

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CIVIL APPEAL NO. ABU0077 OF 2008S

(High Court Civil Action No. HBC398 of 2007S)

BETWEEN: LAISENIA QARASE AND OTHERS

Appellants

AND: JOSAIA VOREQE BAINIMARAMA
AND OTHERS

Respondents

AND: CITIZENS' CONSTITUTIONAL
FORUM LIMITED

Applicant

AND: FIJI HUMAN RIGHTS COMMISSION

Amicus Curiae

Coram: Powell, JA
 Lloyd, JA

Hearing: Tuesday, 31st March 2009, Suva

Counsel: C. Pryde and S. Sharma for the Appellants
 Q. Bale for the Respondents
 T. Draunidalo for the Applicant
 W. Goldman and S. Colonvanua for the
 Fiji Human Rights Commission

Date of Ruling: Tuesday 31 March 2009, Suva

RULING

- [1] By way of Notice of Motion filed 26 March 2009 the Citizens' Constitutional Forum Limited (CCF) seek leave to appear as amicus curiae in appeal proceedings ABU 0077of 2008 (the appeal proceedings). The appeal proceedings are listed for hearing on 6 April 2009 with an estimated hearing time of 4 days.

- [2] The intervention is opposed by the respondents and by the Fiji Human Right's Commission who appeared as amicus curiae in the High Court and will be appearing in the same capacity in the appeal proceedings. The appellants don't oppose the intervention provided it does not cause the hearing of the appeal to be delayed beyond the 4 days allocated for it.
- [3] The CCF is a charitable organization. Most notably, for the purposes of this application, it was the plaintiff in a leading constitutional case namely *Yabaki v President of Fiji* [2003] ABU0061 of 2001S.
- [4] Matters against granting leave are that CCF's application for leave to join the proceedings has been made very late and that it did not seek leave to intervene when the proceedings were before the High Court. The explanation offered is that the CCF only recently obtained European Union Funding to permit it to intervene.
- [5] On the other hand the subject of the appeal proceedings is of great importance, the CCF has limited its written submissions to 16 pages and will be represented by the experienced counsel who prepared the written submissions, namely Dr Melissa Perry QC and Ms Nicola McGarrity. Dr Perry is a constitutional law expert.
- [6] The written submissions address the existence or otherwise of the prerogative powers, in other words issues that are squarely before the Court of Appeal, and should not take the other parties by surprise, though the parties will need to consider their responses to it which takes time and therefore money.
- [7] Mr Pryde for the respondents makes the good point, citing *Re E (a child)* [2009] A All ER 467 at 472, that an intervention is of no assistance to the Court if it merely repeats points that a party has already made, and that senior counsel for the

appellants and the respondents are more than qualified to assist the Court in relation to the questions addressed in the CCF's submissions. However the same might be said about the Fijian Human Rights Commission, and Dr Perry at least is a constitutional law expert.

[8] It is imperative that the appeal proceedings be heard within the time allocated but the CCF says that its oral addresses will take no more than an hour and the Court will limit it to that. In our view 4 days is more than sufficient time for all the parties to address the Court and for the hearing of the appeal to conclude. If necessary the Court can limit the time for addresses for all parties to ensure that the hearing is concluded within the time allocated.

[9] The orders of the Court are:

1. That CCF be granted leave to appear as amicus curiae in the matter herein and be permitted to make submissions in writing and orally to the Court in that capacity, the oral submissions to be limited to 1 hour;
2. That CCF's written submissions be filed and served on all parties by noon Wednesday 1 April 2009 in both hard copy and electronic form.
3. The Fiji Human Rights Commission file and serve a copy of its submission dated 26 March 2009 in electronic form by 4 pm today, 31 March 2009.
4. Any further submissions by the parties be filed in electronic as well as hard copy.

Roger Powell

Powell, JA



R Lloyd

Lloyd JA

Solicitors:

Tevita Fa and Associates, Suva for the Appellants

Office of the Attorney General's Chambers, Suva for the Respondents

Tupou Draunidalo Barrister and Solicitors, Nadi for the Applicant

Office of the Fiji Human Rights Commission, Suva for the Amicus Curiae