

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Judicial Review No. **HBJ 03 of 2025**

IN THE MATTER of an application by **BIU COLATI** and for a Judicial Review under Order 53 of the High Court Rules 1988.

AND

IN THE MATTER of Decision purported to be made by **PERMANENT SECRETARY EDUCATION** and/or **MINISTER FOR EDUCATION**, and/or **MINISTRY OF EDUCATION** on or about 4 December, 2024.

BETWEEN : **BIU COLATI.**

APPLICANT

AND : **PERMANENT SECRETARY FOR EDUCATION**

AND : **MINISTER FOR EDUCATION**

AND : **MINISTRY OF EDUCATION**

FIRST - THIRD RESPONDENTS

AND : **ATTORNEY-GENERAL CHAMBERS.**

FOURTH RESPONDENT

BEFORE : **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Mr. Karunaratne J. o/i of Law Naivalu for the Applicant**

Mr. Chand K. with Mr. Ali T. for the Respondents

DATE OF RULING: **21st January, 2026 @ 9.30am.**

RULING

(Summons for Extension of Time and Summons to File Supplementary Affidavit)

A. Introduction

1. On 05th March 2025 the Applicant filed a Summons pursuant to Order 53 rule 3 of the High Court Rules 1988 and sought for the following orders:
 - a) An Order that leave be granted to the Applicant to apply for Judicial Review of the 04th December 2024 Decision by Respondent(s) themselves, their Servants and/or in purporting to
 - (i) redeploy Biu Colati from Acting Senior Education Officer in the Secondary Education Curriculum Development Unit to Assistant Principal Nabua Secondary School, with effect from 5th December 2024.
 - (ii) vary and/or terminate the Applicant's acting employment at Acting Senior Education Officer in the Secondary Education Curriculum Development Unit without any consultation
 - (iii) redeploy the Applicant in breach of Section 20(1) and 27(7) of the 2013 Constitution.
 - b) An Order for stay of the above redeployment of the Applicant from Acting Senior Education Officer in the Secondary Education Curriculum Development Unit to Assistant Principal Nabua Secondary School and to maintain the status quo to pre-4 December 2024 until further orders of this Honourable Court.
2. Together with the Summons, the Applicant also filed an application for Leave to Apply for Judicial Review pursuant to **Order 53 rule 3 (2) of the High Court Rules 1988**.
3. The application was assigned a returnable date of 24th April 2025. Service of the application was not effected onto the Respondents. The Applicant sought further time for mention till 5th or 6th June 2025.
4. However, the Court made directions for:
 - service of the application,
 - 28 days from service of the substantive application, the Respondents to file and serve the affidavits,
 - any Reply, 14 days thereafter.
 - the matter was adjourned to 4th June 2025 at 9 30 am, and
 - HBJ 01 of 2025, 02 of 2025 and 03 of 2025 to be called together on the returnable date on 4th June 2025.
5. However, on 29th May 2025, the Applicant filed two (2) further Interlocutory applications:
 - (i) **Summons for Extension of Time pursuant to Order 3 rule 4(1) of the High Court Rules 1988:**
 - For Leave be granted for Court to extend time for a fresh timetable for filing of Responses and a new mention date to be given,
 - Any other orders that the Honourable Court may deem just and equitable in all of the circumstances,
 - That there be costs in the cause, and

(ii) **Summons to file supplementary Affidavit Verifying Facts:**

- That Leave be granted for Court to accept a Supplementary Affidavit Verifying Facts to be filed by the Applicant,
- Any other orders that the Honourable Court may deem just and equitable in all the circumstances, and
- There be costs in cause.

The application to file supplementary affidavit was made pursuant to the inherent jurisdiction of the Honourable Court.

6. It is noted that HBJ 01/2025 by Savenaca Muamua Bukadrou and HBJ 2/2025 by Jone Vunidoi Kanalagi are somewhat similar in nature.
7. Both parties to the proceedings furnished Court with written Submissions and argued that two (02) impending Interlocutory application for 'Extension of time' and filing of supplementary affidavit.

Determination

8. Application for Judicial Review are governed by **Order 53 of the High Court Rules, 1988**.
9. No application for Judicial Review shall be made unless the Leave of the Court has been obtained in accordance with the Rule specified in **Order 53 Rule 3 (O.53, r3)**.
10. In all the three (3) cases filed herein HBJ 01 of 2025, HBJ No. 02 of 2025 and HBJ 03 of 2025 the Applicants have commenced their applications seeking for Judicial Review by filing:
 - a. A summons
 - b. An application for leave to apply for Judicial Review pursuant to Order 53 rule 3(2) of High Court Rules 1988, and
 - c. An affidavit Verifying facts.
11. **Order 53 Rule 5 (O.53, R5)** sets out the mode of applying the Judicial Review. **Order 53 rule 5(1)** states:

'When leave has been granted to make an application for Judicial Review, the application shall be made either by Originating Motion or Originating Summons.
12. This Court had in all the three (03) Judicial Review cases assigned on the 24th April 2025 as a returnable date for the hearing of the Leave to Apply for Judicial Review applications.
13. However, on the returnable date of the 24th April 2025, Applicant's counsel sought time to serve the 'Leave application' onto the Respondents and the Court accordingly granted acceded to the request and made certain directions for service and scheduled the cases to 4th June 2025.
14. However, it was noted that Applicant's had filed two (2) Interlocutory application for 'Extension of Time for a fresh timetable' and 'Summons to file supplementary affidavit verifying facts' on 29th May 2025.

15. Both applications were assigned with the returnable of 04th June 2025 together with the scheduled date for 'Leave to apply for Judicial Review application'.
16. The Court finally heard the two (2) Interlocutory applications for Extension of Time and Summons to file Supplementary Affidavit Verifying Facts on 08th October 2025 and reserved the delivery of its Decision at a later date.
17. After hearing both Counsels on their own and written submission, I find that the two (2) Interlocutory applications for 'Extension of Time' and 'supplementary affidavit filing', needed to be filed after the hearing and granting of the 'Leave application' for Judicial Review pursuant to **Order 53 Rule 5 (O.53, R5) of the High Court Rules 1988**. The two (2) interlocutory applications have been filed prematurely.
18. Since the Applicant's have failed to follow and adhere to the applicable set out Rules as per **Order 53 of the High Court Rules 1988**, and that this Court had proceeded to hear both Interlocutory application ahead of the 'Leave application for Judicial Review', I have no alternative but proceed to dismiss both Interlocutory applications seeking for:
 - Extension of Time for a fresh timetable, and
 - Summons to file supplementary affidavit verifying facts accordingly.
19. This Court will now assign a returnable hearing date on the 'Application for Leave to Apply for Judicial Review' pursuant to **Order 53 Rule 3(2) of High Court Rules 1988**.

Costs

20. There will be no order as to costs at the discretion of this Court.

Orders

- (i) Applicant's Summons for 'Extension of Time' and 'Summons to file supplementary affidavit verifying facts' are accordingly dismissed in its entirety.
- (ii) There will be no order as to costs at the discretion of this Court.
- (iii) Hearing date to be assigned on impending 'Leave to apply for Judicial Review.'

Dated at **Suva** this **21st** day of **January** ,2026




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Law Naivalu, Lautoka
Office of the Attorney General, Suva