IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Action HBJ No. 4 of 2026

IN THE MATTER of an Application for leave to apply for Judicial Review pursuant to Order 53 rule 3 of the High Court Rules 1988

AND

IN THE MATTER of a decision made on or about 10 July 2026 by the Ministry of Health and Medical Services

BETWEEN: **JAYS HOLDINGS PTE LTD**, a private company duly incorporated in Fiji with its registered office at Lot 10 Rambisessar Road, Manoca Industrial Subdivision, Nausori, Fiji

1st Applicant

AND: **JASON MOTORS PTE LTD**, a private company duly incorporated in Fiji with its registered office at Lot 10, China Gardens, Nausori, Fiji

2nd Applicant

AND: **MINISTRY OF HEALTH AND MEDICAL SERVICES,** a Ministry of the Government of the Republic of Fiji, having its principal office at Amy Street, Suva, Fiji;

1st Respondent

AND: **THE ATTORNEY GENERAL OF THE REPUBLIC OF FIJI** sued in his official capacity as the principal legal adviser to the Government of the Republic of Fiji and having its office at Suvavou House, Victoria Parade, Suva, Fiji

2nd Respondent

JUDGMENT

Coram: *Hon. Acting Puisne Judge Penijamini R Lomaloma*

Counsels

For the Plaintiff: *M. S. Prasad & Ms. A. Dakumisa*

For the Defendant: *Mr. V. Ram for the Respondent*

Date of Hearing: *1st September 2026*

Date of Judgment: *28th September 2026*

Introduction

1. The Plaintiff filed an Originating Summons on 27th July 2026 seeking leave to apply for Judicial Review of the Decision of the 1st Respondent to detain and continue to detain the Applicant's imported Kava consignment on the grounds that the detention was made in breach of natural justice, was unreasonable, involved reliance upon undisclosed material, and was made without adequate reasons being provided to the Applicants.

2. The Applicants were seeking the following orders:
    a. an order of certiorari to remove into this court and quash the same decision:
    b. A declaration that the same decision is unlawful, invalid, void, and of no effect.
    c. A declaration the applicants were denied procedural fairness and natural justice;
    d. An order directing the respondent to disclose:
    (i). The USP IAS laboratory report relating to the detained consignment.

    (ii) The certificate of analysis.

    (iii) Any risk assessment prepared by or for the Central Board of Health.

    (iv) Any decisions of the Central Board of Health relating to the consignment.

    (v) The reasons relied upon for the continued detention of the goods;

    e. Such further or other orders as this Honourable court deems fit.

3. The Applicant relied on 4 grounds for the relief sought and these can be summarised as: -
    a. The respondents acted in breach of the rules of natural justice and procedural fairness;
    b. The Respondent failed to provide proper and adequate reasons for their decision;

c. The Respondents relied on material that has not been disclosed to the Respondents;

d. The decision was unreasonable; and

e. Respondents have unreasonably delayed determination of the applicant's consignment and continue to detain the goods to the applicant's substantial commercial prejudice.

The Statement Pursuant to Order 53 rule 3 (2) of the High Court Rules

4. The Applicants filed their statement pursuant to Order 53 rule 3(2) of the High Court Rules which state, inter alia, that the Applicants are in the business of importing kava and kava products from Papua New Guinea over the years and regularly complied with Customs, biosecurity and food safety requirements; that on 26 May 2026, they imported 233 bags of dried kava roots and 97 bags of dried kava chips weighing approximately 10,000 kilograms; and that the shipment was accompanied by the relevant customs, phytosanitary, fumigation, inspection and other certificates required by the relevant authorities to import kava.

5. On 30th June 2026, the Biosecurity Authority of Fiji issued an Inspection/Clearance certificate releasing the consignment, but the consignment continued to be detained by the Respondents.

6. On 10th July 2026, the 1st Respondent issued a Detention Notice stating that the products were suspected of noncompliance with the Fiji Kava Standards 2017 and that release would depend upon a Certificate of Analysis and a decision of the Central Board of Health.

7. Prior to and following the issue of the Detention Notice, the Applicants through their solicitors, sought reasons from the Respondents for the continued detention, the legal basis for the requirement for testing, the scientific basis for the detention, the status of the laboratory testing, the particulars of the breach of the Kava Standards 2017.

