

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 268 OF 2020

BETWEEN : **SAHIM MOHAMMED** of Lot 8 Korotogo Back Road, Sigatoka, Registered Trustee, **SATTAR MOHAMMED** of Lot 8 Korotogo Back Road, Sigatoka, Registered Trustee, **MOHAMMED AYSEEN** of 117 Ragg Avenue, Tamavua, Suva, Registered Trustee, **MOHAMMED NABI** of Sigatoka, Elected President, **MOHAMMED FAIYAZ** of Sigatoka, Interim Appointed Treasurer.
1ST PLAINTIFF

AND : **SIGATOKA ISLAMIC CENTRE** a Religious Body registered under Religious Bodies Act (Chapter 68) situated at Olosara, Sigatoka
2ND PLAINTIFF

AND : **MOHAMMED HAMID IQBAL** of Sigatoka, Current Molvi at Sigatoka Islamic Centre.
1ST DEFENDANT

AND : **MOHAMMED JANIF** of Sigatoka, Secretary, **MOHAMMED SHAHIM** of Sigatoka, Treasurer
2ND DEFENDANT

BEFORE : Hon. Mr. Justice Mohamed Mackie.

APPEARANCES : Mr. Sharma. S. -for the Plaintiff
1st Defendant absent & unrepresented.
Mr. U. Koroi O/I- for the 2nd Defendant.

HEARING : Disposal by way of written submissions.

WRITTEN SUBMISSIONS: By the Plaintiff on 28th February, 2023.
By the Defendant on 16th March, 2023.

DATE OF DECISION : 24th March, 2023. (On urgent basis)

RULING

A. INTRODUCTION:-

1. Before me is an amended Summons (Application) filed by the Plaintiffs on 24th January, 2023, pursuant to Order 33 of the High Court Rules, seeking to preliminarily decide the following questions, essentially questions **A, B & C**, under paragraph 1 below:

1. *In terms of the Powers of the Trustees as per the Religious Bodies Registration Act 1881 and Section 9, 10 and 11 of the Charitable Trust Act 1945.*
 - A. ***Whether the registered Trustees of the 2nd Plaintiff have been duly registered in accordance with section 3 of the Religious Bodies Registration Act 1881?***
 - B. ***Whether the Trustee are empowered to convene the meetings of the 2nd Plaintiff and a majority of the Trustees are required to pass any resolution as per the Deed of Trust executed on 18th day of September 2020?***
 - C. ***Whether the Trustees are empowered to inspect, manage or upgrade the Trust property and hold and manage the property on trust for the benefit of the members?***
2. *If the Trustees jointly and severally formed an opinion that the Defendants are not managing the Sigatoka Islamic Center in the best interest of its members, does the Trustees have the powers to terminate the Defendants as committee members of Sigatoka Islamic Center.*
3. *Further and/or in the alternative and/or without prejudice:*
 - i. *Whether the defendants have no conferred powers under the Religious bodies Registration Act or as per the Deed of Trust to manage, control the affairs of the Sigatoka Islamic Center in breach of the interest of the Trustees and the Sigatoka Islamic Center?*
4. *If the answer to the above is affirmative, shall the Defendants be ordered to immediately hand over the management and control of the Trust property not the Trustees and the Defendants be further restrained either directly or indirectly through their agents, servants or employees from interfering with the Trustees in holding a Special General Meeting for appointment of new executive committee for the Sigatoka Islamic Center.*
5. *Further and/or in the alternative and/or without prejudice:*
 - i. *That the Court gives directions as to the manner in which the question(s) or issue(s) will be stated, if necessary and required.*
 - ii. *The Court give directions as to the manner in which evidence, if any, is to be adduced in relation to the question or issue to be decided, if necessary and required.*
6. ***THAT*** *the cost of this Application to be paid by the Defendant.*

B. BACKGROUND:

2. The Plaintiffs initially on 27th October, 2020 filed their EX-PARTE ORIGINATING SUMMONS (Expedited form) seeking number of Injunctive and Declaratory Orders against the Defendants.

3. The said Summons was supported by a joint Affidavit sworn by the 3rd named Plaintiff on 22nd October, 2020, and by the 2nd, 4th and 5th named Plaintiffs on 23rd October, 2020 and filed on the 27th October, 2020, together with annexures marked as "1" to "9".

