

Application by trustees

IN THE HIGH COURT OF FIJI
(AT SUVA)

Civil Action No. 2007

BETWEEN: **HAFIZUD DEAN KHAN** (fn Rasul Khan) and **MOHAMMED TAABISH AKBAR** (fn Mohammed Razak Akbar) and **NISAR AHMED ALI** (fn Farook Ahmed Ali) as Trustees of the **FIJI MUSLIM LEAGUE**, a body duly registered under the Registration of Religious Bodies Act.

PLAINTIFFS'

AND: **FEROZ GULAM MOHAMMED** (fn Tahir Mohammed) of Nakasi, Nausori, Businessman and **MUMTAZ ALI GANI** (fn Abdul Gani) of Nakasi, Nausori, Businessman.

DEFENDANTS'

INTER-PARTE SUMMONS

TAKE NOTICE that this Honorable Court will be moved at the High Court of Fiji at Suva on *Wednesday* the *10th* day of *October* 2007 at *9:00* o'clock in the *fore* noon or so soon thereafter as Counsel for the Plaintiff can be heard for the following orders:-

1. An Order that the Defendants' deliver possession of the Minute book, letter heads, inward/outward correspondence, Salaat Hall and Branch office key, Notice Board and Utensil Room Key, Branch vehicle registered as FF652, traveling documents, files, work permit, employment contract and any other documents in relation of **Maulana Imran Patel**, receipt books and any other Fiji Muslim League property relating to the Nasinu Branch held by the Defendants to the Plaintiffs.'
2. An injunction restraining the Defendants', whether by themselves, their servants or agents or otherwise howsoever, from doing the following:
 - (i) Interfering with and /or displaying any notice(s) on Fiji Muslim League – Koronivia Mosque Notice Board.
 - (ii) Using Fiji Muslim League – Nasinu Branch letter heads.
 - (iii) Impersonating as Secretary and President of the Fiji Muslim League – Nasinu Branch.



Defence by Nasinu Branch

IN THE HIGH COURT OF FIJI
CIVIL JURISDICTION
SUVA.

CIVIL ACTION NUMBER 436 OF 2007

BETWEEN: HAFIZUD DEAN KHAN father's name Rasul Khan and MOHAMMED TAABISH AKBAR father's name Mohammed Razak Akbar and NISAR AHMED ALI father's name Farook Ahmed Ali as trustees of FIJI MUSLIM LEAGUE a body duly registered under the registration of Religious Bodies Act.

PLAINTIFFS

AND: FEROZ GULAM MOHAMMED father's name Tahir Mohammed of Nakasi, Nausori, Businessman and MUMTAZ ALI GANI father's name Abdul Gani of Nakasi, Nausori, Businessman.

DEFENDANTS

STATEMENT OF DEFENCE AND COUNTERCLAIM

The Defendants through his solicitors in his Statement of Defence says as follows:-

1. **THAT** as to paragraph 1 of the Statement of Claim (hereinafter referred as the "said claim") the Defendants admits that the Plaintiff is a body duly registered under the Registration of Religious Bodies Act and categorically denies that the Plaintiffs are the Trustees of Fiji Muslim League and accordingly they do not have any *locus standii* to institute this action for the following reasons:-
 - a). **THAT** the purported trustees of the Fiji Muslim League (hereinafter referred as "FML") were never elected in accordance with section 21 of the Constitution of FML.
 - b). **THAT** there was no election held by virtue of which the purported trustees were elected.
 - c). **THAT** Mr. Hafizud Dean Khan do not qualify to be elected as the National President of FML in accordance with the section 29(d) of the Constitution of the FML.

