

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2022-404-002225
[2023] NZHC 3599**

BETWEEN

MAOIAUTELE LAMOSITELE
NA'AMANU and TAULA PERRY YOUNG
Plaintiffs

AND

VENI MORISA
First Defendant

TAFUNA'I MUAIAVA
Second Defendant

FA'AMANU PENIATA
Third Defendant

SAMOAN ASSEMBLIES OF GOD IN
NEW ZEALAND (INC)
Fourth Defendant/First Named Co-Applicant
.../2

Hearing: 7 December 2023

Appearances: O Woodroffe for Plaintiffs/Respondents
S Keall and M Orange for Applicants/Defendants
J Barrow for First Defendant V Morisa

Judgment: 8 December 2023

JUDGMENT OF VENNING J

This judgment was delivered by me on 8 December 2023 at 4.00 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date.....

SAMOAN ASSEMBLIES OF GOD IN
AOTEAROA CHARITABLE TRUST
BOARD
Fifth Defendant/Second Named
Co-Applicant

ASB BANK LTD
Second Respondent (Non Party)

HEARTLAND BANK LTD
Third Respondent (Non Party)

Solicitors: Fortune Manning, Auckland
Woodroffe Lawyers, Auckland
Lee Salmon Long, Auckland
Timaloa Law, Manukau, Auckland
Counsel: S Mount KC/A Longdill, Auckland
S Keall, Auckland

Current application

[1] The matter before the Court for determination is an on notice application by the fourth and fifth defendants, The Samoan Assemblies of God in New Zealand (Inc) (SAOGNZ) and The Samoan Assemblies of God in Aotearoa Charitable Trust Board (Trust Board) for orders in relation to:

- (a) the operation of the Trust Board's bank accounts;
- (b) the Church Hall; and
- (c) orders in relation to the proposed fourth respondent (the Intended Sixth Defendant) the partners of Woodroffe Law; and
- (d) procedural directions.

Background

[2] Regrettably, there is a history of litigation involving the parties before the Court. In a first amended statement of claim dated 14 November 2023 the plaintiffs seek declaratory judgments and associated orders confirming that the election of the first defendant, Pastor Veni Morisa as treasurer of the National Fellowship at the April 2022 election was unconstitutional and was therefore null and void. Although the first three causes of actions refer to different factual issues they all seek the same relief. In a fourth cause of action the plaintiffs allege against Pastor Tafunai'i Muaiava and Pastor Peniata that they have made false, misleading and incorrect statements in relation to a related proceeding in CIV-2022-404-1349. In a fifth cause of action they seek orders that the unilateral appointment of Pastor Morisa as Treasurer on 11 November 2022 is null and void. In the sixth cause of action they seek relief arising out of an incident in relation to the Church Hall property at 38 Robertson Road, Mangere.

[3] In a judgment delivered on 31 October 2023 in separate but related proceedings CIV-2022-404-1349 Muir J declined to set aside the notice of change of solicitor and

notice of discontinuance in proceedings between the SAOGNZ and Pastor Morisa.¹ The proceedings had originally been commenced by Mrs Woodroffe's firm. However the SAOGNZ instructed Mr Mount KC to represent it and file a discontinuance. Muir J summed up the background:

[1] The plaintiff (known to the parties as "the Fellowship") is an incorporated society riven by dissent, to the extent that even a mediation before one of New Zealand's most experienced practitioners has been unable to resolve its members' differences.

[2] The genesis of the dispute lies in the appointment of the defendant, Pastor Veni Morisa, as the plaintiff's Treasurer (and member of its Executive Council) at the annual meeting of the plaintiff's General Council on 16 April 2022. Some members of the Fellowship say that because Mr Morisa was apparently convicted of a crime of dishonesty earlier in his life,¹ he is disqualified from office. Others say that that is not the case and have obtained an opinion from leading counsel to that effect. From these seemingly small beginnings, litigation has proliferated, including defamation proceedings brought by Ms Woodroffe, who represents those opposing Pastor Morisa's appointment.

[3] This decision does not purport to resolve any of the underlying differences between the parties. It is of very limited compass. It relates exclusively to the issue of whether this Court should, in its inherent jurisdiction, set aside a notice of change of solicitor and discontinuance filed in respect of the present proceeding on 2 February 2023.

[4] Ultimately Muir J confirmed the change of solicitor and counsel and confirmed the notice of discontinuance in those proceedings. That brought those proceedings against the current first defendant to an end save for the issue of costs.

[5] It is apparent that a number of the issues raised in those earlier proceedings have been raised yet again before the Court in the current proceedings by the plaintiffs in their personal capacity. However, at present, the Court is only engaged in the urgent interim relief sought by the SAOGNZ and the Trust Board.

Procedural issues

[6] The current proceedings are a convenient vehicle for the Court to deal with the application for interim relief. It would have been open to the SAOGNZ and the Trust

¹ *The Samoan Assemblies of God in New Zealand (Inc) v Morisa* [2023] NZHC 3049.

Board to commence fresh proceedings but it is convenient to join the Trust Board to these proceedings and to deal with the applications in these proceedings.

