IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

JUDICIAL REVIEW NO. 03 of 2017

IN THE MATTER of an Application for Judicial Review pursuant to Order 53 Rule 5 (1) by **OLANREWAJU AFOLAYAN** (the Applicant)

AND

IN THE MATTER of the Decision of the FIJI IMMIGRATION DEPARTMENT to deport **OLANREWAJU AFOLAYAN** of 72 Ram Sami Reddy Road, Kashmir, Lautoka City.

BETWEEN	:	**OLANREWAJU AFOLAYAN**
		Applicant
AND	:	**DIRECTOR OF IMMIGRATION**
		First Respondent
AND	:	**MINISTER FOR IMMIGRATION**
		Second Respondent
AND	:	**ATTORNEY GENERAL OF FIJI**
		Third Respondent
AND	:	**DONNA THERESE APAP-AFOLAYAN**
		Interested Party

BEFORE	:	A.M. Mohamed Mackie- J
Counsel	:	Mr. Aman Ravindra Singh for the Applicant
		Ms. M. Faktaufon for the Respondents
DATE OF HRG	:	27th July 2018
DATE OF JDGMT	:	29th October 2018.

JUDGMENT

A. INTRODUCTION

1. The Applicant , initially on 21st July 2017, through his wife, the above named interested party, filed his Application for Leave to Apply For Judicial Review under Order 53 Rule 3 (2) of the High Court Rules 1988 and the High Court (Amendment) Rules 1994, in order to file his Application for Judicial Review , seeking following reliefs:

    1. AN ORDER OF CERTIORARI to quash the decision of the First Respondent and the Second Respondent given on or about 16th July 2017 to deport the Applicant OLANREWAJU AFOLAYAN from Fiji;

    2. AN ORDER under Rule 3 (8) (a) that the granting of leave is also to operate as a STAY of the decision of the First Respondent and the Second Respondent until the final determination of the Applicant's application for Judicial Review and that the status quo remain;

    3. AN ORDER that the Applicant be released forthwith from custody of the Fiji Immigration Department and or servants or agents of the State pending the final determination of the Applicant's application for Judicial Review;

    4. A DECLARATION that the Applicant's continued detention from about 2.45pm, Sunday, 16 July 2017 by officers of the Fiji Immigration Department and or servants or agents of the State is unlawful and unconstitutional;

    5. A DECLARATION that the actions by Fiji Immigration Department and or servants or agents of the state to deny the Applicant phone calls, contact with his wife, his legal counsel and access to embassy and counselor staff and service is unlawful and unconstitutional;

    6. A DECLARATION that the First Respondent and the Second Respondent's decision to deport the Applicant and ordering the Applicant to leave the country without first hearing the applicant or allowing him to show cause as to why he should leave the country is in breach of the rules of natural justice;

    7. A DECLARATION that decisions of the First Respondent and the Second Respondent are grossly unfair and of no effect as the Applicant was never given his right to Appeal the said decision;

8. A DECLARATION that the First Respondent and the Second Respondents breached the rights of the Applicant in that they failed to disclose or provide or give sufficient notice for the reasons of his deportation;

9. AN ORDER under Order 53 Rule 8 of the said Rules directing the First Respondent and the Second Respondents to make and serve on the Applicant a list of documents which are or have been in its possession custody or power relating to any matter in question in these proceedings and to make and file an Affidavit verifying such list and to serve a copy thereof on the Applicant;

10. AN ORDER that the time for Service of this Application be abridged and that this matter be called before a Judge on 19th July, 2017 as a matter of urgency as the Applicant is subject to be deported from Fiji;

11. AN ORDER for costs and damages; and

12. AND any such further or other orders as this Honorable Court deems just.

2. The grounds relied upon by the Applicant for the above reliefs are as follows:

a. In making their decisions the First Respondent and the Second Respondent were actuated by extraneous considerations.

