

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 65/2025
[2025] NZSC 149**

BETWEEN

**SALETAULUA CHARLES FAAMANATU
MAKA AND TONGA SEINI FATA AS
TRUSTEES OF THE SAMOAN
INDEPENDENT SEVENTH DAY
ADVENTIST PROPERTY TRUST
Applicants**

AND

**SIAOSI DAVID SOOTAGA TOAILOA
First Respondent**

**FEU SEUMAALII
Second Respondent**

**PENIATA SAUNIA
Third Respondent**

**ATTORNEY-GENERAL
Fourth Respondent**

**SAMOAN INDEPENDENT SEVENTH
DAY ADVENTIST CHURCH (SISDAC)
AKA REMNANT CHURCH OF THE
LIVING GOD
Fifth Respondent**

SC 71/2025

BETWEEN

**SAMOAN INDEPENDENT SEVENTH
DAY ADVENTIST CHURCH (SISDAC)
AKA REMNANT CHURCH OF THE
LIVING GOD
Applicant**

AND

**SIAOSI DAVID SOOTAGA TOAILOA
First Respondent**

**FEU SEUMAALII
Second Respondent**

**PENIATA SAUNIA
Third Respondent**

ATTORNEY-GENERAL

Fourth Respondent

SALETAULUA CHARLES FAAMANATU

MAKA AND TONGA SEINI FATA AS

TRUSTEES OF THE SAMOAN

INDEPENDENT SEVENTH DAY

ADVENTIST PROPERTY TRUST

Fifth Respondents

Court: Glazebrook, Ellen France and Miller JJ

Counsel: J D McBride and S E Cameron for Applicants in SC 65/2025 and Fifth Respondents in SC 71/2025
B O'Callahan and R J Warren for First to Third Respondents
D L Harris and A A A Ghandour for Fourth Respondent
M K Mahuika and T N Hauraki for Fifth Respondent in SC 65/2025 and Applicant in SC 71/2025

Judgment: 30 October 2025

JUDGMENT OF THE COURT

A The applications for leave to appeal are dismissed.

B The applicants in the two proposed appeals must pay the first to third respondents one set of costs of \$2,500.

REASONS

[1] This judgment responds to two applications for leave to appeal the judgment of the Court of Appeal in *Maka v Toailoa*.¹ The applicants in SC 65/2025 are trustees of the Samoan Independent Seventh Day Adventist Property Trust, a charitable trust which we will call SISDA Property Trust, and the applicant in SC 71/2025 is also a charitable trust, the Samoan Independent Seventh Day Adventist Church.² We will call the church SISDAC. It operates from more than 20 locations in New Zealand.

¹ *Maka v Toailoa* [2025] NZCA 261, (2025) 6 NZTR ¶35-003 (Hinton, Brewer and Osborne JJ) [CA judgment].

² From September 2023 the church has also been known as “Remnant Church of the Living God”: see below at [6].

[2] The applicants are closely related and share the same interest in the proposed appeals.

[3] The three individual respondents are a former pastor of SISDAC and two members of SISDAC's trust board. The fourth is the Attorney-General, representing the public interest in ensuring that property devoted to charitable purposes is not misused.

[4] The proposed appeals concern orders made by the High Court, and confirmed in varied form by the Court of Appeal, relating to the costs of an action brought by the three individual respondents.³ They are *Beddoe* orders and prospective costs orders pursuant to which the SISDAC trust board and, if necessary to ensure payment, the SISDA Property Trust must pay their fair and reasonable costs of the litigation.⁴

[5] The three individual respondents have succeeded to date in obtaining interim orders to preserve the assets of the SISDA Property Trust and the orders in relation to their costs of the litigation, in which they seek removal and replacement of trustees of the two trusts.

