

**IN THE SUPREME COURT OF FIJI**  
**APPELLATE JURISDICTION**

**Civil Appeal No. CBV 06 of 2022**

**Court of Appeal No. ABU 24 of 2022**

**BETWEEN:**                    **MILLEMARIN INVESTMENTS LIMITED**

**AND:**                            **THE DIRECTOR OF PUBLIC PROSECUTIONS**

**AND:**                            **SULEIMAN ABUSAIDOVICH KERIMOV**

**Coram:**                        The Hon Chief Justice Kamal Kumar, President of the Supreme Court

**Counsel:**                     Mr. F. Haniff and Mr. P. Suguturaga for the First named Petitioner/Applicant

Mr. C. Pryde and Ms. J. Prasad for the First Respondent

**Date of Hearing:**        02<sup>nd</sup> June 2022

**Date of Ruling:**        07<sup>th</sup> June 2022

---

**RULING**

**(Application for Stay of Execution)**

---

**Introduction**

1. On 30 May 2022, the Applicant (“**The Petitioner**”) filed Ex-parte Application for Interim Stay of Execution of certain Orders made by Court of Appeal in Civil Appeal No. ABU 24 of 2022 and by the High Court in Civil Action No. HBM 57 of 2022, pending determination of the Application for Stay of Execution and or enforcement of Court of Appeal Orders.

2. On 1 June 2022, the Applicant filed Application for Stay of Execution seeking following Orders:-

- “1. *That the execution and/ or the enforcement of the Court of Appeal’s Judgment delivered on 27 May 2022 be stayed pending the determination of the Petitioner’s Petition for Special Leave to Appeal to the Supreme Court.*
2. *That the Motor Yatch Amdea with International Maritime Organization Number 1012531 be further restrained from leaving Fiji waters until the hearing and determination of them Petitioner’s Petition for Special Leave to Appeal from the Supreme Court.*
3. *That all crew wages, maintenance and Fiji Government charges for the Motor Yatch Amedea with International Maritime Organization Number 1012531 be paid by the United States of America Department of Justice pending the hearing and determination of the Petitioner’s. Petition for Special Leave to Appeal from the Supreme Court.*
4. *That all proceedings in the Court of Appeal Court and High Court relating to this matter be stayed pending the Hearing and determination of the Petitioner’s Petition for Special Leave to Appeal from the Supreme Court.*
5. *Such further or other orders the Court sees fit.”*

**(“the Stay Application”)**

3. The Application for Interim Stay and the Stay Application were heard on 02<sup>nd</sup> June 2022, at 11.00am.

4. The First Respondent chose not to file Affidavit in Opposition for the reasons that the facts stated in John Walsh's Affidavit sworn on 30<sup>th</sup> May 2022, and filed on 1 June 2022, are undisputed.
5. The First Respondent and the Applicant's Counsel made legal submission in addition to submission filed in Court.
6. This matter was stood down until 2.15pm at which time this Court granted interim stay order in following terms:-
  1. *Execution and/ or enforcement of Court of Appeal judgment in Civil Appeal No. ABU 24 of 2022 delivered in 27th May 2022 and High Court Judgment in Civil Action No. HBM 52 of 2022 delivered on 3<sup>rd</sup> May 2022 be stayed pending the determination of Application for Stay of Execution filed in this Court on 1<sup>st</sup> June, 2022 (hereinafter referred to as "the Stay Application").*
  2. *Motor Yacht Amadea with International Maritime Organization No. 1012531 ("the Yacht") is not to leave Fiji Waters until the determination of the Stay Application.*
  3. *The Yacht shall remain under the custody and control of the Fiji Police Force until final determination of the Stay Application.*
  4. *The Fiji Police shall only act in respect to the affairs of the Yacht as directed by the First Respondent.*
  5. *No persons should enter the Yacht or remain in the Yacht unless authorized to do so by the First Respondent / or his representative.*
  6. *The First Respondent is at liberty to take all necessary action to ensure that the Yacht is in sailing condition at all times.*
  7. *Matter is adjourned to 7<sup>th</sup> June, 2022 at 2.30pm for Ruling".*

7. The Stay Application was adjourned for Ruling to this day.

### **Background Facts**

8. On or about 13 April 2022, the United States Department of Justice sent a request to the Attorney-General of Fiji the Central Authority of Fiji seeking assistance pursuant to Articles 13 and 18 of United Nations Convention Against Transnational Organized Crimes (**UNTOC**).

