

**IN THE COURT OF APPEAL, FIJI  
ON APPEAL FROM THE HIGH COURT OF FIJI**

**CIVIL APPEAL NO. ABU0071 OF 1997S**  
(High Court Judicial Review No. HBJ0010 of 1997)

**BETWEEN:**

**KEPUELLJITOKO**

*Applicant/Appellant*

**AND:**

- 1) **PERMANENT SECRETARY FOR  
EDUCATION AND TECHNOLOGY**
- 2) **SECRETARY FOR PUBLIC SERVICE  
COMMISSION**

*Respondents*

**Coram:** The Hon. Sir Moti Tikaram, President  
The Rt. Hon. Sir Maurice Casey, Justice of Appeal  
The Hon. Justice K.R. Handley, Justice of Appeal

**Hearing:** Monday 9 August 1999, Suva

**Counsel:** Mr I.V. Tuberi for the Appellant  
Mr. S. Kumar for the Respondents

**Date of Judgment:** Friday, 13 August 1999

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**DECISION**

*(On application for leave to appeal to the Supreme Court)*

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The Applicant was the appellant in the Court of Appeal in Civil Appeal No.ABU0071 of 1997S. He was employed as a teacher from 1979 until his conviction by the Magistrates' Court in October 1990 on 3 counts of raping a pupil for which he was sentenced to two and half years' imprisonment. He appealed to the High Court. The appeal was allowed by Fatiaki J. on 23 May 1991 who quashed the convictions and discharged the Appellant.

The Applicant was dismissed from the service by the Public Service Commission (the 2nd Respondent) on 10 March 1993. He brought Judicial Review proceedings in the High Court challenging his dismissal. On 23 November 1997 Pathik J. refused the application for Judicial Review. The Applicant appealed to this Court which dismissed the appeal on 14 May 1999. It is from this decision that the Applicant now wishes to appeal to the Supreme Court. He

comes to us under section 122(2)(a) of the 1997 Constitution which provides as follows:-

*“122(2) An appeal may not be brought from a final judgment of the Court of Appeal unless:*

*(a) The Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance;”*

The questions that the Applicant wishes this Court to certify are as follows:-

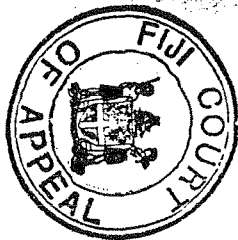
*“1. WHETHER an acquittal on a charge of rape is also an acquittal that no sexual intercourse took place if the accused denied the charges and that consent was not an issue in the criminal proceedings.*

*2. WHETHER the charges of sexual intercourse in disciplinary proceedings under the Public Service Commission (Constitution) Regulation 1990, which arise out of the same allegations in situations in paragraph (1) aforesaid are substantially the same for the purpose of Regulation 53 of the Regulations aforesaid.” (Sic.)*

The Applicant pleaded not guilty to the criminal charges. He did not cross examine the complainant and did not give evidence. The State therefore had to prove all elements of the charges of rape. The effect of the discharge ordered by Fatiaki J. was, as this Court has already held, to enter verdicts of acquittal on all charges. These general verdicts established that the applicant was not guilty of rape, that is they established that not all elements of that crime had been proved. However the verdicts did not decide that any specific element of that crime had not been proved, and in particular they did not establish that sexual intercourse with the complainant had not taken place.

The disciplinary charges under Regulation 36 of the Public Service Commission (Constitution) Regulations 1990 charged the applicant with sexual intercourse with the complainant a student at his school, being conduct improper in his official capacity and likely to bring the Public Service into disrepute.

Despite Mr. Tuberi's arguments we have not been persuaded that we should grant leave in this case, having regard to the provisions of s 122(2) of the Constitution. Leave is therefore refused and the Applicant is to pay the Respondents' costs which we fix at \$350 inclusive of disbursements.



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Sir Moti Tikaram  
President

Handwritten signature of Sir Maurice Casey in cursive.

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Sir Maurice Casey  
Justice of Appeal

Handwritten signature of Justice K.R. Handley in cursive.

.....  
Justice K.R. Handley  
Justice of Appeal

**Solicitors:**

Tuberi Chambers, Suva for the Appellant  
Office of the Attorney-General Chambers, Suva for the Respondents