

IN THE HIGH COURT OF FIJI
AT LAUTOKA

JUDICIAL REVIEW NO. HBJ 5 OF 2018

IN THE MATTER of CIVIL AVIATION
AUTHORITY OF FIJI

AND

IN THE MATTER of an application by TIMOTHY JOHN JOYCE, SUNFLOWER AVIATION LIMITED, JOYCE AVIATION (FIJI) LIMITED t/a HELI TOURS FIJI, JOYCE AVIATION (FIJI) LIMITED, TALL PINES LIMITED t/a PACIFIC FLYING SCHOOL and TANDEM SKYDIVE (FIJI) LIMITED for a Judicial Review and with other reliefs including an Order of Certiorari to quash the decision made by the Civil Aviation Authority of Fiji (CAAF) and Mr Ajai Kumar, the Manager Corporate Services of CAAF made on 27th December 2017 on an apparent review of the Applicants failure to comply with Safety of Aircraft Operation contrary to section 70(1) of the Air Navigation Regulation (ANR) 1981 and deeming the Applicant no longer a fit and proper person to hold or be issued an aviation document under Regulation 53 of the ANR and revoking his Fiji Commercial Pilots Licences for aeroplanes and helicopters; deeming him no longer a fit and proper person to hold and nominated post holder position under the provisions of CAAF Standards Document and revoking the same; that he no longer be deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of the Applicants conviction by the Nadi Magistrates Court as per section 6(1) of the Rehabilitation Act.

STATE v

CIVIL AVIATION AUTHORITY OF FIJI situated at
CAAF Compound, Nadi Airport, Nadi.

FIRST RESPONDENT

AJAI KUMAR, Manager Corporate Services of the Civil
Aviation Authority of Fiji of CAAF Compound, Nadi
Airport, Nadi.

SECOND RESPONDENT

EX-PARTE

TIMOTHY JOHN JOYCE Lot 28, Sovereign Quays,
Denarau Island, and Sunflower Hanger, Nadi, Fiji,
Businessman, SUNFLOWER AVIATION LIMITED,
JOYCE AVIATION (FIJI) LIMITED t/a HELI TOURS
FIJI, JOYCE AVIATION (FIJI) LIMITED, TALL PINES
LIMITED t/a PACIFIC FLYING SCHOOL and
TANDEM SKYDIVE (FIJI) LIMITED all limited liability
companies having their registered office at HLB Crosby
& Associates, HLB House, 3 Cruickshank Road, Nadi
Airport.

APPLICANTS

Appearances : Mr A.K. Narayan for the applicants
Mr Roopesh Singh for the respondents

Date of Hearing : 5 July 2018

Date of Ruling : 5 July 2018

R U L I N G

[Leave to apply for Judicial Review]

Introduction

[01] This is an application for leave to apply for judicial review.

[02] By his *inter partes* summons dated 13 June 2018 and filed 12 June 2018 (*the Application*), Timothy John Joyce, the applicant seeks the following orders:

[a] *That leave be granted to the application to apply for a Judicial Review of the decision of the first respondent and second respondents made on 27 December 2017, made by or on behalf of the Civil Aviation Authority of Fiji.*

[b] *Stay of decision of the first and second respondents' made on 27 December 2017, on an apparent review of the applicants failure to comply with Safety of Aircraft Operation contrary to section 70(1) of the Air Navigation Regulation (ANR) 1981 and deeming the applicant no longer a fit and proper person to hold or to be issued an aviation document under Regulation 53 of the ANR and revoking his Fiji Commercial Pilots Licences for aeroplanes and helicopters; deeming him no longer a fit and proper person to hold and nominated post holder position under the provisions of CAAF Standards Document and revoking the same; that he no longer be deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of the applicants conviction by the Nadi Magistrate's Court as per section 6(1) of the Rehabilitation Act against the first named applicant made by or on behalf of the Civil Aviation Authority of Fiji until further order of this Honourable Court.*

[03] The application is supported by an affidavit of Timothy John Joyce sworn on 11 June 2018, verifying the facts relied upon.

[04] The application is made pursuant to Order 53, Rule 3 (2) of the High Court Rules 1988, as amended ('HCR').