9. Attorney- General of Fiji in exercise of his discretion pursuant to section 31 of Mutual Assistance of Criminal Matters Act 1997 (MACMA), for registration of the Warrant to Seize Property Subject to Forfeiture issued by United States District Court for the District of Columbia in respect to the Motor Yacht Amadea with International Maritime Organization Number 1012531 ("**the Yacht**")

10. On 19<sup>th</sup> April 2022, the First Respondent filed Originating Summons (registration of a foreign order) with Second Respondent as Respondent in the High Court of Fiji seeking following Order:

*"that a warrant to seize property subject to forfeiture be registered for the motor yacht Amadea with international maritime organization number 1012531".*

11. On the same day the First Respondent filed Originating Summons Ex-parte (registration of a foreign order) and after hearing the First Respondent the High Court granted Interim Order in the following terms:-

*"1. Motor yacht Amadea with international maritime organization number 1012531 be restrained from leaving Fiji waters until the finalization of the application to register a warrant to seize yacht Amadea.*

*2. The matter to be mentioned for further directives on 21<sup>st</sup> April. 2022".*

12. On 21 April 2022, the Petitioner appeared by his counsel making an application that it be joined as a party to the proceedings when the High Court ordered that the Petitioner be joined as a party with all documents to be served on it and adjourned the matter to 25<sup>th</sup> April 2022, for hearing.
13. On 3<sup>rd</sup> May 2022, the High Court delivered the Judgment and made following orders:-
  - “1. *The Orders contained in warrant to seize the property (Amadea) subject to forfeiture issued by the United States District Court for the District of Columbia in Case No. 22-sZ-9 (in Matter of Seizure of the Motor Yacht Amadea with international maritime organization number 1012531) is to be registered in terms of section 33 (3) of the Mutual Assistance in Criminal Matters Act 1997.*
  2. *The cost of this application is summarily assessed at \$3000.00 to be paid by the Respondent to the Applicant within 30 days”.*
14. On 4<sup>th</sup> May 2022, the Petitioner filed Application for Stay of Execution of the Order pronounced by the High Court pending determination of the Petitioner’s Appeal, filed in Court of Appeal.
15. On 6<sup>th</sup> May 2022, the High Court delivered a Ruling dismissing the Petitioner’s Application for Stay.
16. On the same day the Petitioner made Application for Stay of Execution of High Court Order to Court of Appeal pending determination of the Stay Application.
17. The Court of Appeal granted interim stay which was subsequently extended until final determination of the Appeal.
18. The Petitioner’s appeal to Court of Appeal was heard on 18<sup>th</sup> May 2022.

19. On 27<sup>th</sup> May 2022, the Court of Appeal dismissed the Petitioner's appeal and made Order in following terms:-

“1. *The Appeal is dismissed.*

2. *The order made by the High Court for costs is set aside.*

3. *This judgment is not to take effect in regard to its implementation and/ or its consequential impact until 7 days from notice of it to parties.*

4. *There shall be no costs in this appeal”.*

20. After the delivery of the Court of Appeal Judgment the US Authorities on the direction of the First Respondent boarded the Yacht and took control of the Yacht from the Petitioner's crew who disembarked.

21. On 30<sup>th</sup> May 2022, the Petitioner filed Petition for Special Leave to Appeal the Court of Appeal decision.

### **Application for Stay**

22. It is well established and undisputed that this Court have unfettered discretion to either grant or refuse stay of execution.