[6] There is evidence that the affairs of SISDAC have been mismanaged by the spiritual leader of the Church, Pastor Willie Papu, and his family and associates. As the Court of Appeal put it, cogent evidence has been presented in an interlocutory context to suggest that the management structure of the trusts operates without proper regard to trust principles, has limited commercial competence and has continued to be influenced by Pastor Papu notwithstanding that his inappropriate conduct led to his disqualification from office.⁵ After the SISDAC trust board got into financial difficulties, 19 properties were transferred to the SISDA Property Trust, and four of those have since been transferred to a company called Sunrise Global Homes Ltd (Sunrise), which is controlled by some of the applicants. A new church, called the Remnant Church, has been established; the Court of Appeal agreed with Johnstone J that it is in substance one and the same entity as SISDAC.⁶ To some extent these

³ See *Toailoa v Eliu* [2024] NZHC 1412 (Johnstone J) [HC judgment].

⁴ See *Re Beddoe* [1893] 1 Ch 547 (CA).

⁵ CA judgment, above n 1, at [2].

⁶ See at [88]; and HC judgment, above n 3, at [48].

developments appear to have followed official investigations into SISDAC's financial affairs. Neither trust has complied with obligations to have its accounts audited in a timely way.

[7] The applicants say that the Court of Appeal failed to appreciate the distinction between *Beddoe* orders, which are said to be available only to trustees (or former trustees) exercising their indemnity rights, and prospective costs orders, which are available to beneficiaries and third parties but only in rare and extreme circumstances. They say that the three individual respondents are not trustees and have no standing to seek orders against the SISDA Property Trust, and are hostile and self-interested and do not enjoy the support of the congregation whose donations will fund the litigation, which has already been very costly. They say that the preservation orders were excessive and are causing financial distress.⁷

[8] The Attorney-General submits that the orders made by the Courts below were appropriate.

[9] The Court of Appeal held that applicants for a *Beddoe* order are usually but not invariably trustees and observed that former trustees have been permitted to seek such orders.⁸ It found that all three of the individual respondents had standing; one, Pastor Toailoa, is a former trustee of SISDAC and the other two, as elders, are members of SISDAC's trust board.⁹ That extended to the SISDA Property Trust because it is very closely aligned to SISDAC and holds the SISDAC properties on behalf of SISDAC.¹⁰

[10] The Court of Appeal agreed with Johnstone J that the proceeding is reasonable and appropriate, and in the best interests of the trusts.¹¹ It held that there is no absolute rule that a *Beddoe* order will not be made in favour of a self-interested applicant and invoked the public interest in the administration of charitable trusts.¹² It found that

⁷ We formally grant leave to SISDAC and the trustees of the SISDA Property Trust to file their brief memoranda clarifying an aspect of their submissions.

⁸ CA judgment, above n 1, at [77]–[78].

⁹ At [79].

¹⁰ At [80].

¹¹ At [140]–[143].

¹² At [141].

the three individual respondents here are not self-interested; the relief they seek is directed to governance of the trusts.¹³ It found that there are clear grounds for judicial intervention, having regard to an unauthorised amendment to the SISDA Property Trust deed which may have introduced a non-charitable purpose, and having regard to an apparent need to re-transfer the Sunrise properties back to the SISDA Property Trust.¹⁴ It agreed with Johnstone J that the application for removal and replacement of trustees appears to be in the best interests of the trusts.¹⁵

[11] We accept that the principles guiding the availability of *Beddoe* and prospective costs orders in connection with charitable trusts are a matter of public importance.¹⁶ However, the contention that the proceeding is not in the best interests of the trusts in this case has insufficient prospects of success on the facts to justify leave.¹⁷ There is evidence that without the costs orders the three individual respondents could not proceed with the litigation. We observe that under the Court of Appeal orders, the High Court will maintain ongoing oversight of costs as they are incurred.

[12] The applications for leave to appeal are dismissed.

[13] The applicants in the two proposed appeals must pay the first to third respondents one set of costs of \$2,500. The Attorney-General did not seek costs.

Solicitors:

Norris Ward McKinnon, Hamilton for Applicants in SC 65/2025 and Fifth Respondents in SC 71/2025

Zhang Law, Auckland for First to Third Respondents

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Fourth Respondent

Kāhui Legal, Wellington for Fifth Respondent in SC 65/2025 and Applicant in SC 71/2025

¹³ At [90]–[94].

¹⁴ At [103] and [110].

¹⁵ At [121], [126], [135], [138] and [140]–[143].

¹⁶ See Senior Courts Act 2016, s 74(2)(a).

¹⁷ See s 74(1).