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

CIVIL APPEAL NO. ABU 019 of 2022
[Judicial Review No. HBJ 02 of 2021]

BETWEEN : **VERONICA RALOGAIVAU MALANI**

Appellant

AND : **DIRECTOR OF PUBLIC PROSECUTIONS**

1st Respondent

ATTORNEY-GENERAL OF FIJI

2nd Respondent

Coram : **Prematilaka, RJA**

Counsel : **Mr. S. Raikanikoda for the Appellant**
Ms. M. Faktaufon for the Respondents

Date of Hearing : **02 June 2025**

Date of Ruling : **06 June 2025**

RULING

Background facts

[1] On 5 July 2020, the appellant lodged a complaint with the Fiji Police Force against Mr Aiyaz Sayed-Khaiyum ('Attorney-General'), alleging the involvement of the Attorney-General in two separate bombing incidents alleged to have taken place in October 1987. According to the appellant, the complaint against the Attorney-General was for possible

charges of murder, assault causing grievous bodily harm and attempting to injure by explosive substance.

[2] Following investigations of the appellant's complaint, the Fiji Police Force sent the police file to the Office of the Director of Public Prosecutions ('DPP') for assessment of the evidence and a decision on whether any charges should be laid against the Attorney-General. On 7 January 2021, the DPP, through a press release, published his decision stating that no charges would be laid against the Attorney-General and no further action would be required.

Application for judicial review

[3] On 07 April 2021, the appellant filed her application in the High Court for leave to apply for judicial review (JR) of the DPP's decision. On 03 September 2021, the appellant's application for leave to apply for JR was heard, and on 10 September 2021, the High Court, *inter alia*, dismissed and struck out the appellant's application for leave to apply for JR[1]. The appellant was also ordered to pay costs of $5,000 to the respondents.

[4] On 30 September 2021, the appellant filed a summons for leave to appeal the decision refusing leave to apply for JR. The High Court then dismissed the appellant's application for leave to appeal on 03 March 2022[2].

Appellant's application to the Court of Appeal

[5] The appellant has on 23 March 2022 filed in the Court of Appeal a Summons for leave to appeal the decision refusing leave to apply for JR.

[1] **Malani v Director of Public Prosecutions** [2021] FJHC 235; HBJ02.2021 (10 September 2021)
[2] **Malani v Director of Public Prosecutions** [2022] FJHC 79; HBJ02.2021 (3 March 2022)

Threshold for leave to appeal on interlocutory orders

[6] 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.[3] 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.[4] 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.[5]

[7] To grant or refuse leave is a discretionary matter in each case and *"may be reviewed if it is clear that it has been exercised on a wrong principle, or a conclusion has been reached which would work a manifest injustice"*[6]. The appellate courts will not interfere with discretionary decisions unless there is an error of principle, irrelevant considerations, or an unreasonable result.[7] The appellate courts should be cautious in disturbing the primary judge's discretion unless there is a clear error.[8] 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

[3] **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 **Shankar v FNPF Investments Limited and Venture Capital Partners (Fiji) Limited** [2017] FJCA 26; ABU32.2016 (24 February 2017); **Parshotam Lawyers v Dilip Kumar (trading as Bianco Textiles)** [2019] FJCA 176; ABU13.2019 (25 September 2019)

[4] Per Sir Moti Tikaram, President Fiji Court of Appeal in **Totis Inc. Sport (FlJI) Ltd & Another v John Leonard Clark & Another** FCA No. 35 of 1996

[5] **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.

[6] **G.L. Baker Ltd v Medway Building Supplies Ltd** 1958 1 W.L.R. 1216

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

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

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 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.[9]

[8] 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. However, if prima facie the intended appeal is patently unmeritorious or there are clearly no arguable points requiring decision then it would be proper to take these matters into consideration before deciding whether to grant leave or not[10]. 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 analyze whether the proposed grounds of appeal will succeed, but merely there is a real prospect of success.[11] If the issue is one which the court considered should in the public interest be examined by the Court of Appeal or that it raised an issue, where the law required clarifying[12] leave to appeal may be granted.

[9] In order to consider whether the appellant's appeal has a realistic or real prospect of appeal, I need to consider the impugned Ruling refusing leave to apply for JR in the light of the grounds of appeal raised by the appellant and not in isolation.