INJUNCTIVE RELIEFS:

4. The Application by the 1st Plaintiffs for injunctive reliefs being supported Ex-parte before my predecessor Judge on 4th November, 2020, following injunctive Orders were granted;
 - a. *An Order restraining the 1st defendant namely, MOHAMMED HAMID IQBAL and/ or his servants, agents and/ or whosoever from leading and practicing the daily prayers including the Friday Prayers at any time in the Sigatoka Islamic Centre.*
 - b. *An injunction stopping the 1st defendant namely, MOHAMMED HAMID IQBAL and/ or servants, agents and/ or whosoever and followers from causing threat, violence, using vulgar words, swearing, intimidating, harassing the 1st Plaintiff and the new Pesh Imam, namely Hafiz Washim, in any manner or from exercising their rights and beliefs at Sigatoka Islamic Centre.*
5. Subsequently, the defendants on 17th November, 2020 filed an Ex-parte Notice of Motion and the same being supported inter-partes on 19th November, 2020, my predecessor vacated both the above injunctive Orders (a) and (b) in paragraph 4 above.
6. However, on 12th February, 2021, once again, after hearing the Plaintiffs' Counsel and the 1st Defendant in person, my predecessor reinstated the injunctive Order (b) above, which had been vacated by him on 19th November, 2020 as aforesaid, being the initial injunctive Order made on 4th November, 2020.
7. Thereafter, the defendant's Solicitors on 7th April, 2021 filed an Ex-parte Notice of Motion, supported by an Affidavit sworn by the 1st and 2nd defendants, seeking 2 injunctive Orders restraining the First, Second and Third named 1st Plaintiffs as follows.
 1. *THAT the 1st Plaintiffs and/ or their agents and / or their employees and/ or their representative and / or their servants are restrained and / or refrained from accessing, withdrawing and using the Monies held in the Bank of South Pacific account number being 80391293 of Sigatoka Islamic Centre until further Order(s) of this Court.*
 2. *THAT all 1st named Plaintiffs, that is, Sahim Mohamed, Sattar Mohamed, Mohammed Ayseen, Mohammed Nabi and Mohammed Faiyaz and/ or their agents and/ or their representatives and/ or their employees and/ or their servants are restrained and / or refrained from having any access to the Bank of Baroda Account being Account number 91060100004070 under name of Sigatoka Islamic Centre.*
8. The injunction Order in paragraph 4 (b) and in Paragraph 7 (1) & (2) above, which were obtained Ex-parte, still remain in operation, with no inter-parte hearing being moved by the respective parties. The matter came up before me for the first time on 29th March, 2022 and thereafter on 31st March, 2022, / 11th & 13th April, 2022/ 11th May, 2022/ 14th June, 2022 and on 01st July, 2022, during which period parties were advised and granted time to arrive at an amicable settlement, with the paramount interest of both the parties and the community at large in mind. Unfortunately, no settlement arrived at.

AMENDED ORIGINATING SUMMONS:

9. After the failure to arrive at a settlement, counsel for the Plaintiffs, having obtained the leave of the Court, filed the Amended Originating summons on 14th August, 2022 seeking the following relief.
1. *Declaration and an order that the Trustees have the ultimate and unrestricted powers to organize and run the affairs of 2nd Plaintiff.*
 2. *Declaration and an order that the Trustees be granted powers to organize and take control of the affairs of 2nd Plaintiff until the annual general meeting of the 2nd Plaintiff is held and a committee is duly elected.*
 3. *Injunction and an order restraining the 2nd Defendant and his followers, servants and agents to interfere with the powers of the Trustee to organize and take control of the 2nd Plaintiff until a committee is duly elected.*
 4. *Declaration and an order that the Trustees to be granted powers and authority to appoint and employ a Pesh Imam of their choice for the 2nd Plaintiff at all times.*
 5. *Order that the 2nd Defendant and his followers, servants and agents to immediately return all documents in relation to account of the 2nd Plaintiff for the purpose of audit to the Trustees.*
 6. *Order that the 2nd Defendant and his followers, servants and agents to immediately return the meeting minutes books to the Trustees in order for the Trustees to audit the minute book and convene the annual general meeting of the 2nd Plaintiff.*
 7. *Declaration and an order that the Trustees must convene and hold the annual general meeting and elected a committee of the 2nd Plaintiff on or before the 31st December 2022 and that the Trustees must hand over the organization and affairs of the 2nd Plaintiff to the duly elected committee thereafter.*
 8. *An order that this matter to be converted into a writ action and take its course.*
 9. *Defendants to pay costs on full solicitor/client indemnity basis.*
 10. *Any other expedient or relief this Honorable court may think fit.*
10. When the matter came up before me for hearing on 06th October, 2023, in relation to the Amended Originating Summons, parties agreed to have this matter converted as a writ action, as prayed for in paragraph 8 of the prayer. Accordingly, Order in terms was granted converting the action and the matter was to take the normal course before the Master.