2. **THAT** as to the matter alleged in paragraph 2 of the said claim, the Defendant categorically deny that they are the former executives and members of the Fiji Muslim League- Nasinu Branch. Furthermore, the Defendants plead that the purported Trustees forcefully and unlawfully removed the Defendants as Executives and Members merely to conceal their unlawful activities and favoritism to their friends and family members.
3. **THAT** as to paragraph 3 of the said claim, the Defendant neither admits nor deny the contents thereof.
4. **THAT** as to paragraph 4 of the said claim, categorically say as follows:-
 - a). **THAT** the branch league were affiliated under the banner of FML when a common Constitution was adopted in 1957.
 - b). **THAT** the 1957 Constitution of FML contained no provisions which allowed it to be amended unless all the members of FML consensually agrees to any amendments. Accordingly, any amendments to the 1957 Constitution adopted on the 9th day of January 2005 and amended is unlawful.
 - c). **THAT** the amendments of the 1957 Constitution, adopted on the 9th day of January 2005 were carried merely to suit the Administrators and/or the Trustees of FML and their friends and family members to enable them to dictate to the branches of their business.
5. **THAT** the Defendants admits paragraph 5 of the said claim.
6. **THAT** as to paragraph 6 of the said claim, the 1st Defendant admits being appointed as the Acting Secretary of the Nasinu Branch on the 5th day of October 2005 and further states that in a meeting held on the 26th day of February 2006, the 1st Defendant was elected as the Secretary of the Nasinu Branch League.
7. **THAT** as to paragraph 7 of the said claim, the Defendants categorically states as follows:-
 - a). **THAT** on the 24th June 2007, a Council meeting of FML was held. The purportedly elected General Secretary publicly announced 47 counts of allegations against the officials of the Nasinu Branch.

- b). **THAT** the officials of the Nasinu Branch objected to the manner in which complaints were announced on the basis that it should have been dealt with in accordance with section 89 of the Constitution of the FML, i.e. by reference to the Dispute Resolution Committee. The objections by the Nasinu Branch were supported by the Nadi, Navua and Maro Branch League.
- c). **THAT** purported Speaker of FML overruled the objections and allowed the General Secretary to announce the allegations. All 47 counts of allegations were read to the public.
- d). **THAT** subsequently, Mr. Safiullah Khan of Ba branch moved that an inquiry committee be established and full enquiry to be conducted on the 47 counts of allegations within 14 days. This was again objected to by the Nasinu Branch on basis of section 85 of the Constitution. However, this objection was again overruled by the Speaker.
- e). **THAT** the Council in its ruling established a Special Committee to conduct an investigation specifically within 14 days from the 25th day of June 2007.
- f). **THAT** by a letter dated the 25th day of June 2007, the 1st Defendant wrote to the purported General Secretary of FML inviting the purported Special Committee to conduct its investigation and specifically stated **"within 14 days"**.
- g). **THAT** by a letter dated the 25th day of June 2007, the Plaintiff's informed the Defendants the names of the members of the purported Special Committee and further reduced the purported allegations from 47 counts to 6 counts.
- h). **THAT** contrary to the ruling of the Council that the inquiry to be conducted within 14 days from the 25 day of June 2005, the Chairman of the purported Special Committee wrote to the Defendant on the 25th day of July 2007, and advised as follows:-
- a). **The** initially there were 47 counts of allegations against the Defendants. Thereafter, the purported General Secretary reduced to 6 counts, which was further reduced to 2 counts only by the Chairman of the purported Special Investigating Committee.
- b). **The** Defendants were to file their submission on the two counts only by the 27th July 2007, i.e. within 2 days.
- c). **The** meeting was schedule to be conducted on the 29th day of July 2007.

- i). **THAT** on the 27th day of July 2007, the 1st Defendant wrote a letter to the Chairman of the purported Special Committee and brought to their attention that the purported Special Committee has failed to comply with the ruling of the Council in not conducting its investigation within 14 days. The Defendants also sought further 14 days time in order to consult its members and their availability for the meeting on the 29th day of July 2007.
- j). **THAT** by a letter dated the 27th day of July 2007, which was delivered to the Defendant at about 5:00p.m., the Plaintiff's advised that the meeting will proceed as scheduled.
- k). **THAT** on the 29th day of July 2007, the 1st Defendant together with the Vice President of the Nasinu Branch attended the meeting and informed the purported Special Committee as follows:-
- a). **THAT** the members of the Nasinu Branch were initially ready and available with their Submissions on the alleged 47 counts within the specified time of 14 days.
 - b). **THAT** however, the purported Special Committee failed to conduct its enquiry within the stipulated time frame.
 - c). **THAT** the Nasinu Branch was not given sufficient time to advise all its members to be present at the meeting due to the short notice by the purported Special Committee.
 - d). **THAT** the purported Special Committee deployed bulldozing tactics in hearing the allegations against the Nasinu Branch, in failing to allow the Defendants adequate time to amend their submissions on two counts of allegations, check on the availability of the members and be present and represented at the Meeting.

