

IN THE HIGH COURT OF FIJI  
AT SUVA  
COMPANIES JURISDICTION

Company Case No. HBE 38 of 2021  
HBE 39 of 2021

IN THE MATTER of NAIR'S TRANSPORT  
COMPANY PTE LIMITED

AND

IN THE MATTER of the Section 176 of the  
Companies Act 2015

**BETWEEN:** SALESH SACHIN NAIR of 18 Orde Place, Prospect, NSW 2148, Australia,  
Audit Manager and Shareholder in NAIR'S TRANSPORT COMPANY PTE  
LIMITED by virtue of the Will of the late Kunjan Nair

1<sup>st</sup> APPLICANT

**AND:** NILESH RISHI NAIR of Wainibuku, Nausori, Director and Shareholder of  
NAIR'S TRANSPORT COMPANY PTE LIMITED by virtue of the Will of the  
late Kunjan Nair.

2<sup>nd</sup> APPLICANT

**AND:** RITESH RISHI NAIR of Lot 81 Kings Rad, Wainibuku, Nausori, Sole Director  
and Shareholder of NAIR'S TRANSPORT COMPANY PTE LIMITED as per  
Companies Office Business Profile last updated 3<sup>rd</sup> February 2021

RESPONDENT

**BEFORE:** Hon. Mr. Justice Vishwa Datt Sharma

**COUNSELS:** Mr. O'Driscoll for the Applicant  
Mr. Sharma N. for the Respondent

**DATE OF DECISION:** 8<sup>th</sup> November, 2023 @ 9.30 am.

DECISION

[Preliminary Objection]

## INTRODUCTION

1. The Applicants by its Substantive Originating Summons sought for various Declaratory Orders including that the Respondent in running the company has failed in his civil obligations as a beneficiary of the last Will of Kunjan Nair, and has failed to exercise reasonable care, skill and diligence towards the management of the company, and that the Respondent be removed as Director of the company due to his breach of his Civil Obligations under the Company's Act.
2. The Applicants filed a further Notice of Motion for Directions that the Applicant's be authorized to make a special application for oppressive proceedings pursuant to Section 176 (1) of the Companies Act 2015 and/or to regulate the state of affairs of the Company in the future pursuant to Section 177 (1) (c) (i) & (J) of the Companies Act 2015.
3. The Respondent subsequently filed a Summons seeking for Security for Costs against the 1<sup>st</sup> and 2<sup>nd</sup> Applicants.
4. Whilst the proceedings were ongoing and directions being made in the pending applications, the Applicant's filed an interlocutory "Preliminary objection" seeking to remove the Respondent's Barristers and Solicitors from further representing him in respect of this matter and appoint an alternative firm of solicitors to act on his behalf:
  - (i) *The Respondent's Counsel attending the matter, Damodaran Nair is also the Company Secretary of Nair's Transport Company Pte Limited and also works for Nilesh Sharma Lawyers, as solicitors on record for the Respondent. This should be seen as a 'Conflict of Interest.'*
  - (ii) *The said Damodaran Nair was also instructed in respect of the Will of Kunjan Nair dated 19<sup>th</sup> March 2020 to prepare the same and as the Applicants' and indeed the Respondents' rights in the Company arise from the Will of their late father this should also be seen as a 'Conflict of Interest.'*

## Determination

5. The preliminary issue for this Court to determine is *'whether the representation of the Respondent by Nilesh Sharma Lawyer is in conflict of Interest since Damodaran Nair is employed in the Law firm and is also the Secretary, for the Nair's Transport Company Pte Limited?'*
6. Conflict of interest can be defined herein in its context that *"a real or apparent conflict between one's professional or official duties and one's private interests. A situation where one duty conflicts with another."*
7. The Contention of the Applicant's Counsel in the within proceedings is that the Respondent's Barrister and Solicitor Damodaran Nair in one capacity being the Secretary of the Company

