

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

**CIVIL APPEAL ABU0053 OF 2003**  
**(HBJ32/02)**

**BETWEEN:**

JOHN ALI aka ASGAR ALI  
KARAM CHAND f/n Shiu Jattan  
NAJENDRA SINGH f/n Gopal Singh

APPELLANTS

**AND:**

THE SUPERVISOR OF ELECTIONS  
THE MINISTER FOR LOCAL GOVERNMENT  
HOUSING AND ENVIRONMENT

RESPONDENTS

**Counsel:** Mr. R. P. Singh for applicant  
Mr. J. J. Udit for respondent

**Hearing:** 7 September 2004

**Ruling:** 10 September 2004

**RULING**

The appellants seek to appeal the refusal of Singh J to grant certiorari in relation to a decision of the respondents by which they excluded the boundaries of the Wainibuku/Davuilevu and Naulu/Nakasi wards from the Nasinu Town Council elections in December 2002.

They now seek leave of this court to adduce fresh evidence at the appeal. The fresh evidence relates to a petition which was sent to the Minister during the inquiry into the proposed change of boundaries. The applicants have produced 14 affidavits all of which are by people whose signatures appeared on the petition but say that they had not signed.

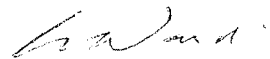
It has long been accepted in this Court that leave to call fresh evidence will not be granted unless the three conditions set out by Denning LJ in *Ladd v Marshall* are fulfilled:

1. that the evidence could not have been obtained with reasonable diligence for use at the trial;
2. that the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive;
3. that the evidence is apparently credible although it need not be incontrovertible.

In the present application there is no affidavit to explain why this evidence was not available at the trial in the High Court. There should have been. Its absence leaves the Court having to speculate on the reason it was not ascertained previously and so it is unable to conclude that the first condition has been met.

However, this application fails for a more fundamental reason. This was an application for judicial review. The objections raised in the High Court are now the basis of the appeal but the grounds demonstrate no matter to which this new evidence could possibly relate. I fail, therefore, to see how it could have an important influence on the result of the appeal. This was an application for judicial review and the weight of the evidence considered by the Minister is unlikely to be relevant unless it was unreasonably accepted or there is an allegation of *mala fides* in his acceptance of it. Neither form the basis of any ground in this appeal.

The application is refused.



[GORDON WARD]  
President  
FIJI COURT OF APPEAL

10<sup>TH</sup> SEPTEMBER, 2004

Solicitors:

MESSRS. KOHLI AND SINGH  
OFFICE OF THE SOLICITOR GENERAL