THAT the Defendants pleads that the so called enquiry was conducted in breach of the Defendants Constitutional Rights and in breach of the Principles of Natural Justice.

8. **THAT** the Defendants categorically deny being constantly approached to file their submissions.
9. **THAT** the FML's Council decision delivered on the 12th day of August 2007 is unlawful and unconstitutional for the following reasons:-
- a). **THAT** the purported decision was made without a proper enquiry conducted by the purported Special Committee, as should be done in any religious organisations.

- b). **THAT** the Defendants and/or the officials of the Nasinu Branch were not given a reasonable chance to respond to the allegations.
 - c). **THAT** the purported Special Committee deliberately set the said meeting in a weekend when the members of the Nasinu Branch were unavailable for the said meeting.
 - d). **THAT** the purported meeting was conducted in contravention with the Constitutional rights of the Defendants and in breach of the Principles of Natural Justice.
10. **THAT** the Defendants admit walking out of the meeting, and categorically state that such action was taken in protest at the unlawful and unconstitutional manner the whole proceedings were conducted.
11. **THAT** the Defendants categorically deny the allegations contained in paragraph 11 of the said claim and categorically states that the Plaintiff is making an attempt to mislead this Honourable Court.
12. **THAT** as to the contents of paragraph 12 of the said claim, the defendants repeat the foregoing paragraphs and say that the decision to resolve the Nasinu Branch was unlawful and unconstitutional.
13. **THAT** as to paragraph 13 of the said claim, the Defendants categorically denies writing to the Public and puts the Plaintiff to strict proof.
14. **THAT** the Defendants categorically deny the allegations contained in paragraphs 14 and 15 of the said claim, and puts the Plaintiff to strict proof.
15. **THAT** the Defendants admits paragraph 16 of the said claim.
16. **THAT** the Defendants categorically denies paragraphs 17 and 18 of the said claim and puts the Plaintiff to strict proof. Suffice it to say that the defendants could only return those items which were in their possession.
17. **THAT** as to paragraph 19 of the said claim, the defendants states that the pleading is bad and lacks particulars. Alternatively, the defendant puts the Plaintiff to strict proof.

COUNTERCLAIM

18. **THAT** the Defendants repeat paragraphs 1 to 17 (inclusive) herein.

Constitution of Fiji Muslim League General Election of Trustees and other office bearers

19. **THAT** the Plaintiff claims that the provisions contained in the Constitution of FML in respect of the election of the office bearers including the Trustees are unlawful, undemocratic and dictatorial.

a). General Election of Trustees and other office bearers

PARTICULARS

- i) **THAT** the aforesaid section deprived the Defendants and/or other Muslim members of the FML to hold free and fair election of the Office Bearers giving each members a right to vote even in accordance with the Constitution of FML.
- ii). **THAT** sections 21 and 22 of the Constitution of the FML are inconsistent for the following reasons:-
- a). Section 21 regulates the manner in which the office bearers under section 18 of the Constitution are to be elected. Whereas, section 22 of the said Constitution states that the National President **shall appoint** all other office bearers.

b). Annual General Meeting (AGM).

i). Representation of Branch League in AGM

- a). **THAT** section 39 of the said Constitution specifies the list of members (which are to be determined by perusing the Register of members of the Branch required to be submitted to the FML in accordance with section 15 of the said Constitution) who are entitled to be present in the Annual General Meeting.

Accordingly, the Defendants claims that neither there was any electoral rolls beings prepared and/or any list of members who are entitled to be present at the said Annual General Meeting.

- b). **THAT** section 41 of the said Constitution entitles a members to vote at any Annual General Meeting, whereas, pursuant to section 46 of the said

Constitution, the business of the Annual General Meeting is limited to Administrative issues only and no elections are conducted.

20. **THAT** accordingly, the Plaintiff claims that the aforesaid provisions of the Constitution of FML are inconsistent and accordingly invite this Honourable Court to make a specific ruling therein.