[05] The respondent opposes the application, and has filed an affidavit of Ajai Kumar, the Acting Chief Executive of Civil Aviation Authority of Fiji sworn on 4 July 2018 in reply. The application is opposed on the ground that the applicants have not exhausted their alternative remedy (appeal) before filing an application for judicial review, in that the appeal under section 12F of the Civil Aviation Authority of Fiji Act ('CAAF Act') still remains pending as the first respondent has informed that it is ready and willing to appoint another Independent Tribunal to hear the appeal of the applicant under section 12F.

[06] At the hearing, the parties made oral submissions.

Background

[07] For ease of reference the background facts are taken from the applicant's affidavit in support. The applicant, on the affidavit, deposes, among other things, as follows:

1. *I am one of the applicants being the Chief Executive Officer Director, shareholder and have held the positions of Chief Pilot and accountable person of the other applicant companies.*
2. *Sunflower Aviation Limited and Tandem Skydive (Fiji) Limited are limited liability companies whilst Joyce Aviation (Fiji) Limited and Tall Pines Limited also being limited liability companies trade as Heli Tours Fiji and Pacific Flying School respectively.*
3. *The applicant companies are involved in the aviation industry and in the business of providing flight services, scenic tours, skydiving activities, repair maintenance and storage of third party aircraft in hangars, operating a flying school and other assorted activities.*
4. *I had been fully involved in all the operations and handled all the delay affairs of the applicant companies until the decision of the respondents dated 27 December 2017. My duties included and carrying out flight standards check on our pilots as required.*

Criminal Action

5. *On 26 February 2016, I was charged by CAAF with 29 counts of failure to comply with Safety Aircraft Operation Requirements contrary to section 70 (1) of the Air Navigation Regulation (ANR) 1981. These offences arose out of my flying an aeroplane without a valid licence as I had overlooked that CAAF had omitted to stamp/renew my Commercial Pilot Licence (Aeroplane) along with my Commercial Pilot Licence (Helicopter) when they were both submitted together for renewal. The 29 occasions of flying were between 11 April 2015 and 20 July 2015 and were all private flights. I had initially pleaded not guilty to the charges they were later amended by CAAF on 21 July 2016 and I pleaded guilty as the offences resulted from an unintentional oversight and misunderstanding. I pleaded guilty to all the amended 29 counts on 4 November 2016. Following mitigation, I was sentenced to a fine of \$1,000.00 on each count on 8 December 2017.*
6. *An appeal was filed to the High Court by me as to the sentences imposed on 4 January 2018. The appeal is currently pending. I am advised by our counsel that the appeal does not impact on the judicial review sought by me. I am advised that what is relevant is that the decision of the respondents made on 27 December 2017 is an additional punishment for the offences that were already dealt with by the Nadi Magistrate's Court as well as the long periods of suspension imposed by CAAF during its 'investigations' of the incidents between 28 September 2015 until 26 July 2016.*

Decision of 27 December 2017

7. *On 27 December 2017, the Manager Corporate Services, Mr Ajai Kumar, of CAAF advised me of the decision made vide a letter of that date that CAAF on an apparent review of my failure to comply with Safety of Aircraft Operation contrary to section 70(1) of the Air Navigation Regulation (ANR) 1981 deemed that I was no longer a fit and proper person to hold or be issued an aviation document under regulation 53 of the ANR. It proceeded to revoke my Fiji Commercial Pilots Licences for aeroplanes and helicopters. It also deemed me no longer a fit and proper person to hold a nominated post holder position under the provisions of CAAF Standards Document and revoked the same. The decision also advised that I was no longer deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of my conviction by the Nadi Magistrates Court as per section 6(1)(a) of the Rehabilitation Acc.*

Appeal Under 12F

8. *As the letter TJJ 5 advised me that I had a right of appeal under section 12F of the Civil Aviation Authority of Fiji Act 1979, I instructed my solicitors to do so. On 17 January 2018, an appeal was lodged to the Chief Executive of CAAF.*

...

