

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

NO. 001/2009

BETWEEN: CHIEF REGISTRAR

Applicant

A N D: ABHAY SINGH

Respondent

**Applicant in Person
Respondent in Person**

Date of Hearing: 30 October 2009

Date of Ruling: 30 October 2009

**EXTEMPORE RULING
ON SUMMONS FOR LEAVE TO APPEAL**

- [1] Before the Commission is a summons filed by the respondent to the substantive proceedings. That summons was filed on 28th October 2009 and seeks that leave be granted to file and argue an appeal in the Fiji Court of Appeal on various grounds.
- [2] The grounds are set out in the summons in paragraphs a – e:
- (a)- seeks to argue whether the Commission was correct in refusing the Appellant an adjournment of the matter to enable him to locate his witnesses
 - (b)- seeks a stay pending the hearing and determination of the Applicant's appeal before the Fiji Court of Appeal
 - (c)- seeks the transcript of the proceedings of 20th October 2009 and 23rd October 2009 be available within 14 days. I note that the transcripts were made available to both parties before the tribunal today
 - (d)- seeks leave to argue three issues on appeal. They are;

- (i) That the issue of conviction was already dealt and decided by the High Court of Fiji
- (ii) That one of the complaints was settled before the High Court
- (iii) That there has been unreasonably delay

[3] In support of the summons Mr Singh relies upon an affidavit that he has filed in these proceedings together with extensive submissions as to the law. The summons is opposed by the Chief Registrar who also relies on an affidavit filed in response to the summons and outline submissions with respect to the law.

[4] Proceedings before this Commission are governed by the Legal Practitioners Decree 2009. Section 128 of that Decree provides

(1) An appeal shall lie to the Court of Appeal from any order of Commission at the instance of either the Registrar or any party to the proceeding

(2) Such appeal shall be made within such time and in such form and shall be heard in such manner as shall be prescribed by the rules of procedures made under section 127

[5] There are no rules of procedures under section 127 at this point in time; however I have in accordance with section 127 issued a practice direction prescribing that the rules pursuant to the Court of Appeal Act shall apply to proceedings before this Commission as if they were proceedings before the High Court.

[6] It is for the purpose of the current application significant that section 128 only gives the right to appeal "from an order of the commission".

[7] The summons which is before the Commission seeks leave inter alia to argue that the issue of conviction was already dealt with and decided by the High Court of Fiji. There is no order of this Commission to trigger section 128 with respect to that issue. Similarly there is no order of this Commission with respect to the alleged settlement of proceedings before the High Court as detailed in paragraph d (ii) of the summons and again there is no order of the court with respect to delay as detailed in paragraph d (iii) of the summons.

[8] This would appear therefore to leave the only available ground as that detailed in paragraph (a) of the summons and for the purpose of completeness I set that paragraph out;

That leave be granted to the Applicant file and argue his appeal in the Fiji Court of Appeal on the ground whether 23rd October 2009, the Commissioner of the Independent Legal Services Commission was correct in refusing the Appellant an adjournment of the matter to enable him to locate his witnesses whose whereabouts were not known due to long delay in commencing the Disciplinary Action."

[9] Before considering the law applicable to an application of this type it is prudent to look at the evidence which is placed before the Commission. That evidence on behalf of Mr Singh is contained in his affidavit. It would seem from the affidavit and from Mr Singh's submissions in response to questions raised in the course of the hearing that the most relevant paragraph is paragraph 9 which states "*that on the same day, I went to look for my witnesses at Valelevu but to my surprise all my witnesses had moved away from the place. One of the important witnesses from Eagle Boys Pizza had since return to Brisbane Australia*" that is the only evidence placed before this Commission as to the lack of the availability of witnesses on behalf of Mr Singh.