21. **THAT** Mr. Hafizud Dean Khan, the purported National President of FML, merely to strengthen their grip on the executives powers, assumed powers by virtue of section 22 of the said Constitution, (which is contrary to section 21 of the said Constitution) and unlawfully appointed his own favorites to further their own particular interest and to conceal numerous fraud and unlawful activities conducted by them.

PARTICULARS OF FRAUD AND FAVORITISM

- a). Failing to provide with full and audited income and expenditure account for Samabula Mosque, Zaaqat, Fitrana, Educational Trust and IDB accounts for last four years, which runs into hundreds of thousands of dollars.
- b). Borrowing loan from banks on interest which contravenes section 5(a) of the Constitution.
- c). Mortgaging Nasinu Branch League's property on interest without proper consent of the Nasinu Branch and the Council of FML.
- d). Awarding tender to build a shopping complex in Samabula to a close family members of the National President in an exorbitant amount of \$900,000.00.
- e). Obtaining loan for 1 million dollars on interest and falsely informing the FML Council that the said funds will be reimbursed by the Islamic Development Bank.
- f). Failing to provide with particulars of a sum of \$400,000.00 allegedly spent to build the Samabula Mosque.
- g). Transferring monies held in the Educational Funds from the branch league (Kamil Muslim College, Ba) to fund their expenses.
- h). Failing to suspend the Nasinu Branch League Treasurer and Vice President for irregularities despite resolution in the Special General Meeting held on the 19th day of January 2007.

- i). Failing to investigate the mishandling of funds of Nasinu Branch League by some of the board of governors officials, unlawfully appointed by the Plaintiffs.
 - j). Misappropriating approximately \$45,000.00 of Nasinu Branch Leagues funds through its appointed officials.
 - k). Failing to appoint an independent auditor to audit the accounts of Nasinu Branch and appointing Mishra & Company, a personal friend of the National President to audit the accounts of the Nasinu Branch League.
 - l). Failing to investigate one Mr. Subhan Ali for unlawfully altering the minute books of Nasinu Branch.
 - m). Failing to discuss and approve full financial accounts of Nasinu Muslim League for 2006 in the Annual General Meeting, which is most imperative as per section 46 of the Constitution of FML.
 - n). Failing to investigate the members of the Valelevu Branch League for misappropriating funds totaling to \$46,000.00 as they were relatives of the National President.
 - o). Failing to direct and/or hear the motions of the Defendants, which remains unheard for a long period of time.
22. **THAT** the Defendants and the other members of the Nasinu Branch were unlawfully suspended merely due to the fact that they were the only branch league who always questions the accountability and transparency in the financial affairs of the FML.
23. **THAT** the Defendants also lodged numerous complaints to the Dispute Resolution Committee in respect of the financial accounts and other related matters, but, however, these were not heard as the members of the Dispute Resolution Committee are in association with the National President and who were appointed by him.
24. **THAT** due to the matters complained of in the foregoing paragraphs, the Defendants were made to endure great embarrassment and were defamed by the Plaintiffs when unfounded allegations were announced publicly at the Council meeting held on the .
25. **THAT** by the reasons of matters aforesaid the Defendant suffered sleepless nights and mental anguish for unlawful suspension of the Nasinu Branch

League, as their only fault, if any, was always being very vigilant into the accountability of the officials of FML.

26. **THEREFORE** the Defendants claims:-

- a). **THAT** the Plaintiff's claim be dismissed.
- b). **A DECLARATION** that the Plaintiff are unlawfully elected as Trustees of the FML.
- c). **A DECLARATION** that the suspension of the Defendant as Official of Nasinu Branch was unlawful and in contravention with the Constitution of FML.
- d). **THAT** the provisions in respect of the elections of the Office Bearers are inconsistent and unlawful.
- e). **THAT** there be a General Election conducted after compliance with section 15 of the said Constitution in a fair and proper manner. Such election is to be held by casting votes for and against each office bearers indicated in section 18 of the said Constitution.
- f). **AN** order directing the Plaintiffs to provide audited financial accounts of each accounts held by FML. The auditors are to be appointed by this Honourable Court who shall be independent and impartial.
- g). General Damages against the Plaintiff.
- h). Costs of this action be paid by the Plaintiff.
- i). **Such** further and/or other relief as this Honourable Court may deem just and expedient.

