

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 21 of 2024

BETWEEN: **DUIYASANA TAXIS & TOURS CO-OPERATIVE LIMITED**
PLAINTIFF

A N D: **RUPENI TABUTABU** of Lum Street, Waiyavi, Lautoka, as the former
Chairman of Duiyasana Co-Operative.
FIRST DEFENDANT

A N D: **KAMINIELI DOMODREU** of Chameli Street, Lautoka as former
Treasurer and Secretary of Duiyasana Co-Operative.
SECOND DEFENDANT

Appearances: Ms. Naidu J. for the Plaintiff
 Ms. Ravai S. for the Defendant

Date of Hearing: 23 April 2024

Date of Ruling: 06 March 2026

R U L I N G

INTRODUCTION

1. What is before me is the defendants' Summons dated 18 March 2024 to strike out the plaintiff's writ of summons and statement of claim. The writ and statement of claim were filed on 09 February 2024. The Summons is filed pursuant to Order 18 Rule 18 (1) (b) and (d) of the High Court Rules 1988. It is supported by an affidavit of Mr. Rupeni Tabutabu sworn on 13 March 2024.
2. The plaintiff has not filed an affidavit in opposition.

BACKGROUND

3. The plaintiff, namely the Duiyasana Taxis & Tours Co-operative Limited ("**DTTCL**"), is a co-operative society. It was registered under Co-operative Act 1996 ("**Act**") on 27 April 2020.

4. Section 14 of the Act provides:

14. *The registration of a co-operative shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold movable and immovable property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its bylaws.*

5. I am mindful though that section 120 of the Co-Operatives Act 1996 precludes the application of the provisions of the Companies Act to any co-operative¹.

DTTCL's Core Objectives

6. DTTCL has a set of By-Laws which is its governing instrument. The By-Laws were registered on 27 April 2020² by the Registrar of By-Laws. Clause 3 subclauses (a) to (h) set out (see below) the following core objectives of DTTCL:

- (a) to acquire taxi base and provide to its members;
- (b) to deliver timely services when needed as and when required;
- (c) to offer its members the best transportation facilities;
- (d) to venture into car wash and tyre repair business to generate more income and create employment to those who rely to this kind of services for their livelihood;
- (e) to buy, charter, hire or otherwise acquire transportation vehicle that is suitable for this kind of business;
- (f) to enter into any arrangements with any government or authority, municipal, local or otherwise that may seem conducive to the co-operatives objectives or any of them to obtain license, permits, rights, privileges and concessions which the co-operative may think it desirable to obtain and to carry out, exercise and comply with such arrangements, licenses, permits, privileges and concessions;
- (g) to encourage savings, self-help, mutual help and cooperation generally among members to promote the development of co-operative ideas and to improve the economic and social conditions of the member; and
- (h) to do all other things that are incidental to or necessary for the attainment of the above objects.

¹ This section provides:

120. The provisions of the Companies Act shall not apply to co-operatives.

² . By Laws annexed as S.V2 to the Affidavit of Samuela Vickboki Koroï sworn on 08.02.24 filed in support of the Inter-Partes Notice of Motion filed on 09.02.24.

Allegations in Statement of Claim

7. DTTCL's statement of claim sets out the following facts and allegations:
- (a) the first defendant is the Chair of DTTCL.
 - (b) the second defendant is the former Treasurer and Secretary of DTTCL.
 - (c) between them, the defendants are alleged to have mismanaged the business affairs of DTTCL through:
 - (i). a lack of transparency in their decision making.
 - (ii). their questionable handling of funds.
 - (iii). their lack of accountability and failure to consult in matters concerning DTTCL's operations
 - (d) the foregoing matters have caused division and generated disputes among DTTCL's membership regarding the society's governance structure.
 - (e) at an Ordinary General Meeting held in July 2023, the members of DTTCL questioned the defendants concerning the society's accounts.
 - (f) the defendants were unable to give a satisfactory account. Their response was marked by agitation.
 - (g) the defendants have since departed from DTTCL and commenced operating a new taxi base under DTTCL's name and goodwill. In doing so, they appropriated various assets of DTTCL. These are itemized in paragraph 22 of the statement of claim.
8. The principal relief sought is an order directing the defendants to render an account and that they be removed from their positions and from the mandate as signatories to Bank Account No. 910201 000 18168.

SHOULD THE WRIT OF SUMMONS & STATEMENT OF CLAIM BE STRUCK OUT?

Defendant's Position

9. The defendants contend that the true instigator of this action is the Assistant Chairman of the DTTCL Board, Mr. Samuela Vicoboki Koroi ("**Koroi**"). Koroi has used the name of DTTCL without proper authorisation. He uses DTTCL in order to deflect attention from his own dubious conduct and to avoid personal exposure to costs.