23. His Lordship Justice Gates, the then President of Supreme Court in **Ward v. Chandra** [2011] FJSC8; CBV 0010 (20 April 2011) stated as follows;

*“The issue for determination is whether the Petitioner's case prior to the hearing is sufficiently exceptional to allow for some interlocutory relief. For at the Supreme Court, that is the final Court of Appeal stage, the hurdles to*

*be overcome for the petitioner seeking leave are formidable. Sufficiently exceptional may be a stronger test than that favored in New South Wales where the hurdles was said to be overcome if “the applicant could demonstrate a reason or an appropriate case to warrant the exercise of its discretion in its favour...”*

24. Courts have over number of years identified various factors that needs to be considered in determining application for stay of execution of judgment.
25. In **Chand v. Lata** [2008] FJHC; Civil Action No. 38 of 2011 (18 July 2008) identified the principles governing stay of execution as follows:-
  - “1. *The grant or refusal of a stay is a discretionary matter for the Court: **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers’ Union**, citing **AG v. Emberson** (1889) 24 QBVC, at 58, 59.*
  2. *The Court does not make a practice of depriving a successful litigant of the fruits of litigation by locking up funds to which prima facie the litigant is entitled, pending an appeal: **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers’ Union**, citing Supreme Court Practice 1979, p. 909; **The Annot Lyle** (1886) 11 PD, at 116 (CA); **Monk v. Bartram** (1891) 1 QBV 346.*
  3. *When a party is appealing, exercising an undoubted right of appeal, the Court ought to see that the appeal, if successful, is not nugatory: **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers’ Union**, citing **Wilson v. Church** (No. 2)(1879) 12 ChD, at 456, 459 (CA).*
  4. *If there is a risk that the appeal will prove abortive if successful and a stay is not granted the Court will ordinarily exercise its discretion in favour of granting a stay: **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers’ Union**, citing **Scarborough v. Lew’s Junction Stores Pty Ltd** (1963) VR 129, at 130.*

5. *In exercising its discretion the Court will weigh considerations such as balance of convenience and the competing rights of the parties before it: **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers' Union**, citing **AG v. Emberson**.*
  6. *A stay will be granted where the special circumstances of the case so require, that is, they justify departure from the ordinary rule that a successful litigant is entitled to the fruits of the litigation pending the determination of any appeal: **Prasad v. Prasad** [1997] FJHC 30; HBC0307d.96s (6 March 1997), citing **Annot Lyle** (1886) 11 PD 114, at 116; **Scarborough v. Lew's Junction Stores Pty Ltd** (1963) VR 129, at 130; and see also **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers' Union**.*
  7. *In exercising its discretion the Court will weigh consideration such as balance of convenience and the competing rights of the parties before it: **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers' Union**, citing **AG v. Emberson**.*
  8. *As a general rule, the only ground for a stay of execution is an Affidavit showing that if the damages and the costs were paid there is not reasonable probability of getting them back if the appeal succeeds: **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers' Union**, citing **Atkins v. GW Ry** (1886) 2 TLW 400.*
  9. *Where there is a risk that is a stay is granted and the assets of the Applicant will be disposed of, the Court may, in the exercise of its discretion, refuse the application: **Fiji Sugar Corporation Limited v. Fiji Sugar & General Workers' Union**".*
26. In **Natural Water of Fiji Limited v. Crystal Clear Mineral Water (Fiji) Limited** [2005] FJCA 13 ABU0011.2004S (18 March 2005) Fiji Court of Appeal stated as follows:-

*"The following non-comprehensive list of factors conventionally taken into account by a court in considering a stay emerge from **Dymoocks Franchise***



**Systems (SW) Pty Ltd v. Bilgola Enterprises Ltd** (1999) 13PRNZ 48, at p.50 and **Area One Consortium Ltd v. Treaty of Waitangi Fisheries Commission** (12993) 7PRNZ 2000:

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

27. In **Murthi v. Patel** [2000] FJCA 17; ABU0014.2000S (5 May 2000) his Lordship Justice Ian Thomson JA (as he then was) stated as follows:-