C. SUMMONS UNDER ORDER- 33 of the HCR.

11. It was under these backgrounds, the amended Summons at hand pursuant to Order 33 was filed by the Plaintiffs' Solicitors on 24th January, 2023. The Application being supported before me inter-partes on 23rd February, 2023, parties were granted 7 days each to file their written submissions. The Plaintiff had duly complied with the direction, but the defendant had failed.

As such, despite the objection by the Plaintiffs' Counsel, further 7 days' time was granted to the defendants, and accordingly defendant's submissions was filed on 16th March, 2023. Though, the Plaintiffs were left at liberty to file reply submissions, if any, in 3 days, no such submissions have been filed.

D. WHAT IS THIS DISPUTE?

12. Undisputedly, both parties hereof are Muslims , the believers of the Religion of Islam, who are supposed to worship the God "Almighty Allah", by following the Teachings in the Holy Quran and the Guidance of the Prophet Muhammed (Peace be upon them) through their sayings and actions, which are called as "Sunnah". This Arabic term also means the Traditions and Practices of the Prophet Muhammed (pbut) that constituted a model for Muslims to follow, what the people of Prophet's time around 1,400 years ago, had evidently seen, heard, followed and passed on to the next generations.
13. Regrettably, with the passage of time, those Sayings, Practices and the Traditions of the Prophet Muhammed (pbut) and the Teachings of the Holy Quran, which were the revelations to Prophet Muhammed by Almighty God ("ALLAH") for the guidance of mankind, have been subjected to various interpretation, deviations, innovations and/ or variations in practice thereof, creating several divisions in the Community posing serious threat to the peace , co-existence and tranquility, leading sometimes even to the violence in the community. Unfortunately, this is prevalent among the Muslim communities living in most of the Countries across the Globe. The Muslim community in Fiji is not an exception to this.

PARTIES:

14. The **First**, **Second** and the **Third** named 1st Plaintiffs in this action are claiming to be the Registered Trustees of the 2nd Plaintiff Sigatoka Islamic Centre (Masjid /Mosque) pursuant to section 3 of Religious Bodies Registration Act (Cha 68) . They claim to have registered themselves under the Act on 28th February, 2007. The **Fourth** and the **Fifth** named 1st Plaintiffs are said to be the appointed President and Committee member of the 2nd Plaintiff respectively.
15. The 2nd Plaintiff hereof Sigatoka Islamic Centre, which is claimed to be a Religious institution/ organization and a place of worship, is said to be a Religious body registered under Religious Bodies Registration Act (Chapter 68). This Centre is situated at Olosara, Sigatoka, which is the subject matter or the bone of contention in this action.
16. The 1st Defendant is the Moulvi or Imam, who conducts the Prayers at the 2nd Plaintiff Masjid, the Place of Worship, on daily basis and Friday prayers as well, being appointed by the first, second and third named 1st plaintiff Trustees some 13 years ago. The 2nd Defendants **were** the committee members of the 2nd Plaintiff Masjid, holding the posts of Secretary and Treasurer respectively, who with their servants and agents are also said to be the supporters of the 1st defendant.

CAUSE FOR DISPUTE:

17. The root cause for the current dispute between the parties now, is said to be the new practices of 1st Defendant in the Prayers and in relation to other activities of the Centre observed on the

advice / direction of the 2nd defendants. The 1st Defendant was , admittedly, leading/ conducting the prayers and other connected activities at the 2nd Plaintiff Centre, by cooperating with all the members and as per the rules and regulations of the 2nd Plaintiff Centre for past 13 years ,from the date of his appointment by the 1st Plaintiffs.

