

**PILLAY v PILLAY**

**(2012) SLR 144**

S Rouillon for the plaintiffs  
Divino Sabino for the defendants

**Judgment delivered on 25 May 2012 by**

**RENAUD J:**

This suit was initiated by a plaint entered on 5 May 2010 by 11 plaintiffs against five defendants. The plaintiffs prayed this Court for the following orders:

- (a) Granting an injunction against the defendants purporting to act on behalf of the Association and/or adopting and putting into practice any new resolutions until the final completion of this suit;
- (b) Terminating the appointments of the defendants as committee members of the Association;
- (c) Ordering the defendants to hand over all Association documents, accounts, property and information presently in their possession to the new committee of the Association to be elected;
- (d) Declaring that the defendants remain liable and accountable for all their acts in respect of the association affairs notwithstanding their removal from office;
- (e) Orders in respect of holding an Annual General meeting of the Association involving the participation of all members and person wishing to become members and eligible to become members and to vote according to the rules of the Association, can participate and vote and such meeting to be held under the supervision and control of an independent authority such as officials of LUNGOS with minimum delay;
- (f) Such other orders as may be fair, just and practical in the circumstances;
- (g) The whole with costs jointly and severally against each defendant.

The plaintiffs pleaded that they are members of the Seychelles Hindu Kovil Sangam (SHKS) Association (hereinafter referred to as the "Association"), an Association registered under the Registration of Associations Act Cap 201 for the main purpose of facilitating the Hindus religious philosophy in Seychelles and they have an interest in the general running of the Association and the defendants are some of the present purported incumbent committee members of the Association.

The defendants denied this and averred that they are the incumbent committee members of the Association, and, furthermore the plaintiffs are required to prove that they are members of the Association.

It is not in dispute that there are other incumbent committee members of the same status as the defendants but these persons are permanently resident overseas and do not participate in the day to day running of the Association. The Association is

governed by rules specifically created and approved by its members under the provisions of Cap 201 at General Meetings from time to time.

The defendant averred that not all of the other incumbent committee members are permanently resident overseas, and of the four other committee members not parties to this plaint, two are permanent resident overseas and two are intermittently in Seychelles.

It is also not in dispute that the plaintiffs would like fresh elections for the appointment of new committee members where all members and persons wishing to become members and eligible to become members and to vote according to the rules of the Association, can participate and vote and such meeting to be held under the supervision and control of an independent authority such as officials formally appointed by LUNGOS.

The defendants admitted the averment except that they denied that such a meeting should breach the rules of the Association by allowing non-members to take part and vote and that such meeting should be supervised by an authority appointed by the court such as LUNGOS.

It is further not in dispute that since the year 2004 the Association has not held an Annual General Meeting of the Association (hereinafter "AGM") as required under its rules and Cap 201 and this despite several notices issued by the first defendant in the press for the collection of subscriptions and for holding AGM several years in a row.

Here the defendants averred that the first defendant issued notices for the collection of the subscriptions and for holding an AGM for several years in a row and that it is the Association, through its Secretary who issued notices for membership renewal in 2009 and in 2010, and that if no AGM has been held it was due to court injunctions or warnings prohibiting the holding of one.

The plaintiffs averred that since 2004 the Association has been wrongfully managed by the defendants and there has been no accountability whatsoever for monies collected and spent by the defendants, and, the clear irregularities in the finances and financial dealings of the Association have been highlighted in the latest report of the Auditor of the Association.

Other averments of the plaintiffs are:

- That the defendant have since 2004 continued in office without a clear legal mandate or status and any attempts to question their authority has been met with threats and negative responses;
- That over the years some of the plaintiffs have made many representations written and otherwise to the Registrar of Association concerning the affairs of the Association without any response or action being taken by the latter;
- That the defendants have continued in office with no formal mandate since 2004 and generally continue to purport to be the management committee of the

Association and the plaintiffs have discovered many irregularities in the affairs of the Association including several legal suits against the Association and the plaintiffs verily believe that the incumbent have failed to uphold the trust of each member of the Association.

- That the first plaintiff whose name is associated with the incumbent committee but who has been excluded from participating and has de facto not participated therein for several years is ready to step down as a committee member for fresh elections to be held as requested herein.

