

IN THE SUPREME COURT OF FIJI
CIVIL APPELLATE JURISDICTION

Civil Appeal No. CBV 004 OF 2024

[On Appeal from the Fiji Court of Appeal
Civil Appeal No. ABU 040 of 2021 and
High Court of Fiji Civil Action No. HBC
177 of 2016 and HBC 182 of 2018]

BETWEEN : **LARRY SIMON** Businessman and semi – retired pilot of 157 Park Lane
Drive, Strathmore, Alberta Canada T1P1V8 .

PETITIONER
ORIGINAL PLAINTIFF

AND : **PACIFIC ISLAND AIR LIMITED** a limited liability company incorporated
under the Companies Act of Fiji whose registered office is at London Avenue
Namaka, Nadi.

1ST RESPONDENT
(ORIGINAL 1ST DEFENDANT)

AND : **JOHN SCOTT CURRIE** company director and businessman c-/Pacific
Island Air Limited of London Avenue of Namaka, Nadi.

2ND RESPONDENT
(ORIGINAL 2ND DEFENDANT)

Coram : **Chief Justice Salesi Temo**
President of the Supreme Court

Counsels : Mr. I. Fa (Junior) for the Petitioner
: Mr. J. Apted for Respondents

Date of Hearing : 20 March and 5 May 2025

Date of Ruling : 30 June, 2025

RULING ON NON-COMPLIANCE WITH THE RULES

1. On 11 April 2024, the Petitioner, through his lawyers, filed his *“Petition for Special Leave to Appeal”* to the Supreme Court, pursuant to section 98 (3) and 98 (4) of the 2013 Constitution, against the judgment of the Fiji Court of Appeal dated 29 February 2024.
2. Rule 4 of the Supreme Court Rules 2016 reads as follows:

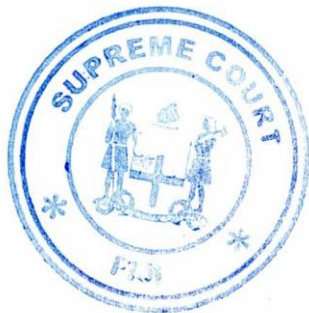
“...4.—(1) An application to the Court for leave to appeal under section 98(4) of the Constitution must be by way of Petition.

(2) A Petition under paragraph (1) must— (a) state succinctly and clearly all facts it may be necessary to state relating to the Petition; (b) deal with the merits of the case only so far as is necessary to explain the grounds upon which leave to appeal is sought; and (c) be signed by the Petitioner’s legal practitioner or by the party if the party appears in person.

(3) A Petition must be supported by an affidavit verifying the allegations made in the Petition.

(4) For the purposes of this Rule, Forms 6 and 7 set out in Atkin’s Encyclopedia of Court forms (Second Edition) Volume 5 (1984 issue) at page 189 et sequentes must be used with any modifications or variations the circumstances of the particular case may require. These forms are set out in Schedule 1...”
3. In filing their *“Petition for Special Leave to Appeal”*, in my view, the Petitioner duly complied with Rules 4 (1) and (2) of the Supreme Court Rules 2016.
4. In complying with Rules 4 (3) and 4 (4) of the Supreme Court Rules 2016, the Petitioner filed an Affidavit by Vasiti Aditukana, who was employed in Fa and Company as a Law Clerk. The affidavit was filed on 11 April 2024. On 3 February 2025, the Petitioner also filed an affidavit in support of the petition.
5. On 20 March 2025, Mr. Apted for the Respondents, objected to the above affidavits, both in its form and the deponents. He submitted that the affidavits had to be signed by a solicitor. He submitted that the above was what the rules demanded. He referred to Rule 4 (4) of the Supreme Court Rules 2016, and especially Form 2 in Schedule 1.

6. On 5 May 2025, Mr. Apted submitted that if the rules are not complied with, then the petition ought to be dismissed on the ground of non-compliance with the above.
7. Mr. Fa, for the Petitioner, submitted that the above affidavits were not defective. He submitted that under Rule 4 (4) of the Supreme Court Rules 2016, “modification or variations” are permitted if the particular circumstances of the case so requires. He was of the view that the particular circumstance of his case, justified the “variation” in the affidavits the Petitioner filed.
8. I have carefully considered the opposing parties’ positions. In my view, I am persuaded to accept the position submitted by Mr. J. Apted, counsel for the Respondents. Form 2 in Schedule 1 of the Rules specifically referred to lawyers signing the affidavit.
9. Given that the petitioner had not complied with the requirement that a solicitor or legal practitioner signing the affidavit in support of the petition, the petition is dismissed for non-compliance with Rule 4 (3) and 4 (4) of the Supreme Court Rules 2016.
10. The Petitioner is at liberty to comply with Rule 17 (3) of the Supreme Court Rules 2016 if he wants to restore his petition. I order so accordingly.




Salesi Temo
Chief Justice

Solicitor for the Petitioner : Fa & Company, Suva.
Solicitor for the Respondent : Munro Leys, Suva.