

In the High Court of Fiji at Suva
Civil Jurisdiction
Judicial Review No. HBJ 03 of 2016
The State
v
The Director of Town & Country Planning
Respondent
Ex parte Edward Charles Woodward
Applicant

COUNSEL: Ms M. Chan for the applicant
Ms S Taukei with Mr V.Chauhan for the respondent
Date of hearing: 2nd February, 2017
Date of Judgment: 1st June, 2017

RULING

1. This is an application for leave to apply for judicial review out of time, a decision of the respondent declining his application to approve a subdivision of CT 5679, on the ground that he does not have any legal right to the land.

The determination

2. Or 53, r4 (1) provides that the Court may refuse to grant leave where there has been undue delay in making an application, *“if in the opinion of the Court, the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration”*.
3. In *Maisamoa v Chief Executive for Health & Ors*, [2008] FJCA 41; ABU 0080 of 2007S the FCA held that one *“of the principal features of judicial review as a remedy is that it must be instituted promptly”*. The FCA added that the court may nevertheless, extend time, if the applicant shows there is good reason for the delay, as for example, if alternative remedies were pursued.

4. The applicant, in his affidavit in support states that on 3rd December,2013, he filed an application for leave to apply for judicial review of the decision of the respondent of 27th August,2013, received on 4th September, 2013.
5. On 29th September,2015, Kumar J dismissed the application for leave on the ground that it was premature, since the applicant's appeal to the Minister of 21st October, 2013, was pending. Kumar J said that he does not consider it unreasonable to await a period of two and a half months for a response from the Minister.
6. The applicant appealed to the Minister of Local Government,Housing Infrastructure and Transport on 21 October, 2015. His solicitor had a meeting with the Minister on 18 January,2016, which was "*not productive*". The affidavit in support concludes stating that the applicant has not received a response to his appeal.
7. In my view, the applicant has shown good reason for his delay. His initial application for leave was filed within time. It was declined on the ground that it was premature. There has been no response to-date to his further appeal.
8. I am satisfied that the applicant meets the requirement of sufficient interest to bring this application. The respondent's refusal to approve a scheme plan affects the applicant.
9. The applicant states that he is the proprietor of a residual balance of CT 5679. His surveyor applied to the respondent for approval of a scheme plan of his residual balance. The Director of Lands approved his redefinition plan, which substantiated that the area between the Naveria-Balagga Road and the sea is a part of the balance CT. The applicant complains that the respondent's decision rejecting the scheme plan deprives him permanently of his balance CT and prevents him from getting it ever rezoned for any useful purpose. JKS Holdings has trespassed by reclamation over part of his balance.

10. The applicant, in his grounds for seeking relief, states that the respondent:

- abused her discretion in failing to publicly notify the scheme, call for hearing of objections under the relevant sections of the Town Planning Act and give a proper reason or reference to the applicable law for her decision.
- erred in law and in fact in basing her decision on irrelevant considerations of two Proclamations of 1996 and 1978, and based her decision on a recommendation of the Director of Lands that the applicant does not own the land and failing to take into account the Land Transfer Act and the Roads Act Schedule, particularly that relating to the Naveria-Balaga Road.
- reached an unreasonable decision .
- acted in breach of natural justice, as he was not given a proper hearing, before depriving him of his entitlement.
- acted contrary to his legitimate expectations.

11. The notice of opposition of the respondents contends that the applicant does not have an arguable case. The respondent acted within her powers in refusing the application to approve a scheme plan.

12. The written submissions of the respondent contends that the applicant seeks reliefs on procedures laid down in the Local Government Act. The application is misconceived, as the stated procedures were not used by the respondent in arriving at the impugned decision. The lodging of a scheme plan falls within the ambit of the Local Government Act. The lodgment of an application for approval of the balance of lands is governed by the Subdivision of Lands Act.

13. The applicant complains that he was not given a proper hearing and the respondent acted contrary to his legitimate expectations.

14. In my view, the applicant has presented an arguable case. The application is allowed.

15. **Orders**

- a. The application for leave to apply for judicial review out of time is allowed.
- b. I make no order as to costs .



A.L.B. Brito-Mutunayagam

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JUDGE

1st June, 2017