The defendants averred that:

- They have continued with a clear mandate and have been willing to hold an AGM and fresh elections but the courts have prevented this through injunctions or warnings.
- They were duly elected at the Association's last AGM, there have been no financial irregularities and certain of the suits mentioned have been commenced by the first plaintiff himself; furthermore, the plaintiffs are in no position to comment on the level of trust of each member of the Association.
- There are no grounds to terminate the appointments of the defendants as they have in fact organized an AGM but were prevented from carrying it out through court orders and warnings.
- The first plaintiff resigned as a committee member shortly after being elected in 2004.

After the hearing of evidence in the case and before the final submissions were to be made, the plaintiffs entered a notice of motion on 5 August 2011 moving this Court for an order of interlocutory injunction under the provision of sections 121(6) and 304 of the Seychelles Code of Civil Procedure, preventing the defendants from holding an AGM of the SHKS scheduled for 15 August 2011 pending the final judgment of this suit. The court granted the application on 10 August 2010.

The defendants in the statement of defence raised certain pleas *in limine litis* and these were disposed of by a ruling of this Court on 11 November 2010. Even in his submission, counsel for the defendants has again made allusions thereto. This Court will not address them as otherwise it will be acting as an appeal court on its own decisions. The court will address the case on its merits only.

### **The Law Applicable**

Associations are entities that are governed by the Registration of Associations Act Cap 201, whereas companies are entities that are governed by the Companies Act 1972. The law applicable to one category ought not to be made applicable to the other category. Associations are non-profitable entities whereas companies are entities which are set up for profitable objectives. Companies have its articles and memorandum of association which governs its management whereas associations have its constitution and/or rules which governs its administration.

For the purpose of this suit the relevant provisions of the Registration of Associations Act Cap 201 and the Rules of the SHKS shall be followed and applied as the law applicable to this suit.

The Rules of the Association of the SHKS as filed with the Registrar of Associations on 21 October 2008 appear to be the up-to-date applicable rules. Rule 5 provides that the members of the Association constitute the “General Body” which shall meet once a year and at that meeting it shall transact businesses as set out in Rule 5.3, which includes the election of the General Council of the Association. The mandate of the Governing Council is set out in Rule 6. There is no provision in the Rules that allow the prorogation of the mandate of the Governing Council for a period extending its one year mandate.

Section 11 of the Registration of Associations Act Cap 201 states that the rules of any registered association shall bind the association and every member thereof and any person claiming through such member to the same extent as if such member or person has subscribed his name thereto. Section 23 makes every default under this Act to be an offence, if continued, shall constitute a new offence in every week during which the default continues.

### **The Issues**

The thrust of this suit by the plaintiffs is that the defendants have exceeded their mandate by overstaying their one year period as the management committee as provided for by the Rules of the SHKS and they have failed in their responsibility to call for Annual General Meetings during the intervening period. Whether these averments are substantiated or not is to be determined.

The question that arises is why the plaintiffs chose to come to court to seek redress and not act according to the Rules and called an Annual General Meeting for the past 7 years. This is an issue that will be addressed in this suit.

The plaintiffs complained that the Association has not been properly managed during the period of stewardship of the defendants acting as the management committee. The plaintiffs based their allegations on the findings contained in the auditor’s reports. This is another issue that has to be determined.

Another issue raised by the plaint is whether the defendants acting as the Management Committee of the SHKS appointed, without proper authority, a Temple Renovation or Rajagoparam Sub-Committee.

### **Other Related Court Cases**

The defendants acting as the Governing Body have drawn, rightly or wrongly, justifiably or not, as many as 9 cases against them and/or the SHKS filed in the Supreme Court by

the members of the Hindu community. Undoubtedly the SHKS is perceived by the people in general as a model religious institution for the Hindu community in Seychelles. For it to be embroiled in all these legal wranglings is indeed not conducive, and is a cause of considerable prejudice to its perceived status. It is incumbent on this Association to address all the contentious matters within their ranks in order to ensure its proper running in the future.

