



3. Counsel for the Applicant, advises that the first direction hearing in that matter, is scheduled for 18 June 2013.
4. In cases of this type, the principles to be applied when considering such an application, are well established in *Natural Waters of Viti Limited v Crystal Clear Mineral Water (Fiji) Limited*<sup>3</sup> and more recently in *Naidu v Boladuadua*<sup>4</sup>.
5. As Chandra RJA, has identified, the non-exhaustive list of factors derived from the case law include:
  - (a) *Whether, if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative)*
  - (b) *Whether the successful party will be injuriously affected by the stay.*
  - (c) *The bona fides of the applicants as to the prosecution of the appeal.*
  - (d) *The effect on third parties.*
  - (e) *The novelty and importance of questions involved.*
  - (f) *The public interest in the proceeding.*
  - (g) *The overall balance of convenience and the status quo.*
6. In this matter before me, Mr Rae advises that his client is now employed. I regard that as a preeminent factor in an employment matter. Outside of that and given the early listing of the appeal for Directions, I am inclined to grant a temporary stay in this matter. Not because I believe that the Applicant has a compelling argument,

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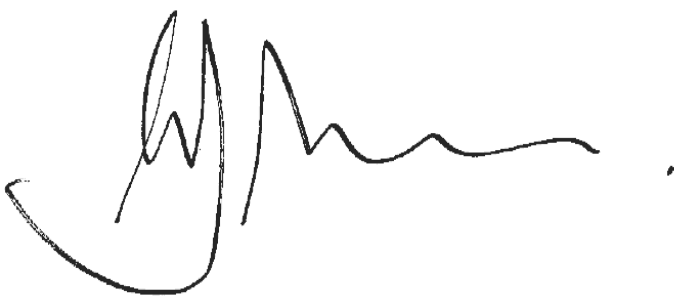
<sup>3</sup> [2005] FJCA13

<sup>4</sup> [2013] FJCA5

because there is not one that has been advanced, but more because of the practical consequences that flow as a result of the decision and the need to ensure that there is an early resolve to the clarity sought.

7. Ms Baleimatuku referred the tribunal to the decision of the *Fiji Public Service Association & Anor v Public Service Commission & Anor*<sup>5</sup>, where in that case Powell J, referred to the overriding principle of upholding the interests of justice in the circumstances. In that case, his Honour identified the risk of irremediable consequences as being a salient feature of that application.
8. While I have reservations at least based on the unique circumstances of this case, that there would be irremediable consequences if the matter was allowed to proceed, I am also cognisant of the need to ensure that there is an appropriate pathway for litigants who seek certainty and consistency of approach. On that basis and for the fact that Mr Rae has no strong objection to the application, I will allow it.
9. The decision in ERT Grievance No 4 of 2012, shall be stayed until such time as the High Court appeal is determined.

I order accordingly.

A handwritten signature in black ink, appearing to read 'A. J. See', with a long horizontal flourish extending to the right.

**Mr Andrew J See**  
**Resident Magistrate**

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<sup>5</sup> Civil Appeals NO CBV 00002 and 0004 of 2009.