IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 055 of 2024
[In the High Court at Suva Case No. HBC 50 of 2021]

BETWEEN	:	**SEA PILOTS (FIJI) LIMITED** a limited liability company whose registered office is located at 24 Ratu Sukuna Road, Suva, in the Republic of Fiji.
		Appellant/Original Plaintiff
AND	:	**MALCOLM ALEXANDER PECKHAM** of Field 40 Road, Lautoka, Ship Captain
		Respondent/ Original Defendant
Coram	:	**Prematilaka, RJA**
Counsel	:	**Ms. L. Jackson for the Appellant** **Mr. S. Leweniqila for the Respondent**
Date of Hearing	:	**13 February 2025**
Date of Ruling	:	**17 February 2025**

RULING

[1] The appellant (original plaintiff) had filed an *inter parte* notice of motion with a statement of claim and an affidavit in support and sought *inter alia* the following orders from the High Court.

> *[1] That the defendant do forthwith deliver up to all the company property in his possession which include, the plaintiff's:*
>
> *a) Pilot Boat Service Manual;*
> *b) Company Cheque Books containing Cheque Numbers 6200, 6936 – 7000 and 8802 – 8787, which relate to the plaintiff's ANZ Cheque Account Number 8312434; and*
> *c) Company vehicle being a Toyota Land Cruiser registration No. CPILOT.*

[2] The defendant do forthwith delver up to the plaintiff all receipts and invoices relating to the 143 separate cheque payments paid out of the plaintiff's ANZ Cheque Account between January 2018 to October 2018 totaling the sum of $601,935.13 (six Hundred and one Thousand Nine Hundred and Thirty Five Dollars and Thirteen Cents).

[2] On 21 February 2021, the High Court entered orders by consent that the respondent delivers up to the appellant the:

a. *appellant's Cheque books containing cheque numbers 6200, 6936 – 7000, 8802 – 8850 and 8751 - 8787 which relate to the appellant's ANZ Cheque Account; and*
b. *Invoices and receipts relating to 143 separate cheque payments the respondent caused to be paid out of the appellant's ANZ Cheque Account totalling the sum of* ***$601,935.13 (Six Hundred and One Thousand Nine Hundred and Thirty-Five Dollars and Thirteen Cents)*** *(hereinafter; the* ***"Total Cheque Payments"****).*

[3] The respondent had not delivered the remaining property to the appellant namely the Toyota Land Cruiser bearing registration no. CPILOT and the appellant's Pilot Boat Service Manual and as such the matter proceeded to hearing for injunctive orders. On 19 October 2023, the High Court delivered its decision and dismissed the appellant's *inter-parte* notice of motion for injunctive orders and granted the respondent costs in the sum of $1000.00. [1]

[4] Thereafter, the appellant in *inter parte* summons had sought the following orders from this Court.

*[1] That the appellant be granted leave to appeal to the Court of Appeal the interlocutory decision ("**Decision**") of the Honourable Mr Justice Vishwa Datt Sharma delivered on 19 October 2023;*

[2] That in the event leave be granted, the time for filing and serving the appellant's notice of appeal be extended by 7 days from the date leave is granted to appeal to the Court of Appeal; and

[3] That the order for the payment of $1000.00 be stayed in the event that leave is granted to appeal to the Court of Appeal.

[1] **Sea Pilots (Fiji) Ltd v Peckham** [2023] FJHC 798; HBC50.2021 (19 October 2023)

Law on leave to appeal on interlocutory orders

[5] In terms of section 12 (f) of the Court of Appeal Act no appeal shall lie without the leave of the judge or the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge of the High Court subject to the exceptions given in section 12 (f) (i) –(v). Similarly, Rule 26(3) of the Court of Appeal Rules directs that when the High Court has the power to grant the appellant leave to appeal to the Court of Appeal, the said application must first be made in the first instance to the Court below.

[6] On 19 November 2023, the appellant had filed an application for leave to appeal the impugned decision of the High Court and on 30 May 2024, the High Court had refused the appellant's application for leave to appeal the decision of the High Court.