## **Findings**

Sections 107 to 112 of the Seychelles Code of Civil Procedure deal with the issue of parties to a suit. There are specific instances where certain parties can be joined as plaintiffs or defendants. Section 112 states that –

No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

The plaintiffs are members of the SHKS and have an interest in the proper running of that association in accordance with its established Rules. I find that the plaintiffs are not busybodies and their grievances are not frivolous and vexatious.

The defendants are the remaining existing members of the SHKS who were elected to serve on the Management Committee of the SHKS for a period of one year in 2004 to manage the affairs of the SHKS for a period of one year in terms of the Rules of the SHKS.

The other members who were elected as members of the management committee in 2004 are either living permanently overseas or have, for one reason or another, ceased to actively participate on the management committee, hence the reason for them not being cited by the plaintiffs as defendants in this suit.

I find that the parties to this suit have *locus standi* and are properly before this Court.

### **Have the defendants exceeded their mandate by overstaying?**

Unlike companies which have been established for profits and which are liable to pay taxes, associations are different in the sense that they are sometimes left to drift aimlessly and operate outside the ambit of their rules, as in the case of the instant association under the control of the few individuals including the defendants as the purported Management Committee and these without proper accountability and management and moreover in breach of the Rules of the Association and the provisions of the Registration of Associations Act Cap 201. It can reasonably be said that the defendants acting as the purported Management Committee have taken advantage of the passivity of the members and have literally hijacked the Association by their attitudes, actions and conduct over the last 7 years.

### **Why did the plaintiffs chose to come to court?**

After a period of over 7 years of the running of the Association by the defendants without holding any Annual General Meetings as required by the Rules of the Association, and, the plaintiffs having sought the assistance of the Registrar of Association to no avail, the plaintiffs were left with no other recourse, other than taking the law into their own hands, but to engage a judicial process. Several attempts were made in the intervening period by the plaintiffs and other members of the Association to request the incumbent committee consisting of the defendants to organize an AGM without success. There are conflicting factions as noted by this Court from the multiplicity of suits in relation to this Association which have been entered in court. The acrimonious relationships that exist among the parties and their respective groups of followers are unbecoming of those claiming to be members of a religious organization.

I find that the instant course of action taken by the plaintiffs is proper and it is in order in view of the circumstances of this case.

### **Has the Association been properly managed?**

Under cross-examination the witness of the defendants Mr K Pillay stated that no elections were held and the books were not brought up to date because there were ongoing constructions of the temple going on at the time. I believe that this is not sufficient reason for not holding AGMs and elections for the Management Committee, bearing in mind that there was a separate committee appointed to be specifically responsible for the construction of the temple.

The audited accounts of the SHKS admitted as Exhibit P4 was a document circulated to all members of the Association and is deemed to be a public document in relation to the members, and as such is subjected to scrutiny by any one of them. The plaintiffs in their evidence brought out the following irregularities as gleaned by them from the auditor's report -

- (a) On page 53 of the auditor's report there appears a procedural lapse in maintaining the accounts and collection of funds from the public. It was also evident that all monies collected were not properly accounted for as appropriate receipts were not issued.
- (b) There is not shown in the auditor's report any item of expenses relating to the numerous legal cases the SHKS has been engaged in over the last few years since 2008.
- (c) At the AGM of 2002 the members appointed a group of members present to form a committee to manage and maintain the entire renovation cum construction of the Rajagopuram project in order to have a completely trustworthy group in view of the amount of "public" funds involved. That committee went out of its way and appointed an outside member of that committee to handle the financial assets of the Association by giving that person signatory rights to remove funds from the Association bank

account. That was done on the pretence that that person was the ex-Chairman of the Association despite the AGM having not chosen him as members of that committee. The defendants as the incumbent Management Committee passively endorsed this anomalous situation.

The plaintiffs' witness brought out in evidence many instances of financial mismanagement which the auditor highlighted in his report.

The witness for the defendants stated that there were reasonable explanations to the shortcomings brought out by the auditor. Unfortunately, no such explanations were taken up at the time of the audit and if these were taken up the auditor must have found them non-acceptable otherwise the report would not have reflected the anomalies.

