

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

**CIVIL APPEAL NO. ABU0024 OF 1998S  
(High Court Civil Action No. HBJ0012 of 1997)**

**BETWEEN:**

**MINISTER FOR INFORMATION, BROADCASTING,  
TELEVISION AND TELECOMMUNICATIONS**

*Appellant*

**AND:**

**FIJI TELEVISION LIMITED**

*Respondent*

**In Chambers:** The Hon. Justice I.R. Thompson, Justice of Appeal

**Hearing:** 12 May, 1998, Suva

**Counsel:** Mr. N. Nand, Mr E. Walker for the Appellant  
Mr G. Leung for the Respondent

**Date of Decision:** 15 May, 1998

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**DECISION IN CHAMBERS**

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This is an application for leave to appeal against an interlocutory order made by Byrne J. in judicial review proceedings in the High Court. In those proceedings Fiji Television Ltd. ("FTL") is seeking judicial review of a decision of the Minister for Information, Broadcasting, Television and Telecommunications ("the Minister") to change the terms on which FTL holds a television broadcasting licence by removing a term that FTL is to be the sole person to whom such a licence will be granted for a term of not less than eight years and not more than twelve years. The Minister has filed an affidavit stating the factual basis for his decision. FTL wishes to cross-examine him. The order in respect of which leave to appeal is being sought is an order that FTL be granted leave to do so but that the cross-examinations be "limited to the question of apparent incongruity of [the Minister's] position in relation to the granting of a television licence to the applicant and the Fair Trading Decree" (emphasis added).

In his affidavit the Minister states that the grant of an exclusive right to hold a television broadcasting licence is prohibited by the Fair Trading Decree 1992. That Decree was in force when such a right was conferred on FTL by the granting of an exclusive licence in June 1994. The interlocutory order's limitation of cross-examination to "the question of the apparent incongruity of the Minister's position" apparently restricts the questions which may be asked to the circumstances of the licence being granted in spite of the provisions of the Decree.

Before me it was common ground that the Minister is not the natural person who was the Minister in June 1994. Mr Nand pointed out, therefore, that the Minister would be unable to answer questions relating to the initial granting of the licence, as he had no direct knowledge of the facts in respect of that. The Minister's affidavit is lengthy and deals with facts relating to his own decision which is the subject of the judicial review proceedings.

Counsel provided me with brief but quite helpful written submissions and a list of authorities. Mr Nand submitted essentially that, if leave to appeal were granted, there was a good prospect that the appeal would be allowed. He referred to cases in which it has been held that, although leave may be given to cross-examine on an affidavit filed in judicial review proceedings, it is given only rarely and should not be given where the facts relevant to the legality of the decision under review are already established. He submitted that the facts which were to be the subject of the cross-examination of the Minister could not be elicited from him because he had no direct knowledge of them and were not relevant to the legality of his decision. Consequently, the learned judge had exercised his discretion without proper foundation. In his written submission he appeared to suggest that, if leave were granted, one issue to be decided on

appeal would be whether a Minister can be the subject of an order to attend for cross-examination. However, he accepted at the hearing that a Minister can be required to do so in appropriate circumstances.

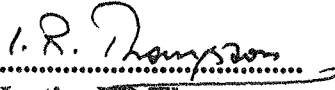
Mr Leung submitted that there was a proper basis for the exercise of the judge's discretion and that the Minister had therefore, not shown that he had a sufficiently arguable case for leave to be granted to appeal. He pointed out that the courts generally discourage appeals against interlocutory decisions, because they result in delay in the hearing of the substantive proceedings. In particular he referred to the Chief Justice's Practice Note No.1 of 1993 on the subject.

I have found it difficult to come to a decision in respect of the application now before me. In O'Reilly v. Mackman [1983] 2 AC 237 Lord Diplock explained at 282 why it is only on rare occasions that in judicial review proceedings the interests of justice will require leave to be given for cross-examination of deponents on their affidavits. Because the Minister has no direct knowledge of the facts to which his cross-examination will be restricted, I can see little, if any, useful purpose being served by his cross-examination on that restricted subject - matter. Mr Nand has, I consider, shown that there are grounds on which an appeal might succeed. On the other hand, it is in the public interest that proceedings in the High Court should not be delayed by the granting of leave to appeal where, even though the appeal may possibly succeed, the proper interests of the would - be appellant are unlikely to be seriously affected by the refusal of such leave. The public interest in judicial review proceedings being heard expeditiously is even greater than it is in respect of private law actions. The governance of the country is affected, and also in many instances the personal interests of citizens. The

proceedings commenced by FTL in June 1997 in the High Court ought to have been heard and determined many months ago. Instead, because of the applications to Byrne J. and to this Court for leave to appeal against the interlocutory order given on 11 November 1997, the hearing has not progressed at all since that date.

In the present case I have not been persuaded that the Minister's proper interests will be seriously affected if effect is given to Byrne J's order. He may suffer some inconvenience; but that is all. Therefore, although I consider that there are grounds on which the Minister might succeed if leave were given to him to appeal, I am satisfied that it is not in the best interests of the administration of justice, of the parties to the judicial review proceedings in the High Court or to the public generally that the hearing and determination of those proceedings should be delayed by the granting of leave to the Minister to appeal against the interlocutory order. As there are, in my view, merits and faults on both sides, each party should bear its or his own costs of the application for leave to appeal

Accordingly, the application is dismissed; each party is to bear its or his own costs of the application.

  
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Mr Justice I.R. Thompson  
Justice of Appeal

**Solicitors:**

**Office of the Attorney-General's Chambers, Suva for the Appellant  
Messrs. Howard's, Suva for the Respondent**