b. The First Respondent and the Second Respondent acted in a manner contrary to and in breach of the Rules of Natural Justice by failing to follow the proper procedures in allowing the Applicant his right to Appeal the said decision.

c. The First Respondent acted unreasonably, arbitrarily and irrationally in not renewing the Applicant's Work Permit and failing to inform the Applicant of this in due time to file his Appeal.

d. That the First Respondent and the Second Respondent both severally and jointly abused their discretions in that:

i) They took into consideration irrelevant matter;
ii) They were influenced by extraneous considerations which ought not to have influenced them;
iii) They have failed or must have failed to take into account considerations which ought to have influence them;
iv) They misdirected themselves in fact or in law;
v) They acted unreasonably, arbitrarily or in bad faith;
vi) They acted in breach of the Doctrine of Legitimate Expectation.

e) Alternatively, the Honourable Court has to decide whether the First Respondent and the Second Respondent's pursued the proper procedure in making the Deportation Order against the Applicant without providing any notice.

f) Whether the decision of the First Respondent and the Second Respondent was prejudicial and in breach of natural justice.

g) Whether the decision of the First Respondent and the Second Respondent was made in breach of their obligations and duties in accordance with the principles of Natural Justice and/or 2013 Republic of Fiji Constitution.

h) The Applicant as a result of the said decision has been deprived the rights of a fair hearing or a fair decision.

i) That there will be no prejudice to the First Respondent and the Second Respondent but there will be prejudice to the Applicant if the decision or the acts of the First Respondent and the Second Respondent is not stayed.

3. The Application was supported by an affidavit dated 21st July 2017 and sworn by the said interested party, DONNA THERESE APAP -AFOLAYAN, being the Applicant's wife, and filed along with the copy of their Marriage Certificate marked as "DTAA-1" and a letter dated 18th November 2016, from the First Respondent informing that the application for a Short Term Work Permit (STWP) for the Applicant has been declined.

4. The matter being supported before me on the same day, after hearing the learned Counsel and perusing the papers, the Court while granting leave, also granted 2nd and 3rd reliefs above, which enabled the LEAVE that being granted to operate as a STAY under Order 53 Rule 3(8) (a) and the temporary release of the Applicant forthwith from the custody of the Fiji Immigration Department.

5. When the matter was mentioned on 4th August 2017, with the presence of the learned counsel for the Respondents, the learned Counsel for the Applicant moved to amend the Application in order to correctly name the relevant Minister in charge of the subject as the 2nd Respondent and also to add the Attorney General of Fiji as the 3rd Respondent. The Court granted 7 days to file amended papers for leave and fixed the matter to be mentioned on 11th September 2017. Counsel also reserved the right to file the Motion (the application for judicial review) on a later date.

6. The amended Application for leave, which should have been filed by 11th August 2017, as per the directions given on 4th August 2017, was filed only on the 11th of September 2017, together with the supporting affidavit of the interested party and a sealed copy of the order that granted leave on 21st July 2017. Since the amended Application for leave had not been served, the Court granted 7 days for service and 21 days for reply by the respondents and fixed the matter for 13th October 2017.

7. When the matter was mentioned on 13th October 2017, it was found that the Applicant had already on 29th September 2017 filed the summons for judicial review supported by his own affidavit.

8. The Court directed same to be served within 7 days for the Respondents to file reply in 21 days and the Applicant to file re-reply in 14 days, if needed.

9. Accordingly, the Respondents filed their affidavit in opposition on 23rd November 2017 with documents marked from "TK-1" to "TK-4"and the Applicant filed his affidavit in reply on 6th February 2018, with documents marked from "OA-1" to "OA-15".

A. HEARING:

10. When the matter came up for hearing on 27th July 2018, the learned Counsel for the Applicant moved for an adjournment on the ground that the Applicant is intending to make an appeal to the 2nd Respondents Minister. The learned Counsel for the Respondents objected for adjournment and moved to take up certain preliminary issues, which was ready in written form along with the submissions on the substantial matter.

