

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

CIVIL APPEAL NO. ABU 004 of 2023
[In the Lautoka High Court Judicial Review No. HBJ 06 of 2020]

BETWEEN : **DAVID CONRAD PETERSON** and **RUTH ANNE PETERSON**
as a Trustees of the David Conrad Peterson and Ruth Anne Peterson
Trust, both of Maui Bay Estates, Baravi, Korolevu.

Appellant

AND : **DIRECTOR OF THE DEPARTMENT OF TOWN AND**
COUNTRY PLANNING Ministry of Local Government, having
its registered office in 1st Floor, Fiji Football Association House, 4
Gladstone Road, Government Buildings, Suva, Republic of Fiji.

1st Respondent

CHRISTINE BADIA NKANKA aka CHRISTINE SILVIE
BADIA of Maui Bay Estate, Baravi, Korolevu.

2nd Respondent

Coram : **Prematilaka, RJA**

Counsel : **Mr. R. P. Singh and Ms. A. Swamy for the Appellant**
Mr. J. Mainavolau for the 01st Respondent
Mr. D. Patel for the 02nd Respondent

Date of Summons : **26 November 2025**

Date of Ruling : **09 December 2025**

RULING IN CHAMBERS

[1] Craig and Evette De La Mare ('Craig and Evette') have filed summons on 26 November 2025 for leave to intervene as an interested party in the appeal ostensibly for the purpose of making submissions on the legal issues concerning:

- a. *the interpretation and legal effect of the Specific Development Guidelines for Maui Bay (SDGM);*
- b. *the scope and limits of the Director of Town & Country Planning's discretion under section 7 (4) of the Town Planning Act;*
- c. *the procedural duties, duties of consultation and notification applying to rezoning and development application approvals within Maui Bay Estates as per the Town Planning Act and General Provisions.*
- d. *the status and operation of the Maui Bay Subdivisional Scheme Plan (SLB 7613) as it applies to all lots in the estate.*

[2] Craig and Evette have also sought leave to file written submissions and make oral submissions at the hearing of the appeal '*limited to the overlapping issues between this appeal and the Applicants' pending Judicial Review (HBJ 03 of 2021; State v Director of Town & Country Planning, Ex parte Craig & Evette De La Mare)*'.

[3] Craig and Evette are supposedly the applicants in the said Judicial Review matter pending in the High Court challenging the rezoning and development approvals granted by the Director of Town & Country Planning in Maui Bay Estates, Baravi in favour of the 02nd respondent in the appeal. They state that many of the issues in HBJ 03 of 2021 are materially identical to the issues in the appeal. According to Craig and Evette, the High Court has formally stayed their Judicial Review application pending the outcome of this appeal and as a result they are unable to advance their application until this appeal is decided.

[4] Craig and Evette also state in the summons that the decision of this appeal will directly affect them in as much as their case in the High Court turns on the same facts, law, planning frame work, guidelines and the same zoning history as the appellants in this appeal and therefore they have a direct personal, proprietary, and legal interest in the appeal. Craig and Evette submit that since the decision of the appeal will be binding on the outcome of

the Judicial Review application, if they are not heard with regard to the outcome of this appeal, their application in the High Court is likely to be dismissed without them being heard. Therefore, they urge that in the interest of justice and in compliance with rules of natural justice, and to prevent prejudice, they must be allowed to assist this court on shared legal questions without expanding the scope of the appeal and introducing factual disputes.

[5] They seek the intervention by virtue of Rules 22(1)-(5), 26(1)-(3), and 6 of the Court of Appeal Rules and Order 15 Rule 6(2)(b)(i)-(iii) of the High Court Rules 1998.

[6] The Court of Appeal held in **Sun Insurance Co Ltd v Lata**¹ that though there is no specific provision in the Court of Appeal Act (Cap 12) regarding addition of parties, section 13 provides that the Court of Appeal has the same powers as the High Court in such matters.

[7] Order 15 Rule 6(2) of the High Court Rules 1988 provides that a party may be added at any stage of the proceedings, the relevant provision for the current application being:

*“(2) Subject to the provisions of this rule, at any stage of the proceedings in any case or matter the Court **may on such terms as it thinks just** and either of its own motion or on application –*

(a)

(b) Order any of the following persons to be added as a party, namely –

(i) any person who ought to have joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon², or

*(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which **in the opinion of the Court it would be just and convenient to***

¹ [2018] FJCA 48; ABU11.2016 (7 May 2018)

² Courts have a responsibility to limit proceedings to those directly involved in a dispute rather than expanding proceedings to third parties who may be consequentially affected and this rule should be used sparingly (vide **Urai v Public Employees Union** [2008] FJCA 166; ABU0096.2006 (18 July 2008))

determine as between him and that party as well as between the parties to the cause or matter³.”

