

IN THE SUPREME COURT OF TONGA  
CIVIL JURISDICTION  
NUKU'ALOFA REGISTRY

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CV 21 of 2018

25/07/19

**BETWEEN:**

1. SILIVEINUSI TAUMOEPEAU
2. EVONA LATU
3. SUITI LEILANI ALATINI
4. SIONA TU'AKALAU

- Plaintiffs

**AND:**

1. SEMISI SIKA
2. STAN MOHELOA
3. TONGA NATIONAL RUGBY LEAGUE  
INCORPORATED SOCIETY

- Defendants

**BEFORE HON. JUSTICE NIU**

**To: Mr. W. Edwards for the plaintiffs**  
**Mr. S. Taione, on instructions of Mr. Tu'utafaiva for the defendants**  
**Mr. 'A. Kefu, Acting Attorney-General, as Amicus Curiae**

**RULING**

[1] The Supreme Court has the jurisdiction to make the orders which it made on 12 November 2018 and 10 December 2018, and the further orders which the Amicus Curiae is now seeking. Clause 90 of the Constitution provides that the "Supreme Court shall jurisdiction in all cases under the Constitution and Laws of the Kingdom". One of those laws is the Incorporated Societies Act. That Act requires societies, if they wish to, to be incorporated, to ensure they are governed and managed in accordance with their rules and constitutions, which rules and constitutions are the basis upon which the members of the society had agreed to

become members, and upon the purpose of which funds are collected, raised and donated to the society. Not only members but donors of funds donated to the societies, which donors may also include Government, have a direct interest that the societies are governed and managed in accordance with the rules and constitutions of the societies. When a society fails to manage or govern its funds in accordance with its rules, the Supreme Court must make the necessary orders to ensure that it does.

[2] In the present case, this Court has found, upon the evidence produced and given at the formal proof hearing of the plaintiffs' claim against the defendants, that the defendants have failed to govern and manage the funds of the society, Tonga National Rugby League, in accordance with its constitution. Substantial funds are not accounted for and accounts rendered were not audited as required by the constitution of the society. The Board of Directors at the time was the body responsible for that failure. The members who constituted that Board must be replaced by new members and the new members must not be persons nominated by or voted for by any person who was member of the Board responsible for the failure. They must not influence the nominations and voting for new members. They must therefore be excluded from the meeting at which the new Board of Directors is elected.

[3] The President and Vice President of the Society are not members of the Board of Directors but they may participate in the meetings of the Board (Cl. 8.1). The reason for that is so that they know what the Board is doing or not doing, so that the Board is thereby ensured to carry out its functions properly. And because the Board has failed to carry out its functions properly, it is clear that the President and Vice President have also failed in their duties. Accordingly, they should also be excluded from the meeting at which the new Board is elected.

[4] The term for which the new Board shall govern shall run from its election until the election of the Board of Directors is completed at the general meeting which shall be convened (by the new Board elected in pursuance of these orders) after the accounts of the society have been audited and after completion of appropriate actions, if any, which shall have been taken by the new Board in consequence of the results of the audit done.

[5] In convening and conducting the general meeting for the election of the new Board of Directors, the Amicus Curiae shall decide all questions and issues arising at the meeting as he shall consider appropriate in law and in accordance with the orders and rulings of this Court and the rules and constitution of the Society.

[6] Accordingly, I make the following further orders:

- (a) The Amicus Curiae shall convene and conduct and decide all questions arising at the meeting to elect the new Board of Directors.
- (b) All persons who were members of the Board of Directors and were dismissed by the orders of 12 November 2018 shall not attend or be represented, or be nominated at the meeting to be held to elect the new Board of Directors.
- (c) The President and Vice President of the Society shall not attend or be represented or be nominated at the meeting to elect the new Board of Directors.
- (d) The new Board of Directors shall continue in office until all appropriate actions, if any, taken in consequence of the results of the audit ordered have been completed, and are replaced at the general meeting thereafter unless re-elected.

NUKU'ALOFA: 24 January 2019.



*L. M. Niu*  
L. M. Niu

JUDGE