18. It is now alleged that the 1st defendant has gradually changed his practices from traditional “**sunni**” to a new belief called “**Saifi**” , which is claimed to be contradictory to the instructions of the 1st Plaintiffs , the rules / practices adopted at the 2nd Plaintiff Centre. This new practices espoused, promoted and advocated by the 2nd defendants are said to be contradictory to the practices and traditions of the majority goers and followers of the faith practiced/ implemented at the 2nd Plaintiff Centre.
19. The 1st Plaintiffs complain of various other new practices adopted by the 1st Defendant, contrary to the practices instructed and expected to be performed and followed by him at the 2nd Plaintiff Centre. In short the traditional practices of the Centre are alleged to be observed in breach by the 1st Defendant. I will not go into examine the propriety or authenticity or correctness of the alleged practices followed and performed by the 1st Defendant or those of the practices followed by the 1st Plaintiffs at the 2nd Plaintiff Centre.
20. It is not my duty here to adjudicate as to what and/ or who have gone wrong and to pin the blame on an individual/s or a particular group or a party before me. This Court cannot give a verdict that a particular method, mode or practice adopted by a particular person or party in following the Religion is correct or wrong. We don't have any man- made laws here to address this state of affairs and arrive at a decision as to who and/ or what is right or wrong. The Divine laws on this will have to be properly identified, studied, understood and put into practice by each and every individual, sooner or later, to avoid the disputes of this kind and the wrath of the creator Almighty God.
21. Whatever the dispute/s between the parties concerned, in relation to the way they practice the Religion they believe in, should be resolved within the four wall of the very place they practice the Religion. It should not end up in the Court paving the way for prolonged litigation at the expense of colossal sum of hard-earned money for charitable purposes and the precious time. This should not pave the way for the breach of peace, degradation of religious, cultural and social values and stability of the community parties belong to.
22. If any provision of the law is available, which is appropriate and can be conveniently applied to resolve and dispose a matter before the Court expeditiously, the Court should not hesitate to make use of those provision of the Law.
23. As far as the matter at hand is concerned , if it is to take its normal course by way of calling evidence at the trial , it would ,undoubtedly , cost an enormous amount of money , precious time and other resources of the Court which, in my view, finally will not produce any tangible outcome in favour of either of the parties hereof . The reason, as I alluded in a foregoing paragraph, is the nature of the dispute between the parties hereof. It is about the propriety or correctness of the religious practices, rituals and procedures adopted by respective parties in their day to day prayers and other activities at the 2nd Plaintiff Islamic Centre, for which this Court cannot give a lasting solution.

24. The most practical and advisable way ahead for this Court and the parties hereof, in my view, to have this action disposed once and for all, is through the application of the Law moved to be applied by the learned Counsel for the Plaintiffs through his Summons under Order 33 of the HCR. Learned Counsel for the Defendants did not object to the resolution of the matter at hand pursuant to order 33 of the HCR. I am thankful to both the Counsel for their stance on this and the helpful submissions filed in this regard.

E. APPLICABLE LAW:-

25. CHAPTER 68 -RELIGIOUS BODIES REGISTRATION Ordinance No. 13 of 1881.(**Section 3**)

AN ACT TO REGULATE THE REGISTRATION OF RELIGIOUS BODIES AND THEIR REPRESENTATION BY TRUSTEES FOR THE PURPOSE OF SUITS AND FOR THE HOLDING OF LAND

1.
2.

