

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

**CIVIL ACTION NO. HBC 90 OF 2022**

**BETWEEN** : **ANAND SAMI KUMAR** of Nadi Town  
**PLAINTIFF**

**AND** : **PARVEEN KUMAR BALA** of Guava Place, Laucala Beach Estate, Suva,  
Vice President North-Western of Then India Sanmarga Ikya Sangam  
**1<sup>ST</sup> DEFENDANT**

**AND** : **YOGESHWAR KRISHNA** of Nasinu, Interim Secretary General of the  
Then India Sanmarga Ikya Sangam  
**2<sup>ND</sup> DEFENDANT**

**AND** : **MUNI KAMLESH NAIDU** of NasinNalovo, Nadi, and President of the  
Then India Sanmarga Ikya Sangam  
**3<sup>RD</sup> DEFENDANT**

**AND** : **THEN INDIA SANMARGA IKYA SANGAM** in its capacity as a duly  
incorporated company with special dispensation fo the workd  
'limited' having its registered office in Nadi, Fiji and in its capacity as  
a parent body of its youth branch the **THEN INDIA SANMARGA IKYA  
SANGAM**  
**4<sup>TH</sup> DEFENDANT**

**BEFORE** : Mr. Justice Mohamed Mackie-J.

**APPEARANCES** : Mr. R. Singh for the Plaintiff  
Mr. D. S. Naidu with Mr. K. Chand for the 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> Defendants.  
3<sup>rd</sup> Defendant absent.

**HEARING** : 26<sup>th</sup> January, 2023.

**DATE OF DECISION** : 9<sup>th</sup> February, 2023

**RULING**

1. This Ruling is pronounced pursuant to the hearing held before me on 26<sup>th</sup> January,2023 in relation to the INTER PARTES SUMMONS filed on behalf of the Plaintiff on 15<sup>th</sup> November,2022 and supported on 18<sup>th</sup> November,2022 seeking the following reliefs.
  1. **THAT** there be an order that the Defendants comply with Order 1.4 of the Orders of this Honorable Court made on the 31<sup>st</sup> October, 2022 within 21 days.
  2. **COSTS** in cause.

3. ANY further or other order as this Honorable Court may deem fit in the circumstances.
2. This Application is made in accordance with the Order 45 Rules 5 (1) and (2) of the High Court Rules and supported by the Affidavit of the Plaintiff, **Anand Sami Kumar**, sworn on 14<sup>th</sup> November, 2022 and filed on 15<sup>th</sup> November, 2022, along with an annexure marked as “A”.
3. Initially, the Plaintiff 30<sup>th</sup> March, 2022 filed an Originating Summons supported by his Affidavit, together with annexures marked as “A” to “J” moving for reliefs (a) to (g) therein. Simultaneously, the Plaintiff also filed an EX-PARTE Summons seeking, inter-alia,

*THAT the 3<sup>rd</sup> Defendant by himself, or by his agents or servants or otherwise howsoever be restrained from acting as the President of the Nadi Branch of the “Then India Sanmarga Ikya Sangam” including calling any meetings and dealing with the Financial and administrative affairs of the Nadi Branch of the “Then India Sanmarga Ikya Sangam” until further order of the Honorable Court.*

4. After granting of the above injunctive relief, parties filed their respective Affidavits and the injunction order being periodically extended, the substantial matter was heard before me on 15<sup>th</sup> August, 2022 and by Judgment dated 31<sup>st</sup> October, 2022 this Court made Orders as prayed for in paragraphs (a), (b), (c) and (d) to the prayer of the Amended Originating Summons dated 30<sup>th</sup> March, 2022. Orders given in favor of the Plaintiff are as follows.

*1.1. Declaration that the decision of the 2nd Defendant of the 25th of March, 2022 nullifying the nomination of the Plaintiff for the position of the President of the Nadi Branch of the Then India Sanmarga Ikya Sangam is null and void and of no legal effect.*

*1.2. A Declaration that the Plaintiff at all material times was able to contest the election for the position of the president of the Nadi Branch of the Then India Sanmarga Ikya Sangam.*

*1.3. A declaration that the election and appointment of Muni Kamalesh Naidu as the President of the Nadi Branch of the Then India Sanmarga Ikya Sangam on 27th March, 2022 is null and void.*

*1.4. An Order that the Annual general Meeting of the Nadi Branch of the Then India Sanmarga Ikya Sangam be convened, election be called for the position of the President of the Nadi branch of the Then India Sanmarga Ikya Sangam in the prescribed manner and the Plaintiff be permitted to contest the position of the President of the Nadi Branch of the Then India Sanmarga Ikya Sangam.*

5. Though, the substantial reliefs were granted to the Plaintiff as aforesaid, particularly the relief 1.4 above for the Annual General Meeting and the Election for the position of the President of the 4th Defendant Sangam to be held, due to an oversight, the Solicitors for the Plaintiff had failed to move for a time-frame to be fixed for the execution of the said order.