29. *Since CAAF's suspensions including the decision of 27th December 2017, I have not been able to perform the following functions for Joyce Aviation Fiji Ltd, Sunflower Aviation Ltd, Pacific Flying School Limited and Tandem Skydive (Fiji) Ltd:-*

- *Fly our main helicopter, the AS355 on any flights including specialised operations including medivacs, filming, under-slug operations and power-line patrols.*
- *Relieve our helicopter or aeroplane pilots when they were off duty or sick.*
- *Carry out required safety and standardisation checks on our pilots.*
- *Relieve our skydive pilots on days off and carry out training and standardisation flights on them.*
- *Relieve our Sunflower Aviation pilots as required when they were off duty.*

As a result, my companies have endured losses, delays and damaged credibility due to being unable to adequately service our customers. I had to engage the following persons to perform the functions, I would have carried out:-

- *Reinhard Ridel as pilot for the AS355 helicopter salary \$60,000.00 plus \$40.00 every hour of flying;*
- *Betty Katerina as Accountable Manager Pacific Flying School \$50,000.00 increment; and*
- *Benjamin Sraginson as pilot estimated costs for his services \$12,812.00.*

30. *My companies and I have sustained and continue to sustain substantial losses. I will provide full details of damages which will be professionally ascertained and assessed by an expert appointed by the Applicants at the assessment of damages. I undertake to file a copy of the report in this proceeding when they are completed.*
31. *I have also suffered mentally and financially because of the erroneous decision of the Respondents. Both my reputation and that of the Applicant companies have been significantly damaged. The suspension against me could end my career and the Applicant companies' business.*
32. *I do not have any other alternative in the circumstances than to apply for a judicial review. I also produce CAAF's own circular in respect of appeals under section 12F marked "TJJ 33". Other than lodging the appeal no further steps were taken in accordance therewith to date except the aborted appointment of the Tribunal. On an enquiry on my instructions Mr Young has advised he is no longer available to hear this matter due to his commitments.*
33. *In view of the foregoing paragraphs, I respectfully pray to his Honourable Court to grant the Applicants' leave to apply for Judicial Review of the Respondents' decision of 27th December 2017 and an order for Stay of the said decision or any further order as this Honourable Court deems fit.*

The relief sought

[08] The applicant seeks the following relief:

- (a) **AN ORDER OF CERTIORARI** to remove and quash the decision of the first and second respondents' dated 27 December 2017, purporting to review the first named applicants failure to comply with Safety of Aircraft Operation contrary to section 70(1) of the Air Navigation Regulation (ANR) 1981 and deeming the applicant no longer a fit and proper person to hold or be issued an aviation document under Regulation 53 of the ANR and revoking his Fiji Commercial Pilots Licences for aeroplanes and helicopters; deeming him no longer a fit and proper person to hold and nominated post holder position under the provisions of CAAF Standards Document and revoking the same; that he no longer be deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of the applicants conviction by the Nadi Magistrates Court as per section 6(1) of the Rehabilitation Act.
- (b) **AN ORDER OF PROHIBITION** prohibiting the respondents' from implementing or continuing to implement or otherwise giving effect to decision dated 27 December 2017, purporting review the first named applicant's failure to comply with Safety of Aircraft Operation contrary to section 70(1) of the Air Navigation Regulation (ANR) 1981 and deeming the applicant no longer a fit and proper person to hold or be issued an aviation document under Regulation 53 of the ANR and revoking his Fiji Commercial Pilots Licenses

for aeroplanes and helicopters; deeming him no longer a fit and proper person to hold and nominated post holder position under the provisions of CAAF Standards Document and revoking the same; that he no longer be deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of the applicants conviction by the Nadi Magistrates Court as per section 6(1) of the Rehabilitation Act.;

(c) **FURTHER OR IN THE ALTERNATIVE, A DECLARATION** (in any event) that the decision of the respondents' made on 27 December 2017, has infringed the first named applicant's rights to natural justice, fairness, breach of the first named applicant's Constitutional rights and section 12F of the Civil Aviation Authority of Fiji Act 1979, is unconstitutional and the decision is unfair, irrational, arbitrary and unreasonable.

(d) *The respondents pay damages to the applicants to be assessed.*

(e) *Costs on a full Solicitor/Client indemnity basis.*

(f) **ANY FURTHER DECLARATIONS** or other relief as his Honorable Court may see fit.