11. Since the Applicant's Counsel was not ready for the oral hearing, the Court, with the consent of the Respondent's learned Counsel, decided to dispose the hearing by way of written submissions. Accordingly, Respondent's written submission was tendered on the same day and the Applicant's submission in reply was filed on 12th September 2018.

B. DISCUSSION:

12. Before proceeding to consider the substantial matter, it is prudent to delve into the two preliminary issues raised by the learned Counsel for the Respondents.

PRELIMINARY ISSUE-1

(1) **This application for judicial review is premature as there is and has never been a decision to issue a deportation order.**

13. As far as the 1st issue above is concerned, the stern position of the Respondents is that there was never at any time a decision taken by the 1st and 2nd Respondents to issue a deportation order and no such deportation order was , in fact, ever made against the Applicant.

14. Conversely, the Respondent's position is that what has been issued against the Applicant is a "Removal Order" as confirmed by the document marked TK-4 annexed to the affidavit in opposition sworn by an Assistant Immigration Officer , namely, Sesenieli Namudu, and filed on 23rd November 2017 on behalf of the Respondents. This fact is not disputed by the Applicant.

15. It is very clear that what has been executed against the Applicant on 16th July 2017 by arresting him is a Removal Order, duly issued against the Applicant after he became a prohibited immigrant in the Country in terms of the section 15 of the Immigration Act 2003. , which states as follows.

Power to remove prohibited immigrants

15. (1) The Permanent Secretary may make a written order directing a prohibited immigrant to leave the Fiji Islands and remain out of the Fiji Islands either indefinitely or for a period specified in the order.

(2) An order under subsection (1) takes effect either on the date of service or, if the person is serving a sentence of imprisonment, on the completion of the sentence of imprisonment, as the Permanent Secretary specifies in the order.

(3) An order made under this section must be carried into effect in such manner as the Permanent Secretary directs in writing, including removal of the person by use of reasonable force if necessary.

(4) A person against whom an order under this section is made may, before leaving the Fiji Islands and while being conveyed to the place of departure, be kept in prison, in police custody or in any other place of custody authorized by the Permanent Secretary, and while so kept is deemed to be in lawful custody.

(5) The Permanent Secretary may vary or revoke an order or directions given under this section.

(6) A person against whom a removal order has been made may be removed to the place from where the person came or to the country of which the person is a citizen, or to any other country or place to which the person consents to be removed, if the Government of the country or place agrees to receive the person.

(7) The master of a ship or commander of an aircraft which is proceeding to a country or place to which a person is directed to be removed to must, if so required by an immigration officer, receive the person on board the hip or aircraft and afford the person a passage to the country or place and proper accommodation and maintenance during the passage.

(8) If the master of a ship or commander of an aircraft fails to comply with

Subsection (6), the master, commander, the owner of the ship or aircraft and the owner's agent each commits an offence.

(9) If a person in respect of whom a removal order is made under this section has been sentenced to a term of imprisonment by a court in the Fiji Islands, the person must serve the sentence before the order is carried into effect.

(10) A person in respect of whom a removal order has been made under section 15 who re-enters the Fiji Islands while the removal order is in force commits an offence.

16. The Applicant being a prohibited immigrant, it is very clear that the section 15 above;

a. Does not require that the permanent secretary to afford any right to the Applicant to show cause as to why he/she should not leave the country;

b. Does not give any right to the applicant to appeal the decision of the permanent secretary to issue a removal order ; in fact a decision by the permanent secretary to issue a removal order is not included as a reviewable decision under section 58 of the Act;

c. Does not require the permanent secretary to provide any reason to the prohibited immigrant for the removal order.

17. A clear distinction can be observed between the procedures for issuing a deportation order by the Minister and procedures for issuing a removal order against a prohibited immigrant by the permanent secretary. Section 13 (1) and (2) of the Act define who is a prohibited immigrant. The entry and presence of a person in Fiji without a valid permit under section 9 of the Act is unlawful.