[7] When seeking leave to appeal an interlocutory order (such as the refusal of an interim injunction), courts typically consider the following principles:

(a) The nature of the decision: final vs. interlocutory

- *The applicant must establish that the order is truly interlocutory and not final. If an order determines substantive rights rather than procedural matters, it may be appealable as of right. In **Licul v Corney** (1976) 180 CLR 213, the High Court of Australia considered whether an order was final or interlocutory, noting that an interlocutory order is one that does not finally determine rights.*

- *In Fiji both order approach and application approach have been considered. The "order approach" requires the classification of an order as interlocutory or final by reference to its effect. If it brings the proceedings to an end it is a final order, if it does not it is an interlocutory order. The application approach looks to the application rather than the order actually made as giving identity to the order. The order was treated as final only if the entire cause or matter is finally determined whichever way the court decides the application.[2] Thus, refusal to order a stay of proceedings is not a final decision.[3] So are the orders refusing the applications to transfer the matter to another court and disqualifying the counsel from acting for the accused in the trial.[4]*

[2] **Nata v The State** [2002] FJCA 75; AAU0015U.2002S (31 May 2002); **Takiveikata v State** [2004] FJCA 39; AAU0030.2004S (16 July 2004)
[3] Court of Final Appeal of The Hong Kong Special Administrative Region in **HKSAR v Yee Wenjye** [2022] HKCFA 6
[4] **Balaggan v State** [2012] FJLawRp 139; (2012) 2 FLR 92 (25 May 2012)

(b) Whether the appeal is necessary in the interests of justice

- *Leave to appeal will only be granted if refusing leave would lead to an injustice that cannot be remedied later in the proceedings. The applicant must demonstrate that the refusal of leave would cause irreparable harm or prejudice. In **Decor Corporation Pty Ltd v Dart Industries Inc.** (1991) 33 FCR 397, the Federal Court of Australia refused leave to appeal an interlocutory order because the applicants could still obtain effective relief at trial.*
- *Leave should only be granted in cases where substantial injustice is done by the interlocutory judgment or order itself. If the order was correct, then it follows that substantial injustice could not follow. If the order is seen to be clearly wrong, this is not alone sufficient. It must be shown, in addition, to effect a substantial injustice by its operation.*[5]
- *It has been long settled law and practice that the interlocutory orders and decisions will seldom be amenable to appeal. However, Courts have repeatedly emphasized that appeal against interlocutory orders and decisions will only rarely succeed and have consistently observed this principle by granting leave only in the most exceptional circumstance.*[6]
- *The prima facie presumption is against appeals from interlocutory orders, and, therefore, an application for leave to appeal should not be granted as of course without consideration of the nature and its circumstances of the particular case.*[7]

(c) The standard of review on appeal

- *Courts typically apply a deferential standard when reviewing interlocutory orders, particularly the exercise of discretion in refusing an injunction. The appellate courts will not interfere with discretionary decisions unless there is an error of principle, irrelevant considerations, or an unreasonable result.*[8] *The appellate courts should be cautious in disturbing the primary judge's discretion unless there is a clear error.*[9]
- *If a judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the fact, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the material for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been*

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[5] **Niemann v Electronic Industries Ltd** (1978) VR 431- Murphy J in the Supreme Court of Victoria. See also **Kelton Investments Limited and Tappoo Limited v Civil Aviation Authority of Fiji and Motibhai & Company Limited** [1995] FJCA 15; ABU34d of 1995s (18 July 1995) and **Dinesh Shankar v FNPF Investments Limited and Venture Capital Partners (Fiji) Limited** [2017] FJCA 26; ABU32.2016 (24 February 2017)

[6] **Totis Inc. Sport (FUl) Ltd & Another v John Leonard Clark & Another** FCA No. 35 of 1996

[7] **Bank of Hawaii v Reynolds** (1998) FJHC 226 per Pathik, J referring to Ex Parte Bucknell [1936] which said the Court will examine each case and, unless the circumstances are exceptional it will not grant leave if it forms a clear opinion adverse to the success of the proposed appeal

[8] **House v The King** (1936) 55 CLR 499

[9] **ABC v O'Neill** (2006) 227 CLR 57

a failure properly to exercise the discretion. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred.[10]

- *It is not appropriate for the appellate court to delve into the merits of the case by looking into the correctness or otherwise of the order intended to be appealed against.*[11]
- *The applicant must demonstrate that the intended appeal has a realistic prospect of success. A 'real' prospect of success means that prospect of success must be realistic rather than fanciful and the court considering a request for permission is not required to analyse whether the proposed grounds of appeal will succeed, but merely there is a real prospect of success.*[12]

Law on leave to appeal against refusal of an interim injunction

[8] The three considerations for granting an interim injunction - serious question to be tried, irreparable harm, and balance of convenience - are well established in common law jurisdictions, following the principles in **American Cyanamid Co v Ethicon Ltd** [1975] AC 396 (HL).