6. Hence, the Summons in hand was filed as aforesaid and the same being supported inter-partes on 18<sup>th</sup> November, 2022, the Defendants were granted 14 days to file Affidavit in opposition. But no such Affidavit was filed by or on behalf of the Defendants.
7. Accordingly, when the matter came up for hearing on 26<sup>th</sup> January, 2023, after the oral submissions of the learned Counsel for the Plaintiff moving for the above reliefs as per the Summons, learned Counsel for the Defendants, after explaining as to why they opted not to file Affidavits on opposition, informed the Court that all the arrangements are underway to hold the Annual General meeting and the Election of the 4<sup>th</sup> Defendant Sangam and he is giving a firm undertaking that the Annual General Meeting and the Election for the 4<sup>th</sup> Defendant Sangam will be held on **12<sup>th</sup> of March, 2023**.
8. Counsel for the Defendants added further that the Plaintiff will be allowed to contest the Election for the Post of the Presidency, notwithstanding the allegations against him, even if he does not submit a fresh nomination and his name will appear in the ballot paper for the forthcoming Election.
9. This Court by its Judgment dated 31<sup>st</sup> October, 2022 has granted the Plaintiff his substantial reliefs, *inter-alia*, by declaring the Election of the 3<sup>rd</sup> Defendant as the President of the TISIS is null and void and allowing the Plaintiff to contest for the Post of Presidency of the 4<sup>th</sup> Defendant Sangam in the Election to be held as per the Judgment.
10. Order 45 Rules 5 (1) makes provisions as follows;

*“Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 4 have power to make an Order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein”*
11. Learned Counsel for the Defendants does not object to the reliance of the learned Counsel for the Plaintiff on the above Order 45 and rule 5 (1) for granting of the Order in terms of the Summons in hand.
12. Counsel for the Plaintiff has drawn my attention to the decided case of ***Sadanand Sharma v Equity Realtors and Land Developers (Fiji) Limited HBC 36 of 1996*** wherein the High Court has recognized that the Order 45 Rule 5 (1) gives jurisdiction to vary the orders enabling to do certain acts.
13. The judgment delivered by this Court on 31<sup>st</sup> October, 2022 has granted the Plaintiff his substantial reliefs. If a time-frame is not set by the Court for the execution / implementation of the judgment, it will be confined to the paper and be of no use to the judgment creditor. Thereby, the purpose of laborious litigation will be lost and serious prejudice will follow.
14. Learned Counsel for the Defendants opted, not to file Affidavits opposing the Plaintiff's Application by the Summons in hand. In addition to that, at the hearing, he has given a solemn undertaking and assurance in the open Court that the Annual General meeting and the Election for the position of the Presidency of the 4<sup>th</sup> Defendant will be held on **12<sup>th</sup> of March, 2021**.

15. Counsel for the Defendant has also given further assurance that the Plaintiff will be allowed to contest for the post of Presidency regardless of the allegations and/or investigation against him. I am hopeful that if the assurance and the undertaking given by the learned Counsel for the Defendants are duly honored, adhered and observed with no breach, the judgment of this Court will stand fully executed.
16. As far as the relief of Costs is concerned, it is observed that when disposing the substantial matter, this Court has decided not to grant Costs. The Application in hand is an ancillary one, filing of which was necessitated due to an oversight / inadvertence occurred on the part of the Solicitors for the Plaintiff. I don't find any special reason to order costs in relation to this proceedings.
17. For the reasons adumbrated above and as per the undertaking given by the learned Counsel for the Defendant at the hearing, this Court finds that the Application made by the Plaintiff by way of Summons dated 15<sup>th</sup> November, 2022 should be allowed, by setting a time-frame for the Annual General Meeting and the Election for the position of the President of the 4<sup>th</sup> Defendant Sangam.

**ORDERS:**

- a. The Order 1.4 made by this Court, by its Judgment dated 31<sup>st</sup> October, 2022, in terms of the prayer (d) to the Originating Summons, shall be executed and implemented on or before **12<sup>th</sup> March, 2023** as per the said Order and the undertaking given to this Court by the Counsel for the Defendants.
- b. No costs ordered in relation to this Application and the parties shall bear their own Costs.
- c. Orders shall be sealed and served on the Defendants forthwith.
- d. Report of compliance shall be filed within 14 days from the date of execution.

  
A.M. Mohamed Mackie  
Judge



**At High Court Lautoka this 9<sup>th</sup> day of February, 2023.**

**SOLICITORS:**

**For the Plaintiff:**

**Messrs. Patel & Sharma – Barristers & Solicitors.**

**For the Defendants:**

**Messrs. Pillai Naidu & Associates – Barristers.**