18. The Applicant in fact had a STWP issued on 29th April 2016 to be expired on 23rd October 2016, enabling him to work for M/s. "Ravudra Holdings ". But, he commenced working for M/s. SIGNS & SIGNS from 18th August 2016, which caused the invalidation of it, since he ceased to be employed at the organization for which the permit was issued.

19. The initial STWP being rendered invalid due to the change of workplace by the Applicant as stated above, he became a prohibited immigrant even prior to the date of lodging his application for a new STWP. Moreover, when he re-entered the country on 20th October 2016, after being away for few days, his initial STWP, which was to be expired only on 23rd October 2016, had already become an invalid owing to his change of the place of employment on 18th August 2016. Thereby, he became disentitled for a new STWP as the section 9 (6) of the Act prohibits the issuance of any permit to him owing to his earlier presence in the country and subsequent entry unlawfully.

20. Therefore, the Applicant being a prohibited immigrant was liable to be removed by the permanent secretary in terms of section 15(1) of the Act. It is to be borne in mind that the decision to issue removal order is not the subject of review here. In any event the very decision cannot come under scrutiny by way of review before this court, unless there was an unsuccessful appeal on it to the 2nd Respondent Minister.

21. It is to be noted that the order of Certiorari, Declarations and/or other Orders prayed for by the Applicant in the summons are in relation to the purported issuance of an order for **deportation**. No such order has been made by the Respondents. So an order that was not made cannot become a subject of review before this court. Thus, the Application for judicial review is without any basis and does not warrant favorable consideration by this court.

22. In this regard, following case law authorities are mention worthy.

    a. *Naidu v. Divisional Surveyor Western [2011] FJHC 161.* In this action the court struck out the application on, inter alia, the basis that there was nothing to judicially review since no final decision had been made by the Surveyor on the Survey Plan.

    b. In *State v. Minister for local Government & Ors ex parte Kumar [2009] FJHC 45* , at paragraph 6.2 Her Ladyship Justice Scutt made the following opinion;

    "Other than in "exceptional circumstances", courts will not grant leave unless a final decision has been reached: The State v. Public Service Commission; Ex parte Damodaran Nair (Jud. Rev Action No. HBJ 02 of 2007, 30 March 2007), at 2

    If leave is applied for prematurely, the application will be dismissed; Ex parte Damodaran Nair; The State v. Commissioner for Magistrate's Courts Inquiry Connors and Attorney General ; Ex parte Sayed Mukhtar .Shah (Jud. Rev No. HBJ 47 of 2008, 7 April 2008)

    If an alternative remedy exists , the court has discretion to refuse the leave if the applicant has failed to utilize it; R v. Secretary of State for the Home Department; Ex parte Swati (1986) 1 WLR 477 Damodaran Nair at 2"

    c. In State v. Public Service Commission; Ex parte Damodaran Nair (Jud. Rev Action No. HBJ 02 of 2007, 30 March 2007) (Supra) it was stated ;

    "The law is clear. Except in exceptional circumstances, the courts will not review proceedings of inferior tribunals until a final decision is reached..."

23. The above decisions amply demonstrate the unwillingness on the part of the courts to interfere by way of judicial review of the decisions that have not yet been made. In the present case in hand, there was never at any time a decision made by the 1st and 2nd

present case in hand, there was never at any time a decision made by the 1st and 2nd Respondents to issue a deportation order or nor such deportation had been issued as alleged in the Summons and in the supporting affidavit.

Preliminary issue (2)

(2) **The decision to refuse the applicant's work permit by the First Respondent is not being reviewed where leave was granted for the review of the purported decision to issue a deportation order.**

24. On perusal of the Application for Judicial Review, it is quite clear that the Applicant has not applied to this court for the review of the decision by the First Respondent to refuse the STWP for the Applicant.