*"A number of considerations have to be taken into account by a judge exercising his discretion whether or not to grant a stay of execution. Prima facie the party succeeding in the High Court is entitled to enjoy immediately the fruits of his success. However, if an appellant shows that he has a good arguable case to present on the hearing of the appeal and if refusal of the stay will cause detriment to the appellant which cannot be effectively remedied if his appeal succeeds, so that the appeal will be rendered nugatory, it may be appropriate for the discretion to grant a stay to be exercised in his favour."*

28. His Lordship Justice Calanchini (as he then was) in **New World Ltd v. Vanualevu Hardware (Fiji) Ltd** ABU0076.2015 (17 December 2015) stated as follows:-

*"The factors that should be exercised by this Court in an application such as is presently before the Court were identified in **Natural Waters of***

***Viti Ltd v. Crystal Clear Mineral Water (Fiji) Ltd*** (ABU 11 of 2004 delivered on 18 March 2005). Generally a successful party is entitled to the fruits of the judgment which has been obtained in the court below. For this Court to interfere with that right the onus is on the Appellant to establish that there are sufficient grounds to show that a stay should be granted. Two factors that are taken into account by a court are (1) whether the appeal will be rendered nugatory if the stay is not granted and (2) whether the balance of convenience and the competing rights of the parties point to the granting of a stay.”

29. In view of what is stated in **New World** case, Courts when dealing with Application for Stay of Execution should:-
  - (i) Consider whether appeal if successful will be rendered nugatory; and
  - (ii) The balance of convenience.
30. In assessing balance of convenience Court would take into account the factors stated in **Natural Waters** case **which factors are not exhaustive.**
31. It must be understood that when Court is empowered to exercise discretion, it should do so judicially and in the interest of justice.
32. The factors provided by Courts when dealing with certain Applications are to guide Court to reach a decision which is fair and just under the circumstances of each case and to ensure the decisions are consistent on such Applications based on similar set of facts.
33. In exercising the discretion, the Court should consider the factors highlighted by Superior Courts in addition to any other factors they think necessary to determine whether interest of justice lies in favour of granting the stay or refusing it.

**Whether Appeal if Successful Will be rendered nugatory**

34. There is no doubt that if Stay is not granted the Yacht will sail out of Fiji waters and after that the Applicant may have no interest in proceeding with the Appeal.
35. From perusal of the document filed it appears that the main intention of the Appeal is to evade the Yacht from coming into the hands of US Authority and if US Authority seized the yacht prior to determination of the Appeal then the Appeal will be nugatory if Petitioner is successful.

**Whether the Respondent will be Injuriouslly Affected if stay is Granted**

36. This Court is of the view that the First Respondent will not be injuriously affected if Stay is granted.
37. On the same token, the Petitioner will not be injuriously affected if Stay is not granted for the reasons that:-
  - a) The Petitioner will still maintain the ownership of the Yacht;
  - b) The Petitioner will be in a position to defend itself if any criminal proceedings are instituted in the United States in relation to the Yacht.

**Bona-fide of Applicant as to prosecution of appeal**

38. The Petitioner's Counsel submitted that the Petitioner will prosecute the appeal diligently to have it listed in the next session of Supreme Court sitting.
39. This Court has no doubt that the Petitioner will prosecute this appeal diligently.

**Novelty and importance of question involved**

40. The Applicant raised eleven grounds of appeal which are identical to the grounds raised in the Court of Appeal. The grounds of appeal are as follows:-