[9] The order in which these factors are considered is crucial, and generally, courts will only proceed to the second and third steps if the first requirement is satisfied. The order of considerations are:

1. ***Serious Question to Be Tried***
   *The threshold inquiry is whether the claim is neither frivolous nor vexatious and that there is a real prospect of success. If there is no serious question to be tried, the application for an injunction fails outright, and the court does not need to proceed to the next steps. In **ABC v O'Neill (2006) 227 CLR 57**, the High Court of Australia confirmed that the requirement of a serious question to be tried is not a high bar but must be met before considering other factors.*
2. ***Irreparable Harm/adequacy of damages***
   *If there is a serious question to be tried, the court then assesses whether the applicant would suffer irreparable harm if the injunction is refused. This means that damages must not be an adequate remedy. In **Siskina (Cargo Owners) v Distos Cia Naviera SA** [1979] AC 210, Lord Diplock emphasized that interim relief should only be granted where there is a real risk of harm that cannot be remedied by damages. Under irreparable harm, the judge should also consider*

[10] **Tidswell v Tidswell** (No.2) [1958] Vic Rp 95; [1958] VR 601 (6 August 1958) per Herring, CJ
[11] **The Public Service Commission v Manunivavalagi Dalituicama Korovulavula** (unreported) Civil Appeal No. 11 of 1989 (23 June 1989)
[12] **Kelton Investments Ltd** (supra) and **Swain v Hillman** (2001|1 All ER 91

whether the party sought to be restrained (the defendant) would be unable to satisfy an order for damages if the applicant ultimately succeeds at trial[13] *because even if damages in theory would be an adequate remedy, they are not practically adequate if the defendant lacks the financial means to pay them and this also ensures that an applicant is not left with a hollow judgment—a damages award that is unrecoverable. Lord Diplock in* ***American Cyanamid*** *emphasized that damages must be an adequate and practical remedy. If damages are theoretically adequate but cannot be enforced against the defendant, this may justify an injunction. The House of Lords in* ***F Hoffman-La Roche & Co AG v Secretary of State for Trade and Industry*** *[1975] AC 295 held that an injunction may be appropriate where there is uncertainty about the defendant's ability to meet a damages award. The Privy Council in* ***National Commercial Bank Jamaica Ltd v Olint Corp Ltd*** *[2009] UKPC 16 reinforced that courts should consider not only whether damages are an adequate remedy but also whether they are realistically recoverable.*

3. ***Balance of Convenience***
   If irreparable harm is established, the court then considers the balance of convenience—whether the harm caused by granting or refusing the injunction would be greater on either party. In ***American Cyanamid****, Lord Diplock explained that where damages are not an adequate remedy, the court must weigh the relative hardship to each party.*

[10] If there is no serious question to be tried, the court should not proceed to consider irreparable harm or balance of convenience. In **Eng Mee Yong v Letchumanan** [1980] AC 331, the Privy Council confirmed that a case with no reasonable cause of action cannot justify injunctive relief and In **Ladbroke (Football) Ltd v William Hill (Football) Ltd** [1964] 1 WLR 273, it was held that if a claim is groundless, the court need not go further. The test for an interim injunction is sequential. If a party fails to establish a serious question to be tried, the court must dismiss the application without considering the second and third steps. Courts will only evaluate irreparable harm and balance of convenience after the first criterion is met. This approach ensures that the injunction process remains fair, efficient, and consistent with established legal principles.