10. From the affidavit of Mr. Rupeni Tabutabu sworn on 13 March 2024 in support of the application to strike out, and from other affidavits filed, I reconstruct the defendants' position as follows:

- (i) DTTCL was established for the purpose of operating a taxi business for its members. The long-term goal was to advance into the car wash and tours.
- (ii) initially, the residence of Koroi in Kermode Road in Kashmir was used as the base from which DTTCL's taxi business was operated. For that, DTTCL was paying Koroi a monthly rental of \$350. For some time, the majority of the members of DTTCL had not been happy with having the taxi base at Koroi's residence.
- (iii) in July 2023, the defendants, together with twenty (20) or so members (including four (4) of the nine (9) Board members), made the decision to relocate DTTCL's taxi base from Koroi's residence at Kermode Road in Kashmir to Lum Street in Waiyavi.
- (iv) Koroi, who is behind the filing of these proceedings, was the individual responsible for managing the financial affairs and operations of DTTCL. The fact that the former base of DTTCL was located at his residence, coupled with his position as Assistant Chairman, afforded him leverage over the cooperative's affairs.
- (v) this was the context in which the decision to re-locate was made.
- (vi) this is also the context in which Koroi made the decision to institute these proceedings.
- (vii) however, a proceeding in DTTCL's name can only be instituted through the sanction of its Board of Directors. There are altogether nine (9) executive members constituting the Board. Six (6) of the nine (9) Board members have confirmed that they did not authorise Koroi to institute this action in the name of DTTCL.
- (viii) the General Meeting of members is the supreme authority for deliberation and decision-making. The Board manages and oversees operations in line with those decisions and is accountable to the members – as per clauses 28 and 13 of the DTTCL By-Laws.
- (ix) when the DTTCL Audit Report for the year ending 30 June 2021 was presented, members did not raise any issue – not even Koroi. It was only in May 2023 when Koroi raised queries when the Report was presented at the first AGM.
- (ix) apart from the fact that these proceedings have been wrongly instituted without due authority in the name of DTTCL, in breach of the Cooperatives Act and the DTTCL By-Laws – Koroi has bypassed the dispute resolution mechanism prescribed in sections 115 and 116 of the Act.

11. As stated, the plaintiff has not filed any affidavit in opposition.

ANALYSIS

12. I do not consider it necessary, nor am I inclined, to decide whether Koroï or the defendants are to blame for the mismanagement of DTTCL. Suffice it to say that the claims and counter-claims make it clear that they do have a dispute of the type envisaged by the Co-operatives Act 1996. The range of disputes which are covered under the Act are as follows:

Nature of Dispute	Section of the Act
Dispute arising out of the interpretation of a by-law	18 (2)
Dispute touching the co-operative	18 (2)
Concerning the By-Laws, election of officers, conduct of meetings, management of business of a co-operative	115 (1) & (2)

13. The issue, however, is whether this Court is the appropriate forum to resolve the dispute and, even if so, whether the matter has been properly brought before the Court.

Whether this Court is the proper forum?

14. I start with the observation that the *Cooperatives Act 1996* does establish an elaborate dispute resolution mechanism. Section 6 (1) provides for the appointment of *inter alia* the office of the Registrar of Co-operatives. The Registrar's functions include "[assisting] in settling disputes within and between co-operatives if such disputes are not being settled by the Co-operative Tribunal according to the provisions of Section 116"³.
15. Whenever a dispute arises, there shall be an attempt in the first instance to settle it through "**local informal mediators**"⁴.
16. If the dispute is not settled through the mediator, it may then be referred to the Registrar or directly to the Co-operative Tribunal (as per section 115 (1)).

³ Section 6 (1) of the Act.

⁴ Section 115 (1) provides:

...such dispute may be referred, **after due attempts to settle the issue by local informal mediators**, to the Registrar or directly to the Co-operative Tribunal constituted under Section 116 of this Act for decision.

17. On receiving a reference, the Registrar may, depending on the “nature and complexity of the dispute”, either deal with the dispute or refer it to the Tribunal (as per section 115 (3)).
18. Where the Registrar decides to deal with the dispute, his decision is appealable to the Tribunal (as per section 115 (4)).
19. Where a dispute has been decided by the Tribunal, whether as a result of a direct reference under section 115 (1), or from a reference from the Registrar under section 115 (3), or pursuant to an appeal from the Registrar’s decision as per section 115 (4), the decision of the Tribunal shall be “**final and conclusive**” (as per section 115 (5) and (6)).
20. It is also noteworthy that a member of a co-operative society has a right to call for an inquiry to be held into the constitution, organization, working and financial situation of the co-operative (as per section 38 (g)), subject to the requirements set out in sections 85 to 89 of the Act.

