IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

CIVIL ACTION HBC NO. 226 OF 2025

BETWEEN: **ABDUL SHAHFEEL** of Lot 65 Palm Drive, Delainavesi, Suva, Bank Officer.

Plaintiff

AND: **FIJIAN ELECTIONS OFFICE** being the office of the SUPERVISOR OF ELECTIONS appointed under section 76 of the Constitution of Fiji, 2013.

Defendant

AND: **FIJI BANK & FINANCE SECTOR EMPLOYEES UNION** with its office at 40 Disraeli Road, Suva.

First Nominal Defendant

AND: **AUNENDRA SINGH** of 5 Lakeba Street, Suva, unemployed.

Second Nominal Defendant

RULING

(ON SUMMONS TO STRIKE OUT)

Coram: *P. R. Lomaloma, Acting Puisne Judge*

Counsels

For the Plaintiff: *Mr. S. Nandan*

For the Defendant: *Ms. S. Kumar*

First Nominal Defendant: *Mr. D. Nair*

Second Nominal Defendant: *Ms. A Ali*

Date of Hearing: *1st September 2025*

Date of Ruling: *15th October 2025*

Introduction

1. The Plaintiff filed an Originating Summons (OS) on 30th June 2025 seeking the certain orders relating to the decision of the Supervisor of Elections (SOE) and the Fiji Elections Office (FEO) to reject the nomination of the Second Nominal Defendant herein for the position of National Secretary of the First Nominal Defendant. The OS sought the following orders from the court but did not specify which rule or rules of the High Court Rules (HCR) it was relying on: -

    a. A DECLARATION that the decision to reject the Second Nominal Defendant's nomination was unlawful and therefore void ab initio;

    b. A WRIT OF CERTIORARI to bring the decision to reject the said nomination to the court to be quashed;

    c. A WRIT OF MANDAMUS to issue ordering the Defendant to accept the Plaintiff's nomination of the Second Nominal Defendant to the position of National Secretary of the First Nominal Defendant at their upcoming elections;

    d. An INJUNCTION be granted to stop the First Defendant from conducting the Second Nominal Defendant's elections until the final determination of this matter by the Court.

2. In addition to the OS, the Plaintiff filed a Summons for Interim Injunction but this has been overtaken by events as the elections were held on 10th July 2025, before the matter could be heard in court. Counsel for the First Named Nominal Defendant withdrew the action in court on the day of the hearing.

The Affidavit in Support

3. The Originating Summons was supported by an affidavit of the Plaintiff, Abdul Shahfeel sworn on the same day, 30th June 2025.

4. Abdul Shahfeel said that he is the plaintiff in this matter; that he is a member of the Fiji Bank & Finance Sector Employees Union; that the Supervisor of Elections (SOE) is responsible under section 154 of the Electoral Act for the election of office bearers of registered trade unions; that he nominated Aunendra Sigh, the 2nd Nominal Defendant herein, to be National Secretary of the association.

5. The deponent continued that the nomination was rejected by the SOE; that on 14th May 2025, the SOE had indicated the reasons for the rejection was that Aunendra Singh had breached section 18(d)(iv)(1) of the Union's Constitution; that the Fiji Elections Office (FEO) failed to provide any particulars of the alleged breach; that the FEO had given only 8 hours to Mr. Singh to respond to the allegations; that the conduct of the FEO breached the principles of natural justice along with Mr. Singh's civil and Constitutional rights and that such violations could be overcome by an extension of time and the provision of the necessary particulars.

6. Mr. Singh continued in his affidavit that the FEO had a duty to act lawfully; that in order to do so it must adhere to the principles of natural justice and the civil and Constitutional rights of all concerned parties; that he had a legitimate expectation that the FEO would act lawfully; that the FEO did not deal with the matter in a lawful manner for the reasons given above; that he had replied to the allegations of the FEO as best he could despite the lack of particulars.

The Summons to Strike Out

7. On This is an application by way of Summons to by the Defendant to strike out the Originating Summons pursuant to Order 18 rule 18 (1)(a)(b) and (d) of the High Court Rules on the grounds that the action: -

    (a) Discloses no reasonable cause of action;

    (b) Is frivolous and vexatious; and

    (c) is an abuse of the process of the court.

8. The summons was supported by the affidavit of MESAKE VOCEVOCE DAWAI, the Manager Legal of the Defendant, sworn on the 18th of July 2025. Order 18 rule 18(2) provides that *No evidence shall be admissible on an application under paragraph (1)(a).*i.e. that the pleadings disclose no reasonable cause of action. None of the other parties have filed an affidavit.

