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IN THE FIJI COURT OF APPEAL AT SUVA
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0043 OF 1997S
(High Court Civil Action No. JR33 of 1996)

BETWEEN:

OLIMIVA CAGICA

Appellant

AND:

PUBLIC SERVICE COMMISSION

Respondent

In Chambers: The Hon. Justice Ian Roy Thompson

Hearing: 4 May 1998

Counsel: Mr. Tevita Fa for the Appellant
Mr. S. Kumar for the Respondent

Date of Judgment: 7 May 1998

DECISION IN CHAMBERS

This is an application for leave to appeal against a decision of Scott J. refusing leave to apply for judicial review. The decision which the applicant wished to have judicially reviewed was made by the respondent; by the decision the respondent imposed disciplinary penalties on the applicant, then the principal of a secondary school. Scott J. refused leave, primarily because of the delay in seeking it.

The respondent's decision was communicated to the applicant in a letter dated 20 September 1995 which was hand delivered to her on 25 September 1995. Application for leave to apply for judicial review of it was made *ex parte* in the High Court on 18 November 1996; it

sought leave to apply for four declarations. Byrne J. considered the application and directed that it be listed for hearing before him ***inter parties*** in January 1997. Unfortunately, due to illness he could not hear it then and it was heard by Scott J. in June 1997. He required counsel to file written submissions, in particular in respect of the delay in making the application. In the applicant's affidavit supporting her application she had said that she had been "constrained by financial circumstances" from applying sooner, as her five children were attending school and her husband, who was living separately, did not pay maintenance for them.

Refusing leave, Scott J. noted that the applicant held "a relatively well paid job" and could have been expected to be able to borrow the money from a bank, a credit union or as an advance of salary, if she had wished. He said that the evidence in the affidavit was not sufficient to show financial hardship as the cause of the delay. He also found that an application for judicial review was unlikely to succeed on the merits.

Scott J. delivered on 21 July 1997 his decision refusing leave. On 8 August 1997 the applicant lodged in the registry of this Court a notice of appeal against it. On 3 September 1987 the Registrar wrote to her solicitor pointing out that the decision was interlocutory and that leave was required for an appeal. On 10 November 1997 her solicitor applied in the High Court for such leave. It is not clear why the application was not heard on 16 January 1998, when it was listed for hearing. In any event, it was relisted and heard on 6 March 1998. On that day Scott J. delivered his decision refusing leave to appeal.

The applicant then applied to this Court on 22 April 1998 for leave to appeal. At the hearing Mr. Fa drew a distinction between an application for certiorari and an application for a declaration. He pointed out that 0.53 r.4 of the High Court Rules sets a period of three months within which an application for certiorari should be made but refers only to "undue delay" where other remedies are sought. He referred also to the fact that leave was given in another case where only declarations were sought and there had been delay similar to that in the present case. He did not traverse the facts of that other case. This case must of course be decided on its own facts.

It is a cardinal principle of judicial review that it should be sought without delay and then heard and determined expeditiously. That is because public law remedies are by their nature likely to impinge on the interests of other members of the public, or of a particular class of the public, and on public administration. Such remedies must be sought and, if justified, given without undue delay or the interests of those on whom the remedies impinge will be unreasonably affected and sound administration stultified. Unfortuntely, for various reasons, applications for judicial review have not always been heard and determined expeditiously. But that does not mean that this Court should countenance undue delay in seeking judicial review.

Mr Fa submitted, in effect, that the delay in this case was not undue delay. However, the respondent's decision had a flow-on effect, as Scott J. pointed out, which affected a number of other teachers. The Education Department had to reorganise the staffing of schools. In that situation a delay of even six months in applying for leave to seek judicial review would have been undue delay. The delay was in fact nearly 14 months.

That delay has now been compounded by the applicant's failure to apply expeditiously for leave to appeal against the refusal of leave to apply for judicial review. A notice of appeal having been filed instead of an application for leave to appeal, it took more than two months from the applicant's solicitor being notified of that error for such an application to be made to the High Court. After that application was refused, it took nearly a further seven weeks to apply to this Court for such leave.

I can find no error in Scott J's reasons for holding that there was undue delay in applying for leave to apply for judicial review. The further undue delay which has since occurred makes it even more inappropriate that such leave should now be given. In those circumstances it would, I am satisfied, serve no proper purpose if I were to grant leave to appeal against Scott J's decision.

The application for leave to appeal is dismissed; the applicant is to pay the respondent's costs of the application.

I. R. Thompson

Mr. Justice Ian Thompson
Justice of Appeal

Solicitors:

Messrs. Tevita Fa and Associates for the Appellant
Office of the Attorney-General for the Respondent