

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

**CIVIL APPEAL NO.ABU0073 OF 2004**  
**[Judicial Review N0.HBJ 010/04]**

**BETWEEN:**

**RAJENDRA KUMAR GOUNDER**  
**(f/n Ram Chandar)**

**APPELLANT**

**AND:**

**THE MINISTER FOR LOCAL GOVERNMENT,  
HOUSING, SQUATTER SETTLEMENT AND  
ENVIRONMENT**

**RESPONDENT**

**Counsel:** H.A. Shah for applicant  
S. Banuve for respondent

**Hearing:** 18<sup>th</sup> October, 2004

**Ruling:** 19<sup>th</sup> October, 2004

**RULING**

The appellant was the elected mayor of Lautoka but, in June 2003, the respondent, acting under the Local Government Act, ordered that he be dismissed as mayor. The appellant sought judicial review of the Minister's decision. It was refused by Singh J in a judgment given on 6 October 2004 and an appeal has been lodged against that refusal.

The appellant seeks an order from this Court to stay execution of the High Court decision with the aim of allowing the appellant to continue in office pending the appeal. As the appellant's term as mayor would have expired in any event on 29 October 2004, there are only a few days remaining.

Rule 34 (1) of the Court of Appeal Rules makes clear the general position that an appeal does not operate as a stay but the Court always has a discretion to grant one:

"34 - (1) Except so far as the court below or the Court of Appeal may otherwise direct -

- (a) an appeal shall not operate as a stay of execution or proceedings under the decision of the court below;
- (b) no intermediate act or proceeding shall be invalidated by an appeal."

The principles upon which a court will exercise such a discretion have been well established since the late nineteenth century. Mr Shah for the appellant suggests that irreparable harm could be caused to the mayoral position if the order of the Minister is allowed to stand. He suggests that the grounds of appeal reveal a very strong case and therefore the court should order the stay.

However, I do not need to consider the merits of the case because this application turns on a different point. The appeal before this Court is from the decision of the learned judge who refused to make the orders sought in the judicial review. It is his decision which is being appealed and it is execution of any order flowing from that decision which would be stayed if the court granted this application but clearly that is not the decision the appellant seeks to stay.

The review sought in the High Court was for an order of certiorari to remove and quash the Minister's decision, declarations that his decision and his purported appointment of the Deputy Mayor to take over were both ultra vires the Act and an order staying the decision. Singh J refused them all.

Had he granted the application for certiorari, execution of that order might have been stayed but, as no order was made, there is nothing to execute and therefore nothing to stay. The applicant appears to believe that a stay of the judge's refusal to order certiorari would result in certiorari being ordered pending appeal. That is not the case.

As has been stated, the purpose of this application is to reinstate the mayor for the remainder of his term pending the appeal. To achieve that, the applicant is asking this

Court to stay the Minister's decision; not the decision of Singh J which is being appealed. A stay pending appeal will stay some action or consequence flowing from the decision of the court from which the appeal is being made but not, as here, the original order which gave rise to the action in the first place.

I heard argument from counsel about the merits of the appeal and its chance of success. As I stated at the outset, it has not been necessary to consider those matters and I have not done so. This application has been decided on a different point and is refused.

Finally, I would add that Mr Banuve for the respondent raised an initial objection to this application on the ground that it was not supported by an affidavit giving the reasons for the application. He is correct to do so. This type of application must be made in proper form with reasons why the application is made. Had I needed to consider the application on its merits, I would have upheld that objection.



*Gordon Ward*

[GORDON WARD]  
President  
FIJI COURT OF APPEAL

19<sup>TH</sup> OCTOBER, 2004

Solicitors:

**Haroon Ali Shah, Barristers & Solicitors for the Appellant**