

ATTY (SSDS)

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

CIVIL APPEAL NO. ABU0040 OF 1999  
(High Court Civil Action No. 134 of 1991)

*In Chambers*

BETWEEN:      THE ATTORNEY GENERAL  
                         OF FIJI

*Applicant/Appellant*

AND:            ANTHONY FREDERICK  
                         STEPHENS

*Respondent*

10.35 am      Court resumes

*Dr D. Singh for Applicant*  
*Mr K. Vuataki for Respondent*

---

DECISION

---

On 6 July 1999 Fatiaki J. after hearing extensive arguments dismissed the Applicant's motion that the Plaintiff's High Court Action No. 134 of 1991 be dismissed for want of prosecution. The Action in question was commenced by way of a writ with a statement of claim issued on 22 February 1991 whereby the Plaintiff claimed various declarations and damages for wrongful arrest, false imprisonment, assault and breach of constitutional rights.

The Applicant sought leave to appeal against this decision. On 13 August 1999 Fatiaki J. dismissed the Applicant's leave application.

The Applicant has therefore come to this Court before a single judge seeking leave to appeal to the Court of Appeal. Leave is necessary because Fatiaki J.'s decision of 6 July 1999 was interlocutory in nature. (See Section 12(2)(f) of the Court of Appeal Act.)

I have had the opportunity of reading the written submissions and the affidavits filed by both sides in this matter. I have borne in mind matters brought to my attention this morning. In particular I have examined the proposed grounds of appeal in the light of Justice Fatiaki's decision to refuse leave.

This Court has time and again said that leave to appeal against an interlocutory decision or order will not be lightly given. Fatiaki J.'s decision has not finally decided the substantive rights of the parties. No injustice will result if leave is refused. If the Applicant fails in the substantive action pending in the High Court it can still seek redress by way of appeal. On the other hand it may succeed in the High Court and no appeal will be necessary.

The proposed grounds of appeal do not disclose any of important questions of law which should be ruled upon before the proceedings in the Court below should be allowed to continue.

In my view the Applicant has no realistic prospect of succeeding on appeal.

Justice Fatiaki's decision of 13 August 1999 has set out the chronology of events and the reasons for refusing leave. Whilst I am not sitting on appeal against his decision I adopt the reasons given by him.

Having considered all the material before me I have no hesitation in refusing leave to appeal.

The application is therefore dismissed.

I will not make any order as to costs because Respondent's Counsel was responsible for the unnecessary adjournment on 19 October 1999.

(sgd) Sir Moti Tikaram  
President  
28 January 2000