

In the High Court of Fiji at Suva
Civil Jurisdiction

Judicial Review No. HBJ 6 of 2012

The State

And

Minister for Housing and Urban Development

The Director of Lands

iTaukei Land Trust Board

The Director of Town & Country Planning

Labasa Town Council

Respondents

Ex parte: Paul Jaduram, Charan Jeath Singh and Naunit Lal

COUNSEL: Mr H. Nagin for the applicant
Ms K. Naidu for the first, second and fourth respondents
Ms E. Raitamata for the third respondent
Mr S.Sharma for the fifth respondent
Mr Amrit Sen for V Corp

Date of hearing: 6th April, 2016

Date of Ruling : 19th September, 2016

RULING

1. By summons filed on 4th April,2016, VCORP moves that these proceedings be dismissed for non-compliance of Or 53, r 5(2) or alternatively, be adjourned under Or 53,r 6.
2. On 2nd February,2016, I granted the applicants,(office bearers of the Labasa Ratepayers Association) leave to apply for judicial review of the decision of the respondents of 2nd April, 2012,“*whereby they purported to approve a Sublease or alienation of the property known as Jaycees Park to Hotel Northpole*”.

3. Mr Sen, counsel for VCORP, in support of his summons submitted that when leave has been granted to apply for judicial review, Or 53 r 5(1) provides that the originating motion or summons filed thereafter must be served on all persons “*directly affected*.” He contended that VCORP is a person “*directly affected*”, as the impugned lease was granted to VCORP. Finally, Mr Sen relied on Or 53,r 9 which requires that “*any person who desires to be heard in opposition to the motion or summons*” shall be heard, albeit he has not been served with notice of the motion or the summons.
4. Mr Nagin, counsel for the applicants in reply submitted that the principle of res judicata does not allow VCORP to re-litigate this matter, since the applications of VCORP to intervene in this matter was declined on two occasions.
5. Mr Nagin, in his written submissions states that Or 53,r 9 allows the Court to hear parties who were never served with documents in the Judicial Review proceedings, but are affected parties. The provision does not allow parties to be heard who have already been heard and their application to intervene has been refused. Finally, Mr Nagin submitted that the rule only allows new parties to be heard, if they are affected parties.

The determination

6. Or 53 r 5(1) reads as follows:

1) When leave has been granted to make an application for judicial review, the application shall be made either by originating motion or by originating summons.

2) The notice of motion or summons must be served on all persons directly affected.

7. Or 53 r 9 states:

On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

8. In my view the rules do not make a distinction between parties who had sought to intervene and new parties, as argued by Mr Nagin. Or 53,r 5(1) encompasses the service of originating motion or summons on all persons “*directly affected*” and Or 53,r 9 requires the Court to hear a “*proper person*”.
9. **Judicial Review: Law and Procedure** by Richard Gordon Q.C as cited by Mr Nagin provides that Or 53, r 9 presumably covers a broader category to make representations. I would reproduce the extract quoted at para 9-009:

OTHER INTERESTED PERSONS

Apart from the applicant and all relevant respondents there is provision that the rules for other persons and to appear at the full hearing in Order 53, r. 9(1)..

Presumably this is a broader category than those persons required to be served and enables the court to admit a wide variety of interested parties to make representations at the hearing. This is not entirely clear, however, and it may be that this rule is merely intended to be an alternative to adjourning the application for proper service under Order 53, r. 5 (7).

At best, r.9 (1) would seem to allow only opposition to an application for Judicial Review. Presumably though, the court has an inherent discretion allow interested parties to intervene to support the grant of judicial review. (emphasis added)

10. In my judgment, VCORP is a party “*directly affected*”, as contemplated by Or 53,r 5(1). Accordingly, the applicants are required to serve notice of motion on VCORP.
11. **Orders**
- The applicants shall serve notice of motion on VCORP forthwith.
 - Costs in the cause.



A.L.B. Brito Mutunayagam

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JUDGE

19th September, 2016