

IN THE SUPREME COURT OF NEW ZEALAND

**SC 102/2011
[2012] NZSC 28**

BETWEEN LUIVA FAGALILO
 Applicant

AND SENETI TIME
 Respondent

Court: Elias CJ, McGrath and William Young JJ

Counsel: C G O'Connor and L H Pratley for Applicant
 R J Buchanan for Respondent

Judgment: 16 April 2012

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs payable by the applicant to the respondent of \$2,500.

REASONS

[1] The applicant and the respondent are leaders of two factions of the congregation which worshipped at a Church owned by the Green Valley Samoan Assembly of God Trust Board. In 2005 the applicant's group excluded the respondent's group from worshipping at the Church. The respondent brought proceedings in the High Court seeking removal of existing trustees and the appointment of new trustees of the Trust Board. The High Court decided that the existing trustees should be dismissed and the Public Trust appointed as an interim trustee to conduct an election which would lead to the appointment of new trustees.¹

¹ *Time v Fagalilo* HC Wellington CIV-2008-485-540, 9 March 2010.

[2] The Court of Appeal's judgment addressed who should vote in the election.² It requires that the Public Trust compile a list of members of the Green Valley Samoan Assembly of God Church who are affiliated with the Assemblies of God New Zealand Incorporated and are over the age of 18 years at the date of the Court of Appeal's judgment. The Public Trust then is to organise a ballot at which that group elects not less than five and not more than nine persons nominated for appointment as trustees of the Trust Board. The effect of the Court of Appeal's order is that the newly elected trustees will be members of the group represented by the respondent.

[3] The Court of Appeal's judgment turned on its conclusion that the respondent's group had continued to operate at Green Valley under the aegis of the Assemblies of God Incorporated New Zealand following the split in 2005 with the applicant's group. The respondent's group regarded itself, and has been recognised by Assemblies of God New Zealand, as the continuation of the Church that was affiliated to Assemblies of God New Zealand at the time of the split. The applicant's group had to be taken as having left the Church at that time and its members thereby lost the right to vote.

[4] The applicant takes issue with the Court of Appeal's approach to the election and appointment of new trustees, contending it is not in compliance with the Trust Deed or the law. He seeks that the roll of those voting in the election include only those who were members of the Church in 2005.

[5] We see the first question which the applicant wishes to be the basis of an appeal to this Court as going to the proper interpretation of the terms of the particular Trust Deed. It does not give rise to a question of public or general importance. Nor are we persuaded that the circumstances of the applicant and his group as a result of the Court of Appeal's judgment could give rise to a miscarriage of justice. The Court of Appeal's approach closely conforms to the relevant provisions of the Trust Deed and correctly reflects their application to the current rather than historical situation. It follows that this ground does not qualify for an appeal to this Court under the statutory criteria.

² *Time v Fagalilo* [2011] NZCA 402.

[6] A further proposed ground concerns the settlement of litigation that had taken place between Assemblies of God New Zealand and the Samoan Assembly of God. The applicant now seeks to relitigate an issue determined by the High Court in the present litigation but not raised in the Court of Appeal. Again, we are not prepared to permit a further appeal on this ground.

[7] For these reasons we dismiss the application for leave to appeal.

Solicitors:
Strachan O'Connor, Wellington for Applicant
Buchanan Gray, Wellington for Respondent