Comments

21. A co-operative society is built on the ideals of mutual aid and collective action. However, wherever people share resources, disputes are bound to arise as to how these are to be managed. As shown above, the Act establishes a clear dispute resolution framework, complete with an appellate process. This framework is intended to give practical effect to the rights and obligations of members while safeguarding the collective interests of the society, ensuring that disputes arising from the society’s rules and the member-society relationship are resolved within the statutory structure.
22. While the Court retains a supervisory jurisdiction⁵, the structure is meant to be followed. It is not a mere aspirational guideline. In instituting proceedings without first exhausting that structure, a party undermines the legislative intent and the integrity of the process. That in itself is an abuse of process.
23. Moreover, given the allegations and counter-allegations of impropriety in this matter, the applicant’s choice to bypass the dispute resolution mechanism prescribed under the Act suggests a vexatious motive rather than a genuine attempt to resolve the dispute.

⁵ See State v Native Lands Appeal Tribunal [2010] FJHC 556; HBJ4.2009 (28 July 2010).

24. It is an abuse of process to institute proceedings for an improper purpose (see **In re Major** (77) (1955) Ch 600⁶; **Jago** (62) (1989) 168 CLR⁷; **Metall and Rohstoff v. Donaldson Inc.** (1990) 1 QB 391⁸; **Goldsmith v. Sperrings Ltd.** (93) (1977) 1 WLR 478)⁹.

Whether the matter has been properly brought before the Court?

25. Suffice it to say that I agree that the person behind these proceedings is the Assistant Chairman of the DTTCL Board, Mr. Samuela Vicoboki Koroi and that

⁶ Lord Evershed in **In re Major** (77) (1955) Ch 600, at pp 623-624, said:

"...court proceedings may not be used or threatened for the purpose of obtaining for the person so using or threatening them **some collateral advantage to himself**, and not for the purpose for which such proceedings are properly designed and exist; and a party so using or threatening proceedings will be liable to be held guilty of abusing the process of the court and therefore disqualified from invoking the powers of the court by proceedings he has abused."

⁷ Brennan J said in **Jago** (62) (1989) 168 CLR, at pp 47-48.

"An abuse of process occurs when the process of the court is put in motion for a purpose which, in the eye of the law, it is not intended to serve or when the process is incapable of serving the purpose it is intended to serve. ... Although it is not possible to state exhaustively all the categories of abuse of process, it will generally be found in the use of criminal process inconsistently with some aspect of its true purpose, whether relating to the hearing and determination, its finality, the reason for examining the accused's conduct or the exoneration of the accused from liability to punishment for the conduct alleged against him. When process is abused, the unfairness against which a litigant is entitled to protection is his subjection to process which is not intended to serve or which is not capable of serving its true purpose."

⁸ In **Metall and Rohstoff v. Donaldson Inc.** (1990) 1 QB 391 Slade L.J. observed (54) (1990) 1 QB, at p 469:

"(A) person alleging such an abuse must show that the predominant purpose of the other party in using the legal process has been one other than that for which it was designed".

⁹ In **Goldsmith v. Sperrings Ltd.** (93) (1977) 1 WLR 478, Bridge L.J. said:

"For the purpose of Lord Evershed's general rule, what is meant by a 'collateral advantage'? The phrase manifestly cannot embrace every advantage sought or obtained by a litigant which it is beyond the court's power to grant him. Actions are settled quite properly every day on terms which a court could not itself impose upon an unwilling defendant. An apology in libel, an agreement to adhere to a contract of which the court could not order specific performance, an agreement after obstruction of an existing right of way to grant an alternative right of way over the defendant's land - these are a few obvious examples of such proper settlements. In my judgment, one can certainly go so far as to say that when a litigant sues to redress a grievance no object which he may seek to obtain can be condemned as a collateral advantage if it is reasonably related to the provision of some form of redress for that grievance. On the other hand, if it can be shown that a litigant is pursuing an ulterior purpose unrelated to the subject matter of the litigation and that, but for his ulterior purpose, he would not have commenced proceedings at all, that is an abuse of process. These two cases are plain; but there is, I think, a difficult area in between. What if a litigant with a genuine cause of action, which he would wish to pursue in any event, can be shown also to have an ulterior purpose in view as a desired byproduct of the litigation? Can he on that ground be debarred from proceeding? I very much doubt it."

he does not have the authority of the Board to institute these proceedings in DTTCL's name.

CONCLUSION

26. I am of the view that these proceedings have been instituted with an ulterior purpose.
27. This court has jurisdiction to permanently stay proceedings instituted or maintained for an ulterior purpose as an abuse of process (see case authorities cited above in paragraph 24).

ORDERS

28. In the result, I direct that these proceedings be permanently stayed as an abuse of process. The parties would be well advised to utilize the dispute resolution mechanism prescribed under the Co-operatives Act 1996.
29. Costs to the Respondent which I summarily assess at \$800 – 00 (eight hundred dollars only). For the avoidance of doubt, the costs are to be borne by Mr. Samuela Vicoboki Koroi personally and not the Duiyasana Taxis & Tours Co-operative Limited.



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Anare Tuilevuka
JUDGE

06 March 2026