25. According to the summons, this court has been called upon to Judicially Review the **decision** of the First and the Second Respondents to **deport** the Applicant and to quash the same, while in fact no such decision has been made by the 2nd Respondent to that effect. It is obvious that the First Respondent and/or his subordinates had acted only on the removal order.

26. The entire allegations in the affidavit about the procedural irregularity are concerning the decision to refuse the Applicant's STWP. This court has not been called upon to review such a decision.

27. I find that the objection raised by the learned Counsel for the Respondents basing on the said two preliminary issues have convinced me that no review should be carried out by this court and it does not warrants any favorable consideration, except for dismissal.

Substantive Issues:

28. Though, this court has cogent reason to dismiss the Application on the above discussed preliminary issues, without prejudice to the above finding, for the sake of completeness, I shall delve into the substantive issues as well.

1. **Purported Decision to issue Deportation Order:**

29. In paragraphs 3, 4, and 5 of his summons , the Applicant respectively seeks declarations to the effect that the First and Second Respondent's decision to **deport** without first hearing the Applicant or allowing him to show cause as to why he should leave was breach of his natural justice, the decision was unfair and of no effect as the Applicant was never given the right to appeal, and the First and Second Respondents breached his rights by failing to disclose or provide or give sufficient notice for the reasons of his deportation.

30. As discussed under preliminary issues above, there was neither a deportation order in existence nor a decision made to issue such an order and what had in fact been issued was a removal order pursuant to section 15 of the Act. The removal order cannot be a subject of review as observed above and the only way out for the Applicant was making an appeal as required by the letter dated 18th November 2016.

31. Even if this court sits to judicially review the decision of the First and Second Respondents to issue a removal order, which in any event, is not and cannot be subjected to scrutiny here, this court cannot go into the merits or demerits of the impugned decision to issue the removal order, unless the question is with regard to the manner and process in which the decision was made. Lord Templeman in ***REG v. Inland Revenue Commissioner, Ex parte Preston (1985) A.C.835 at 862*** stated as follows.

> *" Judicial review is available where a decision making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached, or abuses its powers"*

32. The Applicant's initial STWP became invalid due to his change of work place without having it cancelled and commencing to work for the new organization, namely, SIGNS & SIGNS from 18th August 2016. During the time material he had the STWP only to work for the company called "Ravudra Holdings". This is a blatant violation the Applicant committed and thereby he became a prohibited Immigrant.

33. The fact that he worked for the new organization without a valid STWP stands proved by his attendance register and his working there is not denied, except for merely stating that the said register has been tampered with. He failed to substantiate his allegation of the alleged tampering.

34. The action of the First Respondent in not issuing a new STWP stands justified in view of the fact that the Applicant had become a prohibited immigrant even before his lodgment of an application for a new STWP and upon his re-entry into the country on 20th October 2016 without a valid permit. Thus, the section 9(6) of the Act prohibits the issuance of a permit to the Applicant.

35. The next allegation in paragraph 4 of the summons that he was not given the right of appeal is totally unfounded. His plea that he was ignorant of the decision and came to know about it only on 16th December 2016, after the expiry of 21 days appealable period, cannot be accepted. Even if it is so, he had ample time to make at least a belated appeal during the period from16th December 2016 till he was arrested on 16th of July 2017.

36. This court on the 2nd date of mention, pointed out to the Applicant's learned counsel that the Applicant has to make an appeal to the Second Respondent Minister, before the

Minister was to be made a party. (Vide my notes dated 4th August 2017). The learned counsel undertook to do so. But, it was only on the hearing date, i.e. on 27th July 2018, after nearly one year, counsel intimated that the Applicant intends to make an appeal to the Second Respondent Minister. This shows the level of inaction on the part of the Applicant.

37. The alleged ignorance of the refusal until 16th December 2016, need not, necessarily, have deprived him of his opportunity to appeal. He had seven months' time period until his arrest on 16th July 2017, to make an appeal to the Second Respondent Minister, if he was so concerned about it.