8. Their attempts failed to elicit the required information from the Respondents so the Applicants filed this application on 28 July 2026 together with a Motion seeking interlocutory injunction against the Respondent.

The Interim Injunction

9. The injunction sought an order directing the First Respondent to immediately release the Applicant's imported kava consignment presently detained pursuant to the Detention Notices dated 10 July 2026 namely:

    a. The First Applicant's consignment contained in Container No. TCNU1203646; and

    b. The Second Applicant's consignment contained in Container No. DRYU3031142.

10. The motion was set for hearing on 5th August where directions were given. On 10th August 2026, the matter was called for mention again and set for hearing on 1st September 2026. The Court reminded the Respondents of section 15 of the State Proceedings Act that there can be no injunction granted against the State.

The Final Decision

11. On the day of the hearing, Counsel for the Respondents told the Court that the decision of 10th July 2026, which is the impugned decision, was not a final decision; that on 30th July 2026, the Respondent wrote to the Director of the 2nd Applicant Company notifying them of the conditional release of the kava roots and these were subsequently released to the 2nd Applicant Company. These were in the Affidavit of Dr. Mike Kava filed on 26 August 2026 which stated that a final decision had been made on 20th August 2026 that the consignment of kava roots has been accepted for local use and export but the Kava Chips is from Non-Noble kava following testing at the AIS Laboratory at the USP.

12. The Applicants filed 2 affidavits in support of their applications and these were sworn by Jag Ram, a director of the 1st Respondent and Jason Shaymal, a director of the 2nd Respondent respectively. The Respondents filed an affidavit in opposition sworn by Dr. Mike Kava, the Acting Permanent Secretary of Health and Medical Services on 26th August 2026. I have extracted the material facts below from these 3 affidavits.

THE MATERIAL FACTS

13. The 1st Applicant applied for an import permit to import kava roots and kava chips from Ocean Kava Limited in Papua New Guinea. On 26th May 2026, the Board issued an import permit No. JPL535/26 to the 1st Applicant to import 50 tons each of the dried kava roots and kava chips with conditions.

The Import Permit

14. **Condition 1** of the Import Permit stated that the kava be **of known noble kava variety**; have no intentional adulteration; be free of moulds; free of off aroma; and practically free of pests and free from damage caused by pests.

15. **Condition 10** was in capital letters also that the product be used only for the purpose mentioned in the Table at the top of the permit, which required it FOR LOCAL RETAIL ONLY.

16. **Condition 11** was in capital letters only and stated, "Consignment shall be placed on hold and locked. Three samples shall be randomly obtained for further analysis at IAS Lab (Institute of Analytical Science at the University of the South Pacific,) Results shall be submitted to the Board for risk assessment prior to release of products for local retail.

The Detention Order

17. On 22nd June, officers of the Ministry of Health inspected the consignment and obtained samples for laboratory testing. The Ministry of Health then issued a *Food Importation Inspection Certificate* declaring that the container would remain locked pending approval of the Central Board of Health and laboratory testing "at the IAS

Lab." The notice was given in a form titled "Food Importation Certificate (FIC) issued pursuant to the Food Safety Act 2003 and Food Safety Regulations 2009.[1]

18. The affidavit of Dr. Mike Kama had the Fiji Kava Standard 2017 annexed as Annexure MK8. At page 1, it states that the standard applies to kava as defined in section 2. Section 2.1 lists the 13 noble varieties of kava, all of which are referred to by Fijian names, showing that they are grown in Fiji. Section 4 states that the products shall comply with the Codex General Standard for Contaminants and Toxins in Foods (CODEX] STAN 193-1955].

19. On 28th July 2026, the Applicants filed the application for leave to apply for judicial review and an injunction to release the shipment. As shown later in this judgment, the actions were filed before the final decision of the Central Health Board had been reached and communicated to the Applicants.

The Final Decision

20. On 20th August 2026, Central Board of Health by letter to the 1st Applicant informed them of their decision based on the analysis results obtained from the IAS and permitted the release of the kava roots as consistent with noble kava profiles. The Kava Chips were identified as non-noble kava due to elevated proportion of Dihdromethysicin (DHM) and rejected as being non-compliant.