The plaintiffs have shown sufficient evidence of a lack of proper management and accounting from the accounts and from the lack of properly kept records and minutes of decisions of the various committees and as a result of which I find on a balance of probabilities that there has indeed been instances and elements of serious mismanagement of the Association by the defendants.

### **Issues relating to Temple Renovation or Rajagopuram Sub-Committee**

The main issue here is the delegation by the sub-committee of its powers to another person without any provision for doing so under the Rules. This issue has been addressed earlier above as part of the allegations of mismanagement by the Governing Body and a finding has already been made.

On this specific issue I find that the sub-committee itself being a body operating under the delegated authority of the General Body does not have any mandate to delegate such authority to any other person or member.

### **Conclusion**

Here is a case where members of an Association have, for over 7 years, been deprived of their rights under the Rules of the Association to participate in the management of the association. The defendants acted in breach of the Rules of the Association by not calling annual general meetings of the Association when that was due, thus depriving the plaintiffs of the right within the rules of the association. The plaintiffs, short of seeking redress before this Court after failing to get the Registrar of Association to intervene, were for them to take the law in their own hands, a course of action that

would have been deplorable. It is evident that the plaintiffs have a genuine common interest in pursuing this suit because of their common element or grievance.

In the case of *Mulholland & Or v St Peter Roydon Parochial Church Council & Or* [1969] 1 WLR 1842, Pennycuik J said –

As I understand it, the court has always assumed and exercised jurisdiction with regards to meetings held by corporations of any kind. In particular the court, upon the instigation of an interested party, will prevent a corporation from acting upon a resolution not duly passed in accordance with its constitution.

A similar situation has arisen in the instant case and I believe that the statement of Pennycuik J is the equitable approach which I subscribe to.

The Supreme Court of Mauritius entertained the case of *M Nutchetrum & Ors v Poudre D'or Village Tamil Circle & Ors* (2006) SCJ 104, involving 17 members of an Association and granted an interlocutory injunction to prevent the respondents, the Association and three Committee Members from holding an AGM.

Here we have an Association with hitherto reputable religious standing and substantial funds, finding itself in conflict with its members, in disarray and discord for not having held an AGM or elected a management committee since 2004. This is now required to reach some form of reconstruction and reformation in order that it may move ahead in its noble pursuits.

It is trite that, aside from exercising its civil jurisdiction under contract or tort, this Court is vested with considerable residual and inherent powers in order to permit it to properly administer justice.

In light of the findings made earlier above, I conclude that the plaintiffs' contention has been established on a balance of probabilities to the extent set out above and for these reasons I believe that they are entitled to equitable remedies deemed appropriate in the circumstances. As such I make the following orders:

- (i) I hereby order the termination of the appointments of the defendants as members of the Governing Council of the Seychelles Hindu Kovil Sangam effective 30 days from today, or as soon as the new Governing Council is elected, whichever is earlier, for having exceeded their mandate under the Rules of the SHKS;
- (ii) I hereby order the subsisting Governing Council of the Seychelles Hindu Kovil Sangam to hold a General Meeting of the Governing Body of the Seychelles Hindu Kovil Sangam within 30 days from today only to elect new members of the Governing Council and that the auditor shall preside over that General Meeting and conduct the elections with the assistance of two persons selected by him, one from among the plaintiffs and one from among the defendants;



- (iii) The newly elected Governing Council of the Seychelles Hindu Kovil Sangam shall within 30 days after its election hold a meeting of the Governing Body of the Association to transact business set out in Rule 5.3 of the Association;
- (iv) I further order that in respect of the holding of that General Meeting it shall include the involvement of participation of all members and eligible persons wishing to become members, and that they are allowed to participate and vote according to the Rules of Association of the Seychelles Hindu Kovil Sangam;
- (v) I order the defendants to hand over all the documents, accounts, property and information presently in their possession relating to the Seychelles Hindu Kovil Sangam to the new Governing Council of that Association immediately after its election at that General Meeting;
- (vi) I hereby declare that the defendants remain liable and accountable for all their acts in respect of the affairs of the Seychelles Hindu Kovil Sangam to the date of the General Meeting notwithstanding their removal from membership of the Governing Body; and
- (vii) I order that the defendants jointly and severally pay the costs of this suit.