(g) **AND** for the following further interim reliefs:

(a) *A stay of the implementation of the decision of the respondents' made on 27 December 2017, purporting to review of the first named applicants failure to comply with Safety of Aircraft Operation contrary to section 70(1) of the Air Navigation Regulation (ANR) 1981 and deeming the applicant no longer a fit and proper person to hold or be issued an aviation document under Regulation 53 of the ANR and revoking his Fiji Commercial Pilots Licences for aeroplanes and helicopters; deeming him no longer a fit and proper person to hold and nominated post holder position under the provisions of CAAF Standards Document and revoking the same; that he no longer be deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of the applicants conviction by the Nadi Magistrates Court as per section 6(1) of the Rehabilitation Act.*

(b) *A Certiorari and Prohibition to maintain the status quo prevailing prior to 27 December 2017.*

(c) *Mandamus to process the first named applicant's CPL (a) and CPL (H) and restore his status as a fit and proper person.*

The grounds upon which relief is sought

[09] The grounds which the relief is sought upon are as follows:

- (a) *The respondents' acted in breach of the principles of natural justice and fairness.*
- (b) *The respondents' had failed to make a disclosure of the charge or information or results of any investigation with respect to the matter they were reviewing to accord a proper hearing to the first named applicant.*
- (c) *The decision by the respondents' deeming the applicant no longer a fit and proper person to hold or be issued an aviation document under Regulation 53 of the ANR and revoking his Fiji Commercial Pilots Licences for aeroplanes and helicopters; deeming him no longer a fit and proper person to hold and nominated post holder position under the provisions of CAAF Standards Document and revoking the same; that he no longer be deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of the applicants conviction by the Nadi Magistrates Court as per section 6(1) of the Rehabilitation Act is unreasonable and irrational, and/or capricious.*
- (d) *The respondents' decision was in breach of the Constitutional rights of the applicants and was arbitrary and improperly made and/or against the rule of double jeopardy.*
- (e) *The respondents' decision was ultra vires their powers having abdicated their rights to deal with the first named applicant at the Authority level to the Nadi Magistrate's Court by way of private prosecution which had concluded the matter to sentencing with the penalties prescribed for the offences charged.*
- (f) *The first and second respondent failed to consider relevant factors and took into account irrelevant factors pertinent to the issues.*
- (g) *The respondents decision is biased and/or predetermined and not made independently and/or after an independent enquiry.*
- (h) *Section 12F of the Civil Aviation Authority of Fiji Act 1979 in providing an appeal to the second respondent is unconstitutional being in breach of section 16(1) (a), (b) and (c) of the Constitutional of Fiji.*

The law

[10] The relevant law in relation to leave to apply for judicial review is the HCR, O 53, R 3 (2), which provides:

'Application for leave to apply for judicial review (O 53, R 3)

3.- (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this Rule.

- (2) *An application for leave must be made upon filing in the Registry-*
- (a) *a notice in Form 32 in Appendix 1 hereunder containing statement of-*
 - (i) *the particulars of the judgment order, decision or other proceeding in respect of which judicial review is being sought;*
 - (ii) *the relief sought and the grounds upon which it is sought;*
 - (iii) *the name and description of the applicant;*
 - (iv) *the name and address of the applicant's solicitors (if any); and*
 - (v) *the applicant's address for service;*
 - (b) *an affidavit which verifies the facts relied on.*
- (3) (a) *Copies of the application for leave and the affidavit in support must be served on all persons directly affected by the application.*
- (b) *The Court may determine the application without a hearing and where a hearing is considered necessary the Court shall hear and determine the application inter partes.*
- (c) *Notice of hearing of the application shall be notified in writing to the parties by the Registrar.*
- (d) *Where the Court determines the application without a hearing the Registrar shall serve a copy of the order of the Court on the applicant.*
- (4) *Without prejudice to its powers under Order 20, Rule 8, the Court hearing an application for leave may allow the relief sought and the grounds thereof to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.*
- (5) *The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates. (Emphasis provided)***
- (6) *Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.*
- (7) *If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.*
- (8) *Where leave to apply for judicial review is granted, then-*
- (a) *if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings*

to which the application relates until the determination of the application or until the Court otherwise orders; (Emphasis provided)

(b) *if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.*

(9) *Upon granting leave the Court may, if satisfied that such a course is justified, direct that the grant shall operate either forthwith or conditionally as an entry of motion under rule 5 (4) and may then proceed to judgment on the application for judicial review or may give such further directions as may be warranted in the circumstances.'*

Test for granting leave

[11] To grant leave to apply for judicial review, the court has to be satisfied that:

- (a) There is an arguable case for review;
- (b) The claimant has a 'sufficient interest'; and
- (c) There has not been 'undue delay'.

