

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Case No. HBM 070 of 2021

IN THE MATTER of an Application for
Constitutional Redress and interpretation made
Pursuant to the High Court (Constitutional Redress)
Rules 2015

BETWEEN : **JOHN SAMISONI**
Applicant

AND : **CORPORATE MANAGEMENT SERVICES PTE**
LIMITED trading as THE HOT BREAD KITCHEN
First Respondent

MINISTER FOR EMPLOYMENT, PRODUCTIVITY &
INDUSTRIAL RELATIONS
Second Respondent

MINISTER FOR HEALTH
Third Respondent

ATTORNEY-GENERAL OF FIJI
Fourth Respondent

Counsel : **Mr S Nandan (on instructions) for the Applicant**
Appearances for 1st Respondent excused
Ms M Faktaufon for 2nd, 3rd & 4th Respondents

Hearing : 25 June 2025
Judgment : 27 June 2025

EXTEMPORE JUDGMENT

- [1] The Applicant seeks leave to appeal to the Court of Appeal from my decision of 29 July 2024.
- [2] The First Respondent takes a neutral position, whilst the Second, Third and Fourth Respondents oppose the grant of leave.
- [3] This proceeding arises from regulations enacted in 2021 in response to the COVID epidemic. The 2021 regulations required employers and employees to be COVID vaccinated in order to be allowed in and on the work site. The Applicant refused to be vaccinated. His employment was, therefore, terminated as permitted under the 2021 regulations. He brought the present proceedings in October 2021 for constitutional redress seeking declarations that the 2021 regulations were ultra-virus, being in breach of his rights under the 2013 Constitution.
- [4] The Second, Third and Fourth Respondents filed an application to strike out the proceeding. Whilst the proceeding was on foot, the 2021 regulations were repealed by the new government. On 15 July 2024, in a separate case involving the same legal issue¹, I determined that the 2021 regulations were not ultra-virus. In light of that decision, the Applicant could not succeed with the present proceeding and I determined as such in my decision of 29 July 2024, striking out the Applicant's claim.
- [5] The Applicant filed a late application for leave to appeal from that decision. On 7 May 2025, I granted an enlargement of time to the Applicant. The issue now requiring determination is whether to grant leave to the Applicant to appeal to the Court of Appeal.

¹ *Fijian Teachers Association v State* [2024] FJHC 431 (15 July 2024)

[6] The Applicant seeks leave under s 12(2)(f) of the Court of Appeal Act 1949. Leave is required because the decision of 29 July 2024 was an interlocutory decision striking out the Applicant's claim.

[7] There is a dispute between the parties as to the test to be applied and whether there is a material difference between appeals from interlocutory decisions on procedural matters and appeals from interlocutory decisions affecting substantive rights – this case clearly falls into the latter category. I do not need to decide the issue. I am content to rely on the test identified by the Second, Third and Fourth Respondents, in particular, that *'[l]eave may be granted if the case raises an issue of broader public interest or requires legal clarification - but this is also rare'*.²

[8] The Applicant argues that leave should be granted because my decision in *Fijian Teachers Association v State* is wrong. Further, that there is a wider public interest in the Court of Appeal deciding the issue. On this, the Applicant relies on paragraph [9] of my decision of 7 May 2025 enlarging the time, where I stated:

That said, I am satisfied that the issue on appeal is of considerable public interest and there are compelling reasons for the higher courts to consider the matter. Moreover, the 2021 Regulations affected a large number of people causing their termination of employment. I am satisfied that the issue is at least arguable. The issue is not moot for the Applicant despite his re-employment – he was out of pocket for the period between his termination and re-employment

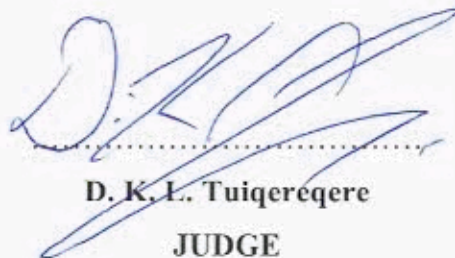
[9] Counsel for the Second, Third and Fourth Respondents relies on thorough and comprehensive written submissions to oppose leave. The nub of the opposition being, that the prospect of the appeal succeeding is remote, that the focus by the Applicant has inappropriately shifted in the course of the proceeding as well as on appeal, and that the Applicant's motives for bringing these proceedings (and the vehicle by which he has done so) are questionable. Whilst counsel makes some forceful points, I am satisfied that it is in the public interest for the higher courts to consider the legality of the 2021

² Paragraph 5 of 2nd, 3rd, and 4th Respondent's Written Submissions dated 23 June 2025.

regulations. The 2021 regulations affected a significant number of people. Whilst the legislation has been repealed, the repeal has not undone the consequences for those whose employment was terminated due to the 2021 regulations. It is in the public interest to receive clarification from the higher courts on when Parliament and/or Ministers (or other lawmakers) may introduce such legislation in the future.

[10] Accordingly, my orders are as follows:

- i. Leave is granted to the Applicant to appeal to the Court of Appeal from my decision of 29 July 2024.
- ii. Costs to be in the cause.



D. K. L. Tuiqereqere
JUDGE

Solicitors:

Karunaratne Lawyers for the Applicant

Diven Prasad Lawyers for the First Respondent

Attorney-General's Chambers for the Second, Third & Fourth Respondents