ANALYSIS

21. The impugned decision was made on 22nd June 2026 and the 2nd Respondent was notified by letter dated 10th July 2026 which stated that it "was due to the product being suspected of not complying with the prescribed standard under the Fiji Kava Standard 2017."

22. The reasons given are:

> ***Due to the product intended for human usage and is required under section 7 of the Food Safety Act 2003 whereby the ultimate purchaser is entitled to have food of such nature, substance and quality that reasonably expected of such food under the fair trading practices.***

23. The objects of the Food Safety Act are at the very top of the Act in capital letters:

> ***To promote public health and safety with regard to food****, to regulate the preparation, sale and use of food, to assist consumers make informed choices on food, to promote fair trading practices in relation to food and for related matters.*
>
> *(emphasis mine)*

24. The Food Safety Act of 2003 deals with food which is unsafe, unhygienic, adulterated or unfit for consumption and makes it an offence, inter alia, to sell such food. The permit that was granted to the Applicants was for "local retail sales" and stated in condition 1 that it was to be of noble variety. Nowhere in the permit does it state that the consignment was for re-export to China or India for medicinal purposes as the Applicant's contend in their submission.

[1] Exhibit JR-4 of Affidavit of Jag Ram.

25. Section 24 of the Act makes it an offence for someone to import food that does not comply with the Act and making it an offence shows the seriousness of the issue. The Central Board of Health is the government body that is entrusted by section 28 of the Act to administer the Act. Section 32(1)(b) gives the Boad the power to "approve any laboratory in the Fiji Islands or in any other country for the purposes of this Act to make an analysis of any food as required under section 32(1)(a). The Board in the Import Permit stated clearly at condition 11 that the samples of kava and kava chips imported by Applicants should be further analysed at the laboratory of the IAS (USP Institute of Applied Sciences).

26. That is the prerogative of the Board exercising its discretion under the Act based on the facts known to it and it is not for this Court to second guess its decision on which laboratory to analyse the samples. In any case, the Applicants were aware of the decision of the Board to use the AIS laboratory and were bound by it when they accepted the permit and imported the consignments that are the subject of these applications. The submissions by the Applicants that the Board should have had the consignment analysed by the Fiji Agriculture Chemistry Laboratory is discussed further below.

The First issue—What is non-noble kava?

27. The import permit stated at Condition 1 that the imported product shall be of known Noble kava variety. The submissions did not cover this. It is a key point and I will refer to scientific research on this subject.

28. In *The Journal of Pacific Studies, Volume 37 Issue 1, 2017 5,* in an article titled, *Fiji Kava: Production, Trade, Role and Challenges,* Associate Professor Manoranjan Mohantyare, of the University of the South Pacific[2] said that all the varieties of kava grown in Fiji are noble kava as they are preferred for human consumption. The article dedicates 2 pages to Medicinal Role/ Health Implications of Kava with sources from reputable research.[3]. Some studies suggest that non-noble kava, also known as two-day kava, has flavokavain B (FKB) that has proven to be toxic to liver cells:[4]

> *Most data from Kava publications confirm that varieties of Kava were classified into two* ***types – Noble Kava and Two-day kava****. Further* ***research suggests that lethargy and nausea may not be the only harm of Two-day cultivars but Flavokavain B (FKB) a chalcone from kava root has been proven to be toxic to some liver cells (hepatotoxicity). Under normal preparation and consumption of Noble Kava root****, the amount of FKB is negligible or non-existent. Once kava is dried and ground, Noble and Two-day varieties are indistinguishable and* ***can only be differentiated through High Performance Liquid Chromatography (HPLC) analysis of***

[2] Associate Professor, School of Government, Development and International Affairs, The University of the South Pacific, Fiji, at page 10

[3] The Journal of Pacific Studies, Volume 37 Issue 1, 2017 5 an article titled, Fiji Kava: Production, Trade, Role and Challenges at pages 20-22

[4] https://www.usp.ac.fj/the-institute-of-applied-sciences/news/kava-industry-stakeholders-trained-by-ias-on-kava-species-testing/

chemotype, of FK/KL (Flavokavains/Total Kavalactone content) or Acetonic colour testing.[5]

29. In other States in the Pacific, including Papua New Guinea, Vanuatu and the Solomon Islands, non-noble kava is grown. It is therefore the duty of the Central Board of Health to ensure that only Kava from noble varieties are allowed to be imported into Fiji for local consumption. I repeat what I said before that the import permit was that it was for local retail only. Until the analysis is done and the results obtained from the IAS laboratory, the Board cannot permit the consignment to be released locally.