The Law on Strike Out

9. Order 18 r 18 (1) of the High Court Rules provides:

    Striking out pleadings and indorsements (O.18, r.18)

    18.–(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that–

    (a) it discloses no reasonable cause of action or defence, as the case may be;

    (b) it is scandalous, frivolous or vexatious;

    (c) it may prejudice, embarrass or delay the fair trial of the action; or

    (d) it is otherwise an abuse of the process of the court;

    and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

    (2) No evidence shall be admissible on an application under paragraph (1)(a).

    (3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

10. In ***National MBF Finance (Fiji) Ltd v Buli [2000] FJCA 28; ABU0057U.98S (6 July 2000),*** the Court of Appeal said;

> *"The law with regard to striking out pleadings is not in dispute. Apart from truly exceptional cases the approach to such applications is to assume that the factual basis on which the allegations contained in the pleadings are raised will be proved. If a legal issue can be raised on the facts as pleaded then the courts will not strike out a pleading and will certainly not do so on a contention that the facts cannot be proved unless the situation is so strong that judicial notice can be taken of the falsity of a factual contention. It follows that an application of this kind must be determined on the pleadings as they appear before the Court".*

11. The striking out proceedings have been said again and again in the authorities that the jurisdiction to strike out an endorsement or pleading, whether under the rules or under the inherent jurisdiction, should be exercised with great caution, and only in plain and obvious cases that are clear beyond doubt: Megarry V.C. in ***Gleeson v J. Wippell & Co. [1971] 1 W.L.R. 510 at 518***

The submissions

12. I thank all parties for their submission. I have not set out the submissions in detail but refer only to the relevant particulars necessary to determine this application.

13. The Defendant's submissions are based on (1) Procedural defect—the failure to invoke judicial review proceedings; (2) Lack of Locus Standi of the Plaintiff and (3) Misjoinder of Party. During the hearing, the plaintiff withdrew the application for an injunction as the election had taken place on 10th July 2025, before the application could be heard.

14. I will deal with the submissions of the Plaintiff and the other parties in my analysis of each of the grounds argued by the Defendants.

ANALYSIS

Procedural Defect

15. The Defendant submits that the relief sought by the Plaintiff, namely certiorari, mandamus and declarations in relation to an administrative decision of the Supervisor of Elections, a statutory officeholder acting in a public capacity are well-established as being available only by way of judicial review proceedings. Judicial review proceedings are governed by Order 53 rule 1 and 3 of the HCR and the relevant provisions provide:
    a. **O. 53 r 1 (1**): An application for an order of mandamus, prohibition or certiorari shall be made by way of an application for juridical review in accordance with the provisions of this order;

b. **O.53 r. 3(1**) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule.
c. **O.53 r 3(5**): The court shall not grant leave unless it considers that the applicant has sufficient interest in the matter to which the application relates;
d. **O.53 r 4(2**): In the application for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is three months after the date of the proceeding

Discussion

16. Mandamus, certiorari and prohibition are prerogative writs. The Plaintiff is seeking two of those writs—mandamus and certiorari. To better understand the prerogative remedies, we need to go back into history and the division between public law and private law. Public law governs the relationship between individuals/organizations and the state, addressing issues of public interest like constitutional, administrative, criminal, and tax law. In contrast, private law manages relationships between private individuals or entities, covering areas such as contract, property, tort, family, and commercial law to resolve disputes and rights between private parties.

17. Prerogative remedies belong in the area of public law. In ***Administrative Law*** by H.W.R. Wade & C.F. Forsyth, Oxford University Press, Eleventh Edition 2014, the learned authors describe the prerogative writs as:

> "These remedies are used for the control of government duties and powers. Their hallmark is that they are granted at the suit of the Crown… they are "prerogative" because they were originally available only at the suit of the Crown and not the subject. By obtaining orders of the court in the form of **mandamus, certiorari or prohibition**, the Crown could ensure that public authorities carried out their duties, and that inferior tribunals kept within their proper jurisdiction. These were essentially remedies for ensuring efficiency and maintaining order in the hierarchy of courts, commissions and authorities of all kinds.
>
> By the end of the 16th Century, these remedies had become generally available to ordinary litigants and the litigants could begin proceedings without seeking any permission or authority [from the crown]."

18. **Mandamus** is Latin for "We command." The writ of mandamus is a command to private or municipal corporation or government official or department or judicial officer or to any inferior court commanding the performance of a particular act. It therefore deals with a wrongful inaction.

19. **Certiorar**i is a writ of common law issued by a superior court to an inferior court and administrative body so that the court may judicially review the decision made and if improperly reached, may quash it. The modern name for a writ of certiorari now in England is a Quashing Order.