- [Nair's Transport Company Pte Limited] is also acting and/or representing the Respondent in Court proceedings in another capacity, that tentamounts to conflict of interest.
8. For the above reasons, Damodaran Nair's Legal Practitioner's duty to the Court to present the case fairly and without favor in all full honesty cannot be achieved in this case and should be removed from further representing the Respondents in this matter.
  9. However, the Respondent's Contention that neither the law firm nor Damodaran Nair had acted for the Applicants and/or the Respondent in any other proceedings.
  10. Notably, in Company Case HBE No. 39 of 2021, the Originating Summons Application and the Summons seeking for Security for Costs against the Applicants was filed and commenced by the Principal firm of Solicitors of Nilesh Sharma Lawyers. Damodaran Nair who was an employee of the Law firm represented the Respondent in the matter.
  11. Some of the Declarations sought in Action No. HBE 39 of 2021 are:
    - (1) That the Respondent is not the Sole Shareholder of the Company Nakasi Davuilevu Buses Pte Limited as currently noted at the Companies office.
    - (2) That the Respondent being the Director and shareholder of the Company has failed in his civil objection as the beneficiary of the said Will, to avoid Conflict of Interest that will benefit him personally before the Company interest which has affected his interest in carrying out work for the company with reasonable care and diligence.
  12. The Substantive Originating Summons filed and commenced in Company Case HBE No. 38 of 2021 is also seeking Declaratory Orders and orders as in file no. HBE 39 of 2021 respectively.
  13. The parties named in the proceedings are individuals. However, the proceedings has been filed by Salesh Sachin Nair in his capacity as an Audit Manager and shareholder in Company Nair's Transport Company Pte Limited together with Nilesh Rishi Ram as the Director and Shareholder of Nairs Transport Co. Pte Ltd against the Respondent, Ritesh Rishi Nair in his capacity as the Sole Director and Shareholder of Nair's Transport Company Pte Ltd.
  14. On the other hand, Damodaran Nair holds the company office Nair's Transport Company Pte Limited in his capacity as the Secretary and has made Court appearance representing the Respondent in his capacity as the Sole Director and the Shareholder.
  15. The Respondent being the Sole Director and the Shareholder in Nair's Transport Company Pte Limited cannot be represented in Court by Damodaran Nair who is a Barrister and Solicitor by profession and the Secretary of the Company wherein the Respondent is the Sole Director and Shareholder of the Company. Obviously, this tentamounts to a Conflict of Interest.
  16. This Court's attention was drawn to the Case of *Solomon v Solomon & Co. Ltd [1897] A.C 22*, wherein it was established that a registered Company is a Legal person separate and distinct from its members. Therefore, irrespective of the current shareholder or persons who may

acquire shares in future, the Plaintiff shall remain as a separate entity and will not construe part of the personal property of any person.'

17. Whilst giving due consideration to the above case, it would be appropriate to cite the case of *Rajendra Chaudhary v Chief Registrar* [2016] FJSC 3 CBV 0001 of 2015 (20<sup>th</sup> April, 2016): Hon. Saleem Marsoof, JA stated in paragraphs 37, 38 and 40 as follows:

"[37] Both barristers and solicitors have a duty to the court; they being officers of the Court. A solicitor's primary obligation is to his client; however a barrister's primary obligation is to the Court.

[38] Anything that intervenes in that relationship almost certainly per se creates a conflict of interest. There can be instances where that conflict can be overridden in the case of a solicitor's client, properly advised, giving express authority to the solicitor to act despite the conflict; such a disclaimer can never apply in the case of a barrister; his duty to the court cannot be abrogated or diluted.

[40] ... it is practitioner's duty to the court to present a case fairly and without favour in all honesty."

18. Bearing the above case authority in mind, it can be clearly seen that the 1<sup>st</sup> and 2<sup>nd</sup> Applicants are the shareholders of Nair's Transport Company Pte Limited.
19. Whilst the Respondent is the **Sole Director and shareholder** of Company and the Respondent is represented by Counsel/Practitioner Damodaran Nair who is also the **secretary** of the **company**.
20. Damodaran Nair as an officer of the Court and Barrister, has a primary obligation to the Court. It is his duty to the Court to present the current case fairly and without favour in all honesty.
21. However, whilst holding the position of the **Secretary** in the company and legally representing the Respondent in his capacity as the **Sole Director and Shareholder** of the company will not be appropriate in the circumstances since the capacity in which Damodaran Nair operates, as the **Secretary** and Legal Practitioner and/or Barrister intervenes into his primary obligation to the Court and tentamounts to a '**Conflict of Interest**.'
22. Taking into consideration the nature of the proceedings and positions held by Damodaran Nair and to allow the substantive case to be finalized in a just and fair manner without any hiccups.
23. I have no alternative, but proceed to remove Damodaran Nair from the Court Record and from representing the Respondent, Ritesh Rishi Nair.
24. That the Respondent is at liberty either to appoint an alternative firm of Solicitors and/or continue its representation by Nilesh Sharma Lawyers accordingly and not Damodaran Nair by whom he was represented by as evident from the Court appearances.

**Costs**

25. The matter proceeded to full hearing, parties filing Affidavits and Written Submissions and orally arguing the issue before this Court.
26. It is only fair that the Applicants be paid a summarily assessed costs of \$500.

**Orders**

- i. Counsel, Damodaran Nair is removed from the Court Record and refrained from representing the Respondent forthwith.
- ii. The Respondent is at liberty to continue representation by the law firm of Nilesh Sharma Lawyers and/or appoint an alternative firm of solicitors and not to be represented by the Practitioner Damodaran Nair.
- iii. The Respondent to pay the Applicants a Summarily Assessed Costs of \$500.
- iv. The Substantive matter will take its normal cause of action.

Dated at Suva this 8<sup>th</sup> day of November, 2023.



VISHWA DATT SHARMA  
JUDGE



cc. Messrs. O'Driscoll & Co., Suva.  
Nilesh Sharma Lawyers, Suva.