Discussion and decision

[12] The applicant applies for leave to apply for judicial review of the first respondent's decision dated 27 December 2017 that: 1. the applicant is no longer a fit and proper person to hold or be issued an aviation document under regulation 53 of the ANR as he had failed to comply with Safety of Aircraft Operation contrary to section 70(1) of the Air Navigation Regulation (ANR) 1981. 2. Revoking the applicant's Fiji Commercial Pilots Licences for aeroplanes and helicopters. 3. The applicant is no longer a fit and proper person to hold a nominated post holder position under the provisions of the CAAF Standards Document and revoked the same. 4. The applicant was no longer deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of his conviction by the Nadi Magistrates Court as per section 6(1)(a) of the Rehabilitation Act.

[13] In compliance with R 3 (2) (i), the application is accompanied by a statement of the particulars of the decision in respect of which judicial review is being sought. The application seeks, among other things, orders in the nature of *certiorari* (*quashing order*) and *mandamus* (*mandatory order*) to quash the decision

on the ground that the respondent had breached natural justice and failed to follow the proper procedure in arriving at the decision.

- [14] The Court may determine the application without a hearing and where a hearing is considered necessary, the Court will hear and determine the application *inter partes* (see O 53, R 3 (3) (ii)). In this case, the application was heard *inter partes*.
- [15] As required by the HCR, O 53, R 3 (2), the application provides name, description and address of the applicant, and provides the particulars of the decision in respect of which judicial review is being sought. The application is in order. There was no dispute in regard to the formality of the application.
- [16] The applicant has filed an affidavit verifying the facts relied upon. This complies with the requirement of the HCR, R 3 (2) (b).
- [17] Turning to apply the test for granting leave to apply for judicial review.

Sufficient interest

- [18] The question is whether the applicant has 'standing' (*sufficient interest*), pursuant to O 53, R 3 (5). According to this rule, the court will not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- [19] The test for deciding whether a claimant has sufficient interest was considered by the House of Lords in *R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Business Ltd* [1982] AC 617. The court held:
- 'That not only was standing a ground in itself upon which permission could be granted, it should also be considered at the substantive hearing after the relevant law and facts were examined in full.'*
- [20] The decision sought to be judicially reviewed affects the applicant's employment and his business. The decision directly interferes with his personal right. The sufficient interest point was not raised at the leave-hearing. I am satisfied that the applicant has sufficient interest in the matter to which the application relates.

The arguable case for review

- [21] The test for granting permission has been that a claimant must demonstrate to the court upon 'a quick perusal of the papers' that there is an arguable case for granting relief (*R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Business Ltd* (above)).
- [22] When considering whether there is an arguable case for granting the relief sought, the court will not go into the matter in depth. The court will only see, upon perusal of the papers, whether there is an arguable *prima facie* case for granting the relief. The applicant challenges the impugned decision on the grounds that: (a) breach of the principles of natural justice and fairness, (b) breach of the Bill of Rights, (c) *ultra vires*, (d) bias and (e) disproportionality.
- [23] In my view, a cursory consideration of the application demonstrates that the applicant has an arguable case for granting relief.

Undue delay

- [24] The application to apply for leave to judicial review of the decision made on 27 December 2017 seeks quashing orders (*certiorari*) to vacate it.
- [25] The court may, under O 53, R 4, refuse to grant leave for the making of the application or any relief sought on the application, if the court considers that there has been undue delay in making the application for judicial review. The applicant seeks to judicially review the decision of the respondent by issuing an order of *certiorari* to quash and to remove that decision.
- [26] The HCR, O 53, R 4 (2), dealing with the time frame, states:

'(2) In the case of an application for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is 3 months after the date of the proceeding. (Emphasis provided)'

- [27] R 4 (2) applies to this application as an order of *certiorari* is sought to remove the respondent's decision. The applicant states that the decision sought to be judicially reviewed was made on 27 December 2017 and he was informed of the decision on the same day. The applicant filed his application for leave on 12 June 2018.