Memorial of names of trustees to be registered

3. *A memorial of the names of the trustees of any such religious body to be registered under this Act shall be recorded in the office of the Registrar of Titles in the form contained in the Schedule. Such memorial shall be signed by the principal or head of such religious body in Fiji and at least two of the ministers or priests thereof resident in Fiji or, in case there shall be less than such number of ministers or priests of any such religious body in Fiji, by the principal officer or head and at least two members of such religious body, and the names of the persons for the time being registered in either of the above cases shall be taken for all purposes as the names of the trustees of such religious body.*

On death, resignation, etc., of any trustee new memorial to be effected

4. *In the event of the death, resignation or removal from his trust of any trustee of a religious body, the requisite alteration in the names of the trustees of such body shall be effected by a new memorial to be signed and registered under the conditions imposed by the provisions of section 3. Until the registration of such new memorial the trustees already registered shall be treated for all purposes as existing trustees, and no trust under this Act shall in any case devolve upon the heirs or personal representatives of any trustee.*

26. CHAPTER 67 – CHARITABLE TRUST ACT of 1945. (**Sections 9,10 & 11**)

AN ACT TO PROVIDE FOR THE INCORPORATION OF THE TRUSTEES OF CHARITABLE AND OTHER TRUSTS, FOR THE EXTENSION OF CHARITABLE TRUSTS, AND FOR OTHER PURPOSES CONNECTED THEREWITH

Vesting of property

9. *All property, whether real or personal, held by the trustees of any such trust, shall immediately upon their incorporation be deemed to be vested in the board of trustees upon and subject to the same trusts, powers, contracts, and equities as then affect the same.*

Deeds and contracts

10. *Deeds may be made by any board of trustees under its common seal, attested by the trustees or any three of the trustees for the time being constituting the board of trustees; and all other contracts may*

be made in writing, signed by any person in the name and on behalf of the board of trustees acting under a resolution in writing passed at a meeting of the board of trustees.

Acts prima facie valid

11. *All acts or deeds done or made by any person acting bona fide as such trustee shall be valid notwithstanding any defect that may afterwards be found in his appointment, and the signature of any person purporting to act as such trustee shall be prima facie evidence of his being such trustee.*

27. REGISTRATION Act (Chapter 224)

2. *All deeds made within Fiji, whether deeds inter partes or deed poll **may** be registered in the office of the Registrar of Titles who, for the purposes of this Act, shall be Registrar of Deeds. In sections following the term "Registrar" used without qualification means the Registrar of Deeds. (Emphasis mine)*

Object of registration

3. *Deeds **may be** registered for publication, for preservation and for execution, or for one or more or all of these objects combined.(Emphasis mine)*

Deeds registered under the Land Transfer Act

4. *All deeds forming titles to land which are provided for by the Land Transfer Act are registered under the provisions of that Act for reservation and publication, and no deed or title so registered requires to be again registered under the provisions of this Act.*

F. ANALYSIS:

28. The stern position of the learned Counsel for the Plaintiff, in his short oral Arguments and written submissions, is that the section 3 of the Religious Bodies Registration Act No. 13 of 1881 duly recognizes the First, Second & Third named 1st Plaintiffs as the Trustees of the 2nd Plaintiff. Counsel argued further that the Sections 9 and 10 of the Charitable Trust Act of 1945 and the relevant provisions of the Trust Deed give them the power and authority to Manage, control and administer the 2nd Plaintiff Centre according to the constitution of the 2nd Plaintiff and the other rules and regulations, under which the 2nd Plaintiff's affairs are conducted.
29. Learned Counsel for the Defendant in his written submissions argued that the Registration is **inconsistent** with the requirement as per Section 3 of the Religious Bodies Registration Act No-13 of 1881. He also argued that the Application for that purpose has been witnessed by a Justice of Peace, instead of any other principal or Head of the Fiji Muslim League or any of the Molvis in their Muslim League to authenticate the application.
 - i). Accordingly, defense Counsel maintain a position that the Application for Registration as Trustees of the 2nd Plaintiff Sigatoka Islamic Centre registered on 28th February, 2007 under registration No; 604906, is non-compliant with the procedure required by law, thus nullifying the registration and invalidating the same purported religious body. Counsel

further argues that the submission by the Plaintiff is erroneous in stating that the Trustees are duly registered under section 3 of the Act.