20. A writ of **Prohibition** was designed for preventing the usurpation or abuse of power of inferior bodies, judicial and administrative alike.[1] A writ of certiorari looks to the past while a writ of prohibition looks to the future.

Issue—what is the proper way of initiating these proceedings?

21. The remedies pleaded determines the type of proceeding to be filed. The Plaintiff is seeking prerogative writs of mandamus and certiorari and the High Court Rules, Order 53. rule (1) require this application to be filed by way of Judicial Review: -

> ***ORDER 53 – APPLICATIONS FOR JUDICIAL REVIEW***
>
> *Cases appropriate for application for judicial review (O.53, r.1)*
>
> *1.–(1)* ***An application for an order of mandamus, prohibition or certiorari shall be made by way of an application for judicial review in accordance with the provisions of this Order.***
>
> *(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the court may grant the declaration or injunction claimed if it considers that having regard to–*
>
> *(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;*
>
> *(b) the nature of the persons and bodies against whom relief may be granted by way of such an order and*
>
> *(c) all the circumstances of the case, it would be just and convenient for the declaration for injunction to be granted on an application for judicial review.*
>
> *(emphasis mine)*

22. The orders sought by the Plaintiff in this matter are the common law prerogative writs of mandamus, and certiorari and MUST be brought by way of judicial review. Injunction and Declaration are not prerogative writs and **may** be brought by judicial review. The Defendant relied on the decision of the House of Lords in ***O'Reillly v Mackman [1983] 2 AC 237*** where Lord Diplock stated:-

> *"As a general rule, it would be contrary to public policy and an abuse of process of the court to permit a person seeking to establish that a decision of a public authority infringed the rights to which he is entitled under public law to proceed by way of an ordinary action and by means to evade the provisions under order 53 for the protection of such authorities"*

[1] *Administrative Law* by H.W.R. Wade & C.F. Forsyth, Oxford University Press, Eleventh Edition 2014 at page 100

23. The orders sought by the Plaintiff in this matter are the common law prerogative writs of mandamus, and certiorari and **MUST** be brought by way of judicial review. The purpose why they should be filed using Order 53 was explained by Diplock LJ in ***Commissioner of Inland Revenue v National Federation of Self-Employed and Small Business Ltd [1982] AC 167***:

> *"The need for leave to start proceedings for remedies in public law is not new. It applied previously to applications for prerogative orders, though not civil actions for injunctions or declarations. Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings of judicial review of it were actually pending even though misconceived."*

24. The decision in ***O'Reilly v Mackman [1983] 2 AC 237*** was examined in detail by the Court of Appeal in ***Digicel Fiji Limited v Pacific Connex Investment Limited & Ors [2009] Civil Appeal No. ABU0049 of 2008S*** (hereafter referred to as Digicel v AG) which was followed in ***Ram Prasad v Attorney General [1999] FJCA 52.*** The Court of Appeal in *Digicel v AG* quoted from *O'Reilly v Mackman* and observed[2]:

> *My Lords, I have described this as a general rule; for though it may normally be appropriate t apply it by the summary process of striking out the action, there may may be exceptions, particularly where the invalidity of the decision arises as a collateral issue in acclaim of a right of infringement of a right of a plaintiff arising under private law or where none of the parties object to the adoption of the procedure by a writ or originating summons. Whether there should be an exception should in my view, at this stage in development of procedural public law, be left to be decided on a case-by-case basis.*

25. The Court of Appeal in ***Digicel Fiji Limited v Pacific Connex Investment Limited & Ors [2009] Civil Appeal No. ABU0049 of 2008S*** referred to what Lord Diplock said in ***O'Reilly v Mackman [1983] 2 AC 237***: -

> *"in many if not most proceedings, the discreat5ion to stay would be informed by the imperative to use proceedings under Order 53. However, it is plain that he left open the possibility that there would be cases where this would not be the appropriate order to make."*

26. The Court of Appeal quoted Lord Diplock in ***O'Reilly v Mackman [1983] 2 AC 237*** that the process of judicial review requires evidence to be taken on oath at the leave stage, and that challenges to administrative decisions should be taken as soon as possible and the use of the process of originating summons or writ can take several years and that is plainly undesirable. In the case before me, the Plaintiff is challenging the decision of the SOE to disqualify him from elections for the post of National Secretary of the First Nominal Defendant. Should the case follow the procedure of

[2] [1983] 2AC 237, at 285F

an originating summons and with the number of cases before this court, some going back 10 years and having priority over this one, the post, which is for 4 years, would most likely be vacant again before the decision is reached. This is a powerful reason for this matter to have been initiated by way of Order 53.

