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

CIVIL APPEAL NO. ABU0064E OF 1998S  
(High Court Civil Appeal No. JR HBJ No. 4 of 1998S)

BETWEEN:

SULTAN ALI F/N SAYED ALI

*Appellant*

AND:

ATTORNEY-GENERAL  
TAX AGENT REGISTRATION

*Respondents*

In Chambers:

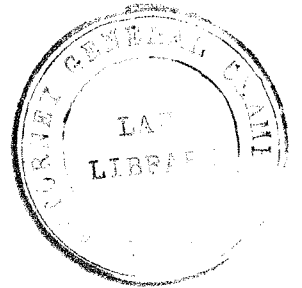
The Hon. Justice Ian R. Thompson, Justice of Appeal

Hearing:

Friday, 29 January 1999, Suva

Counsel:

Mr P. Howard for the Appellant  
Ms N. Basawaiya, Mr A. Bale for the Respondents



Date of Decision:

Friday, 5 February 1999

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**DECISION**

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The applicant has appealed against an order of Scott J. dismissing an application made by him for judicial review. The administrative decisions of which he sought judicial review were made by the Tax Agents Registration Board and the Minister of Finance and Economic Planning. On 15 December 1994 the Board found him guilty of understating a client's income by deliberately manipulating the client's accounting records by using fraudulent journal entries and of failing to submit returns of his personal income for six years; it cancelled his registration as a tax agent. He appealed to the Minister against that decision. After a delay of three years, on 6 February 1998 the Minister affirmed the Board's decision but on the single ground that the applicant had failed to submit returns of his personal income. The matter now

before me is an application couched as an application for a stay of operation of the decision to cancel the applicant's registration as a tax agent.

The applicant's main ground for seeking judicial review of the Board's decision was that the Board breached natural justice by not hearing him before it made its decision. He alleged that the Minister's decision was biased and in breach of natural justice; he did not specify any breach other than bias.

Copies of letters sent to the applicant by the Board before it made its decision were exhibited to an affidavit sworn by the Board's Secretary. On the basis of that evidence and of facts admitted by the applicant regarding an absence from Fiji, Scott J. found that the Board had sent a letter to him on 12 October 1994 informing him of what was alleged against him and requiring him to show cause within one month why his registration as a tax agent should not be cancelled, and that on 15 December 1994 it had sent him a further letter informing him that it had decided to cancel his registration but that the cancellation would not take effect for 60 days or, if he appealed to the Minister, on the Minister's determination of the appeal. He found that, when the letters were written, the applicant was absent from Fiji, that there was no reply to either letter but that on 13 February 1995 a solicitor wrote to the Minister on the applicant's behalf making representations and also asking the Minister to treat the letter as an appeal against the Board's decision.

In rejecting the applicant's submission that the Board had not given the appellant an opportunity to be heard in respect of the allegations made against him in the letter of 12

October 1994, Scott J. noted that on 20 April 1994 the Commissioner of Inland Revenue had sent to the applicant's address in the register of tax agents a registered letter demanding that he deliver within a month returns of income for the six years and other statements relating to his financial affairs during those years. He noted that the applicant had not left Fiji until 16 May 1994 and had not denied receiving the letter, but had not complied with the demand or replied to the letter. He found, therefore, that the applicant was knowingly in default in respect of his personal tax affairs. He observed also that, although the applicant was absent from Fiji until late in 1995, there was no reason to believe that those looking after his affairs could not have informed him of the receipt of the letter of 12 October 1994; someone clearly had instructed the solicitor by February 1995. Yet the applicant had made no response. On that basis His Lordship concluded that the Board had not failed to accord the applicant a proper opportunity to respond to the allegations made against him, and that it had not breached the requirements of natural justice.

In respect of the Minister's decision Scott J. noted that the applicant's counsel had not made any submission relating to the ground of alleged bias and breach of natural justice but had instead relied on the fact that no evidence was presented that the Minister had himself made the decision. He noted that reliance could not be placed on that, as it was not a ground on which judicial review was being sought but observed that in any event, as the issue had not been put in dispute by the evidence, the *omnia praesumuntur* rule was applicable.

