

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0056 OF 1997S

BETWEEN:

MICHAEL DESMOND BENEFIELD

Appellant

AND:

FIJI LAW SOCIETY
MUNRO LEYS & CO.
ATTORNEY-GENERAL OF FIJI

Respondents

Coram:

The Hon. Sir Moti Tikaram, President
 The Rt. Hon. Sir Maurice Casey, Justice of Appeal
 The Hon. Justice Ian Roy Thompson, Justice of Appeal

Hearing:

Thursday, 19th November 1998

Counsel:

Mr. B. Salmon Q.C. with S.D. Sahu Khan and
 James Sabharwal for the Appellant
 Mr. C.B. Young for the 1st Respondent
 Mr. A. Gates for the 2nd Respondent
 Mr. N. Nand Solicitor-General with Ms. N. Baswaiya
 for the Attorney-General

Date of Judgment: Friday, 27th November 1998

REASONS FOR DECISION ON JURISDICTION AND
 JUDGMENT STRIKING OUT APPEAL

This matter came before the Court as an appeal from the decision of the Chief Justice of 4 July 1997 refusing an application by Mr. Benefield under s.65 of the Legal Practitioners Act (Cap 254) ("the Act") for restoration of his name to the role of the Court after he had been struck off on 3 June 1985. A preliminary question arose about this Court's jurisdiction to entertain such an appeal and this was argued first. We concluded there was no such jurisdiction and gave our decision accordingly on 19 November 1998, now stating our reasons for it.

The Act in force at the time Mr. Benefield was struck off, and under which his application for restoration was decided, has been replaced by the Legal Practitioners Act 1997, but it is accepted that the provisions of the earlier Act apply in respect of the present proceedings.

Section 65 read:

'65.-(1) The Chief Justice may, on the petition of the barrister and solicitor, and after hearing the Solicitor-General, in his absolute discretion by order restore the name of such barrister and solicitor to the Roll or terminate any suspension either unconditionally or subject to such terms and conditions as he may think fit; whereupon, subject to such order, the striking off or suspension shall be cancelled or cease, and the barrister and solicitor shall be entitled to the return or renewal of his practising certificate, as the case may be.

(2) The Chief Justice may make rules or give directions as to the manner in which petitions made under subsection (1) shall be heard and may by rule limit the frequency with which such petitions may be made.'

This Court's jurisdiction to entertain any appeal is conferred by s.121 of the Constitution (Amendment) Act 1997, which contains essentially the same jurisdiction and provisions as were applicable before that Act came into force. Subsection (1) provides as follows:-

'121.-(1) The Court of Appeal has jurisdiction, subject to this Constitution and to such requirements as the Parliament prescribes, to hear and determine appeals from all judgments of the High Court, and has such other jurisdiction as is conferred by law.'

(For ease of reference the term "High Court" is used in this judgment to mean the present High Court and that court under its former name of "Supreme Court").

Under s.12(1)(a) of the Court Appeal Act (Cap12) an appeal lies in any civil case or matter to the Court of Appeal from any decision of the Supreme Court sitting in first instance including any decision of a judge in chambers. (The remaining provisions of s.12 are not relevant).

In *Coulam v. Fiji Law Society* 18 FLR 175 this Court had to consider the identical provisions of s.12(1)(a) of the former Court of Appeal Ordinance in determining whether an appeal lay from a decision of the then Chief Justice refusing to admit an applicant as a barrister and solicitor under s.3 of the Legal Practitioners Ordinance, as the Act was originally entitled. The Court concluded that the power to admit was conferred on the Chief Justice personally and, as no right of appeal against his decision had been given, there was no jurisdiction to entertain one. In the course of its carefully reasoned and researched judgment, the Court reviewed the powers given to the Chief Justice relating to the admission of barristers and solicitors; regulation of the right to practice on their own account; the issue of practising certificates; the appointment of Notaries and Commissioners for Oaths; the appointment of the chairman, secretary and members of the Disciplinary Committee established under part 8 of the Ordinance; and the termination of suspension, or the restoration to the Roll, of those practitioners suspended or struck off by that Committee. Section 74(1) provided that an appeal lay to the Chief Justice against any order or decision of the Disciplinary Committee (a function which he could delegate to another Judge) while subsection (3) gave a right of appeal to the Court of Appeal against his or her decision thereon. This was the only instance in which a right of appeal was given under the Ordinance against any decision of the Chief Justice.