2. **Alleged Refusal to Issue a New STWP:**

38. Once again I remind myself that this is not a matter under review here. However, for the sake of completeness, I reiterate that what the 2nd Respondent has performed here is his duty in the way expected of him by the Immigration Act of 2003.

39. The Applicant had ample time and opportunity to make an appeal, but for the reason best known to him he did not do so. Instead, he chose to write a complaint to the Second Respondent Minister by writing a letter on 16th December 2016, threatening legal action, without adhering to the procedures set out in the STWP refusal letter dated 18th November 2016.

40. He should have known and/or properly advised as to what the procedures are. Now the Applicant cannot be heard to say that he was not duly informed , his right of appeal was stifled and he was unjustly treated by arresting and having him in custody , which is an official act duly performed by the officers of the 2nd Respondent's department.

41. It is trite law that judicial review is not and appeal of a decision and the cardinal principle that governs judicial review proceedings is that in exercise of its supervisory jurisdiction, the court cannot usurp the powers of the decision maker by substituting its own opinion or decision.

In *Chief of North Wales Police v. Evans 1982 1 W.L.R 1155* at 1174 Lord Birmingham said;

> *"Judicial review as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made"*

In *Fiji Aviation Workers Association v. Air Pacific Ltd and Arbitration Tribunal (Civil appeal No. ABU 0033/ 2001,* the above view was expressed, when reviewing the decision of a permanent Arbitrator, as follows.

"As a reviewing court it is not concerned with the merits of the decision of the tribunal by with the question whether the Tribunal acted lawfully in arriving at its decision i.e. whether it is so within the jurisdiction conferred on it by virtue of the appointment made under the trade dispute Act"

42. Had the Applicant made an appeal in time or even belatedly by following the due procedures, the Second Respondent Minister had the authority to review the decision of the First Respondent to refuse a new STWP to the Applicant. This court cannot lend its hands to the applicant by disregarding the due process that was and is available to the Applicant under section 58 of the Act.

43. Though, it is not warranted for this court to review the decision with regard to the STWP, for the sake of completeness, all what this court can say is that the Applicant had become a prohibited immigrant and the due process of law has played its role in terms of the Immigration Act of 2003.

44. The Applicant, admittedly, being a Nigerian Passport holder, the absence of a Police Report from that country, among other things, has been a valid ground for the refusal of STWP. The Applicant cannot adduce his own and unacceptable reason to observe that requirement in breach.

45. Section 58 in part 8 of the Immigration Act 2003 defines the "reviewable decision" and the appeals to the Minister in charge as follows.

Part 8 - APPEALS
Appeal to Minister

58. (1) In this section 'reviewable decision' means a decision of the Permanent Secretary-

(a) Refusing to issue, extend, or vary a permit under section 9;

(b) Attaching conditions to a permit under section 9(2);

(c) Cancelling a permit under section 11; or

(d) Refusing a claim or cancelling a refugee status under Part 6.

(2) **When a reviewable decision is made, a person affected by the decision who is dissatisfied with it may, within 21 days after the day on which it was made, or within any further period the Minister (either before or after the expiration of the 21 days) allows, appeal to the Minister for a review by the Minister of the decision.** (Emphasis mine)

46. The above provisions clearly stipulates as to what action should be taken when an adverse decision is taken by the First Respondent.

47. As I pointed out in a foregoing paragraph , when the matter was mentioned on 4th August 2017, being the 2nd mention date, and on being intimated by the learned Counsel for the Applicant that they move to make the Minister in Charge as the 2nd Respondent, this Court informed the Counsel to make an Appeal to the Minister concerned before making the Minister as a party.