- ii). What the Section 3 of the Religious Bodies Registration Act No-13 of 1881 requires is “*such memorial shall be signed by the principal or head of such religious body in Fiji and at least 2 of the Ministers or priest thereof resident in Fiji or, in case there shall be less than such number of Ministers or Priests of such religious body in Fiji , by the Principal officer or head and at least two members of such religious body, and the names of the persons for the time being registered in either of the above cases shall be taken for all purposes as the names of the trustees of such religious bodies” (*Emphasis mine*).*
- iii). Careful perusal of the Section 3 of the Religious Bodies Registration Act shows that what is required is only for the Application to be **signed** by at least 2 of the Ministers or Priests thereof resident in Fiji or **by the principal officer or head and at least two members of such religious body**. This Section does not require the Application to be witnessed, certified or attested by anyone. It only requires the signatures of such persons to be so registered.
- iv). It is abundantly clear that the names of 3 persons, as per the minutes of the Meeting dated 23rd July, 2006 marked as annexure “6”, have been included in the schedule to the Application for Registration of the Centre as a Religious Body. This Application marked as annexure “1” has been signed by all 3 persons so appointed, namely, MOHAMED AYSEEN, apparently as the head of the Centre, and by two other members, namely, SATTAR MOHAMED and SAHIM MOHAMED. The fact that they are the registered Trustees is not disputed by the defendants. The said 3 person being the Trustee, the appointed Vice President and the Secretary respectively have signed it. There is no restrictions for them to sign it.
- v). It is clear that the relevant Application required for registration in terms of Section 3 of the Act has been signed by the said Mohamed Ayseen, as the Trustee in terms of annexure “6” apparently as the Principal Officer or Head of this Religious Body, and by two other members, namely, Sattar Mohamed, and Sahim Mohamed, who had become Trustees ex-officio. In my view, this is sufficient compliant as far as the section 3 of the Act is concerned.
- vi). The above Application has been accepted by the Registrar of Deeds and duly registered on 28th February, 2007 under registration number 604906. If it was not falling in line with the Section 3, the Registrar would, undoubtedly, have refused the Registration and returned it.
- vii). There may have been changes of the Registered Trustees of the Centre after the registration on 28th February, 2007. But, the Section 4 of the Act clearly states that, until the registration of such new memorial, **the trustees already registered shall be treated for all purposes as existing trustees,**

viii). Hence, the objections raised by the Defendants to the status of the presently registered Trustees and with regard to the propriety of the Application for the Registration of the Trustees under section 3 of the Act will not hold water.

30. The next argument of the learned Counsel for the Defendants is that the Trust Deed dated 18th September, 2020 is very questionable, since the Sigatoka Islamic Centre was registered on 28th February, 2007 and the said Deed dated 18th September, 2020 is an unregistered one. Counsel also finds fault with the propriety of the method adopted in witnessing the signature of the 1st named Trustee Mr. Sahim Mohammed in the said Deed of Trust.

i). Counsel for the Defendant also argued that when the Registration of the 2nd Plaintiff in the year 2007 took place there was no Deed of Trust accompanied with the Application, as such the Registration of the 2nd Plaintiff Sigatoka Islamic Centre is null and void.

ii). In response to the above arguments advanced by the Counsel for the Defendant in his written submissions, what this Court can observe is that the section 11 of the Charitable Trust Act of 1945 seems to have escaped the attention of the Counsel for the Defendant?

iii). The Section 11 of the said Act states that all acts or deeds done or made by any person acting *bona-fide* as such trustee shall be valid notwithstanding any defect that may afterwards be found in his appointment, and the signature of any person purporting to act as such trustee shall be prima facie evidence of his being such trustee.

iv). The argument advanced by the Counsel for the Defendant that a Registered Deed of Trust is required for the Registration of a Religious Body, ie the 2nd Plaintiff. Sigatoka Islamic Centre in this case, is unsupported by provisions of the Registration Act or any other Law. Not even a single case law authority in this regard was brought to the attention of this Court by the Counsel for the defendants.

v). The First named 2nd defendant seems to be justifying his prayer for the removal of the present Trustees (the first, second and third named 1st Plaintiffs), and for the nomination of him and his supporters, mainly on the ground that the Deed of Trust dated 18th September, 2020 is not registered. By moving for such a relief for the removal of the present Trustees itself, the first named 2nd Defendant is tacitly admitting that the first, second and third named 1st Plaintiffs are the presently Registered Trustees and the 2nd Plaintiff Sigatoka Islamic Centre is a legality registered body.

