purchase money in unequal shares, and the property is purchased in their joint names, there is, again in the absence of a relationship that gives rise to a presumption of advancement, a presumption that the property is held by the purchasers in trust for themselves as tenants in common in the proportions in which they contributed the purchase money: **Robinson v. Preston** (1858) 4 K & J 505, at p 510 (70 ER 211, at p 213); **Ingram v. Ingram** [1941] VicLawRp 20; (1941) VLR 95 and **Crisp v. Mullings** (1976) EGD 730 (a decision of the English Court of Appeal).*
4. *the general rule is that in the situations mentioned it is presumed that a resulting trust arises in favour of the purchaser, or in favour of two purchasers in the proportions in which they contributed the purchase money, is subject to the exception created by the presumption of advancement. "It is called a presumption of advancement but it is rather the absence of any reason for assuming that a trust arose or in other words that the equitable right is not at home with the legal title": **Martin v. Martin** [1959] HCA 62; (1959) 110 CLR 297, at p 303; in other words, it is "no more than a circumstance of evidence which may rebut the presumption of resulting trust": **Pettitt v. Pettitt** [1969] UKHL 5; (1970) AC 777, at p 814.*
124. It would appear that the presumption of a resulting trust in favour of a purchaser or co-purchaser is based on two reasons. The first is that equity takes a cynical view and will not readily believe that

a purchaser would wish to spend his money away to benefit another. The second is that equity will not assist a volunteer.

125. Hence, a registered proprietor who has not contributed money to the purchase of a property is said to be holding the property on a resulting trust in favour of the purchaser. Similarly, a registered proprietor who has contributed a portion only of the purchase price is said to hold the property on a resulting trust in favour of other co-purchasers (who are not on the title) in the proportion of their contribution.
126. Having said that, a registered proprietor may rebut the presumption of purchase money resulting trust by showing that the purchaser or the party that paid for the property intended to gift the property to him (registered proprietor). Failing that, equity will simply declare a resulting trust in favour of the purchaser.

GENERAL COMMENTS

127. Applying the above, there is a presumption of a resulting trust in favour of the Guam Church which is a corporate body. There is also a presumption of a resulting trust in favour of the defendants in their capacity as trustees of the Lautoka Church.
128. The onus then shifts to the plaintiffs to rebut that presumption, that is, that Guam and the defendants did not intend to benefit themselves.
129. The fact that all collaborating parties were affiliated to the CFCI-fellowship at the time of the acquisition of the property, in my view, does not evince an intention on the part of the defendants and the Lautoka Church that they were spending money for the benefit of the fellowship. Of course, if the Arizona By-Laws, or if the By-Laws of the local congregational church, had a clause which stipulated that any property purchased by a member church shall be acquired for the benefit of the fellowship, that may attract the law in **Overtoun** and **Pearson** in the case of a schism. But this does not arise here.
130. Accordingly, equity must declare a resulting trust in favour of Guam and the Lautoka Church in the proportion of their respective contributions to the purchase of the property.

CONTRIBUTIONS

131. In dealing with this part of the judgment, I find myself in a position akin to a Court dealing with the division of property between estranged spouses or partners or cohabitants.
132. What then counts as a contribution towards the acquisition of the property? From the evidence, and doing the best that I can, I find that the defendants and the Lautoka Church have contributed the following:
 - (i) servicing of the mortgage and paying off the mortgage debt
 - (ii) paying all utilities and outgoings and charges on the property including tax, repairs, insurance (if any), housekeeping, maintenance, repairs, Lautoka city rates
 - (iii) improvements (if any)
133. I find that Guam would have contributed the following:

- (i) deposit for the purchase
- (ii) monthly support to the Lautoka Church (between 1996 to 2001)

134. There is no clear evidence before me as to how the above might be quantified. In the absence of such evidence, the court may treat the parties as tenants in common holding equal shares.
135. I am of the view that the ideal approach in this case is to allow the parties time to settle on their contribution on this point, failing which I shall then determine the issue to the best that I can on equitable principles.

CONCLUSIONS

136. As to for the plaintiffs' prayer seeking a declaration that they were the trustees of the Suva Church and as such, the lawful proprietors of the property, I decline. Instead, I declare that there is a resulting trust on the property in favour of the Guam Church and also a resulting trust in favour of the defendants in their capacity as trustees for the Lautoka Church.
137. As for the plaintiffs prayer seeking an Order that the Registrar of Titles correct Crown Lease No.391971 and Mortgage No .447318 by recording the plaintiffs' names as proprietors in their capacity as the trustees of Potters House Pentecostal Church of Fiji, I decline. The mortgage has already been paid off by the defendants. To seek an Order that the Registrar of Titles correct Mortgage No. 447318 when the mortgage has already been cleared is to undermine the very essence of the defendants' case theory which is founded on a purchase money resulting trust.
138. As for prayer number three, that the defendants deliver vacant possession of the said property, I also decline this for reasons I have stated above.
139. I further declare that, given that the Suva Church has maintained its common affiliation to the CFCI as Guam, that the plaintiffs, by virtue of their position as trustees of the Suva Church, are to hold Guam's share on the property on trust for and on behalf of Guam.
140. The parties are to bear their own costs. I will adjourn this matter to one month to allow the parties to settle on their contribution if they can – and if that is not possible, I shall then invite further submissions on this point and rule on it at some point in future.
141. Case adjourned to **January 26 2022 at 10.00 a.m. for mention** on the issue of contribution.



.....
Anare Tuilevuka
JUDGE
Lautoka

23 November 2021