48. The reason adduced by the Applicant for not making an appeal, that the STWP refusal letter dated 18th November 2016 was not made available to him before the expiry of 21 days appealable period, is an afterthought and cannot be accepted at all for the following reasons.

a. The letter in question addressed to the Managing Director of SIGNS & SIGNS, where the Applicant was, admittedly, working without a STWP, would undoubtedly have been received by the SIGNS & SIGNS and/ or by Ms. Sobna Mani, and the contents of it would have been relayed to the Applicant, who was a much sought after employee as per the document "TK-1" annexed to the affidavit in opposition filed on behalf of the Respondents.

b. The Applicant need not have, necessarily, waited till 16th December 2016 to come to know about the refusal of STWP as he stated in paragraph 43 of his affidavit in reply filed on 6th February 2018.

c. Although, the Applicant in paragraph 39 of his affidavit in reply states that neither Ms. Shobna Mani, nor his employer at SIGNS & SIGNS received the letter in question, it has not been substantiated by SIGNS & SIGNS by swearing an affidavit to that effect. The statutory declaration by the said Ms. Shobna Mani, in this regard has not been annexed to the reply affidavit, though it is pleaded therein.

d. If the Applicant was to rely on the affidavit evidence of Ms. Shobna Mani or any others in this regard, it should have been divulged in his initial supporting affidavit and not by the affidavit in reply to that of the Respondents, since the Respondents will not have an opportunity to reply to the contents therein.

The Delay

49. Another consideration that the court can take in to account before intervention by review, among other things, is the delay on the part of the applicant in search of this review remedy.

50. An administrative decision should be in abeyance, if it is well founded and does not warrant intervention by the court.

51. The delay for over two Months in filing the Application for Judicial Review from the date of granting leave also can be considered to refuse the relief prayed for, as per O.53, r.4 which reads as follows.

Delay in applying for relief (O.53, r.4)

4.-(1) Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which paragraph (2) applies, the application for leave under rule 3 is made after the relevant period has expired, the Court may refuse to grant-

(a) Leave for the making of the application, or
(b) Any relief sought on the 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.

52. The right to appeal to the Second Respondent Minister against the refusal of the STWP by the First Respondent and the time for same was available to the Applicant for a period well over 7 to 8 months commencing from 18th November 2016 or at least from 16th December 2016, till he was arrested on 16th July 2017. This is clearly an alternative remedy and the learned counsel conceded it by making an application for the adjournment of hearing on that ground. The rules also permit the court to dismiss the application since an alternative remedy was and is available.

53. If the Applicant wished, he could have amended the application, to include any other grounds that would have been available to him, since he had sufficient time given, but did not make use of it. However, in the absence of an appeal to the Minister in terms of Section 58(2), the mere amendment would not have brought any favorable result.

C. CONCLUSION:

54. Since no decision had been made by the First and Second Respondents to issue a **Deportation** order and in the absence of such an order, the Applicant cannot move for an order of Certiorari, Declarations or other Orders as prayed for in his Summons.

The Applicant cannot seek to review the decision by the First Respondent to refuse his application for a new STWP as it was not a ground and leave was never applied for same or granted by the court, which in any event was a subject of an appeal to the Second Respondent.

The Applicant failed and neglected to make an appeal to the First Respondent Minister, as provided under Section 58(2) of the Immigration Act 2003. He can seek review remedy

from this court only after an unsuccessful appeal to the Second Respondent Minister, provided he has sufficient and sound ground/s to do so. The Applicant is guilty of delay and has an alternative remedy.

The Applicant failed to demonstrate as to how the decision of the 1st Respondent in relation to the issuance of the removal order (although not subjected to review) was unreasonable or was made on irrelevant considerations.

D. FINAL ORDERS:

a. The Application for Judicial review dated 22nd September 2017 and filed on 29th September 2017 is hereby dismissed.

b. The orders made by this court on 21st July 2017 as per paragraphs 2 and 3 of the initial Application for leave to apply for Judicial Review are hereby revoked and set aside.

c. The Applicant and the interested party are ordered to pay jointly and severally unto the Respondents a sum of $ 1,800.00, being the summarily assessed cost, within 14 days from today.

HIGH COURT OF FIJI
LAUTOKA

A.M.Mohammed Mackie
Judge

At Lautoka
29th October, 2018