

# 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.



## Na'Amanu v Morisa [2023] NZHC 3599

High Court of New Zealand, Venning J, 8 December 2023

A faction of a Church sought injunctive relief to access bank accounts and property.

**Key words:** Incorporated Society, New Zealand, Church, Injunction, Schism, Bank Accounts, Hall Access

1. [The Samoan Assemblies of God in New Zealand \(Incorporated\) v Morisa](#) [2023] NZHC 3049 was a separate but related proceeding.
2. The Samoan Assemblies of God in New Zealand (Inc) (SAOGNZ) and The Samoan Assemblies of God in Aotearoa Charitable Trust Board (Trust Board) sought orders in relation to:
  - the operation of the Trust Board's bank accounts;
  - its Church Hall; and
  - orders about the proposed fourth respondent (the Intended Sixth Defendant), the partners of Woodroffe Law; and
  - procedural directions.
3. The Samoan Assemblies of God in New Zealand (Incorporated) (the Fellowship) is an incorporated society and a charitable entity.
4. The Fellowship is governed by a General Council comprising representatives from all individual member churches. Fifty-two churches across the country make up the Fellowship. At the General Council, each church is represented by eight delegates.
5. The Trust Board was established in 1992 to own and hold 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 the property as trustee for and on behalf of the Fellowship.
6. The Fellowship's General Council appointed Pastor Veni Morisa as its Treasurer.
7. Some members opposed the appointment because Pastor Morisa was apparently convicted of a crime of dishonesty some 35 years ago.

8. A membership schism occurred with the minority group seeking to seize control of the bank accounts and access to the Church Hall. The banks refused to allow access to the bank accounts without an order from the Court. The Church Hall caretakers, who were aligned with the minority faction, would not permit entry to certain members.
9. The General Council passed a vote of no confidence in the dissenting members of the Executive Council and confirmed their removal. That resolution and the further resolution that the dissenters 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).
10. Proceedings commenced with the Fellowship seeking a declaration that Pastor Morisa's appointment as Treasurer was void, and that he was not eligible to hold the position of Pastor, Executive Council member, or Treasurer. Mediation had failed to resolve the issues.
11. The earlier decision related exclusively to the issue of whether the Court should, in its inherent jurisdiction, set aside a notice of change of solicitor and discontinuance. The Court confirmed the change of solicitor and confirmed the notice of discontinuance.
12. This application was for interim relief and dealt with urgent matters such as controlling bank accounts and access to the Church Hall.
13. The Court explained that the onus was on the applicants to satisfy the Court that there was a serious question to be tried and that the balance of convenience required consideration of the impact on the parties of a granting of the orders, and refusal to grant the orders. The Court had to carry out an assessment of the overall justice of the position.
14. The Court found that on the balance of convenience of the Fellowship being able to operate for the members, and in the interests of justice, the orders sought should be granted.

## COMMENT



It appears that there will be further litigation in relation to the matters raised in this case.

The majority vote seeking to remove the dissenting members, and the support of the members of the general council seemed persuasive in the Court's decision making.

## VIEW THE CASE



This case may be viewed at: <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHC/2023/3599.html>

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