[7] However, as discussed with counsel, I only propose to deal with the urgent matters, such as the control of bank accounts and the Church Hall. The issues involving Mrs Woodroffe's firm and other related matters are not as urgent and can be left for another day, particularly as that may require Mrs Woodroffe to consider whether she can properly continue acting for the parties she represents in these proceedings if ultimately her firm and she is joined as a party to the proceedings.

[8] For present purposes however I confirm the joinder of the Trust Board to these proceedings as a fifth defendant and co-applicant. I also note that the proceedings have been served on Heartland Bank and ASB Bank (non parties) both of whom have filed memoranda for the hearing confirming they abide the decision of the Court and providing input into the proposed orders.

[9] A final preliminary point is that the dispute between the parties is justiciable. It is to be resolved on the Court's interpretation of the evidence regarding the formation documents and the validity of the resolutions pursued at meetings.²

Evidence

[10] The application is primarily supported by an affidavit of Pastor Peniata, the second defendant. In that affidavit he confirms his position as General Secretary of the Executive Council of the SAOGNZ and as a trustee of the Trust Board. Pastor Peniata explains the structure of the SAOGNZ and Trust Board, the governance arrangements and the problems between the SAOGNZ and the Trust Board on the one hand and the plaintiffs represented by Mrs Woodroffe on the other. Finally he sets out the difficult position the SAOGNZ and the Trust Board are in, in relation to the lack of control over the bank accounts and the Church Hall despite the fact they are assets of the SAOGNZ and Trust Board.

² *Shergill v Khaira* [2014] UKSC 33; and *Matamu v Si'itia & The Presbyterian Church Property Trustees* [2016] NZHC 2516.

[11] Ms Woodroffe has filed a memorandum in response and referred the Court to the affidavits of Paul Moriarty, a forensic accountant, and Pastor Sauafea Fa'atuatua, a former principal of the Bible College. The evidence is intended to support Mrs Woodroffe's and the plaintiffs' challenge to the suitability of the first defendant to hold the position of Treasurer, which, on the issue before the Court is somewhat of a side issue.

Principles

[12] As an application for injunctive relief the onus is on the applicants to satisfy the Court that there is a serious question to be tried, or put another way, that the claim is not frivolous or vexatious. Next, the balance of convenience must be considered. That requires consideration of the impact on the parties of a granting of and refusal to grant the orders. Finally the Court must carry out an assessment of the overall justice of the position as a check.³

Analysis

[13] The evidence before the Court is that the SAOGNZ is an association of individual churches throughout New Zealand. It is known as the "Fellowship". The members of the churches that make up the Fellowship are an international Pentecostal Christian movement.

[14] The SAOGNZ is a charitable entity registered under the Charities Act. It is governed by a General Council. The General Council comprises representatives from all individual member churches. Currently there are 52 churches across the country that make up the Fellowship. At General Council each church is represented by eight delegates.

[15] The Executive Council is the administrative and management arm of the Fellowship. It is usually made up of 12 people. There are four formal positions: the General Superintendent, the Deputy Superintendent, the General Secretary, and the General Treasurer. There are eight further members of the Executive Council.

³ *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90 at [12]; and *Intellihub Ltd v Genesis Energy Ltd* [2020] NZCA 344 at [23].

[16] Under the terms of the SAOGNZ's Constitution, the Executive Council is empowered by the General Council to "control the collections and disbursements of the funds of the Fellowship and the investment of same in accordance with accepted business practices". The General Superintendent chairs meetings, but no one person has the power or authority to do anything on behalf of the Fellowship or the Executive Council. Control rests with the Executive Council as a whole or at least as a majority of the Executive Council.

[17] The Trust Board was established in 1992. It owns and holds assets for the benefit of the Fellowship. The Trust Board has its own set of rules. The objects of the Trust Board are, amongst other things, to hold and manage property as trustee for and on behalf of the SAOGNZ.

[18] The bank accounts with ASB and Heartland Bank are held in the name of the Trust Board. They have funds in excess of \$700,000,000. The title to the Church Hall property is registered in the name of the Trust Board.

[19] Clause 4 of the Trust Board's rules provides for the appointment and removal of trustees. The rules require a minimum of three members of the Trust Board who remain in office until resignation, retirement or removal by resolution. There is no upper limit on numbers. Vacancies are filled by resolution of a general meeting of the members of the Assembly.

[20] Prior to the Special Session meeting in August 2023 (which I will come to) the plaintiffs were members of the Executive Council and were also Trustees of the Trust Board. They were also two of the three signatories to the bank accounts and held effective control over the Church Hall. The applicants by this application for injunction seek to regain control of the bank accounts and Church Hall, following the Special Session meeting in August 2023.

[21] Pastor Peniata's evidence is that following the Special Session of the General Council in August 2023 the plaintiffs were removed and the Trustees of the Trust Board were the first three defendants, together with Pastor Taele Muavae Mika; Pastor Taloolema'agao Soi Afoa; Pastor Lauafia Taula; Namulau'ullu Peteru; and Pastor

Tuliatu Iosefo, all of whom are members of the Executive Council and are aligned with the current applicants. I note that the Constitution of the Trust Board provides for the Trustees to act by majority, cl 6 for example. The other four members of the Executive Council apparently maintain their opposition to the appointment of the first defendant as General Treasurer and are aligned with the plaintiffs.

