

THE COURT OF APPEAL  
CIVIL JURISDICTION  
Appeal No. ABU001 of 2007  
(On appeal from HBJ of 2001S)

BETWEEN:

DILDAR SHAH

(Appellant)

- and -

FIJI ISLANDS REVENUE & CUSTOMS AUTHORITY AND OTHERS

(Respondents)

- 1 This is an application for leave to appeal to the Supreme Court by the Appellant, Dildar Shah.
- 2 On 3 July 2008 the Court of Appeal (Byrne, Pathik & Hickie JJA) dismissed an appeal by the Appellant against an order of the High Court refusing an application for judicial review at the instance of the Appellant. The application for judicial review concerned issues in relation to the claim for reinstatement of the Appellant in the civil service and other related issues.
- 3 The appeal before the Court of Appeal failed on procedural grounds. The application for judicial review was heard and determined on 2 November 2006. On 2 January 2007, the Appellant appealed to the Court of Appeal. The preparation of the appeal went awry because of a failure to prepare the record. This was not done and the appeal was deemed to have been abandoned pursuant to Rule 17 of the Court of Appeal Rules. On 12 November 2007, the Appellant applied for leave to appeal out of time.
- 4 On the hearing of the appeal, the Court of Appeal considered whether the circumstances justified permitting an appeal out of time. It held that the circumstances did not justify an extension of time and leave to appeal was refused.

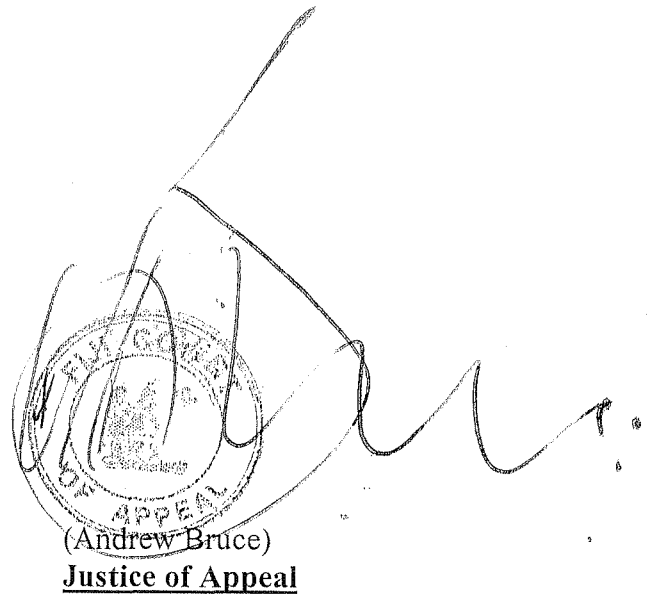
5 The basis for the application for leave on the basis that the issues raised on appeal raise questions of significant public importance. is as follows:

- (i) Rights of the individuals who are transferred from Public Service Commission or other Government Department to another institution during corporatisation and the regulations which apply to these individuals while this transition is taking place and the responsibility of the transferring institution and receiving institution towards these individuals until the receiving department has its own rules and regulations in place.
- (ii) That this prejudiced individual has a right for his grievances to be heard in the Courts of law when there is no prejudice to the Respondents which are two organizations involved in this case Public Service Commission and Fiji Islands Revenue and Customs Authority.
- (iii) That sickness or illness is an acceptable ground under common law to prompt a more sympathetic response to the application and is treated as special circumstances where discretion of the Court is exercised in allowing an appeal out of time.
- (iv) That when the mishap is being done by the legal representative the Court cannot deprive the Appellant from its justice and fairness which the Appellant is entitled to.

6 Items (i) and (ii) were not considered by the Court of Appeal and do not arise. These issues were not considered by the Court of Appeal because the appeal fell at a basic procedural hurdle. They are, in my view, not topics of significant public importance which call for the intervention of the Supreme Court. The issues raised by the Appellant are special to his circumstances and even if there was a resolution of those issues in favour of the Appellant, I do not think that they raise matters of significant public importance.

- 7 Items (iii) and (iv) fail the same test. The Court of Appeal simply applied well-known procedural rules. The only challenge is to the application of those rules. The application of these rules is quintessentially a matter for an intermediate appellate court to determine.
- 8 For these reasons leave to appeal is refused.

DATED the 12th day of September 2008



(Andrew Bruce)  
**Justice of Appeal**