1. *The Court of Appeal erred in law in upholding the decision of the High Court delivered on 3 May 2022 that registered a United States of America ‘warrant to seize property (Amadea) subject to forfeiture issued by the United States District Court of Columbia in Case No. 22-sZ-9 when Section 31 (2) of the Mutual Assistance in Criminal Matters Act 1997 only permits an application to restrain persons from dealing with property to be made, not seizure in rem.*
2. *The Court of Appeal erred in law in upholding that the ‘Warrant to Seize Property Subject to Forfeiture’ issued by the United States District Court for the District Court of Columbia in Case No. 22-sZ-9 was a Foreign Restraining Order when the order was for the seizure of the Motor Yacht Amadea with International Maritime Organization Number 1012531. Restraint and seizure are vitally different.*
3. *The Court of Appeal in endorsing the reasoning of the High Court that if the seizure warrant was not a foreign restraining order within the meaning of MACMA then “the court can exercise its discretion so as to refuse the request for registration’. If (as the Petitioners submit) the seizure warrant was not a foreign restraining order within the meaning of the statute, the court has no discretion; rather, it has no jurisdiction to register the warrant.*
4. *The Court of Appeal erred in law in upholding that Section 31 (6) of the Mutual Assistance in Criminal Matters Act was irrelevant to applications to register a foreign restraining order when Section 31(6) expressly referenced and required the Court to consider the parallel provisions in the Proceeds of Crimes Act 1997 determining an application for a registration order against property.*
5. *The Court of Appeal erred in law in upholding that the Court is not required to consider the factors in the Proceeds of Crimes Act 1997, particularly Part 2, Division 2A, Civil Forfeiture Orders at Section 19(B) had to be considered before registering a foreign restraining order.*

6. *The Court of Appeal erred in law in declining to consider these underlying facts on the grounds that to do so would amount to reviewing the US Court order. The Courts of Fiji are neither compelled nor permitted simply to rubber stamp the orders of any foreign state, but can and must apply the domestic law, which involves establishing power jurisdiction to make an order, and exercising proper discretion in doing so.*
7. *The Court of Appeal erred in law in relying upon the fact that some 20 years after enacting MACMA, Fiji acceded to UNCTOC, as somehow attenuating the requirements of the domestic legislation. The obligation on the courts of Fiji to apply its domestic law does not in any way render the assistance available to foreign states “a dead letter”. Fiji is not obliged by UNCTOC to disapply its domestic law in giving assistance to foreign states.*
8. *The Court of Appeal erred in law in failing to consider Section 19(B) of the Proceeds of Crime Act which required the Court to be satisfied that there were reasonable grounds for suspecting that the Motor Yacht Amadea with International Maritime Organization Number 1012531 is a tainted property before registering the foreign restraining order.*
9. *The Court of Appeal erred in law in upholding the registration of the foreign restraining order when there was no evidence that Motor Yacht Amadea with International Maritime Organization Number 1012531 is property used in, or in connection with, the commission of the offence and/or property intended to be used in, or in connection with, the commission of the offence and/or proceeds of crime.*
10. *The Court of Appeal erred in law and in fact in failing to find that the beneficial owner of the Motor Yacht Amadea with International Maritime Organization Number 1012531 given there is undisputed evidence before the Court was that the beneficial owner of the Motor Yacht Amadea was Mr Eduard Khudaynatov.*
11. *The Court of Appeal erred in avowing that the Court should not consider what steps the Attorney General might choose to take. If and insofar as*

*this was intended to give free rein to the DPP to hand over possession of the Yacht to the US Authorities to sail her out of the jurisdiction, the DPP had no power so to do. This could not be done under a domestic restraining order. The course proposed amounts to converting a US seizure order first into a domestic restraining order and then back into a US seizure order a There is no basis in law for such an approach.*

41. It is well established that the threshold to obtain special Leave to Appeal will need the Petitioner to establish that the grounds of appeal raise:
  - a) A far reaching question of Law
  - b) A matter of great general or public importance,
  - c) A matter that is otherwise of substantial grounds of interest to the administration of civil justice S 7(3) Supreme Court Act 1998.
  
42. Even though the Applicant has very generously identified eleven grounds of the appeal, the crux of the Applicant's grounds of appeal are as follows:-
  - i. The order sent by the United States Department of Justice was Foreign Seizure Order and not Foreign Restraining Order which means that the Foreign Seizure Order could not be registered lawfully under section 31 (3) of MACMA, our domestic Legislation.
  - ii. The Court of Appeal erred an upholding High Court decision to not to refer to section 19B of Proceeds of Crime Act 1997.
  