[10] The two grounds of appeal set out in the summons are as follows:

> "*1. The Learned Judge erred in law and in fact in dismissing and striking out the Appellant's Application for Leave to Apply for Judicial review of the Director of Public Prosecution's dated 7th January 2021.*

[9] **Tidswell v Tidswell** (No.2) [1958] Vic Rp 95; [1958] VR 601 (6 August 1958) per Herring, CJ
[10] **The Public Service Commission v Manunivavalagi Dalituicama Korovulavula (**unreported) Civil Appeal No. 117 of 1989 (23 June 1989)
[11] **Kelton Investments Ltd** (supra); **Swain v Hillman** (2001|1 All ER 91 & **Tanfern Ltd v Cameron-MacDonald** [2000] 1 WLR 1311 (EWCA Civ 3023)
[12] **Mataitini v Director of Lands** [2001] FijiLawRp 81; [2001] 2 FLR 339 (18 September 2001)

2. *The Learned Judge erred in law and in fact in ordering costs in the sum of $5,000*."

Could this court possibly assess the prospect of the appeal?

[11] The precision of grounds of appeal in an application for leave to appeal is a fundamental requirement in appellate procedure. Courts across Commonwealth jurisdictions have consistently emphasized that grounds of appeal must demonstrate merit, be clearly articulated, concise, and sufficiently specific, identifying precisely the alleged errors of law, fact, or mixed fact and law**.** Vague or generalized complaints (e.g., 'the judge was wrong') are insufficient and such overly broad grounds are generally disfavored, as they hinder the efficient administration of justice and do not assist the appellate courts in identifying the realistic prospect of success of an appeal.

[12] The purpose of requiring precise grounds of appeal is:

1. *To inform the appellate court of the exact nature of the challenge.*
2. *To allow the respondent to know the case to meet.*
3. *To enable the court to assess whether there is a realistic case warranting leave.*

[13] The court will not sift through voluminous submissions to find a possible ground. Grounds that are too general or merely assert that the decision is 'wrong' are inadequate. Grounds of appeal must not merely restate the relief sought or make vague complaints; they must isolate the legal or factual issues. Grounds should be 'succinct and focused' and not contain argumentative or discursive material. The precision of grounds avoids confusion between the grounds and the arguments in support of those grounds. A ground must point to a recognisable legal or factual error. A general complaint that the trial was 'unfair' without more detail will not suffice. The appellate function is not to retry cases, but to review for material legal error, which must be identified specifically in the grounds. Grounds alleging the trial judge 'misdirected himself' without reference to how or where would be rejected and grounds must identify the alleged misdirection and its effect. Grounds must disclose

a triable question**,** not merely express dissatisfaction with the outcome. Grounds should not be prolix, must be legally intelligible, and set out the precise error of law, fact, or principle.

[14] Consequences of imprecise grounds may be the refusal of leave to appeal, result in strike-out of the appeal and prejudice the appellant's case, as appellate courts are reluctant to allow amendments or new grounds unless exceptional circumstances exist**.**

[15] Precision in grounds of appeal is not a mere technical requirement; it is central to the integrity of the appellate process. Grounds must be clear, focused, and refer to specific errors in the judgment under appeal. Courts across the Commonwealth have made it clear that imprecise, vague, or overly general grounds undermine judicial economy and are unlikely to succeed.

The appellant's grounds of appeal

[16] The two grounds raise by the appellant do not satisfy the precision requirements discussed above. While they may not be wholly defective, they are too vague and lack sufficient specificity to meet the standard required by appellate courts.

01st ground of appeal

[17] As far as the 01st ground of appeal is concerned, all what it does is to identify the decision under appeal (i.e. the dismissal of the leave to apply for JR) and subject matter (judicial review of the DPP's decision). However, crucially it fails to identify the legal or factual errors made by the judge; what was the specific error in law or fact? Was it a misapplication of the judicial review threshold? A failure to consider relevant factors? A misreading of the facts? Further, it is too broad—just stating the judge erred in both law and fact is conclusory**,** not explanatory. An example of a properly framed ground of appeal (not connected to the matter at hand) could be as follows:

> *"The Learned Judge erred in law by applying the wrong legal test for leave to apply for judicial review, namely by requiring the appellant to demonstrate a prima facie*

> *case on the merits, rather than whether arguable grounds exist with a realistic prospect of success and whether any discretionary bars, such as delay, and existence of an alternative remedy exist as established in Sharma v Brown-Antoine [2007] 1 WLR 780; (2006) 69 WIR 379."*