[11] However, even if (1) – serious question to be tried – is answered in the affirmative**,** the judge must still consider (2) – irreparable harm and (3) – balance of convenience before

[13] **Honeymoon Island (Fiji) Ltd –v- Follies International Ltd** (unreported Civil Appeal No. 63 of 2007 delivered 4 July 2008) by the Fiji Court of Appeal.

granting an injunction. The three-stage test is sequential, and satisfying (1) alone is not sufficient for an injunction to be granted because the purpose of an interim injunction is to prevent injustice pending the final determination of the case. However, simply having a serious question to be tried does not automatically justify injunctive relief. The courts must also ensure that the applicant will suffer irreparable harm that cannot be compensated by damages if the injunction is refused and the balance of convenience favors granting the injunction (i.e., the inconvenience to the defendant does not outweigh the benefit to the plaintiff). Lord Diplock in ***American Cyanamid*** emphasized that all three factors must be considered. Even if a serious question to be tried exists, the court must move to the second and third steps before granting an injunction. The Privy Council in **National Commercial Bank Jamaica Ltd v Olint Corp Ltd** [2009] UKPC 16 reaffirmed that an injunction should only be granted if irreparable harm is proven and the balance of convenience favors the applicant. The High Court of Australia in **Australian Broadcasting Corporation v O'Neill** (2006) 227 CLR 57 reiterated that the three-stage test is cumulative and each step must be satisfied and mere existence of a serious question to be tried does not justify an injunction unless the other two criteria are met. If damages are an adequate remedy, the injunction should be refused. If the balance of convenience favors the defendant, the injunction should be refused. If both (2) and (3) are satisfied, the injunction should be granted. Even after answering (1) in the affirmative, a judge must still consider (2) and (3) and an injunction can only be granted if all three conditions are met.

[12] However, if a judge cannot determine whether there is a serious question to be tried because it involves disputed facts, the established position is that the judge should proceed to consider the second and third factors—irreparable harm and balance of convenience. This principle is derived from ***American Cyanamid*** where Lord Diplock emphasized that courts should not conduct a "mini-trial" at the interlocutory stage but rather assess whether the claim is frivolous or vexatious. If the case is not frivolous and presents arguable issues, the court should assume that there is a serious question to be tried and move to the next steps.

[13] The House of Lords in ***American Cyanamid*** held that where the existence of a serious question to be tried is uncertain due to disputed facts, the court should assume that there is

a serious question and proceed to assess irreparable harm and balance of convenience. The High Court of Australia in **Australian Broadcasting Corporation v O'Neill** (2006) 227 CLR 57 (HCA) reaffirmed ***American Cyanamid***, stating that at the interlocutory stage, courts should not attempt to resolve disputed factual issues but instead focus on the adequacy of damages and balance of convenience. The Privy Council in **National Commercial Bank Jamaica Ltd v Olint Corp Ltd** [2009] UKPC 16 emphasized that an injunction should not be refused solely because resolving the serious question to be tried involves factual disputes but move on to the second and third considerations *i.e.* where factual disputes prevent a clear resolution of the first limb, courts should move to the second and third limbs rather than engage in premature fact-finding. This ensures that interlocutory injunctions remain a protective rather than a determinative measure, preserving the *status quo* until a full trial resolves the factual disputes.

[14] An appeal against the refusal of an interim injunction is generally assessed on whether:

1. *There was a prima facie case or a serious question to be tried (American Cyanamid Co v Ethicon Ltd [1975] AC 396).*
2. *Irreparable harm/adequacy of damages – whether an award of damages would be sufficient to compensate the applicant if the injunction is refused and they succeed at trial. If damages are adequate, an injunction is generally unnecessary. When assessing irreparable harm, the judge must consider both whether damages are an adequate remedy and whether the defendant is capable of paying them. If one is affirmative and the other is negative, the court will weigh the overall risk of injustice before proceeding to consider the balance of convenience.*

    - *Scenario 1: Damages are generally an adequate remedy, but the defendant may not be able to pay. The applicant has a strong argument for an injunction because the adequacy of damages is undermined by the defendant's inability to satisfy them. The court may still grant the injunction, provided the balance of convenience favors it.*

    - *Scenario 2: Damages are not an adequate remedy, but the defendant is financially capable of paying. The applicant may still be granted an injunction because the inadequacy of damages takes priority. The defendant's financial ability does not negate the fact that damages are an unsuitable remedy (e.g., in cases of loss of reputation or land disputes).*

3. *Balance of convenience – whether the harm to the applicant if the injunction is refused outweighs the inconvenience to the respondent if the injunction is granted.*

[15] The appellant submits that the High Court failed to exercise its discretion on established principles relating to interm injunctions, gave insufficient weight to relevant considerations such as the respondent's unemployment status and also make a mistake as to the facts of the matter such as the alleged "resolution" of the directors referred to at paragraph 34 of the impugned decision.