43. The issue in respect to what is stated in paragraph 42 (i) deals with statutory interpretation of what is stated in section 31 (3) of MACMA which is whether use of word "Foreign Restraining order" stops the registration to Warrant of Seizure issued by United States Department of Justice.
  
44. The Court of Appeal at paragraph 16 of its judgment quoted the principle from Salomon v Custom and Excise Commission (1952) AC 401

*“If the terms of the legislation are clear and unambiguous, they must be given effect to, whether or not they carry out Her Majesty’s treaty obligations, for the sovereign power of the Queen in Parliament extends to breaking treaties (see **Ellerman Lines v. Murray; White Star Line** and **US Mail Steamers Oceanic Steam Navigation Co Ltd v Comerford**), and any remedy for such a breach of an international obligation lies in a forum other than Her Majesty’s own courts. But if the terms of the legislation are not clear but are reasonably capable of more than one meaning, the treaty itself becomes relevant, for there is a prima facie presumption that Parliament does not intend to act in breach of international law, including therein specific treaty obligations; and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is consonant is to be preferred. Thus, in case of lack of clarity in the words used in the legislation, the terms of the treaty are relevant to enable the court to make its choice between the possible meanings of these words by applying this presumption.”*

[1952 AC 401 at 426]

45. Court of Appeal at paragraph 20, 21, 22, 24 and 25 of its Judgment stated as follows:-

*“ [20] If one looks at the underlined portion in Lord Denning’s approach to interpretation of treaty Acts, the Fijian position is even stronger in that, Fiji, subsequent to the MACMA (1997), in pursuance of Section 51 of the Constitution, the UNCTOC was approved by Parliament.*

*[21] It was consequent to the events referred to above that, after the impugned order of the US District Court for the District Court of Columbia, the US Authorities sought assistance from the Fijian authorities for its registration leading up to the DPP (1<sup>st</sup> Respondent) making an application for registration of the order (contained in page 1570 of the Copy Record (supra)).*

*[23] .....*

*[22] Looking at the said sequence of events we have no doubt in our minds that, the comprehensive summary of the principles and key authorities applicable to the interpretation of treaties (conventions) given by Mummery J in **IRC v. Commerzbank AG** became applicable to the issue involved in this case.*

*[24] Finally, we still felt the need to look at the definition of “a foreign restraining order” contained in the MACMA which is:*

*“an order, made under the law of a foreign Country, restraining a person or persons dealing with property, being an order made in respect of an offence against the law of that foreign Country.”*

[25] *Reading that section, we were persuaded to agree with the DPP’s submissions that, although the US Order (at 1570 of the Copy Record) on the face of it was a “seizure order subject to forfeiture”, nevertheless, in substance, it satisfied the definition of a “foreign restraining order.”*

46. I fully endorsed what the Court of Appeal said at paragraph 25 of its Judgment and the principle in **Solomon’s case** (supra).
47. It is undisputed that request by United States Department of Justice was made pursuant to Articles 13 and 18 of UNTOC.

Article 13 (1) (2) provide as follows:-

1. *A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:*
  - (a) *Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or*
  - (b) *Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 12, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 12, paragraph 1, situated in the territory of the requested State Party.*



2. *Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, 14 equipment or other instrumentalities referred to in article 12, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.*

[“Article 13, 1 &2”]

48. To supplement what is stated at preceding paragraphs on the issue of interpretation UNOTC defines “freezing” or “seizure” to mean:-

*“(f) “Freezing” or seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority”*

[“Article 2 (f)”]

49. This indicates date “restraining” meaning temporary prohibiting would fit the definition of “seizure”.
50. The Applicant’s Counsel kept on emphasizing that Fiji should not act as a rubber stamp for the requesting country thus signifying that in this instance the Attorney-General of Fiji being, the Central Authority just rubber stamped that request from the United States Department of Justice without giving due consideration to the request.
51. This Court finds such an assertion to be totally misconceived for the following reasons:-
  - i. The request for enforcement of the warrant was received by the Attorney-General of Fiji on 13<sup>th</sup> April 2022.
  - ii. The First Respondent moved the Court on 19<sup>th</sup> April 2022, which is six (6) days after the request had been made.