DATED at Suva on the 26th day of May 2008.

MEHBOOB RAZA & ASSOCIATES

Per. Sgt. Roman P. Singh
SOLICITORS FOR THE DEFENDANTS

This Statement of Defence and Counterclaim has been filed by **Mr. Mehboob Raza of Messrs Mehboob Raza & Associates** on behalf of the Defendants whose address for service is at the chambers of the said solicitors at 176/184 Renwick Road, Suva.

Judgement

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO.: HBC 436 OF 2007

BETWEEN:

HAFIZUD DEAN KHAN & OTHERS

PLAINTIFFS

AND:

FEROZ GULAM MOHAMMED & ANOTHER

DEFENDANTS

Mr. S. Singh for the Plaintiffs

Mr. M. Raza for the Defendants

JUDGMENT

[1] Serious differences have arisen between the Fiji Muslim League represented by the plaintiffs on the one hand and its branch Nasinu Muslim League represented by the defendants. On 12th August 2007 Fiji Muslim League removed the defendants as Secretary and President of Nasinu Muslim League. However these two have disregarded the removal and have continued to hold onto books, keys, letterheads etc. of the Nasinu Branch and continued to impersonate as Secretary and President. On 17th September the plaintiffs filed a writ of summons with endorsement of claim. On the same day they filed a summons seeking certain mandatory and injunctive orders against the defendants.

[2] The Fiji Muslim League is a religious body. Its affairs and those of its branches are conducted in accordance with the Constitution and rules of the Fiji Muslim League – Annexure A to the affidavit of Mohammed

Taabish Ali. The Nasinu Muslim League is one of the affiliated branches of the League – Section 7(b) of the Constitution.

The Constitution:

- [3] Among other things the objects of the League are to establish and manage schools, colleges and educational institutions and to hold property – Section 5(1) of the Constitution.
- [4] The Fiji Muslim League has a Council which consists of whole host persons as stated in Section 53 of the Constitution. Under Section 64 of the Constitution it has powers to adjudicate upon all matters of controversy and differences between the Branch leagues or between the League and a Branch League. It also has powers to appoint from its own members or otherwise such sub-committees for special purposes and to delegate all or any of their powers to such sub-committees as it may deem fit and proper: Section 64(c) and (l) of the Constitution. It also has powers to suspend or expel after due enquiry any office bearers or members of the League or its branch or subsidiary organization: Section 106 of the Constitution. The powers of the Council are therefore wide.
- [5] At a Council Meeting held on 24th June 2007 at Lautoka Muslim Primary School the council decided to appoint a Special Committee to investigate whether the Nasinu Muslim League breached the Rules and Regulations of the Fiji Muslim League in purchasing a motor vehicle and whether such motor vehicle was purchased with mosque funds. The terms of reference are contained in a letter dated 27th June 2007 – annexure B to the affidavit of Mohammed Taabish Akbar. The Secretary of the Nasinu Branch was advised in writing of the impending enquiry. The committee scheduled its meeting on 29th July 2007. It informed the Nasinu Branch. The Nasinu Branch sought postponement of meeting by fourteen days, a request which was rejected. The Committee asked Nasinu Branch to file written submissions on the allegations. The plaintiffs complain that the Nasinu Branch was not given a proper hearing.

Whether the Nasinu Branch was given a Hearing?