[16] Under the first ground of appeal the appellant argues that the learned Judge erred when he held at paragraph 34 of his decision that there is *prima facie* no serious question to be tried since the meeting of the directors of the appellant on 5 October 2018 had resolved that the respondent keep the appellant's vehicle - CPILOT when there was no evidence whatsoever before the High Court that the appellant had resolved to transfer the appellant's vehicle to the respondent as alleged by the respondent.

[17] It is not correct to say that there was no evidence to substantiate the appellant's position. The appellant, who was one of the original founders of the appellant company and was still a director till he resigned and still a shareholder, had explained particularly at paragraphs 7 and 11 in his affidavit in opposition (which is *prima facie* evidence though untested at a trial) that the vehicle concerned was under his care since 2013 and there was a gentleman's agreement that he keeps this vehicle to be transferred to him while two other directors kept two other vehicles which were later transferred to their names and sold by them. However, the appellant had strongly refuted this position in the affidavit in reply. Nevertheless, it appears from the impugned decision (paragraph 18) that the respondent's statement of claim also had claimed that:

> *"The Directors of the Plaintiff Company agreed in their meeting of 05th October 2018 for the Defendant to keep the vehicle 'CPILOT' which was to be transferred to the Defendant in recognition of the Defendant's years of service to the company. The conditions of Defendant's resignation was agreed between all the Directors then and therefore the Plaintiff no longer has any entitlements to the vehicle registration no 'CPILOT'"*

[18] The High Court judge had relied on the following statement by Lord Diplock in ***American Cyanamid:***

> *"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial."*

[19] However, reading through the entirety of the impugned decision, it appears to me that the High Court judge could not have determined affirmatively that there was no serious question to be tried because the answer to that question involved disputed facts surrounding conflicting positions whether at the meeting of the directors with the respondent on 05 October 2018 it was agreed mutually between the parties for the respondent to keep the vehicle registration no. 'CPILOT' to be transferred to him in due course. Therefore, the High Court should have proceeded to consider the second and third factors—irreparable harm and balance of convenience which it has failed to do.

[20] How about irreparable damage/adequacy of damages? The appellant's contention was that if the injunction were to be refused the appellant would suffer irreparable damage and that damages will not be an adequate compensation. On the other hand, the respondent's rival contention was that damages would be an adequate remedy for the appellant who also argues that the respondent was not in a position to pay damages anyway as he was 74 years old. While the appellant had submitted evidence of its financial capacity to pay any damages, the respondent had not.

[21] Considering the material placed before the High Court and before me by both parties, I am not inclined to accept the appellant's contention that refusal of the interim injunction would cause irreparable damages given that the appellant admittedly has lots of assets as submitted by its counsel at the hearing. Undoubtedly, it is a well-established company with a strong financial muscle. I also do not agree that as contended by the appellant that having paid for the vehicle, plus interest to Credit Corporation and then being denied its use in the company operations, cannot possibly be adequately compensated by way of damages.

Neither do I agree that the respondent is not financially capable of paying damages if ordered against him.

[22] As for balance of convenience, being deprived of the use of the vehicle in issue and the Manual or lack of both has not apparently affected the operations of the appellant company to any noteworthy extent until the matter is finally decided by High Court, for the appellant has many other vehicles for its operations. Thus, in my view the harm to the appellant when the injunction was refused did not outweigh the inconvenience to the respondent if the injunction was granted against him, in as much he was using this vehicle and it was under his care since 2013 (according to him) and even after his resignation he has continued to use it presumably like any other legal user of a vehicle.

[23] In the circumstances, although the High Court judge had not really examined closely and determined the second and third considerations relating to the 02nd and 03rd limbs of injunction principles, I am not inclined to answer them in favour of the appellant.