[18] The appellant's counsel did not make any oral submissions but relied on the written submissions which is replete with factual scenarios not borne out by her affidavit in support. Then, it proceeds to examine under 13 headings reasons for judicial review. Thereafter, the written submissions have dealt with several paragraphs of the respondent's written submissions. With regard to the main argument of the respondent that absence or inadequate grounds of appeal should lead to the refusal of leave to appeal with costs, the written submissions at page 9 states:

> *'The appellant has clearly articulated the grounds for appeal in the initial application, which include [briefly list the grounds for appeal, e.g. procedural errors, misapplication of law, etc.]. These grounds are sufficient to warrant the consideration of this Honourable Court.'*

[19] However, eight so-called 'grounds of appeal' set out thereafter are not part of the proposed grounds of appeal. In any event, the matters raised therein are of general nature and not connected or referable to the impugned ruling dated 10 September 2021. None of them demonstrate how and where the High Court erred in law or fact with regard to those propositions. That is all what the written submissions contain regarding the appellant's case and the rest of the submissions deal with some paragraphs of the respondent's written submissions.

[20] Written submissions is not the place and time to raise grounds of appeal. Written submissions cannot substitute for proper grounds of appeal. There was no application to file amended grounds of appeal either. Written submissions cannot cure defective or vague grounds of appeal. The two are complementary but distinct. A statement of grounds that simply states the appeal is 'against conviction' or 'against sentence' or that the judge 'erred in law and in fact' is insufficient without further particularity. Such clarity cannot be left to the submissions. Written submissions can be long and discursive—unsuitable for quick reference (judicial economy).

[21] Written submissions are a structured legal argument in support of the grounds of appeal. They (i) elaborate on the grounds by presenting the appellant's legal reasoning (ii) cite authorities, such as case law and statutes (iii) apply legal principles to the facts of the case (iv) anticipate and respond to potential arguments by the respondent. One may think of written submissions as the 'argument' part of the appeal, whereas grounds of appeal are the 'issues to be argued'. Grounds must be listed and cannot merely be embedded in narrative arguments. Submissions without clear grounds risk inviting the court to guess what is actually being appealed. Grounds help the court quickly identify the alleged errors (judicial economy).

[22] On the other hand, grounds of appeal are succinct statements identifying the specific errors allegedly made by the lower court. Each ground should (i) be concise and numbered (ii) identify whether the error is of law, fact, or mixed law and fact (iii) clearly state what the error was and in relation to which part of the decision. Grounds define the scope of the appeal and submissions develop the argument for each ground. An example of a sound ground of appeal is:

> *'The Learned Judge erred in law by applying the wrong test for procedural fairness in dismissing the applicant's claim, contrary to the principles in Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147.'*

[23] Written submissions cannot substitute for proper grounds of appeal. Grounds of appeal must be clearly and separately stated. Written submissions must be based only on those grounds—not invent new ones. If the grounds are defective, the court may refuse leave to appeal or strike out the appeal, regardless of how strong the submissions are.

02nd ground of appeal

[24] As for the 02nd ground of appeal, it identifies the costs order, which is a discrete component of the judgment but totally fails to say why the costs order was wrong; was the amount excessive? Was there an error in applying principles of discretion? Should costs have

followed the event differently? Hypothetically, an example of a proper ground of appeal for consideration by this court on costs may be as follows:

> *"The Learned Judge erred in law by failing to consider the appellant's limited financial means and the public interest nature of the application in awarding costs against the appellant, contrary to the principles in R v Lord Chancellor ex parte Child Poverty Action Group [1999] 1 WLR 347;[1998] EWCA Civ J0206-4."*

[25] The current grounds raised by the appellant are inadequate because they:

- *Lack specificity about the alleged errors;*
- *Fail to identify any legal principles or factual misapprehensions;*
- *Do not assist the appellate court in understanding why the appeal has a realistic prospect of success.*

[26] The written submissions of the appellant or the respondents do not elaborate at all anything on the second ground of appeal on costs order. On instructions from his client, Mr. Raikanikoda informed at the hearing that the respondents had agreed not to insist on the appellant paying the costs which has not been paid to date and the respondent's counsel had written to her regarding the same. The insinuation was that the costs need not be paid at all. Ms. Faktaufon agreed that she had written to the appellant but only to the effect that if the appellant were to withdraw her appeal proceedings, the respondents would waive off the costs. Apparently, there had been some discussions about a withdrawal of the matter before this court earlier. Neither party had a copy of the said letter. Mr. Raikanikoda wanted court's permission to submit a copy to the Registry and Ms. Faktaufon had no objection to that. The court granted leave for Mr. Raikanikoda to do so and specifically told him that only that letter, if available, and no other material should be forwarded to the Registry.

