

IN THE HIGH COURT OF FIJIAT SUVA
CENTRAL DIVISION
CIVIL JURISDICTION

Civil Action No. HBJ 03 of 2022

IN THE MATTER OF an application by
SHYMAL SHESH KUMAR for Judicial
Review under Order 53 of the High Court
Rules 1988

AND

IN THE MATTER OF a decision made by
the **COMMISSIONER OF POLICE** on or
about the 11th of May 2021.

BETWEEN: **SHYMAL SHESH KUMAR**

PLAINTIFF/RESPONDENT

AND: **THE COMMISSIONER OF POLICE**

DEFENDANT/APPLICANT

Date of Hearing : **20 November 2025**
For the Plaintiff/Respondent : **Mr. Karunaratne. J**
For the Defendant/Applicant : **Ms. Faktaufon. M**
Date of Decision : **5 March 2026**
Before : **Waqainabete-Levaci SLTT, Puisne Judge**

JUDGEMENT

(APPLICATION FOR STAY PENDING APPEAL)

APPLICATION

1. The Respondent was a police officer with the Fiji Police Force when he was dismissed on the 11th of May 2021 by the Commissioner of Police. The Respondent thereafter applied for Judicial Review against the decision of the Commissioner of Police. By Orders of the Court, and after hearing the parties on an application for Judicial Review, the Court granted the Respondent's application with Orders as follows:
 - (i) Declaration that the decision of the Commissioner of Police on 11 May 2021 is unreasonable, unjust and irrational.
 - (ii) An Order for Certiorari is issued to quash the decision of the Commissioner of Police of 11 May 2021.
 - (iii) That the Applicant be reinstated and his salaries which were suspended from indictment until his dismissal be repaid to him.
 - (iv) Alternatively, that the Applicant be repaid his full salary and benefits from the date of indictment until Judgement and compensation on a generous scale be awarded to him.
 - (v) Remitted to the Respondent under Order 53 rule (4) of the High Court Rules for compliance within 60 days from today.
 - (vi) Costs summarily assessed to the sum of \$2500.00.

2. The Defendant thereafter Appealed the decision of the High Court and has filed this Summons seeking for Stay of Execution pending the Appeal in the Court of Appeal.

3. The application is made in accordance with Order 45 Rule (10) of the High Court Rules.

SUBMISSIONS BY PARTIES

4. In the Applicant's oral legal submissions, relying upon the case precedences of Haroon Ali Shah have argued that their grounds of appeal are an arguable grounds with a potential to succeed on the basis that the Commissioner of Police had given the Applicant the notice to show cause for which was sufficient for him to mitigate prior to reviewing the decision of the Tribunal.
5. The Applicant has also argued that status quo should remain as there are exceptional circumstances of success.
6. In response to the Respondents arguments, the Applicant submitted that they seek a stay on the Order as a whole, that costs can be compromised and that there are further legal proceedings with criminal elements for which reinstatement cannot be pursued until the proceedings are completed.
7. In response the Counsel for the Respondent has argued that the grounds emanated by the Applicants are not grounds for stay and that the cases of Haroon Ali Shah requires that the successful party not be deprived of the fruits of their judgement unless special circumstances exist. That costs be paid and the Respondent be reinstated in the Fiji Police, given that on a balance of convenience it would be prejudicial to the Respondent if the Orders were not enforced.

LAW AND ANALYSIS

8. Order 45 Rule (10) of the High Court Rules empowers the High Court to an application to grant a stay of the execution of the judgement or order pending an Appeal.
9. In Natural Waters of Viti Ltd -v- Crystal Clear Mineral Waters (Fiji) Limited [2005] FJCA 13; ABU 011.2004S (18 March 2005):

[7] The principles to be applied on an application for stay pending appeal are conveniently summarized in the New Zealand text, *Mc Gechan 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.”

10. In *Prasad -v- Sagayam* [2019] FJCA 15; ABU 82.2018 (22 February 2019) where Callanchini JA held that base only on two of the factors found that the Plaintiff should be entitled to the Orders for occupation but that both parties undertake not to alienate the property pending the Appeal.
11. In regards to the first factor, the Court finds that the stay will mean the Respondent will not be able to be reinstated or be entitled to compensation until the Appeal decision is reached. The Applicant contends that these issues have a bearing if Stay

is not granted as the Appeal is against the reasoning of the Court for which they contend is in the public interest and are important questions of public interest.

12. The Grounds of Appeal are issues of public interest more particularly with the manner in which the Commissioner of Police reviews the decision made by the Tribunal as to mitigatory and aggravating circumstances.
13. The Respondent has contended that they should be compensated or reinstated as per orders of the Court. The Court finds that in doing so, this would defeat the very basis of the Grounds of Appeal and would also prejudice the Applicants.
14. Having weighed the submissions by both parties and the factors to be considered whether or not to grant a stay, the court determines that on a balance of convenience, status quo should be retained whilst the Court of Appeal determines the appeal.
15. Although costs are awarded at the discretion of the Court, more particularly, in most cases, for the benefit of the successful party, given that stay is imposed for the Orders of the High Court, this also extends to the Orders for Costs pending the decision of the Court of Appeal. It would not be appropriate to enable cost orders to be paid as this is not a money judgement for a monetary or liquidated claim. Furthermore, the Court of Appeal is in a position to make their decision as to whether costs should be awarded in any event.
16. The Court will therefore grant the application for Stay pending Appeal.

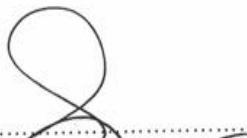
Orders

17. **The orders are as follows:**

(1) Application for Stay pending Appeal is granted;

(2) Costs bourne by parties.




Ms. Senileba LTT Waqainabete-Levaci
Puisne Judge