

0000061

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

CIVIL APPEAL NO. ABU0055 OF 2006
[High Court Civil Action NO. HBJ 15/04]

BETWEEN:

GENERAL MACHINERY HIRE LIMITED

APPELLANT

AND:

**CHIEF EXECUTIVE OFFICER FOR LABOUR,
INDUSTRIAL RELATIONS & PRODUCTIVITY**

1ST RESPONDENT

FIJI SUGAR AND GENERAL WORKERS UNION,

2ND RESPONDENT

D Naidu for appellant
A Neelta for second respondent
No appearance for first respondent

Hearing: 20 June 2006

Ruling: 23 June 2006

R U L I N G

[1] On 5 July 2004, the second respondent made a compulsory recognition order under the Trade Unions (Recognition) Act in respect of the first respondent. The appellant sought judicial review on two grounds; namely, that the second

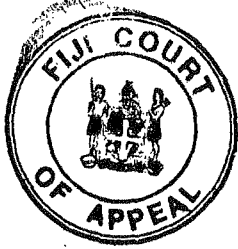
respondent failed to comply with the provisions of the Act before making the Order and that he took irrelevant matters into consideration.

- [2] Jiten Singh J dismissed the application with costs of \$400.00 to each respondent. It appears that there had been a previous order for an interim stay of the recognition order and the learned judge vacated that also.
- [3] Although the written judgment bears a date of December 2004, it was not delivered until 9 June 2005 when it was handed down by Connors J. At the hearing before me, counsel for the second respondent handed in a sealed copy of the order of Singh J dated 3 May 2005. It is unclear why, in those circumstances, it was necessary for Connors J to deliver the judgment after that. An unsealed copy of the order delivered by Connors J has been exhibited to the affidavit of Alvin Kumar Singh, a director of the appellant.
- [4] Whether the compulsory recognition order was obeyed is not revealed in the affidavit. It states that an application for a stay of the order of Singh J was filed on 27 March 2006 and heard by Connors J on 7 April 2006. He granted an interim stay to 28 April 2006 when the application was heard by Finnegan J and dismissed. Neither the application nor the orders of Connors J or Finnegan J are exhibited.
- [5] This appeal had previously been deemed abandoned and a brief search through the documents in the earlier files to try and find the orders shows there were earlier applications for a stay which are not mentioned in the affidavit filed in support of this application. The first appears to have been filed following the order of Singh J dated 3 May 2005 but it was withdrawn until the later sealed order was made following delivery of the judgment by Connors J on 9 June 2005. That led to an application for stay being filed on 19 July 2005 and heard by Connors J on 12 August 2005. His order, sealed on 16 August 2005, granted an interim stay until 16 September 2005. There is no information on any of the files before me to indicate what happened on 16 September 2005 although it must be

assumed the stay was not extended because of the subsequent application filed 27 March 2006.

- [6] The present application for a stay was filed in this Court on 7 June 2006 five and a half weeks after the dismissal by Finnegan J.
- [7] The appeal is against the order of Singh J dismissing the application for judicial review and vacating the interim order. In order to decide whether to grant a stay pending appeal the Court must look at the likelihood of success in the appeal and at the balance of convenience. The latter includes consideration of the possibility that the refusal of a stay may render any successful appeal nugatory.
- [8] The grounds of appeal are principally directed at the learned judge's interpretation of the evidence. It was all on affidavit and whilst an appellate court in such circumstances may not be at any substantial disadvantage compared with the trial judge, it will still be reluctant simply to substitute its own view of the same evidence unless there are grounds for saying the decision could not reasonably have been reached on that evidence. I do not consider those grounds suggest a strong likelihood of success.
- [9] The fourth ground additionally charges that the learned trial judge misdirected himself on the test of unreasonableness in the Wednesbury sense. A brief perusal of the judge's reasons does not reveal any such misdirection and Mr Naidu, for the appellant, was unable to point out the basis for that suggestion.
- [10] I appreciate that the balance of convenience may support an application to stay the execution of the recognition order made in July 2004 but the scant evidence of the previous applications for a stay suggest that, in nearly a year between the order of Connors J on 9 June 2005 and the filing of this application, there has only been a stay in place for a total of eight weeks and the applicants have been waiting for hearings for an additional five weeks. Thus, for nearly three quarters of that time, there has been no stay and yet it appears the appellants have made no attempt to implement the recognition order.

[11] I see no reason to make such an order now and the application is refused with costs to the second respondent of \$500.00.



G. Ward

[GORDON WARD]
President
FIJI COURT OF APPEAL

23RD JUNE, 2006