[12] Order 15 Rule 6(3) set out the nature of the application that has to be made for addition as a party and provides thus:

*“An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute or, as the case may be, **the question or issue to be determined as between him and any party to the cause or matter.**”*

[8] Commenting on re Securities Insurance Company⁴ the Court of Appeal said in *Sun Insurance Co Ltd* that:

*‘In support of its application for addition as a party, the Applicant..... relies on the comments made by Kay L.J to the effect that a party could be allowed to appeal against an order where he was aggrieved even though he was not a party on the record with leave of court. **This is a general proposition and the addition of a party would depend on the particular circumstances of each and every case.....**’*

[9] In Bubble Up Investments Ltd v. National MBF Finance Ltd⁵ where Rule 6 of the Court of Appeal Rules and Order 15 Rule 6 of the High Court Rules had been considered, Bank of Baroda’s application to be added as a party to participate in the appeal was allowed though the Bank was not a party to the proceedings because its securities were affected by the judgment in the case.

[10] The Supreme Court affirming the Court of Appeal decision in *Sun Insurance Co Ltd*, said in *Sun Insurance Co Ltd v Lata*⁶:

33.Order 15 rule 6(2) clearly enables an applicant, not party to the proceedings, whether at the first instance or on appeal, to apply to those courts to be added as a party:

³ The court has power to add a party between whom and one of the parties to the action there is an issue [vide Bubble Up Investments Ltd v National MBF Finance Ltd [1999] FJCA 38; Abu0021d.98s (5 August 1999)]

⁴ [1894] 2 Ch 410

⁵ [19990 FJCA 38; ABU0021d.98S (5 August 1999)

⁶ [2019] FJSC 21; CBV0006.2018 (30 August 2019)

- a. *Where the applicant ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause of matter may be effectually and completely determined and adjudicated upon;*
 - b. *Where as between the applicant and any party to the cause of action there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the court would be just and convenient to determine between him and that party as well as between the parties to the cause or matter.*
34. *The words used in this sub-rule are wide and it enables an applicant, who can establish **that the question or issue between one of the parties and the applicant is linked factually or otherwise to the relief or remedy claimed in the cause or matter**, to join as a defendant or third party or as an intervener in the proceedings. **Additionally, it must be just and/or convenient and/or necessary to add the applicant as a party and the residual discretion whether to do so or not is with the court.** Further, from the opening words of Order 15 Rules 6(2), it is clear the court may impose such terms as it thinks just.*

[11] From several decided cases⁷ and the legal position in other Commonwealth countries⁸ cited by the Supreme Court, further guidance as follows could be obtained:

1. *Wherever a court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the court shall have power to bring all the parties before it, and determine the rights of all in one proceeding - Order 15 rule 6(2)(b)(i).*
2. *Will [the applicant's] rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any judgment which may eventually be made in this case?*
3. *Were any matters of considerable public importance in issue in the proceedings below and in respect of which did the appellant have a strong interest?*
4. *The right to intervene and be added as a party exists where the proprietary or pecuniary rights of the intervener are directly affected by the proceedings or where the intervener may be rendered liable to satisfy any judgment either directly or indirectly.*

⁷ **Bubble Up investments Ltd v National MBF Finance Ltd** [1999] FJCA 38 ABU 0021d.98s (5 August 1999); **Waiqele Sawmill Ltd v Mateo Sauma** [2003] HBC 34/02, Decision 13 February 2003; **Fiji Development Bank v New India Assurance Company Limited** [2007] HBC 299/03S; **Fiji Medical Association v Ramon Fermin Angco & Fiji Medical Council** [1997] ABU 0041/97S, 7 November 1997,

⁸ Singapore White Book, (Singapore Civil Procedures 2018 Vol 1, (Sweet & Maxwell, 2018) at para. 15/6/13; **Gurtner v Circuit** [1968] 2 All E.R. 328 CA (Eng)

[12] Under Order 15 rule 6(2)(b)(i) and (ii) addition of a party is at the discretion of court. I do not think that the application to be added by Craig and Evette falls under 15 rule 6(2)(b)(i) in as much their presence in this appeal is not necessary to ensure that all matters in dispute may be effectually and completely determined and adjudicated upon. Their application has to be considered under Order 15 rule 6(2)(b)(ii) *i.e.* whether (i) the issue between one of the existing parties and them is linked factually or otherwise to the relief or remedy claimed by the appellant in appeal and (ii) whether it is just and/or convenient and/or necessary to add them as a party and (iii) whether the residual discretion with this court should be exercised in favour of them.

[13] Craig and Evette have stated in their summons that the legal issue (and perhaps the factual issue as well) raised by the appellant in this appeal is the same as they have currently before the High Court.

[14] However, is it just and/or convenient and/or necessary to add them as a party? The appellant's judicial review application HBJ 06 of 2020 was heard on 22 March 2022 and the impugned Ruling was delivered on 18 January 2023⁹. The judicial review application by Craig and Evette had been filed after HBJ 06 of 2020 was filed but before the Ruling was delivered as shown by the number HBJ 03 of 2021. When the High Court judge refers to 'other judicial review applications' he may have contemplated HBA 03 of 2021 as well if it was also before him. Thus, it is reasonable to assume that Craig and Evette was aware of the outcome in HBJ 06 of 2020 and the consequent appeal by the appellant since January 2023. However, Craig and Evette did not make an application to intervene in the appeal until 26 November 2025. No explanation has been given for the extraordinary delay which alone is sufficient to negate the discretion of this court to allow them to participate in the current appellate proceedings. With the impending court vacation, the parties to the appeal will have little time to respond to the summons by Craig and Evette and for this court to make an order without affecting the hearing on 03 February 2026.

