N THE HIGH COURT OF FIJI
CENTRAL DIVISION
CIVIL JURISDICTION

LPU Reference No. 218 OF 2020

BETWEEN: **ASHISHNA ANSU**

PLAINTIFF/RESPONDENT

AND: **LEENA GOUNDAR**

DEFENDANT/APPLICANT

Date of Hearing	**:**	**24 July 2025**
For the Plaintiff	**:**	**Mr. O'Driscoll G.**
For the Defendant	**:**	**In Person**
Date of Decision	**:**	**3 December 2025**
Before	**:**	**Waqainabete-Levaci, SLTT, Puisne Judge**

R U L I N G

(*Application for Leave to Appeal and Stay of Court Orders)*

PART A – BACKGROUND AND AFFIDAVITS

1. The Plaintiff/Respondent had lodged a complaint against the Defendant/Applicant under the Legal Practitioners Act pertaining to exorbitant charges for fees for services not provided. Pursuant to section 109 (2) of the Legal Practitioners Act, the Chief Registrar referred the matter to the High Court for Assessment of Costs.

2. Thereafter the Applicant applied for a setting aside of hearing on the basis of irregularity upon Order 2 Rule 2 of the High Court Rules. After conducting a hearing, the Court dismissed the application and determined that in accordance with Order 62 of the High Court Rules, a Bill of Costs was to be filed by the Applicant.

3. The Applicant filed the application seeking Leave to Appeal and to Stay the decision of the High Court. The basis of the Applicants argument is that:

   (i) There are serious questions to be tried;
   (ii) There is no irreparable harm suffered by the Respondents if stay is granted;
   (iii) Appeal is a nugatory if stay is not granted.

4. The Court will consider these arguments in accordance with the principles of Stay and Leave.

AFFIDAVITS

5. The Defendant/Applicant deposed that on 4 July 2022 a Notice of Adjourned Hearing was served to her and was informed in Court of the referral pursuant to section 109 (2) of the Legal Practitioners Act 2009 to the High Court.

6. The Defendant/Applicant deposes that on the 27th February 2024 an application was made to withdraw the referral which was denied on 16 April 2024.

7. Thereafter on 2 May 2024 the Defendant/Applicant filed setting aside proceedings pursuant to Order 2 Rule 2 of the High Court Rules on the grounds of non-compliance with Order 5 of the High Court Rules.

8. The Defendant/Applicant submits that submissions made on 27 August 2024, the Court dismissed the application on 21 February 2025 with directions for Bill of Costs to be filed by both the Defendant/Applicant and the Plaintiff/Defendant.

9. The Defendant/Applicant seeks Leave to appeal against the decision of the High Court and seek stay of the current proceedings.

LEAVE AND STAY PRINCIPLES AND ANALYSIS

Leave Application

10. For leave applications it has been established in the case of Vinod Raj Goundar v Minister of Health [2008] ABU0075 of 2006S that any interlocutory decision made by a Judge of the High Court can be appealed by way of an application for Leave to Appeal.

11. In this instance, the Defendant/Applicant seeks leave to appeal the decision of the Judge to the Court of Appeal. The application for leave is in order.

12. In Kelton Investments -v- Civil Aviation Authority of Fiji [1995] FJCA 15; ABU0034.1995 (18 July 1995) Tikaram JA stated the following principles for applications seeking leave to appeal:

> "I am mindful that Courts have repeatedly emphasized that appeals against interlocutory orders and decisions will only rarely succeed. As far as the lower courts are concerned granting of leave to appeal against interlocutory orders would be seen to be encouraging appeals (see Hubball v Everitt and Sons (Limited) ([1900] [1900] UKLawRpKQB 17; 16 TLR 168).
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> Even where leave is not required the policy of appellate courts has been to uphold interlocutory decisions and orders of the trial Judge - see for example Ashmore v Corp of Lloyd's [1992] 2 All ER 486 where a Judge's decision to order trial of a preliminary issue was restored by the House of Lords.
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> The following extracts taken from pages 3 and 4 of the written submissions made by the Applicants' Counsel are also pertinent:
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> > '.....5.2 The requirement for leave is designed to reduce appeals from interlocutory orders as much as possible (per Murphy J in Niemann v. Electronic Industries Ltd [1978] VicRp 44; (1978) VR 431 at 441-2). The legislature has evinced a policy against bringing of interlocutory appeals except where the Court, acting judicially, finds reason to grant leave (Decor Corp v. Dart Industries 104 ALR 621 at 623 lines 29-31).
> >
> > 5.3 Leave should not be granted as of course without consideration of the nature and circumstances of the particular case (per High Court in Exparte Bucknell [1936] HCA 67; (1936) 56 CLR 221 at 224).