Sub Issue—Is the Central Board of Health justified in requiring tests only from the Laboratory of the USP Institute of Applied Sciences (IAS)?

30. Attached to the Affidavit in Opposition of Dr. Mike Kama as Annexure MK-7 are the results of tests on the samples from the Fiji Agriculture Chemistry Laboratory. The exhibit said the tests were carried out using Kavalytics NTR spectroscopy and categorised both samples as "Beverage Grade." The University of the South Pacific article by Associate Professor Manoranjan Mohantyare, of the University of the South Pacific (see para 28 above)said:

    a. *Once kava is dried and ground, Noble and Two-day varieties are indistinguishable and can only be differentiated through High Performance Liquid Chromatography (HPLC) analysis of chemotype, of FK/KL (Flavokavains/Total Kavalactone content) or Acetonic colour testing.*

    (Underlying mine)

31. I find that the results of the Fiji Agricultural Chemistry Laboratory did not carry out the tests that could distinguish between noble kava and two-day kava also known as non-noble kava. I find also that the decision by the Central Health Board to require in the Import Permit for the samples to be tested by the USP IAS laboratory to be justified in order to determine if the sample has non-noble kava as they have the equipment and the tests to identify non-noble kava.

Conclusions on the Issue & sub-issue

32. I find for the reasons given that:

    a. Non-noble kava is toxic to some liver cells and is harmful to health;

    b. The Board is justified in law to require imported kava for local sale and consumption to be of a noble variety only;

    c. The Board is duty bound to analyse imported kava samples if it has reasonable suspicion that the consignments might contain non-noble kava.

    d. The Board had specifically made it a condition of the Import Permit for both Applicants that the consignment be of noble kava only.

[5] Emphasis mine

e. The Board is justified in requiring testing to be done only by the USP Institute of Applied Science (IAS) because it uses equipment and tests that can distinguish between noble and non-noble kava varieties.

2nd Issue—Should the injunction be granted?

33. It follows from my conclusions above that the injunction seeking to release the consignment before the test results are out should not be granted as it poses the risk of exposing the public in Fiji to the dangers posed by non-noble kava. Further, if the Court were to grant the injunction, then the court could be aiding the Applicants in committing an offence under section 3 of the Act if the samples proved to contain non-noble kava.

3rd Issue—Are the grounds for judicial review based on the facts relating to the impugned decision?

34. The grounds for the application for leave to apply for judicial review are set out in paragraphs 1 to 5 of the application. Ground 1 provides multiple grounds for the judicial review leave application and include:

a. the failure of the Respondents to give to the Applicants the USP IAS laboratory report;

b. not being provided with the Certificate of Analysis;

c. not being provided with the Board of Health risk assessment; and

d. that the Applicants were denied the opportunity to respond to any adverse findings concerning the consignments. These grounds are not supported by the 2 affidavits in support of the application and are therefore based on assumptions.

35. These grounds might be valid grounds if the final decision had been made and on analysis do not support an examination of the impugned decision. They are based on the assumption that the final decision had been made already and have no relation to the impugned decision of 22nd June 2026 to detain the consignments while samples are taken to be analysed at the IAS laboratory.

36. Nowhere in the 2 affidavits in support is there any evidence that the final decision has been made. The affidavit in Opposition of Dr. Mike Kame was filed on 28th August 2026 and showed that the final determination was made by the Central Board of Health was notified by letter to the Applicants by letter dated 20th August 2026. At the time of filing the applications, the Applicants had not been informed of the final decision.

Conclusion on the issue

37. I find that there is no evidence of the grounds relied upon by the Applicants for their application for leave to seek leave to seek judicial review. If I grant leave, there would be no evidence for the Court to apply the law on leave applications for JR sought by the Applicants and so on this ground alone, I can dismiss the application.

4th Issue—Was the decision to seek JR pre-mature?

