

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Ahmeds & Ors v Mukith & Ors [2022] EWHC 315 (Ch)

High Court of England and Wales, Chancery Division, Jackson J, 15 February 2022

Dispute as to validity of elections in an unincorporated association.

Key words: Unincorporated Association, England, Mosque, Validity of Elections, COVID 19

1. The Shahjalal Mosque & Islamic Cultural Centre (SMICC) is an unincorporated association and is not a registered charity. SMICC beneficially owns two properties in Newcastle and has about 1600 members.
2. An internal dispute arose during the COVID-19 pandemic in 2020 as to who was entitled to manage and operate SMICC and its property.
3. When Government restrictions were imposed on the numbers of people who could gather indoors due to the COVID-19 pandemic, the SMICC Executive Committee then in place took the decision to close SMICC. As a result of the continuation of the restrictions in May 2020, the Executive Committee took the further decision to postpone the Biennial General Meeting at which elections to the next Executive Committee would have taken place. When restrictions were again brought into force in November 2020 the ongoing executive committee again closed SMICC. The right of the Executive Committee to continue to exercise its functions and duties post May 2020 was an issue in these proceedings.
4. Approximately 100 of the members of SMICC were unhappy with the decisions taken, and some members, with the President of SMICC changed the locks to the mosque and the signatures on the SMICC's bank account. There were violent disturbances at the mosque in 2021 to which the police were called.
5. Three 2018 elected executive committee members sought an injunction and orders that control of SMICC (by three members and 2018 President) be returned to that committee. An agreed order was that an appointed person would arrange fresh elections, with a process and vetted membership as determined by him. He was to be the sole and final arbiter and not subject to review. The vote was held, with 64% of members participating, to elect a new executive committee, but the three members and 2018 President refused to hand over control.
6. The issue of validity of the 2021 elections was then brought before the Court.

7. The three members and 2018 President were represented by a relative of one of them, as they could not afford legal representation and were unable to represent themselves due to language difficulties.
8. The issues before the Court were (at [23]):
- Were the parties bound by the result of 5 October 2021 elections?
 - If not, were the claimants the lawfully elected Executive Committee with authority to run the day-to-day affairs of SMICC as a result of the elections held in May 2018?
 - If the claimants did not have authority to run the day-to-day affairs of the SMICC, who did?
 - Was clause 4 of the constitution amended in 2010 to remove the President, General Secretary and Treasurer from their position as trustees and replace them with the first to fourth defendants?
 - If not, should the Court order the first to fourth defendants to transfer the legal title of the premises at Sceptre Street to the Chairman, Secretary and Treasurer of the Executive Committee?
9. The Court made extensive comments about the witnesses. The Court found the evidence of the person appointed to hold the disputed elections very credible, and that others were (at [34]):

...guilty of over promising, presenting presumptions and hypothesis as facts, ignoring differences in their pleaded case and ignoring the blatant contradiction sitting at the heart of their case.

10. Of the 2018 President the Court noted that he (at [40]):

...admitted that either he or the trustees falsified the change of bank mandate form. This is a serious matter aggravated by the position of trust the Defendants held at the time. This matter must in my judgment be reported to the police and as a result a copy of this judgment will be sent to the Northumbria Police with reference 924 8/6/21, together with a transcript of the evidence...

11. The claim that the constitution of SMICC was altered to remove the President, General Secretary and Treasurer from their position as trustees and replace them with the three members and the 2018 President was not supported by the evidence before the Court.
12. The Court declared the proper trustees for the property of SMICC were the President, General Secretary and Treasurer of the Executive Committee, and the three members and the 2018 President were ordered to transfer the properties held by them forthwith to the proper trustees.
13. There were a number of complaints about how the person appointed to conduct the 2021 election actually conducted the election. The Court found that the appointed person's decision could not be disputed as there was no evidence that he had exercised his powers in bad faith due to corruption or partiality on his side, or if he materially failed to follow his instructions in his decision making.
14. The Court found that the 2021 elections were valid.

15. The Court made two further comments. The first was that notices be placed in the mosque about how the publicly available judgment of the court could be freely accessed. This was because there was a risk that the judgment, or parts thereof, might be misinterpreted or misquoted to the members, and any confusion should be avoided.

16. The second was that (at [90]):

[I]t is clear having heard the testimony in this case that to date those responsible for the property of SMICC and for the management and control of SMICC have for many years had scant regard to the Constitution and rules governing SMICC. This culminated in Mr Qureshi ignoring the terms of the Constitution and seeking to effect a non-violent coup for which the Defendants may face further consequences. In acting as they did the Defendants unarguably breached the Constitution and placed themselves in a position they were not entitled to hold. The Defendants acted wrongfully before the election and had no valid reason to contest the election. Moving forward whatever has happened in the past has happened and the parties should now see where that gets them. The Trustees are to be removed. At the same time, the Executive Committee and the members of SMICC must learn to respect and abide by the terms of the Constitution. If changes are needed to the Constitution they must be passed in accordance with the Constitution.

IMPLICATIONS



It should be noted that it was accepted by the Court that the constitution of the unincorporated association formed a binding contract between the parties. The Court was referred to the case of *In Re Sick and Funeral Society of St John's Sunday School, Golcar* [1973] Ch 51, 60. In that case the Court stated (at [60]):

...membership of a club or association is primarily a matter of contract. The members make their payments, and in return they become entitled to the benefits of membership in accordance with the rules.

This may not be the case in Australia given the High Court decision in [Cameron v Hogan](#) [1934] HCA 24 confirmed that associations which are 'social, sporting, political, scientific, religious, artistic or humanitarian in character', and not formed 'for private gain or material advantage', are usually formed on the basis of mutual consent. Unless there is some clear, positive indication that the members wish to relate to each other in a legal fashion, the rules of the association will not be treated as an enforceable contract, in contrast to the rules of incorporated bodies such as companies. Refer to [Asmar v Albanese](#) [2021] VSC 263 and [John Setka v Noah Carroll & Ors](#) [2019] VSC 571.

VIEW THE CASE



This case may be viewed at <https://www.bailii.org/ew/cases/EWHC/Ch/2022/315.html>

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EVENTS