[22] So, the position is that, if the applicants satisfy the Court there is a serious question that the plaintiffs were removed and that the replacement Trustees were validly appointed at the August 2023 meeting then those Trustees have the right and authority at law to control the assets of the Trust Board and the plaintiffs no longer have standing as Trustees to assert any such right.

[23] In relation to that, the evidence of Pastor Peniata is that the Executive Council convened a Special Session pursuant to cl 4(4)(v) of the Constitution: That clause provides:

Special Sessions of the General Council may be called by the Executive Council at its discretion ...

[24] Again Pastor Peniata's evidence is that notice of the Special Session meeting was provided to all General Council members on 24 June 2023 and the agenda circulated on 29 July 2023. While Mrs Woodroffe challenged the notice, the evidence is that the notice was circulated and the meeting was validly constituted.

[25] Clause 4(6)(v) of the Constitution confirms the quorum of the General Council is one-third of the eligible voting members of the General Council. Thirty-two of the 52 registered churches of the Fellowship were represented at the Special Session. In total 208 of the 416 eligible voting members were in attendance.

[26] The General Council passed a vote of no confidence in the plaintiffs as members of the Executive Council and confirmed their removal. That resolution and the further resolution that the plaintiffs be removed from their positions as Trustees on the Trust Board was passed by an overwhelming majority of 197 in favour with only nine against (with two discarded). The members of the Executive Council were then

unanimously appointed as Trustees of the Trust Board. On that basis, the majority of the Trustees of the Trust Board support the orders sought.

[27] There have also been issues in relation to the Church Hall. The keys are held by a caretaker and administrator, Mr and Mrs Fakaua, employed by the Fellowship. The Fakauas live in a small house within the boundary of the Hall's land. Their job is to take care of the Hall and ensure the events at the Hall run smoothly. The caretaker and the administrator are aligned with the plaintiffs. They have not permitted entry to any of the Executive Council members.

[28] At a Special Session in August 2023 a motion was passed by the General Council that the administrator and caretaker be replaced as soon as possible. On 12 August 2023, the same day as the Special Session of the Council, the majority of the Executive Council arranged for the locks to the Hall to be changed to retake possession of the Church Hall. A stand-off ensued which led to the Police being called. Mrs Woodroffe submitted the applicants' actions had damaged the security system of the Hall. Following the incident, the plaintiffs changed the codes again. At present the Executive Committee and Trustees of the Trust Board are locked out of the Church Hall, even though the Church Hall is owned by the Trust Board.

[29] Although Mrs Woodroffe challenged the validity of the meeting on 12 August, on the evidence before the Court, there is more than a serious question to be tried that the plaintiffs have been removed from their position as Trustees and the applicants are entitled to the control of the assets of the Trust Board.

Balance of convenience

[30] At present the bank accounts are frozen which obviously is hampering the administration of the Trust and the business of the Church. That must be addressed. Understandably the Banks will only act on an order from the Court.

[31] The principal concern of the plaintiffs and parties represented by Mrs Woodroffe appears to be the involvement of the first defendant Pastor Morisa as Trustee with him having signing authority. To address that issue, and without in any way accepting the criticism of Pastor Morisa or his actions, Mr Keall confirmed that

Pastor Morisa could be replaced by Pastor Taloolema'agao Soi Afoa as one of the authorised signatories for the purposes of operating the Trust bank account. As noted, in any event, two signatories are required.

[32] There is an unfortunate internecine division between members of the church, but the majority support the applicants' position. The fact that an overwhelming majority of those entitled to vote at the meeting in August were in favour of removing the plaintiffs from their position on the Executive Council and also as Trustees is significant. I also note the second defendant is the General Superintendent and the third defendant is the General Secretary. Their support of the application is relevant.

[33] The Court is conscious that Mr and Mrs Fakaua, the caretaker and administrator of the Church Hall live on site. Pending their replacement, provided they co-operate with providing access to the applicants in terms of the order, they could remain. However, if they fail to co-operate by providing control of the keys and access to the Church Hall to the applicants then the applicants will be at liberty to seek a further order for their eviction.

[34] Finally third parties are potentially affected by the current impasse. The members of the church are affected. The Bible College programme is due to run from January and work is needed to ensure the programme can be run at the Church Hall.

Interests of justice

[35] The interests of justice support the orders sought, which will break the current impasse and enable members of the church to focus on what should bring them together – other than what divides them.

Result

[36] There will be orders in terms of the attached schedule.

[37] The remaining aspect of the application insofar as it relates to the proposed joinder of Olinda Woodroffe and Colin Woodroffe as partners in the firm of Woodroffe

Law Partnership and orders against that party is adjourned to the duty Judge list for call and further direction at **10.00 am, 14 February 2024**.

Costs

[38] The applicants are entitled to costs on this application. I fix costs on a 2B basis against the plaintiffs.

Venning J