27. Lord Diplock said this of the public interest in ***O'Reillly v Mackman [1983] 2 AC 237***:

> *The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision. In contrast, allegations made in a statement of claim or endorsement of an originating summons are not on oath, so the requirement of a prior application for leave to be supported by full and candid affidavit verifying the facts relied on is an important safeguard against groundless or unmeritorious claims … There was also power in the court on granting leave to impose terms as to costs or security.*

28. The Court of Appeal in ***Digicel v AG***, then discussed matters relevant to the case and the options available to it to determined whether it fell within the exceptions envisaged by Lord Diplock regarding judicial review mentioned above and concluded that the root of the claim is in public law and said:

> *However, on any view, the root of the claim is in public law. The consequence of this, on the authorities is that the proceedings should have been brought by judicial review. To bring them via Originating Summons was an abuse of the process of the court.*
>
> *We have not lost sight of the fact that this may lead the Plaintiff being deprived of its remedy simply because it chose the wrong procedural route. It is not open to amend the proceedings to convert such proceedings to a judicial review.*

Conclusion on the First Issue on How the Proceedings should have been initiated

29. Applying the above statements of the law to the case before me, the Plaintiff is seeking writs of mandamus and certiorari which are prerogative writs and should have, on the authority of ***O'Reillly v Mackman [1983] 2 AC 237*** and ***Digicel Fiji Limited v Pacific Connex Investment Limited & Ors [2009] Civil Appeal No. ABU0049 of 2008S*** and ***Ram Prasad v Attorney General [1999] FJCA 52*** been initiated by way of Order 53 of the High Court Rules. The Plaintiff's failure to do so, leave this Court to conclude that it should be struck out.

2nd Issue—Does the Plaintiff have Locus standi to bring this action?

30. The Defendant submitted that the doctrine of *locus standi* is a threshold requirement in any legal proceedings which ensures that only parties with sufficient interest in the subject matter of the dispute may invoke the jurisdiction of the court; that the Plaintiff is not the person directly affected by the decision of the SOE; that his involvement is limited to having nominated the Second Nominal Defendant as a candidate; that he does not allege any infringement of his own rights under the Union's Constitution;

that he does not claim that his own nomination was rejected or that his right to nominate the Second Nominal Defendant was infringed; or that his right to participate in the election process or that the rules of the union discriminated against him in any personal or procedural manner.

31. The Defendant then based his submission on the case of ***Commissioner of Inland Revenue v National Federation of Self-Employed and Small Business Ltd [1982] AC 617*** where the court stated that a person must demonstrate a sufficient interest in the matter to be allowed a claim for judicial review. He then cited the case of ***Tomu Teahana Vatei & Ors v Wailoku Land Board of Trustees& Ors[2023] HBJ 23 of 2021 (2 June 2023*** , citing the case of ***Proline Boating Company Ltd v Director of Lands [2014] FJCA 159; ABU 0020.13 (25 September 2014)*** where the full bench described the meaning of the term "**sufficient interest**" said at paragraph 29:

> *The English decisions reveal a vast range of situations in which an applicant has been held to have a sufficient interest in applying for leave to seek judicial review. Of these in what I would like to call the direct consequences test, that would be applicable in the instant case for example, if the decision sought to be reviewed interferes directly with the applicant's personal right, then the applicant would have "sufficient interest."*

32. The Plaintiff in his skeletal submission relied on the case of ***Vijay Wati v Sophia Khan Civil Appeal No. ABU0062 OF 2022*** where the Fiji Court of Appeal was asked to consider the standing of the Appellant to appeal a decision where she was trying to enforce a deed to which she was a beneficiary to a will and was a signatory to a deed to distribute a significant estate to her and others. The Court of Appeal found that the Respondent was merely trying to enforce that agreement and that required the Appellant administrator to enforce the agreement and found that on the facts, she had standing. The Court of Appeal did not go into detail into the law of standing in that case but on the facts found that the Respondent had standing.

<u>Discussion</u>

33. The Plaintiff in the case before me is a member of the First Defendant Union and is bound by contract and the Constitution of the Union. Rule 18 of their Constitution is entitled "Position of National Secretary." Rule 18. c deals with the criteria for the nomination of National Secretary. Rule 18.d states:

> *The Executive Committee shall not accept any nomination from persons who do not meet all the requirements of this Rule 18 (c) (i to vii) above or person(s) who have served in the position previously and who blatantly breached the Union's Constitution rules during his/her tenure*.