5.4 There is a material difference between an exercise of discretion on a point of practice or procedure and an exercise of discretion which determines substantive rights. The appellant contends the Order of 10 May 1995 determines substantive rights.

5.5 Even "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" (per Murphy J in the Niemann case at page 441). The appellant contends the order of 10 May 1995 determines substantive rights.

5.6 In Darrel Lea v. Union Assurance (169) VR 401 at 409 the Full Court of the Supreme Court of Victoria said:

> "We think it is plain from the terms of the judgment to which we have already referred that the Full Court was stating that error of law in the order does not in itself constitute substantial injustice, but that it is the result flowing from the erroneous order that is the important matter in determining whether substantial injustice will result."'

13. Following from these precedent, the Court considers the principles of leave to appeal i.e whether there is an arguable case, whether there is a substantial injustice that would follow on from the erroneous order.

14. The Defendant/Applicant contends that the referral by the Chief Registrar based on section 109 (2) of the Legal Practitioners Act requires that the application comply with High Court Rules in Order 5 requiring an originating application be filed either by way of a Writ, or by Originating Motion or Summons.

15. That there is an arguable case for which there are real chances of success. In para 16 the Court had determined that:

> ’16.Order 5 of the High Court Rules is not applicable at all in these instances as the matter is transferred by way of referral from the Chief Registrar, who exercises limited powers of the High Court, to the Judge with directions of the Court to assess or tax costs.’

16. The Defendant/Applicant argued that the learned Judge erred in law and in fact by failing to take into consideration the procedural requirements under Order 5 of the High Court Rules for originating applications, even though the Registrar had referred the matter to a Judge.

17. When referring to Part 9 Division 3 of the Legal Practitioners Act 2009 in the case of Chief Registrar -v- Kant [2025] FJCA 142; ABU 0018.2023 (12 September 2025) Justices of Appeal Justice Premlatika with Dobson JA and Heath JA had this to say:

> "[22]Thus, the statutory scheme of Part 9 is such that once a failure to comply with section 108 notice occurs (which means that a failure to comply with section 105 or 106 has already occurred), by operation of law it is deemed to be professional misconduct and when the failure escalates to the level of a professional misconduct by operation of law, once proceedings are instituted the CR has no power to determine or adjudicate upon that 'deemed' professional misconduct. That jurisdiction is vested in the Commissioner[31]. However, the CR could still consider the substantive complaint with a view to taking any of the steps in terms of section 109. Therefore, any belated response to section 105 or 106 notice by the practitioner or a law firm after the lapse of time granted by section 105 or 106 notice and also the expiry of further statutorily prescribed period of 14 days thereafter, would still be considered in relation to the substantive complaint.
>
> [25] However, if a response is received before proceedings are instituted before the ILSC, even although belatedly, the CR should consider such response to decide whether proceedings should still be instituted under section 109(1)(c) and/or section 111 for professional misconduct or unsatisfactory professional conduct as the case may be. Such responses received before proceedings are instituted may include explanations for non-compliance with section 105, 106 and 108 notices and the CR's role extends to considering whether any such explanation is sufficient to excuse the failure to respond to notices under these provisions. I think this is the purposive, contextual and logical interpretation that could be given to the intended meaning of the phrases '..will be liable to be dealt with for professional misconduct' in section 108(1) and '... such failure shall be deemed to be professional misconduct, unless the legal practitioner of law form furnishes a reasonable explanation for failure' in section 108(2). In the case of the respondents, the response to the substantive complaint reached the LPU two days after the institution of proceedings and 23 days after the expiry of 14 days granted by section 108(1)."

