

**IN THE COURT OF APPEAL, FIJI ISLANDS**  
**APELLATE JURISDICTION**

Criminal Appeal No: AAU0057/06  
High Court Action No. HAC 004 of 2004

**BETWEEN:**

**ABHAY KUMAR SINGH**

**Appellant**

**AND**

**THE STATE**

**Respondent**

Appearances:

Appellant: Mr A K Singh

Respondent: Mr W. Kurisaquila

Date of Hearing: 8 February 2008

Date of Judgment: 22 February 2008

Coram: Byrne, JA

Scutt, JA

**JUDGMENT**

**1. ISSUE IN APPEAL**

On Monday 25 June 2007 the Court of Appeal considered an appeal in relation to the question:

To what extent is the State permitted or justified in conducting cover surveillance with or without a warrant having regard to Sections 26, 28(1)(c) and 37 of the Constitution of the Republic of the Fiji Islands.

2. The Appellant, Mr Singh, was convicted in Suva High Court on two counts of attempting to pervert the course of justice contrary to section 131(d) of the *Penal Code* (Cap. 17). As the Court of Appeal observed, the evidence in the trial 'depended to some extent on covert recordings of conversations' by Mr Singh.

3. Having considered submissions, the Court held:

We consider that the question arises from the decision in [Mr Singh's] appeal to this Court and raises important matters of interpretation of the provisions of the Bill of Rights in Chapter Four of the Constitution.

We therefore certify that the above question is one of significant public importance.

4. By apparent oversight, the Court of Appeal did not formally and explicitly grant leave to Mr Singh to appeal to the Supreme Court. This means that section 122(2) of the Constitution has not been complied with, impeding Mr Singh's right of appeal.

5. Section 122(2) of the Constitution says that an appeal may not be brought from a final judgment of the Court of Appeal unless:

(a) the Court of Appeal *gives leave to appeal* on a question certified by it to be of significant public importance ... (Emphasis added)

6. Without leave, Mr Singh is precluded from filing his petition of appeal under Rule 4(3) of the Supreme Court Rules 1998.

#### **7. NOTICE OF MOTION**

The Notice of Motion now before this Court is an application on behalf of Mr Singh for Orders:

(a) That it is now implied that leave was granted by the Fiji Court of Appeal when it certified the question in the present case as one of significant public importance in its decision on 25<sup>th</sup> June 2007; and/or

(b) That the issue of Certificate by the Fiji Court of Appeal on 25<sup>th</sup> June 2007 be taken to mean that leave was duly granted by the Honourable Fiji Court of Appeal under Section 122(2) of the 1997 Constitution.

(c) That the petitioner be now allowed to file his petition of Appeal under Rule 4(3) of the Supreme Court Rules 1998.

(d) Such further or other relief as this Court deems just.

#### **8. DETERMINATION**

Inherent jurisdiction enables the Court to correct what is obviously an error or oversight. To do so is simply to enable Mr Singh to take advantage of the judgment of the Court of Appeal on 25 June 2007, as he would have been entitled to do, had the error not been made, or oversight not occurred.

9. The parties are in agreement that the relief sought should be granted; that the intention of the Court of Appeal to enable Mr Singh to appeal to the Supreme Court should be effected; and that Mr Singh should now be allowed to file his petition of Appeal.

10. The relief sought should be extended to Mr Singh.

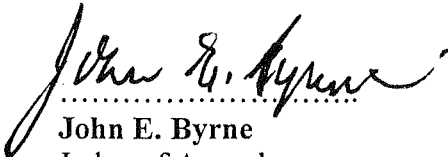
**11. CORAM**

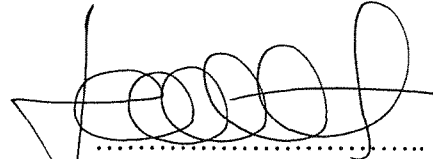
The appeal was heard by the Court constituted by two Judges of the Court of Appeal in accordance with section 6 (2) and (3) of the *Court of Appeal Act* (Ch 12).

**Orders**

By consent, the Court makes the following orders:

1. That the issue of Certificate by the Fiji Court of Appeal on 25<sup>th</sup> June 2007 be taken to mean that leave was duly granted by the Honourable Fiji Court of Appeal under Section 122(2) of the 1997 Constitution.
2. That the petitioner be now allowed to file his petition of Appeal under Rule 4(3) of the Supreme Court Rules 1998.
3. The time for filing the petition be 42 days from the date of this order.

  
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**John E. Byrne**  
Judge of Appeal

  
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**Jocelynn A. Scutt**  
Judge of Appeal

Suva  
22 February 2008

