

**RAJENDRA CHAUDHRY v CHIEF REGISTRAR (ABU0063 of 2012)**

COURT OF APPEAL — CIVIL JURISDICTION

5 CALANCHINI AP

24 October, 5 November 2012

**Practice and procedure — execution — application for stay of execution pending appeal — no application for stay of execution to Court below — whether Court of Appeal has jurisdiction to hear appeal — Court of Appeal Act s 20 — Court of Appeal Rules rr 26(3), 34(1).**

10 The appellant appealed against ex parte orders made by the Independent Legal Services Commission. The appellant also filed a summons seeking that the orders be stayed pending the determination of the appeal.

**Held –**

(1) An application for a stay of execution must be first made to the Court below. If the application is refused by the Court below then a further application may be made to the Court of Appeal. The Court of Appeal has no jurisdiction to hear the present application, as the appellant has not yet made an application for stay of execution to the Court below.

(2) Under s 20 of the Court of Appeal Act Cap 12, a single judge of the Court of Appeal has jurisdiction to decide such an application. Application for stay of execution is dismissed.

*Appellant in person.**L Vateitei* for the Respondent.

[1] **Calanchini AP.** On 11 October 2012 the Independent Legal Services Commission made the following ex parte orders:

30 ‘1. That the Respondents (*Ronald Rajesh Gordon and Rajendra Pal Chaudhry trading as Gordon and Chaudhry Lawyers at 19 Rewa Street*) and/or their servants and/or agents be restrained from operating/continuing to operate the law firm under the style of *Gordon and Chaudhry Lawyers situated at 19 Rewa Street Suva and any branches of the same until further and/or other orders of this Honourable Commission.*

35 *The Respondents not being the holders of valid practising certificates be ordered to submit a list of pending files of the law firm Gordon and Chaudhry Lawyers to the Legal Practitioners Unit together with a list for the contacts of the clients on the files, such as carried out in the presence of an officer of the Applicant (the Chief Registrar).*

*Members of the Fiji Police to assist the Applicant in the execution and enforcement of this Order.’*

40 [2] On 15 October the Appellant filed Notice and Grounds of Appeal. On the same day the Appellant also filed a summons seeking an order from the Court of Appeal that the orders made by the Commission be stayed pending the determination of the appeal. An affidavit sworn by the Appellant on 15 October 2012 was filed in support of the application.

45 [3] In the Court of Appeal, the position in respect of stay of execution pending appeal is set out in r 34 (1) of the Court of Appeal Rules which states:

‘(1) Except so far as the Court below or the Court of Appeal may otherwise direct

50 (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below;

(b) no intermediate act or proceeding shall be invalidated by an appeal.’

[4] So the filing of a notice and grounds of appeal does not stay execution of the orders made by the Court below unless and until either the Court below or the Court of Appeal grants a stay.

[5] That, however, is not the end of the matter. Rule 26 (3) of the Court of  
5 Appeal Rules provides that:

*‘(3) Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal it shall be made in the first instance to the Court below.’*

[6] An application for a stay of execution must be made to the Court below  
10 first. If the application is refused by the Court below then a further application may be made to the Court of Appeal. Under s 20 of the Court of Appeal Act Cap 12 a single judge of the Court of Appeal has jurisdiction to hear and determine such an application.

[7] As the Appellant has not yet made an application for stay of execution to the  
15 Court below, this Court has no jurisdiction to hear the application at this stage. As a result the Appellant’s application for stay of execution is dismissed.

*Application dismissed.*

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