- [28] In *R (Anufrijeva) v Secretary of State for Home Department* [2004] 1 AC 604, the court said the date runs when notice of a decision was given to the applicant and not the date of a decision.
- [29] The applicant must have filed his application for leave within 3 months of the date when he was informed of the decision. The applicant appears to be late in filing his application.
- [30] In *Caswell v Dairy Produce Quota Tribunal for England and Wales* [1990] 2 AC 738, it was held that: "*Questions of delay are best dealt with in depth at the substantive hearing.*"
- [31] In any event, the respondent did not raise an issue on the point of undue delay because the applicant was waiting for the appointment of an independent tribunal to hear his appeal against the decision.

Alternative remedy

- [32] The only point that was strenuously argued by Mr Singh on behalf of the respondent at the leave hearing was that the applicant has an alternative remedy in that the applicant has not exhausted his right of appeal under section 12F of the CAAF Act before seeking judicial review of the decision. Section 12F provides:

"12F Any person who is aggrieved by the Authority's decision on the refusal, withdrawal, revocation, variation or suspension of an aviation document may appeal to the Chief Executive for the review of the Authority's decision." (Emphasis supplied)

- [33] Mr Narayan of counsel for the applicant conversely contended that section 12F provides a right to appeal to the Chief Executive and the applicant cannot exercise his right of appeal in the absence of Chief Executive. He refers to me a case authority of *State v Commissioner of Inland Revenue ex parte Dilmun Navigation Co. Ltd.*, (2001) 1FLR 296. In that case, Fatiaki, J (as he then was) held that: **(1) in the absence of an appeal to the Court of Review as a practical alternative (not functioning) or of prescribed statutory form or format for taking an objection under s62 (1) of the Act, leave for judicial review and stay are granted.** (Emphasis supplied)

- [34] Under s.12F any appeal must be heard by the CE of the respondent. At the moment, there is no CE to hear the appeal. Therefore, section 12F has become redundant. The applicant is unable to prosecute an appeal under that section in the absence of CE.
- [35] The respondent has agreed to appoint an independent tribunal to hear the appeal, but it has not materialised. There is no time frame within which an independent tribunal would be established.
- [36] In terms of O 53, R 3 (6), where leave is sought to apply for an order of *certiorari* to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- [37] The applicant applies for leave to apply for judicial review of the decision and the relief sought includes an order for *certiorari* to remove for the purpose of its being quashed the decision, which is subject to appeal to the Chief Executive. In the circumstances, the court has, pursuant to R 3 (6), discretion to adjourn the application for leave until the appeal is determined or the time for appealing has expired. I do not intend to adjourn the application until the applicant exhaust his right of appeal because the applicant cannot effectively exercise his right of appeal in the absence of the Chief Executive to him or her any appeal has to be submitted and section 12F (which enables appeal) itself is being challenged on the ground of unconstitutionality.

Conclusion

- [38] Having been satisfied that the applicant cannot exercise his right of appeal and that has an arguable case, I would grant leave to apply for judicial review of the respondent's decision delivered on 27 December 2017.

Stay

- [39] Pursuant to O 53, R 3 (8), where leave to apply for judicial review is granted, then-if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders.

[40] The applicant seeks the relief in the nature of a writ of certiorari and prohibition and I am satisfied that there should be a stay on the decision as it has an impact on the applicant's occupation and his entire business for a period of 10 years. I would, therefore, direct the granting of leave shall operate as a stay on the decision until the determination of the application.

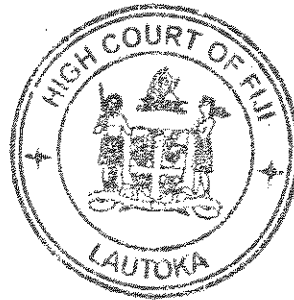
The Result

1. Leave to apply for judicial review granted.
2. This (granting of leave) shall operate as a stay on the decision of the respondent delivered on 27 December 2017.

M. H. Mohamed Ajmeer
5/7/18

M. H. Mohamed Ajmeer

JUDGE



At Lautoka
05 July 2018

Solicitors:

For the applicants: M/s A K Lawyers, Barristers & Solicitors

For the respondents: M/s Patel & Sharma, Barristers & Solicitors