Looking at the Ordinance as a whole, the Court concluded that from the nature of the foregoing powers given to the Chief Justice, they were bestowed on him as a designated person and not by virtue of his position as a Judge of the High Court. It found support for its view in the fact that only in s.74(3) above did parliament expressly confer a right of appeal from the Chief Justice, a provision that would have been unnecessary if his functions were those of the Court over which he presided.

In addition to its conclusion based on the scheme of the legislation, the Court was able to refer to an impressive body of supporting authority, which included *Boulter v. Kent Justices* (1897) AC 556, *Owen v. London and North Western Railway Co. Ltd.* (1867) LR 3QB 54 and *In re Pollard* (1888) 20 QBD 656, where Lord Esher surveyed the independent personal jurisdiction of the Master of the Rolls in relation to attorneys and solicitors. At s.184 of its judgment in *Coulam*, the Court concluded that his traditional position in regard to the admission of solicitors had been transferred to the Chief Justice of Fiji under the Ordinance. If he has such a personal jurisdiction in respect of admissions it is difficult to see why the Chief Justice's power under s.65 to restore a practitioner whom he had previously admitted under s.3 should be otherwise than personal also.

As the Court observed, the discretion given by s.65 is absolute, and while this may not be conclusive in establishing that the Chief Justice possessed the power independently of the High Court, it certainly demonstrates its singularity, as does the fact that under subsection (2) he was to make the rules, so that the procedure for restoration was not governed by the normal rules

of the Court. These matters lend support to the view that he exercised the powers in s.65 in his own right.

Mr. Salmon asked us to consider the historical background of that section, pointing out that it was retained after the introduction of the provisions for Disciplinary Committees, which removed the control the Court had previously exercised over practitioners in these matters. He submitted that the ability to restore a practitioner to the Rolls should continue to be regarded as a function of the High Court. However, in *Coulam's* case the Court undertook a historical survey and we agree with its conclusion at p.185 that the earlier Ordinances had been deliberately changed to bring the position as far as possible into line with the English practice, by giving substantial functions to the Law Society in a self-contained system. We are satisfied that this left no room for control by the High Court, except insofar as the general jurisdiction of the different Courts over practitioners was preserved in s.59. Nor, apart from s.74 (3) (noted above), does it give any right of appeal from the Chief Justice. We did not find Mr. Salmon's other submissions persuasive, either based as they were on the use of particular expressions in some of the sections which were at best equivocal. He was right to point out that *Coulam's* case dealt with the question of admissions only, but in the light of the Court's overall survey, the Chief Justice clearly emerges as a designated individual on whom the powers throughout are conferred personally. The reasoning and conclusions in the judgment are persuasive and we agree with them.

Conclusion

As we have ruled that we have no jurisdiction to entertain the appeal it must fail and is therefore struck out for want of jurisdiction, with costs of \$1000 to the first respondent the Fiji Law Society and \$750 to the second respondent Munro Leys & Co., in each case with disbursements fixed by the Registrar if the parties cannot agree.

The Attorney-General made it clear through the Solicitor-General Mr. Nand that he did not appear as a party, and following usual practice no order for costs is made in his favour.

Moti Tikaram

 Sir Moti Tikaram
 President

M. G. Casey

 Sir Maurice Casey
 Justice of Appeal

I. R. Thompson

 Justice I. R. Thompson
 Justice of Appeal

Solicitors:

Messrs. Mehboob Raza & Associates, Suva for the Appellant
Messrs. Young & Associates, Lautoka for the First Respondent
Gates Esq. Suva for the Second Respondent
Office of the Attorney-General Chambers, Suva for the Respondent