⁹ **State v Director of the Department of Town and Country Planning; Ex parte Peterson** [2023] FJHC 2; HBJ06.2020 (18 January 2023)

- [15] The notice of appeal has been filed on 10 February 2023 and the appeal has taken its usual course through several legal and procedural steps culminating in the appeal being fixed for hearing on 10 November 2025. In between, there has been a successful application by the appellant to have the security for costs varied and a pending application to lead fresh evidence pending before the Full Court by the appellant.
- [16] However, unfortunately the hearing of the appeal had to be vacated due to personal and unavoidable reasons on the part of the counsel for the 02nd respondent subject to costs; the appeal now stands fixed for hearing for 03 February 2026 as directed on 10 November 2025. The re-fixing of the appeal was supplemented by orders for the 02nd respondent's written submissions by 09 January 2026 followed by the appellant's written submissions in reply by 23 January 2026 and respondents' written submissions in reply to the appellant's reply submissions by 30 January 2026. If the appeal had been taken up for hearing on 11 November 2025, Craig and Evette would not have been able to make any application for intervention as the judgment of this court would have been delivered on 28 November 2025. Their current application to intervene clearly seems an afterthought.
- [17] The appellants have already filed fairly comprehensive written submissions on 23 April 2024 followed by 01st respondent's written submissions on 13 June 2024 and reply written submissions by the appellant on 08 August 2024. These submissions have sufficiently covered the legal issues identified by Craig and Evette from paragraph 01(a)-(d) of their motion. The written submissions which are yet to be filed as directed on 11 November 2025 is likely to deal with any areas not addressed or adequately addressed in submissions already filed by the appellant and 01st respondent. Further, the 02nd respondent's written submissions yet to be filed will shed more light on these issues.
- [18] Therefore, I do not consider it just and/or convenient nor is it necessary to add Craig and Evette as an intervenient party to the appeal at this late stage.
- [19] Regarding the third question on the discretion of this court, I am not inclined to exercise the court's discretion in favour of the application by Craig and Evette given all the circumstances enumerated above.

- [20] If I may, I shall also refer to other relevant principles governing intervention by a non-party on appeal. First thing to say is that this kind of intervention is granted is exceptionally. Appellate courts are reluctant to admit parties who did not participate below.
- [21] There is no “real and substantial stake”¹⁰- an “interest that may be affected by the outcome”- shown by Craig and Evette in the outcome of the appeal. An interest is “direct” where the outcome of the appeal may practically affect the rights, obligations, or legal position of the applicant. Craig and Evette do not have a direct stake in the outcome of this appeal which they have in HBJ 03 of 2021.
- [22] Their submissions will not distinctly¹¹ or materially assist¹² the appellate court in resolving any legal issue of public or systemic importance¹³ (for example constitutional, administrative, media freedom, electoral disputes) - where it promotes substantive justice. The parties to the appeal either have already addressed the same issues identified by Craig and Evette or is likely to do so as directed by this court.
- [23] Therefore, I cannot consider Craig and Evette to be added as a party as formal intervener (full party-like status) which is rare *or* amicus curiae– limited submissions on law only *or* interested party as the law and procedure do not expressly provide for addition of interested parties.
- [24] Therefore, the application to intervene is refused. Craig and Evette have not demonstrated a direct and legitimate interest in the appeal or that they would be directly affected by the outcome of this appeal, nor would their submissions materially add anything substantial to assist the court. Issues of public importance involved in this appeal, if any, are already before court and well-canvassed by the existing parties to the appeal. Intervention at this appellate stage would risk fairness and prejudice to the parties¹⁴. Finality and preserving

¹⁰ **Attorney-General of The Gambia v N’Jie** [1961] AC 617; **Brewer v Commonwealth Bank of Australia** (2009) 239 CLR 144; **Q v Chief Executive of the Ministry of Social Development** [2022] NZSC – interest must be adequate and identifiable

¹¹ **Takamore v Clarke** [2012] NZSC 116

¹² **R v Oickle** [2000] 2 SCR 3

¹³ **R v Secretary of State for the Home Department, ex p Salem** [1999] 1 AC 450

¹⁴ **Re E (A Child)** [2008] UKHL 66


proper appellate function would also not permit an intervention by Craig and Evette at this stage.

[25] In summary, Craig and Evette have not satisfied the legal thresholds for addition as a party to the appeal in terms of Order 15 Rule 6(2)(b)(i) or (ii) and the criteria set out by the Supreme Court in *Sun Insurance Co Ltd v Lata* and relevant legal principles.

Orders of the Court:

1. *Summons lodged by Craig and Evette on 26 November 2025 is struck out/dismissed*
2. *No costs.*




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

Solicitors:

Patel & Sharma Lawyers for the Appellant
AG's Chamber for the 1st Respondent
Samuel Ram Lawyers for the 2nd Respondent