38. In ***State v Connors, ex parte Shah [2008] FJHC 64; HBJ47.2007 (7 April 2008)*** Scutt J said:

> *It remains only to say that in my opinion this application is premature. As previously noted, De Smith's Judicial Review, 6th Edn, refers to this occurrence in applications for judicial review, saying:*
>
> *Seeking [leave] prematurely is almost as common a ground for refusing [leave] as delay. Judicial review may be premature for several reasons: the decision-taker may not yet have determined the facts; or completed assessment of relevant factors (although in cases involving deprivation of liberty the court will be cautious in rejecting a claim as precipitate); or the impugned decision is merely preliminary to a final decision. The court's general approach is to reject challenges made before the conclusion of a hearing in formal proceedings. Importance must also be attached to the fact that judicial review is intended to be an expeditious process and that some decisions taken by public authorities need to be taken quickly: at 843-44*

39. Scutt J was dealing in the above case where a judicial review was sought by Magistrate Shah before a final decision was made by Judge Connors in an enquiry into the Magistrates Courts in Fiji. Scutt J then said:-

    a. *Mr Connors has not yet determined the facts;*
    b. *He has not yet completed assessment of relevant factors; and*
    c. *The impugned decision (the decision to issue the summons requiring Mr Shah to appear before the Inquiry on 22 November 2007) is merely preliminary to a final decision*

40. At the time of filing the applications, the final decision had not been conveyed to the Applicants. The grant or refusal of application for leave to apply for judicial review is a discretionary decision. Courts have long emphasised that the judicial review procedure is a *"remedy of last resort, to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective"*: ***R (Glencore Energy UK Ltd) v HMRC [2017] 4 WLR 213 at [55***]. Thus, a court may refuse to grant permission to apply for judicial review or refuse to order relief if a suitable alternative remedy is available to the claimant.

41. It was open to the Applicants in this case to enquire with the USP's IAS laboratory before filing their applications if they had analysed the samples of kava sent to them. The samples were theirs and they were going to have to pay for the analysis. They had sufficient interest in the matter to simply find out if the analysis had been done or not before filing for JR. Alternatively, they could await the final decision of the Central Board of Health which was available to the Applicants 23 days after they filed these applications. There is no evidence that the Applicants had taken these steps.

42. If leave is granted, the court would be restricted to the facts as they existed on the day the application was filed, 27 July 2026.

Conclusions on the Issue

43. I find for the reasons given that the application for leave to apply for leave to apply for judicial review was premature and I would also dismiss the application on this ground.

44. The Court cannot apply the law on leave applications for JR based on a decision that was yet to be made.

45. Leave to apply for judicial review should not be taken until the final decision has been taken and all the facts and evidence are in. The Respondents have a duty to investigate shipments of kava if they have reasonable grounds to believe that it poses a danger to the people of Fiji or for those who might consume the kava.

46. Courts should tread with caution in dealing a judicial review application of a government department that is still gathering evidence on which it will make its final decision.

47. **Result:** Circumstances in this case show that the final decision had not been taken when this action to initiate judicial review was taken. The grounds relied upon by the Applicants might be relevant if a final decision had been taken. I find that they are not relevant to the impugned decision. The application should be dismissed on this ground also.

Is there a lis for the Court to decide?

48. I raised the issue with both Counsels in Court after it was informed that the Board had reached its final decision. Counsel for the Applicants argued that leave should be granted to determine the issues in their application, namely:

    a. An order for certiorari to remove the decision into this Court and quash the said decision;

    b. A declaration that the said decision is unlawful, invalid, void and of no effect;

    c. A declaration that the Applicants were denied procedural fairness and natural justice; and

    d. An order directing the Respondents to disclose: (i) the IAS lab report; the Certificate of Analysis; any risk assessment prepared by the Central Board of Health; any decision of the Board relating to the Consignment; and the reasons relied upon for the continued detention of the goods.

49. As I have said before, the impugned decision was the decision of 22nd June to detain the consignments pending testing by the USP's IAS laboratory. The final decision of the Board has already been covered in this judgment and the goods have been released. The court finds it a total waste of resources to review the impugned decision which had been overtaken by events. The grounds relied upon by the Applicants are not based on facts but on the assumption that the Board had made its decision already. If the applicants wish to continue the exercise would be moot and a waste of the meagre resources of the Court.

