

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. ABU0029 OF 1997

(High Court Judicial Review No. HBJ0021 of 1995)

BETWEEN:

SUKH DEO PRASAD
GANGA PRASAD SHANKAR

APPLICANTS

-and-

THE ATTORNEY GENERAL AND
MINISTER FOR JUSTICE

RESPONDENT

Mr. G. P. Lala for the Applicants
Mr. S. Kumar for the Respondent

Date and Place of Hearing : 1 August 1997 and 5 August 1997, Suva

Date of Delivery of Decision : 13 August 1997

DECISION

On 7 December 1995 the second applicant, in his capacity as barrister and solicitor representing the first applicant, applied in the High Court in Lautoka for leave to apply for judicial review of a decision of the Comptroller of Customs or his delegate. The application came before Lyons J. He directed that it should be heard inter partes. Normally the Deputy Registrar in Lautoka would have listed it for hearing by a judge. However, it had not been listed by the end of July 1996. The second applicant then

applied by summons for a judge to fix a hearing date. Lyons J fixed 10 September 1996 as the hearing date. Subsequently the second applicant applied for an adjournment and the application was removed from the hearing list. It was subsequently re-listed for hearing before Sadal J on 8 November 1996.

At that hearing the first applicant and the respondent were, according to the order of Sadal J made on that date, both represented by counsel. Mr. Haroon Shah appeared for the first applicant, deputising for the second applicant. It seems that counsel for the respondent, Miss Driu, was not present when the hearing began but was present by the time Sadal J made his order granting leave. Unfortunately, although the hearing was inter partes, Sadal J recorded that his order was made ex parte. He has since explained that he recorded that because counsel for the respondent said that she had no submission to make.

The second applicant then applied on the first applicant's behalf for judicial review. In March 1997 he wrote to the Deputy Registrar requesting an early hearing date and informed the respondent of his request. The respondent then applied to have the order granting leave set aside. The application came before Lyons J on 2 May 1997. His Lordship revoked the leave granted by Sadal J; it is clear that he intended to exercise the power which a Court has to set aside for good cause an order made ex parte.

He set out in writing at considerable length his reasons for doing so. In that statement he made a number of very serious allegations of professional misconduct

against the second applicant, Mr. Shankar; he subsequently reported him to the Fiji Law Society. It is clear that he formed his opinion that Mr. Shankar was guilty of professional misconduct because he believed that the application dealt with by Sadal J on 8 November 1996 was made ex parte. In view of Sadal J's subsequent explanation of how he came to include those words in the record, it seems that the foundation of facts on which Lyons J relied for in his opinion of Mr. Shankar's conduct did not exist, that is to say that the allegations which he made against Mr. Shankar were unfounded.

There are now a number of applications before me. Originally the first applicant sought leave to appeal against Lyons J's order revoking the leave granted to him by Sadal J to apply for judicial review. However, leave has subsequently been granted, so that the first applicant is no longer in need of the remedy which he wished to obtain by appealing. Consequently Mr. Lala informed me that the first applicant is no longer pursuing his application for leave to appeal.

The second application now before me is by Mr. Shankar. He is seeking leave to appeal; such leave is needed for two reasons, first because Lyons J's order was an interlocutory order and second because Mr. Shankar was not a party in the proceedings in the High Court. The parties to any original proceedings in the High Court have a right to appeal to this Court against a final judgment or order of that Court, provided that they do so within time. They also have standing to apply for leave to appeal against interlocutory orders of the High Court. A person who was not a party to the proceedings in the High Court cannot appeal to this Court against a final or an interlocutory judgment or order of

that Court unless he or she first obtains the leave of this Court to do so. In order to obtain that leave the person must be interested in or aggrieved or prejudicially affected by the judgment or order (Re Securities Insurance Co [1894] 2 Ch. 410).

Mr. Shankar is aggrieved by the *statements* about him made by Lyons J in giving the reasons for the order which he made; he may well be prejudicially affected by the fact that those statements were made. But he is not aggrieved by the *order*; nor is he prejudicially affected by it. He has no personal interest in the question whether leave to apply for judicial review was granted or revoked. The reasons given for a judgment or order may show that it is wrong or not the result of proper judicial consideration of the facts or the law or both; but it is only the judgment or order itself which has legal effect. For that reason it is only the judgment or order against which appeal can lie to this Court.

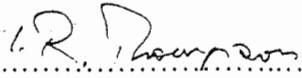
Lyons J's comments about Mr. Shankar were published in at least one national newspaper. If, as Mr. Shankar asserts, they were made without his having been given any opportunity by the judge to acquaint him with the true facts, he has every right to feel aggrieved that they were made. As Mr. Lala has pointed out, he appears to have no means of obtaining redress if he is not allowed to appeal against His Lordship's order. I have considerable sympathy for Mr. Shankar in his predicament; but for the reasons I have given above he cannot be given that leave. I have, therefore, to dismiss his application.

Also before me is an application by Mr. Shankar for an order to stay any disciplinary proceedings by the Fiji Law Society against him. Such an order could possibly be made as a part of proceedings on an appeal. However, Mr. Lala accepted that, if Mr. Shankar were not granted leave to appeal, his stay application must fail.

Mr. Shankar also applied for leave to add grounds additional to those contained in the first applicant's appeal and for the requirement that he give security for costs to be dispensed with. Those applications were made contingently on leave to appeal being granted. As I have had to refuse leave, they must be dismissed.

Accordingly all Mr. Shankar's applications are to be dismissed. In all the circumstances, however, I consider that the interests of justice will be best served if each party bears his or its own costs. Accordingly I make no order as to costs.

Order: All the applications of both applicants are dismissed.


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Mr. Justice I. R. Thompson
Judge of Appeal