IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 32 OF 1990
(Civil Action No. 19 of 1987)

BETWEEN:

FIJI PUBLIC SERVICE ASSOCIATION   APPELLANT

-and-

THE REGISTRAR OF TRADE UNIONS   1ST RESPONDENT
VITI CIVIL SERVANTS ASSOCIATION   2ND RESPONDENT

Mr. V. Kapadia for the Respondent (Original Appellant)
Mr. R. Matebalavu for the Applicant (Original 2nd Respondent)
Mr. V. Nathan for the Original 2nd Respondent

Date of Hearing   :   11th February, 1993
Date of Delivery of Judgment   :   16th February, 1993

REASONS FOR JUDGMENT OF THE COURT ON MOTION
FOR LEAVE TO APPEAL

On 8 October 1987 the Registrar of Trade Unions granted an application by the Viti Civil Servants Association (VCSA) for registration as a Trade Union. The Fiji Public Service Association (FPSA) then applied to the High Court for an order of certiorari to quash the Registrar's decision. That application was refused by the High Court, and the FPSA thereupon appealed to this Court. That appeal was heard on 17 November 1992, and on 27 November 1992 the appeal was allowed. An order of certiorari was made "that the decision of the Registrar of Trade Unions be removed into this Court and quashed. We further add a direction that the Registrar consider the application afresh".

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The VCSA has now applied to this Court for leave to appeal to the Supreme Court from that decision. It obtained in Chambers an order for a partial stay of execution of the judgment of this Court pending determination of the present application.

The application for leave was heard on 11 February 1992 and was dismissed, but the Court indicated that its reasons would be given later, together with any other necessary orders. The stay of execution was dissolved. We now state our reasons.

The application for leave appears to have been made as a result of uncertainty in the minds of the VCSA and the Registrar as to the meaning and effect of the decision of this Court. It is a matter of some surprise to us that there should have been any such uncertainty, but in the interests of clarification we now set out the position. This is in order to dispel the view apparently held by the VCSA and the Registrar that the effect of the Court's decision was to dissolve the VCSA.

The position is this. An application for registration was made to the Registrar. It was duly advertised and an objection to registration was received from the FPSA. The Registrar considered the application and the objection, and, as he was obliged to do, consulted the Trade Unions Advisory Committee. He then gave his decision which was that the VCSA should be registered. In arriving at his decision he took into account the various matters specified in s.13(1) of the Trade Unions Act Cap. 96. One of those was contained in para. (e) of s.13(1) which

concerned whether any other trade union already registered was adequately representative of the interests of the applicants. It was in the Registrar's application of that paragraph which this Court held to have been in error.

Paragraph (e) of s.13(1) was repealed on 1 November 1991. Unfortunately this was not brought to the attention of the Court during the hearing in November 1992. The paragraph was, of course, in force when the Registrar gave his decision. The effect of the decision of this Court on the appeal was to quash the decision made by the Registrar, but not the application for registration. The Registrar's obligation is to consider that same application afresh. In doing so he cannot now take into account the provisions of paragraph (e) as that no longer exists.

We would not presume to direct the Registrar as to how he should now proceed. It will be for the VCSA to inform the Registrar whether it wishes him to proceed with consideration of the application. If it does so then no doubt the Registrar will do so as soon as possible. In the circumstances the Registrar may well feel that further advertisement is unnecessary but this must be a matter entirely for him. It is also likely that a fresh consideration of the application will be much simplified because of the absence of paragraph (e), but again that must be for the Registrar to decide.

The application for leave to appeal to the Supreme Court was brought under the provisions of Section 117(2)(a) of the Fiji Constitution 1990, which provisions are repeated in Section 8(c) of the Supreme Court Decree 1991 (Decree No. 47).

Section 117(2)(a) of the Fiji Constitution 1990 reads as follows:

> "An appeal shall lie from decisions of the Fiji Court of Appeal to the Supreme Court with the leave of that Court in the following cases, that is to say-
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> (a) from decisions in any civil proceedings where in the opinion of the court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Supreme Court; and
>
> (b) ...."

In the judgment from which this appeal is brought the Court found that the Registrar of Trade Unions had not properly reached the decision that he did. It therefore ordered that that decision be quashed and it directed the Registrar to consider the application for registration afresh. In other words, to put it colloquially, the Court said to the Registrar, "Last time you got it wrong. Go back and look at it again." It cannot be too strongly emphasised that that and no other matter was the subject of this judgment. In order to grant leave to appeal to the Supreme Court, it was necessary for the appellant to demonstrate that that was a question that ought to be regarded as a matter of great general or public importance. It is perhaps not surprising that this Court was unconvinced.

Having regard to the dismissal of the application for leave to appeal to the Supreme Court there will be an order also for the payment of costs by the VCSA.

Mr. Justice Michael M. Helsham
President Fiji Court of Appeal

Sir Moti Tikaram
Resident Judge of Appeal

Sir Peter Quilliam
Judge of Appeal