50. For completeness, I will discuss the question of: *Is there a lis for the Court to decide*? A lis is defined in Black's Law Dictionary as "a controversy or dispute; a suit or action at law."

51. In ***Prudential Assurance Company Ltd v McBains Cooper & Ors [2000] EWCA Civ 172 (23 May 2000); [2001] 3 All ER 1014*** Lord Justice Brooke of the House of Lords said:

> *It is elementary that parties to private litigation are at liberty to resolve their differences by a compromise, and that an unimpeached compromise represents the end of the dispute or disputes from which it arose (see Foskett, The Law and Practice of Compromise (4th Edition 1996), p 90, citing Plumley v Horrells (1869) 20 LT 473 per Lord Romilly MR; and Knowles v Roberts (1888) 38 Ch D 263 per Bowen LJ at p 272).*
>
> *The House of Lords has on occasion declined to hear an appeal in the context of private litigation once it has perceived that the original lis between the parties is at an end, whether by virtue of a compromise or because, as in Ainsbury v Millington [1987] 1 WLR 379,* ***there has been such a change in the underlying factual situation*** ***that the remedy sought by the appellant no longer raises any live issues****.* For the Court to determine the issues of ***certiorari, declarations*** and ***mandamus*** now after the impugned decision has been overtaken by events and the fact that the basis of the application was not based on facts but on supposition, would be, in the words of Viscount Simon LC,[6]
>
> ***not be deciding an existing lis between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellants hope to get decided in their favour without in any way affecting the position between the parties. ... I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue.***"

52. The principles enunciated above are applicable to all cases in all courts, not merely to the House of Lords in appeals. I would therefore not hear the application and determine the prayers for *certiorari, declarations and mandamus* sought in the summons as it would be a waste of valuable court resources. There has been a change in situation and the Court and the Respondents would be wasting their valuable resources, in determining a moot point.

Conclusion on the issue

53. For the reasons given, I would refuse the application as there is no lis for the court to decide.

[6] Sun Life Assurance Company of Canada v Jervis [1944] AC 111 at pp 113-114:

The Calling of Viva Voce Evidence

54. At the hearing, I gave the parties time to consider their next step and Counsel for the Applicants decided to proceed with the matter. He then said that he wanted to call Mr. Jag Ram who is a Director of the 1st Respondent Company to testify orally about the background to the production of kava. Counsel for the Respondents vigorously opposed the application, saying that the proposed witness has already deposed in 2 affidavits and that he had the opportunity then to included what he wanted to testify about today. Furthermore, Counsel argued that he should have been given notice of the intention to call viva voce evidence so he could prepare.

55. I decided not to hear viva voce evidence from the witness and said I would give my reasons in a ruling hence and so I now turn to it.

56. As I said above, there is no existing ***lis*** between the parties and listening to the witnesses would be a waste of court time. Any evidence he could give, which was foreshadowed by his counsel as involving the production of kava would be irrelevant to the matters raised in the application for leave to file for judicial review and for the injunctive relief sought.

FINAL CONCLUSIONS

57. I had in analysing this case, I had raised issues and came to my findings or conclusions of those issues. The impugned decision was that of 22nd June 2026 to detain the kava consignment pending the analysis of the kava by the IAS Laboratory based on the reasonable suspicion of not complying with the prescribed standard under the Fiji Kava Standard 2017." The basis of the application when it was filed, was that a final decision had been reached and this was not supported by the evidence of the Applicants at all but on the false assumption that a final decision had been made. The Court cannot apply the law on whether leave should be granted on facts that did not exist at the time of the application to a decision that had not been made when the application was filed.

58. I find that the application was premature and, on that ground would also dismiss the application. I find that there was no lis for the court to decide and would dismiss the application on that ground also.

59. In the premises the application for leave to apply for judicial review should be dismissed and I so order. The application for injunctive orders should be dismissed.

ORDERS.

1. The application for leave to apply for judicial review is dismissed.

2. The Application for injunctive orders is dismissed.

3. Costs in the sum of $2,000 to be paid by the Applicants to the Respondents within 28 days.

.....

Penijamini R Lomaloma

Acting Puisne Judge