34. The Executive Committee found that the Second Nominal Defendant had been previously employed by the Union as National Secretary and had had breached Rule 18.d of their Constitution and disqualified him. That information was conveyed to the FEO who then declared the Second Nominal Defendant as a candidate in the elections.

35. In the case of ***Gouriet v Union of Post Office Workers [1977] UKHL 5 (26 July 1977)*** Lord Wilberforce said of the issue of standing in a case seeking declaratory relief:

> *"the case of* ***L.P.T.B. v. Moscrop [1942] A.C. 332 (House of Lords)****is a conclusive authority against Mr. Gouriet's entitlement to declaratory relief. Mr. Moscrop, an employee of the London Passenger Transport Board, sought a declaration that certain conditions of his employment were unlawful. Rejecting that claim, Viscount Maugham said (at p. 344):*
>
> *My Lords, I cannot call to mind any action for a declaration in " **which (as in this case) the plaintiff claims no right for himself**, but " seeks to deprive others of a right which does not interfere with his liberty or his private rights ... **It has been stated again and again, and also in this House, that the jurisdiction to give a declaratory " judgment should be exercised ' with great care and jealousy' . . .***
>
> *" What special interest has the respondent to enable him to bring this " action? We are not here concerned with anything but his civil right, " if any, under the section. **I think it plain that there has been no" interference with any private right of his, nor has he suffered special " damage peculiar to himself from the alleged breach ...**"*
>
> *Lawton, L.J., said that the weighty opinions in Moscrop bore heavily upon him (339 B). But he concluded that they did not apply to the instant case, on the ground that, " what the plaintiff has asked this court to restrain" is a breach of the criminal law which will take away his own right to" use the facilities of the Post Office ". But as no such " right" exists, in my judgment the ratio decidendi of Moscrop applies in full force to this case. It was a decision of this House in complete conformity with a large body of long-established law, and it impels me to the conclusion that the plaintiff was entitled to none of the declarations granted and that his last-minute request for them should have been dismissed.*

36. In ***Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses Ltd***,[1982]. The Respondents were trying to enforce public rights and therefore, to that extent, the decision in ***Gourlet v Union of Post Office*** Workers [1978] AC 345 applies. The declaration sought here in respect of the public interest and this they cannot do. A fortiori, in the words of RSC Order 53 r. 3 (5) they can have "no sufficient interest" to bring these proceedings.

Discussion

37. The Plaintiff had the right as a member of the Union under their Constitution **to nominate** a person for the position of National Secretary. He exercised that right by nominating the Second Nominal Defendant. He should have ensured before the nomination that the Second Nominal Defendant met all the requirements of Rule 18 of the Union Constitution. He did not do so, resulting in the Executive Committee finding that his nominee did not meet the requirements of Rule 18.d of the Constitution. The decision by the FEO to reject his nomination is not an arbitrary decision but based on the finding of the Executive Committee.

38. The Plaintiff's right to nominate the Second Nominal Defendant has not been denied by the Union and any remedy that he has is in the area of private law and cannot be pursued by way of prerogative writs. Once the nomination had been rejected by the SOE, any right of redress belongs to the Second Nominal Defendant and he should have been the Plaintiff as his rights had been affected. As stated by Viscount Maugham, in ***L.P.T.B. v. Moscrop [1942] A.C. 332:***

> **I cannot call to mind any action for a declaration in "** ***which (as in this case) the plaintiff claims no right for himself.***

Conclusions on Standing

39. I find, for the reasons given, that the Plaintiff has no right to bring this action, as he has no right of action for himself.

Injunction

40. The application for injunction was made under Order 20 of the HCR which deals with amendments of writs. It should have been made under Order 29 of the HCR. The injunction application was withdrawn at the hearing of this matter and is struck out.

Finding

41. I find on the balance of probabilities that for the reasons given:

    a. The Plaintiff initiated this action by Originating Summons without specifying the Orders of the High Court Rules that he was relying on;

    b. The Summons seeking the prerogative orders of mandamus and Certiorari should have commenced by way of judicial review under as stipulated under Order 53 of the High Court Rules;

    c. That the Plaintiff by failing to comply with Order 53 of the HCR, has abused the process of the Court and the action should be dismissed;

    d. That the Plaintiff has no sufficient interest in the matter and is therefore no standing in public law to bring this action and therefore the action should be dismissed.

    e. That the application for an injunction has been withdrawn and struck out.

Orders

1 The Originating Summons is dismissed.

2 The Summons for an injunction is dismissed.

3. Costs summarily assessed at $1,000.00 to be paid to the Defendant within 21 days of this order.

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Penijamini R Lomaloma

Acting Puisne Judge