31. Looking at the Section 3 of the Registration Act, Cap.224, I firmly opine that any Deed registered under the provisions of the said Act is only for publication, preservation and for execution or a combination of all or any of these. Whereas, the effect of registration under the Land Transfer Act, Cap.131 creates, varies, extinguishes or passes any estate or interest or encumbrance in, or over any land. The impugned Deed of Trust is not in relation to the sale, transfer, gift, lease or mortgage of a land or to deal with a land.

32. Therefore, the registration of a Deed is not a mandatory requirement under the Registration Act, Cap.224. That is why the Section says "**Deeds may be registered**.....", and it is so clear

that the registration of a Deed is for the purposes explained within the Section 3 of the Registration Act, Cap.224.

33. The Defendant has not convinced this Court as to why the issues raised by the Plaintiff, particularly, the issue in paragraph 1; 1- A above, should not be answered in favor of the Plaintiffs.

G. CONCLUSIONS:

34. This Court is satisfied that in terms of the Section 3 of the Religious Bodies Registration Act of 1881, the First, Second and Third named 1st Plaintiffs are duly registered Trustees of the 2nd Plaintiff Sigatoka Islamic Centre. This Court is also satisfied that the 2nd Plaintiff, Sigatoka Islamic Centre, is the Subject matter of the Deed of Trust dated 18th September, 2020 and it is governed, administered, managed and controlled by the Trustees named therein, who are the First, second and third named 1st Plaintiffs. Accordingly, the pivotal issues raised by the Plaintiffs pursuant to Order 33 Summons attract affirmative answers in favor of the Plaintiffs hereof.
35. Further, the above discussion reveals that this is a matter of private law and not public law. The First, Second and third named 1st Plaintiffs have been appointed and duly registered under section 3 of the Religious Bodies Registration Ordinance of 1881.
36. The Deed of Trust executed on 18th September, 2020 clearly, in my view, gives absolute authority to the first, second and third named 1st Plaintiffs, who are the appointed and duly registered Trustees. They have the power and authority to manage, control and to administer the 2nd Plaintiff Sigatoka Islamic Centre and all its affairs pursuant to the provisions of the Deed of Trust and the constitution thereof.
37. The 1st Plaintiffs as Trustees, Office bearers and members are bound by the provisions of the Deed of Trust and the Constitution of the 2nd Plaintiff. The non-Registration of the impugned Deed of Trust is not a bar for the said Trustees to perform their duties in the manner expected of them. This Court finds no reason to answer the issues in favor of the Defendant. The Court has no power to meddle with the status of the Plaintiff Trustees and/ or with the provisions of the Deed of Trust.
38. The power is with the appointed and registered board of Trustees and the members of the congregation of the 2nd Plaintiff Centre, to act according to the provisions of the Deed of Trust and the Constitution of the Centre, if changes in the administration and management thereof are to be brought in.
39. This Court should 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 and circumstances in this matter do not warrant such a move by this Court.

H. FINAL ORDERS:

- a. The preliminary issues raised in the Plaintiffs' Order 33 Summons, filed on 24th January, 2023, are answered in favor of the Plaintiffs.

- b. The First, Second and the Third named 1st Plaintiffs are the duly appointed and registered Trustees of the 2nd Plaintiff in terms of Section 3 of the Religious Bodies Registration Act of 1881.
- c. The First, Second and the Third named 1st Plaintiffs are at liberty to manage, control and administer the 2nd Plaintiff, namely, Sigatoka Islamic Centre, and all its affairs in the manner set out in the Deed of Trust dated 18th September, 2020 and the Constitution thereof.
- d. The ex-parte interim injunction Order issued against the 1st Defendant on 4th November, 2020, which was subsequently vacated on 19th November, 2020, and reinstated on the 12th February, 2021, is hereby vacated.
- e. The ex-parte interim injunction Orders issued against the 1st Plaintiffs as described in paragraph 7 (a) and (b) of this ruling is hereby vacated.
- f. Considering the nature of the proceedings and the circumstances, no costs ordered.
- g. These Orders shall be sealed and served.



A.M. Mohamed Mackie
Judge

At High Court Lautoka this 24th day of March, 2023.

SOLICITORS:

For the Plaintiff:

Susil Sharma Lawyers.

For the 2nd Defendant:

Koroitamudu Lawyers.