[27] However, instead of Mr. Raikanikoda, the appellant in person has sent an email at 12.02 pm on 05 June 2025 under the subject *'Offer of $5,000 Court Cost Withdrawal & For Veronica Malani To Withdraw The Case [ABU 019/22 Veronica Ralogaivau Malani -v- Director of Public Prosecution & AG]'* attaching a letter written by her then lawyer Mr. John M Rabuku dated 25 August 2023 to the then Attorney-General Mr. Siromi Turaga proposing that the A.G may waive off the costs of $5000 and then to engage in negotiations

on the withdrawal of the 'appeal' (which really is summons for leave to appeal) subject to a joint announcement by the A.G and the Fiji Police Force to the effect that the investigation against then A-G Mr. Aiyaz Syed Khaiyum will be reopened.

[28] Despite the clear directive by this court that Mr. Raikanikoda should only submit the letter allegedly written by A-G or on his behalf to the appellant, the appellant without submitting that letter (but submitting another letter) has sent this email (which is self-explanatory and perhaps, the motive behind it is reasonably obvious) to the Registry copying it to several others. I reproduce it below:

> *'Sa Yadra.*
>
> *I am informed that the judgment by notice of the above case is now scheduled for tomorrow - Friday at the Fiji Court of Appeal, Veiuto Complex at 9.30am.*
>
> *The Judge has requested for the formal letter and I just found from my past records of the letter of our former solicitor John Rabuku to formalise after their meeting [between our former solicitor - Rabuku/AG Siromi] of* ***AG - Siromi's offer for the withdrawal of the $5,000 court cost, but my condition was never met for Khaiyum to be interviewed and arrested by Police before we withdraw the case.***
>
> *Therefore, I now forward the same to Silimaibau- the Clerk for the information of the Judge of the Fiji Court of Appeal.*
>
> ***Khaiyum was never interviewed and arrested so I did not withdraw the case as my condition was never met.***
>
> *I am also cc-ing the CJ, Acting AG and former lawyer - Siromi Turaga, my former lawyer and Current DPP - John Rabuku for their information.*
>
> *I am also forwarding this information to my ICJ, ICC and UNOCHR as well as our fellow local UN registered- Human Rights Defenders - Jale Cavu and Damiano Logaivau, etc. for their heads up.*
>
> ***We are still waiting for the Fiji Government endorsement to escalate and raise my concern with the ICJ.***
>
> *Vinaka.*
> ***Veronica Malani.****'*

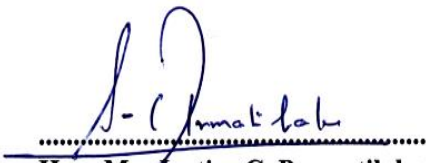
[29] This conduct of the appellant is highly unwarranted, highhanded, and impermissible and amounts to an undue interference with the judicial process. However, the appellant's conduct or the contents of the email will have no effect at all on the decision this court is to make in this matter which will be solely based on the matters discussed above.

[30] Therefore, based on the reasons given above and the principles of law discussed, I am of the view that the appellant's grounds of appeal do not have a realistic prospect of success in appeal nor do they raise any matters of public interests or importance. Neither do they relate to any novel legal issues. Therefore, this is not a fit case to grant leave to appeal the Ruling dated 10 September 2021 on either of the grounds of appeal.

[31] The respondents have urged this court to dismiss the appellant's summons with costs. However, I take into account the fact that raising proper grounds of appeal was a matter for the appellant's lawyers to do. They have simply failed her in that endeavor. The appellant being a laywoman cannot be expected to supervise their professional work and therefore, she should not be penalized for her lawyers' fault. Therefore, I do not think it reasonable to cast the appellant in costs in respect of the proceedings before this court.

Orders of the Court:

1. Leave to appeal the High Court Ruling dated 10 September 2021 is refused.
2. Summons for leave to appeal the High Court Ruling dated 10 September 2021 is dismissed.
3. No costs is ordered against the appellant.



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

Solicitors:

Raikanikoda & Associates Lawyers for the Appellant
AG's Chamber for the 1st and 2nd Respondents