18. Sub-section (2) of section 109 of the Legal Practitioners Act empowers the Registrar, with the consent of the complainant, to refer the complaint made under section 99 or investigation under section 100 for charging of excessive legal costs or fees in connection with the practice of law or charging legal costs or fees for work not carried out by legal practitioner or legal practice or incomplete work to a Master

of the High Court or a Judge of the High Court for taxation or assessment of costs or fees.

19. Hence, in this instance, having received an explanation, the Registrar made the decision to refer the complaint to the Judge of the High Court for taxation or assessment of costs. The Registrar, therefore did not pursue disciplinary proceedings nor mediation. In consideration of finding a resolution, the Registrar referred the matter to the Judge of the High Court.

20. Whether a proper application is required is not stipulated as a requirement by the Legal Practitioners Act nor its Regulations or Rules. Given that the law requires the exercise of discretion to refer the matter to the High Court, the Court has not failed to exercise its powers accordingly.

21. The Court thereafter ordered that parties file their Bill of Costs in accordance with Order 62 of the High Court Rules.

22. The Court finds no arguable case for which there are chances of success.

23. The second and criteria is whether the arguable case has caused substantial injustice. The Court finds it hasn't. Given that there is no arguable case which stands chances of success, there is no substantial injustice if leave is not granted.

24. The substantive matter, the assessment of costs, has not concluded. The matter requires to be heard by the Court to determine whether or not there are substantiated costs or otherwise. The Court has only made orders for filing of Bill of Costs. This has not caused any substantial injustice at all.

Stay application pending Leave to Appeal

25. In the precedent case of Natural Waters of Viti Ltd -v- Crystal Clear Mineral Water (Fiji) Ltd [2005] FJCA 13; ABU 0011.2004S (18 March 2005)Tompkins JA and Scott JA which established by adopting the principles of stay applications by providing the following grounds:

> **Principles on a stay application**
>
> [7] The principles to be applied on an application for stay pending appeal are conveniently summarized in the New Zealand text, *McGechan on Procedure* (2005):

"On a stay application the Court's task is "carefully to weigh all of the factors in the balance between the right of a successful litigant to have the fruits of a judgment and the need to preserve the position in case the appeal is successful": Duncan v Osborne Building Ltd (1992) 6 PRNZ 85 (CA), at p 87.

The following non-comprehensive list of factors conventionally taken into account by a Court in considering a stay emerge from Dymocks Franchise Systems (NSW) Pty Ltd v Bilgola Enterprises Ltd (1999) 13 PRNZ 48, at p 50 and Area One Consortium Ltd v Treaty of Waitangi Fisheries Commission (1993) 7 PRNZ 200:

(a) Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative). See Philip Morris (NZ) Ltd v Liggett & Myers Tobacco Co (NZ) Ltd [1977] 2 NZLR 41 (CA).

(b) Whether the successful party will be injuriously affected by the stay.

(c) The bona fides of the applicants as to the prosecution of the appeal;

(d) The effect on third parties.

(e) The novelty and importance of questions involved.

(f) The public interest in the proceeding.
(g) The overall balance of convenience and the status quo."

26. The court has already determined there is no arguable case for which the successful party will be injured.

27. The prosecution of this matter is not bona fide, it is merely an attempt to delay the matter further.

28. There are no third parties involved and so effect on them.

29. There are no novel questions to be involved and there is no public interest in these proceedings. The matter is simply as to what is the proper Bill of costs to be assessed and taxed against the Defendant/Applicant.

30. On a balance of convenience, the Court finds that granting the stay will render nugatory as leave has not been granted.

31. The court will summarily assess costs at $500 against the Defendant/Applicant.

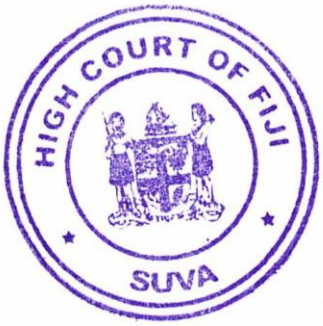
Orders of the Court:

32. **The Court Orders as follows:**

(a) That the Application for Leave to Appeal is dismissed;

(b) Application for Stay pending Leave to Appeal is denied;

(c) Costs against the Defendant/Applicant for $500.



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Ms Senileba LTT Waqainabete- Levaci

Puisne Judge