***A party seeking leave to appeal must come to court with* clean hands**

[24] The principle that a party seeking leave to appeal must come to court with *clean hands* is recognized in appellate practice. This principle is often linked to equitable considerations and the broader interests of justice when deciding whether to grant leave to appeal an interlocutory order. A party seeking leave to appeal should not have delayed the trial court proceedings when they could have proceeded. Courts take into account whether the applicant has acted fairly and diligently. If the party seeking leave contributed to unnecessary delay, the court may refuse leave on discretionary grounds, applying the *clean hands* principle in the interests of justice.

[25] Conduct of the applicant at trial stage matters.

- *If a party seeking leave to appeal unreasonably delayed the trial proceedings or engaged in conduct that obstructed the timely disposition of the case, the appellate court may refuse leave.*

- *This aligns with the general doctrine of clean hands, which holds that a party should not benefit from equitable relief (including appellate discretion) if they acted unfairly or improperly.*

[26] Delay as a factor in granting leave:

- *Courts are reluctant to allow appeals from interlocutory orders where the applicant has contributed to delays at the trial court level.*
- *If the applicant could have proceeded to trial but instead pursued unnecessary interim applications or appeals, the court may dismiss the application for leave on discretionary grounds.*

[27] Public interest in avoiding interlocutory appeals

- *Courts discourage piecemeal litigation, preferring that cases proceed to final determination unless exceptional circumstances justify interlocutory appeals.*
- *The interests of justice require that litigation be resolved efficiently, and allowing appeals from interlocutory orders when the applicant has delayed the proceedings contradicts this goal.*

[28] The High Court of Australia in **Clements v Ellis** (1934) 51 CLR 217 emphasized that appellate courts should not encourage delays in proceedings through unnecessary interlocutory appeals. In **Lenah Game Meats Pty Ltd v Australian Broadcasting Corporation** (2001) 208 CLR 199, the court refused an appeal partly because the applicant could have obtained final relief at trial rather than seeking multiple interim orders. **Australian Broadcasting Corporation v O'Neill** (2006) 227 CLR 57 reaffirmed that appellate courts must exercise caution in granting leave to appeal against interlocutory orders, especially when the applicant has contributed to delaying final relief.

[29] Since the impugned decision on 19 October 2023, the appellant had entered an interlocutory judgment against the respondent which had been sealed on 17 June 2024 and served on the respondent on 24 June 2024. The appellant has not taken the next step of assessment of damages by court thereafter. The respondent contends that the interlocutory judgment has been wrongly entered and he will challenge it at the appropriate time. Contrary to the appellant's position that the matter has gone *ex parte* due to the failure of the respondent to file a statement of defence, the impugned decision shows that in fact a

statement of defence had been filed. The appellant submits that the respondent has failed to file an amended statement of defence to its amended statement of claim. Be that as it may, I think that appellant has not acted with reasonable diligence in prosecuting the matter at the trial court resulting in an unexplained delay. There is no stay of proceedings granted by this court. This is also another reason, in my view, why the appellant's leave to appeal application cannot succeed.

[30] Refusing leave would not lead to an injustice that cannot be remedied later in the proceedings. The appellant could still obtain effective reliefs after the main trial, if it successfully prosecutes the case in the High Court. No substantial injustice has been done by the interlocutory decision. Overall, it is not in the interest of justice to grant leave at this stage which will further hamper the High Court proceedings. Arguably, even if leave to appeal the interlocutory decision is granted, it will take a considerable time for the appeal to be heard by the Full Court, the result of which may well be sending the matter back to the trial court for final determination without any adjudication of the interim injunction application for good reasons. Thus, considering the law as I highlighted and the facts placed before me, I am not inclined to grant leave to appeal the impugned interlocutory decision. Nor am I willing to stay the cost of $1000.00 ordered by the High Court.

Orders of the Court:

(1) Leave to appeal the decision made on 19 October 2023 is refused.
(2) Application to stay the order for the payment of $1000.00 is refused.
(3) High Court is directed to expeditiously hear and deliver final judgment in this matter and both parties are directed to take all necessary steps with due diligence and corporate with the High Court in that endeavor.
(4) Appellant to pay cost of $2000.00 to the respondent within 21 days of this Ruling.

COURT OF APPEAL FIJI

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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Jackson Bale Lawyers for the Appellant
Toganivalu Legal for the Respondent