

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

HBJ 05 of 2022

**IN THE MATTER** of **CIVIL AVIATION**  
**AUTHORITY OF FIJI**

**A N D**

**IN THE MATTER** of an application by  
**TIMOTHY JOHN JOYCE, SUNFLOWER**  
**AVIATION PTE LIMITED, JOYCE**  
**AVIATION (FIJI) PTE LIMITED t/a HELI**  
**TOURS FIJI** for a Judicial Review and with other  
reliefs including an Order of Certiorari to quash the  
decision made by the controller of Air Safety dated  
10<sup>th</sup> February 2022 and 11<sup>th</sup> February 2022.

**STATE** v **CIVIL AVIATION AUTHORITY OF FIJI** situated at CAAF Compound, Nadi  
Airport, Nadi.

**FIRST RESPONDENT**

**JIM SAMSON** Controller of Air Safety of the Civil Aviation Authority of Fiji of CAAF  
Compound, Nadi Airport, Nadi.

**SECOND RESPONDENT**

**EX-PARTE** **TIMOTHY JOHN JOYCE, SUNFLOWER AVIATION PTE LIMITED,**  
**JOYCE AVIATION (FIJI) PTE LIMITED t/a HELI TOURS FIJI**

**(APPLICANTS)**

Appearances: Ms. Lata for the Intended Appellants  
Mr. R. Singh and Ms. Swamy for the Respondents  
Date of Hearing: 12 August 2022  
Date of Ruling: 16 August 2022

## **R U L I N G**


1. On Tuesday 09 August 2022, I delivered my Ruling on the main application which was then before me – that is – the applicants ‘ application seeking leave to issue judicial review. I did refuse leave. Immediately after I delivered the Ruling, Mr. Sharma was on his feet ready to argue a written application already drafted in anticipation of the decision. The application had sought two things. Firstly, it sought leave to appeal. Secondly, it sought a stay pending appeal.
2. Mr. Sharma only argued the stay – which I refused after hearing both counsel. My reasons are set out in a written ruling which was circulated on 10 August 2022.

3. Between 10 August and 11 August, there was some correspondence from AK Lawyers seeking the court's indulgence for a hearing on their application for leave to appeal. In light of the urgency involved for the applicant, and given that the application for leave to appeal was not pursued in the first instance on 09 August, I directed that the hearing of the application for leave be held on Friday 12 August 2022.
4. On Friday 12 August 2022, Ms. Lata appeared for the intended appellants and Mr. Singh and Ms. Swamy appeared for the respondents.
5. She argued *inter alia* that, since no leave to appeal was afoot when I last heard Mr. Sharma on 09 August, and since I was now dealing with an application proper seeking leave to appeal, it was open to me to revisit the issue of stay.
6. I was not amenable to the argument as I stood by my reasons stated earlier. In other words, I was not amenable to granting stay because it would mean extending the status quo which had been maintained up to the date of the Ruling – that is – that Captain Paul Hilton's appointment as Temporary Chief Pilot – be extended. However, it appeared that there were
7. I did indicate in Court that I would not disturb my reasons for refusing stay.
8. Both counsel however were able to resolve the issues between their clients. There is consequently, a temporary arrangement between them which has the same effect of stay.
9. A judgement of order of the High Court to grant or refuse leave for Judicial Review is an interlocutory decision (**Goundar v Minister for Health** [2008] FJCA 40; ABU 0075.2006S (9 July 2008)).
10. I have perused the various authorities cited by both counsel on what I should take into account in deciding an application seeking leave to appeal an interlocutory decision. I do not intend to regurgitate them here.
11. My decision to refuse leave for Judicial Review was made on the basis that there was an alternative remedy available under section 12F of the Civil Aviation Authority of the Fiji Islands Act which the applicants should have exhausted.
12. The decisions which the applicants were aggrieved about entailed the refusal of some "aviation documents". The immediate effect of those decisions was that they would affect the applicants' business operations.
13. In saying that there was an alternative remedy that should have been exhausted, I was, in no way whatsoever, finally determining any substantive rights of either the CAAF as the regulatory authority – or the applicants as "operators" (**In re Denarau International Ltd** [2011] FJHC 682; HBE 19.2010 (26 September 2011)).
14. If this was to be appealed – the main question of law would be on – whether or not I did exercise my discretion judicially in refusing to grant leave on account of the alternative remedy available under section 12F. The issue would then narrow down specifically to the question –

whether there are exceptional circumstances in this case to justify the applicants bypassing the section 12F appeal provisions and file the leave for Judicial Review proceedings.

15. Mr. Victor Sharma did submit *inter alia* before me on 09 August 2022 that, where the line is to be drawn in Fiji as to what constitutes “exceptional circumstances” – has not been clearly defined – and that this is an opportunity for the Fiji Court of Appeal to do just that. Admittedly, the law books are abound with case authorities from other common law jurisdictions on the point. Notably, the views expressed differ slightly in some respects – as evident from the different authorities cited before me by both counsel.
16. There is a strong view that – where Parliament has prescribed by statute an avenue for an administrative appeal of an executive decision, the Courts should be slow to entertain an application which bypasses that.
17. Mr. Narayan and Ms Lata have both raised strong arguments from time to time on why the appeal procedure under section 12F was not appropriate for the applicants in this case. It has been argued that the CE is already tainted, because she has been, hitherto, involved in the decisions in question at some level. There is also raised the argument that the CE is ill qualified to deal with the issues of law which the Applicants would like to raise about the decisions of 10 and 11 February 2022.
18. In my view – ultimately – the effect of the 10 and 11 February 2022 decisions was to deny the main applicant, Timothy Joyce – some relevant Aviation Documents – which had the effect of disentitling him from continuing to act as Chief Pilot for Heli Tours – thus affecting the company’s operations.
19. Section 12F empowers the CE to deal with a related grievance.
20. It would seem that the argument that the CE is already tainted and ill-equipped by training to deal with the arguments involved – are rather presumptive. Can an untested presumption as such be a valid excuse to bypass the section 12F? Should an aggrieved party be able to bypass a statutorily prescribed appeal process and come directly to court on account of some suspicion – even if supported – that the appeal process would be tainted – or would not be able to grapple with the legal arguments which the case entails? I must leave these questions – along with others – for the Fiji Court of Appeal. I must say that in my view, what the applicants should do is exhaust the section 12F process and if they are of the view that the process was tainted or did not deal with the legal questions involved – to then raise them as a ground for judicial review later.
21. Leave granted to appeal. Parties to bear their own costs.



  
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**Anare Tuilevuka**  
**Judge**