- [6] By letter dated 27th June 2007, the Fiji Muslim League had informed the Nasinu Branch of the appointment of the Special committee. It also provided the terms of reference. The main thrust of the enquiry was whether a motor vehicle purchased by the Nasinu Branch was properly done and whether any of the moneys were from the mosque fund. The letter requested the Branch to provide information and documents to the Committee.
- [7] The letter would have served as an advance notice to the Nasinu Branch to gather its information. Four weeks later on 25th July the Special Committee requested the Nasinu Branch to deliver written submissions by 27th July to League's Secretariat at Nabua. It also informed Nasinu Branch that the Special Committee will be present to meet branch officials on 29th July.
- [8] The Nasinu Branch informed the Committee in writing that since the matter involved entire branch, any submissions would need endorsement of at least seven branch officials. I cannot see why the submissions could not be prepared in a month the Branch had since it was first informed of the appointment of the Committee with its terms of reference. The Nasinu Branch had one month to gather information and get its officials together to endorse those submissions. This is a fairly long and adequate time to attend to such matters. This is a branch snubbing the League. It was given an opportunity but it failed to seize it and make submissions.
- [9] Again on 12th August 2007, when the report of the Special Committee was being discussed at the Council Meeting, all except two members of Nasinu Muslim League walked out.

Dispute Resolution Committee:

[10] The defendants submit that the matter should have been heard by the Dispute Resolution Committee appointed under Section 84 of the Constitution. I agree that that was one way of approaching the investigations but that is not the only way. As I indicated earlier under Section 64 of the Constitution the council has powers to appoint special purposes committees. The investigation team here was appointed under this Section and it made its recommendations to the Council. It was for the council to decide how best to investigate and the form of investigations it was going to undertake to satisfy itself of the truth or otherwise of the allegations.

Interlocutory injunction:

[11] This is an application for interlocutory injunction. On affidavits filed there are number of serious issues raised.

✓ [12] The defendant says the office bearers of the League were not properly elected which the plaintiff disputes. The defendants say that their removal was not in accordance with the Constitution of the League. These are complex issues and I am not at this stage required to go into fact finding in detail. As stated earlier, I am of the view that the League had the powers to remove the officials of the branch. They appeared to have given the defendants an opportunity to be heard on the allegations and then in its deliberate judgment considered removing them.

[13] This is not a case where any one will suffer damages or losses. The principal objective is to see that the affairs of the League the parent body are conducted in a dignified manner. It is for the League principally to decide how those affairs should be conducted. The defendants had the opportunity to persuade the Special Committee that their actions were proper but they did not do so.

[14] It is regrettable that matters of religion and appointment of officials of religious bodies find their way into court. But once they come before the courts, the court has to make hard decisions seeing the issues which have been raised. I do not consider this action is an abuse of process as the defendants suggest. The plaintiff is saying that the acts of the defendants are in open defiance of rights under the Constitution of the League and they seek the court's assistance to enforce its decisions.

Orders:

[15] However the orders as sought are a bit too wide and ambiguous so I intend to mould them to an extent. I grant the following orders :

THAT the defendants within a period of two days from service of this order

–

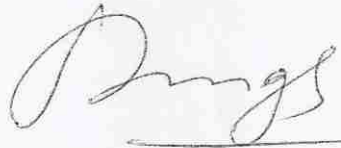
- (1) deliver possession of the Minute Book, letterheads, inward/outward correspondence, Salaat Hall and Branch office key, Notice Board and utensil room key, branch vehicle registered number FF 652, travel documents, work permit and employment contract in relation to Maulana Imran Patel. The delivery is to be done at the Office of the National Secretariat at Samabula after consulting one of the plaintiffs as to time of delivery.
- (2) the defendants are restrained from –
 - (a) using Fiji Muslim League and Nasinu Branch letterheads.
 - (b) impersonating as Secretary and President of the Fiji Muslim League – Nasinu Branch.
 - (c) interfering with work of Pesh Imam of Fiji Muslim League – Koronivia Mosque.
 - (d) Assaulting, verbally abusing or interfering with the work of plaintiffs' members and staff of the Secretariat.

See P. 12.

Have Direction

[16] Those are my orders pending hearing of substantive matter. I make no order as to costs.

[17] I have deliberately not granted an order which sought to restrain the defendants from distributing any material against Fiji Muslim league. This is a wide order as sought and it also interferes with the defendants' freedom of expression and freedom to impart information under the Fiji constitution. As long as the defendants are not defamatory, they should be free to express their opinion.



[Jiten Singh]
JUDGE

At Suva

29th February 2008

AF: To file St. of CLAIM.
within 7 days
DF: 14 days Threats.
DF: Reply to DF's
Threats.
Summons re Direction
14 days after filing
of reply.
\$ 200.00 costs.