- iii. This certainly suggests that Attorney-General of Fiji as Central Authority considered the request before exercising his discretion to authorize the First Respondent to register the Warrant.
52. In my view, there is no error by Court of Appeal in holding High Court decision to not to refer to provision of Proceeds of Crime Act 1997.
53. After analysis the fact and submissions this Court finds that chance of the Applicant satisfy in the threshold in section 7(3) of the Supreme Court Act 1998 is from nil to very slim.

### **Effect on the Third Parties**

54. No evidence was led as to how grant or refusal of Stay will affect any third party.
55. Also the issue relating to interpretation of Statute are not novel as this Court has time and again dealt with this issues and set down the principles for interpreting legislative provisions.

### **Public Interest**

56. UNTOC was adopted by member States to assist each other in fight against serious organised crimes. Fiji, being the member country from 2017, is obliged to carry out its obligations under UNTOC efficiently and expeditiously and without being hampered by mere technilites in the domestic legislation.
57. Not to comply with the provisions of UNTOC due to technilites would, certainly put Fiji's international reputation in dealing with international crimes and its membership of International Conventions at a risk.
58. The fact that the Attorney-General of Fiji, being the competent authority in exercise of his discretion has authorized the First Respondent to register the Foreign Order in our Court demonstrates that, Foreign Orders is valid for registration purposes.

59. This Court accepts the First Respondent's submission that the Yacht being berthed at Lautoka Wharf is costing the Fijian Government dearly in terms of its resources. The fact that US Authorities have undertaken to pay cost incurred by the Fijian Government is totally irrelevant.
60. Fijian Government resources could be utilized elsewhere more meaningfully rather than utilizing it in respect to a vessel which sailed into Fiji waters without any permit and most probably to evade prosecution by United States of America.
61. Public interest therefore demands that the Yacht which has no interest in Fiji should sail out of Fiji waters to avoid wastage of more valuable resources on it.

### **Conclusion**

47. This Court after considering the Affidavit evidence and Submissions made, finds that:-
- (i) If stay is not granted the Appeal if successful will be rendered nugatory;
  - (ii) Applicant and the First Respondents will not be injuriously affected if stay is granted or refused;
  - (iii) Question to be answered in this Court is not novel and chance of the Petitioner meeting the threshold required in s7(3) of Supreme Court Act is nil to being very slim.
  - (iv) No third party will be affected if Stay is granted or refused.
  - (v) Public Interest dictates that Stay be refused and the Yacht sail out of Fiji waters.

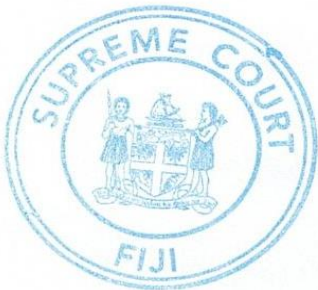
### **Costs**

49. I take into consideration that the parties in addition to written submissions made oral submission.

### **Orders**

51. This Court makes following Orders:-

- (i) Summons for Stay of Execution and of Proceedings Pending Appeal filed on 1<sup>st</sup> June 2022, is dismissed and struck out.
- (ii) The Applicant do pay the First Respondent costs assessed in the sum of \$1500.00.



A handwritten signature in blue ink, consisting of a large, stylized 'K' followed by a horizontal line and a small flourish.

.....  
Hon. Mr. Justice Kamal Kumar

**President of Supreme Court**

**Solicitors:**

Haniff Tuitoga for the Applicant

Office of the Director of Public Prosecution for the First Respondent