[10] The very short history of the matter is set forth in the ruling sought to be appealed. The matter first came before this Commission on 20th October 2009 when after lengthy discussion the proceedings were set for hearing by consent on the 3rd and 4th November 2009. Mr Singh at that time was represented by senior counsel, Mr Raza. On that same day a facsimile transmission was received from Mr Singh address to the Commission seeking that the hearing date taken be vacated due to a failure to locate witnesses. That application was placed before the Commission and was heard and determined on the 23rd October 2009 when the application to vacate the date was refused.

Whilst there are numerous authorities with respect to granting leave to appeal and the issues that should be considered they are perhaps summarised in the following determinations of the Fiji Court of Appeal

[11] The Fiji Court of Appeal in Civil Appeal No. 117 of 1989 – *Fiji Public Service Commission v Manuvalagi Dalitucama Korovulavula* at page 5 said:

"I am dealing with an application for leave to appeal and not with the merits of an appeal. It would therefore, not be appropriate for me to delve into the merits of the case by looking into the correctness or otherwise of the order intended to be appealed against.

However, if prima facie, the intended appeal is patently unmeritorious or there are clearly no arguable points requiring decision then it would be proper for me to take these matters into consideration before deciding whether to grant leave or not."

[12] The then President of the Fiji Court of Appeal, Sir Moti Tikaram, in *Totis Incorporated spor (Fiji) Limited, Richard Evanson v John Leonard Clark and John Lockwood Sellers* – Civil Appeal No. 35 of 1996 at page 15 said:

"It has long been settled law and practice that interlocutory orders and decisions will seldom be amenable to appeal. Courts have repeatedly emphasized that appeal against interlocutory orders and decisions will only rarely succeed. The Fiji Court of Appeal has consistently observed the above principle by granting leave only in the most exceptional circumstances."

- [13] Thompson JA sitting as a single judge of appeal in **K.R. Latchan Brothers Limited v Transport Control Board and Tui Davullevu Buses Limited** – Civil Appeal No. ABU0012 of 1994 said:

"The granting of leave to appeal against interlocutory orders is not appropriate except in very clear cases of incorrect application of the law. It is certainly not appropriate when the issue is whether the discretion was exercised correctly unless it was exercised either for improper motives or as result of a particular misconception of the law. The learned judge has given full reasons for the order he has made. There is no suggestion of impropriety in the appellant's affidavit. There is an allegation of misconception of the law, but if there was a misconception of the law, it is not a clear case of that. That matter can be made a ground of appeal of any appeal against the final judgment of the High Court, if the appellant is unsuccessful in the proceedings there."

- [14] And further the Fiji Court of Appeal in **Kelton Investments Limited v Civil Aviation Authority of Fiji** (1995) FJCA 15 – 18 July 1995 relied upon a decision of the Supreme Court of Victoria, Australia (Full Court) in **Niemann v Electronic Industries Ltd** (1978) V.R. 431 where Murphy J. said at page 441:

Likewise in Perry v Smith(1901), 27 VLR 66 & Darrel Lea Case [1969] V.R. 401, the Full Court held that leave should only be granted to appeal from an interlocutory judgment or order, in cases where substantial injustice is done by the judgment or order itself. If the order was correct, then it follows that substantial injustice could not follow. If the order is deemed to

[15] The President of the Court of Appeal then went on in *Kelton* to say:

"If a final order or judgment is made or given and the applicants are aggrieved they would have a right of appeal to the Court of Appeal against such order or judgment. Therefore, no injustice can result from refusing leave to appeal.

The courts have thrown their weight against appeals from interlocutory orders or decisions for very good reasons and hence leave to appeal is not readily given."

[16] In line with the authorities to which I have referred and the evidence that is been placed before the Commission it is difficult to see how the circumstance of this application warrant a departure from the clear authority of the Fiji Court of Appeal and accordingly it appears to me that the application for leave to appeal the interlocutory order of the 23rd October 2009 refusing to vacate the hearing date set on 20th October 2009 should be refused.

ORDERS:

1. Summons dismissed
2. Leave to appeal refused



30 OCTOBER, 2009


JOHN CONNORS
COMMISSIONER