Ms Basawaiya submitted that, as the application for judicial review had been dismissed in the High Court, any stay which this Court might now grant could not extend to the operation of the Board's decision. However, it is to be noted that the Board's decision was not

to take effect pending the determination of the appeal to the Minister and that, if the Minister's decision were set aside as the result of judicial review being granted, the Board's decision would not take effect until the Minister made a fresh decision. This Court can make an interlocutory order staying the Minister's decision; if it does so, the effect will be that the cancellation of registration by the Board will be in abeyance while the stay is in force.

However, before this Court will grant a stay, it must be satisfied that -

- (1) the appeal has a reasonable prospect of success; and
- (2) if a stay is not granted and the appeal succeeds, the applicant, or other persons, will have suffered serious adverse consequences which it would be unjust that he or they should suffer.

In deciding whether it would be unjust to require the applicant or others to suffer those serious adverse consequences, the interests of the community are to be taken into account and weighed in the balance.

I have noted above the grounds on which judicial review was sought and have set out the facts established by the evidence and Scott J's reasons for dismissing the application for judicial review. The applicant's grounds of appeal are:

- 1. *That the learned Judge misdirected himself in finding that the decision of the Minister of Finance in rejecting the Appellant's appeal against the first decision of the Second Defendant, in fact such rejection was never made under the hand of the Minister and further there was no evidence that the Minister ever heard the appeal himself.*
- 2. *That the learned Judge misdirected himself in holding that despite the Appellant's compliance in filing all personal tax returns and the Second Respondent's withdrawal of all prosecutions against the Appellant, that the Appellant's deregistration as a tax agent was valid thereby resulting in miscarriage of Justice.*
- 3. *That the learned Judge erred in law and in fact by upholding the de-registration of the Appellant as justified, when in fact, the Appellant had already been penalised with the penalty of late lodgement and late payment assessed at high rates."*

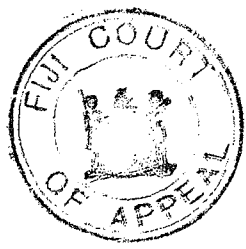
The first ground cannot, in my view, succeed as the issue to which it relates was not put in issue by the application for judicial review as it was framed; because it was not an issue, no evidence relevant to it was presented. The other two grounds raise matters which were, as far as I have been able to ascertain, not relied on by the applicant's counsel in the High Court. Scott J. did not refer to, or base his reasoning in any way, upon an assertion by the Board's Secretary, denied by the applicant, that he failed to pay tax for the six years after it had been assessed. I can see little prospect of the appeal succeeding on the second or third grounds.

In his affidavit sworn on 1 October 1998 in support his application to this Court for a stay the applicant says that, if he cannot continue to practise as a tax agent, he cannot meet his obligations to his employees. At the hearing of the application Mr Howard said that the applicant no longer has any employees. However, he stressed another fact stated in the affidavit, that the applicant's practice as an accountant will suffer if he cannot undertake the work of a tax

agent, as clients want their accountant to attend to all their financial affairs, including taxation. He made the further point that the Minister in affirming the Board's decision, did not give as a ground for doing so the fraudulent accounting stated as a ground by the Board, and that there was therefore no great risk to the community from allowing the applicant to practise as a tax agent pending the determination of his appeal to this Court.

It is clear that the applicant will suffer adverse consequences if the stay is not granted. However, in my view the chance of his appeal succeeding is so small that it would not be proper to grant the stay. Accordingly his application must be dismissed. I suggest, however, that, if as he asserts he has now put his personal tax affairs in order and as the Minister apparently did not uphold the Board's finding of fraudulent dealing, it may be appropriate for the Board to register him afresh as a tax agent if he applies for that after a period of, say, six month from today.

Order: Application dismissed.



*I.R. Thompson*  
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 Mr Justice I.R. Thompson  
 Justice of Appeal

**Solicitors:**

Messrs. Howards & Associates, Suva for the Appellant  
 Office of the Attorney-General's Chambers, Suva for the Respondents