

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

CIVIL APPEAL NO. ABU 0004 OF 2023
[Lautoka Civil Action No. HBJ 006 of 2020]

BETWEEN : 1. **DAVID CONRAD PETERSON**
1st Appellant

2. **RUTH ANNE PETERSON**
2nd Appellant

AND : 1. **DIRECTOR OF THE DEPARTMENT
OF TOWN AND COUNTRY
PLANNING**
1st Respondent

: 2. **CHRISTINE BADIA NKANKA aka
CHRISTINE SILVIE BADIA**
2nd Respondent

Coram : Prematilaka, RJA
Qetaki, RJA
Morgan, JA

Counsel : Mr. R. P Singh and Ms. A. Swamy for the Appellants
: Mr. J. Mainavolau for the 1st Respondent
: Mr. D. Patel for the 2nd Respondent

Date of Hearing : 10 November, 2025
Date of Judgment : 28 November, 2025

RULING
(Notice of Motion to Vacate Hearing Date)

Prematilaka, RJA

[1] I concur with Morgan, JA.

Oetaki, RJA

[2] I agree with Morgan, JA.

Morgan, JA

[3] This matter was set down to be heard on the 10th November 2025 at 9:30am.

[4] In this appeal the Appellants by Notice and Grounds of Appeal filed on the 10th February 2023 have appealed against a Ruling of the High Court at Lautoka delivered on the 18 January 2023 refusing an application by the Appellants for Judicial Review of a decision (“the decision”) of the Director of Town and Country Planning (“DTCP”) dated the 28th September, 2020 and seeking orders for Certiorari to remove and quash that decision, an order of Mandamus directing the DTCP to restrain the construction of a building and a declaration that a rezoning decision was wrong, damages and costs.

[5] By a Notice of Motion to Vacate the Hearing Date filed in the Court of Appeal Registry on the 30th October, 2025 the Second Respondent sought the following orders:

- 1.) The allocated hearing date of 10th November 2025 be vacated and a fresh hearing date and time be allocated in lieu of the same;
- 2.) The time for hearing of this application be abridged;
- 3.) The Second Respondent be allowed/given 21 days to file and serve their submissions;
- 4.) The Costs of the application be in the cause;
- 5.) Such further and/or other orders as deemed necessary by the Honourable Court.

- [6] The Motion was made pursuant to Rules 20(1)(j) and 21(3)(a) of the Court of Appeal Rules and the inherent jurisdiction of the Court.
- [7] The motion was supported by an affidavit of one Wayne Downs (“Downs”) on behalf of the Second Respondent filed the same day as the motion.
- [8] The Appellants filed an affidavit in opposition to the motion on the 4th November 2025 and Downs filed an Affidavit in Reply on behalf of the Second Respondent on the 4th November 2025.
- [9] The First Respondent filed two affidavits on the 3rd and 5th November 2025 which averred that the First Respondent had no objection to the Second Respondent’s application to vacate the hearing date.
- [10] The Affidavits of Downs in essence averred that Ms. Adrienne Ali, Counsel for the Second Respondent who had gone to England in September 2025 to visit and care for her mother was unexpectedly detained in London. She had intended to return for the hearing but due to the deteriorating condition of her mother’s health had to defer her return to Fiji until a full time carer has been engaged.
- [11] Copies of an electronic ticket receipt and a letter from a health centre in London were annexed to the Affidavit to confirm the intention to return and the Second Respondent’s Counsel’s mother’s health condition.
- [12] The Affidavit further averred that the Second Respondent’s Counsel was a sole practitioner in carriage of all the Second Respondent’s legal matters and could not be substituted due to her in depth knowledge of the history of the matter and the law.
- [13] It was also contended that there was no urgency in the matter as the building the Appellant had sought to restrain construction of in the Order for Mandamus had been completed three years ago.
- [14] The Appellants in their Affidavits in Opposition and at the hearing of the Motion opposed the application for an adjournment and asked for costs. In essence, the First Appellant contended that he was aged and required the matter to be heard. That he

was unaware of the Second Respondent's Counsel's mother's health condition but she had time to file her submissions and to make alternative arrangements with another Solicitor to conduct the hearing or could have made an application to conduct the hearing via Zoom or Skype.

[15] The Motion was heard on the 10th November, 2025 and after hearing all parties fully, this Court decided in the circumstances to grant a short adjournment and made the following interim orders with formal orders, including orders as to costs and any other matter deemed necessary, to be delivered on notice to all parties:-

1. The Hearing is re-fixed for the 3rd February 2026 at 9:30am.
2. The Second Respondent to file and serve its written submissions on or before the 9th January 2026.
3. The Appellants are to file and serve their Submissions in Reply on or before the 23rd January 2026.
4. The Respondents are to file any reply to the Appellants' Submissions in Reply by the 30th January 2026.

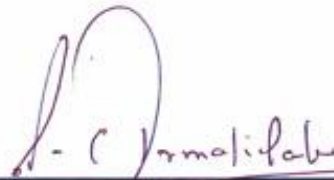
The Court now makes the following formal orders:-

Orders of the Court


1. *The Hearing is re-fixed for the 3rd February 2026 at 9:30am.*
2. *The Second Respondent to file and serve its written submissions on or before the 9th January 2026.*
3. *The Appellants are to file and serve their Submissions in Reply on or before the 23rd January 2026.*
4. *The Respondents are to file any reply to the Appellants' Submissions in Reply by the 30th January 2026.*

5. *The Second Respondent is to pay the Appellants costs of this motion fixed at \$4,500.00 within 21 days of this Ruling.*





Hon. Mr. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL



Hon. Mr. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL



Hon. Mr. Justice Walton Morgan
JUSTICE OF APPEAL

Solicitors

Patel & Sharma, Nadi for the Appellants
AG's Chamber for the 1st Respondent
Interalia Consultancy for the 2nd Respondent