

**IN THE HIGH COURT OF FIJI  
(WESTERN DIVISION) AT LAUTOKA  
CIVIL JURISDICTION**

**JUDICIAL REVIEW NO. HBJ 9 OF 2020**

**BETWEEN: PAULA MALO RADRODRO**

**APPLICANT**

**AND: THE CHIEF REGISTRAR**

**RESPONDENT**

**BEFORE :** Hon. Mr. Justice Mohamed Mackie

**APPEARANCES :** Plaintiff in Person  
Mr. S. Kant, for the Defendant

**DATE OF DECISION :** 9<sup>th</sup> September, 2022

**RULING**

[On leave to apply for judicial review]

**A. Introduction**

1. Before me is an application, purportedly, seeking for leave to apply for judicial review .The Applicant, by his NOTICE OF MOTION dated 10<sup>th</sup> December, 2020 and filed on 22<sup>nd</sup> December, 2020 is seeking the following specific reliefs.
  - a. *That the Orders sought are Mandamus and Certiorari.*
  - b. *That the applicant seeks that the allegations mentioned in this application be referred to the Judicial Services Commission pursuant to section 104(2) of the constitution of investigation.*
  - c. *That the applicant is also seeking fees waived under Order 110 of the High Court Rules.*
2. The Notice of Motion is supported by an affidavit of the applicant sworn on 10 December, 2020, by which the applicant appears to be verifying the facts relied upon by him.
3. The applicant does not specify the relevant Order and Rule under which the application is made. However, I presume that the application is made under Order 53, Rule 3 (2) of the High Court Rules 1988, as amended ('HCR').
4. The respondent has filed an Affidavit in response on 13<sup>th</sup> September 2021 sworn by RANJANI WATI, a Senior Court Officer of the Supreme Court, in reply to which the applicant has filed his affidavit in reply on 21<sup>st</sup> December 2021 sworn on the same date.
5. At the hearing in relation to leave, the Counsel for the respondent made submissions seeking to dismiss the application *in limine* on the basis that there is no merit in this application as the applicant is complaining against the Chief Registrar's decision not to waive the payment

of Security for costs on the applicant's appeal to the Supreme Court, which appears to me in relation to certain matter/s involving the applicant.

6. The applicant too made his oral submissions and was left at liberty to file his written submissions, if needed, on matters submitted by the counsel for the respondent while making submissions to dismiss the applicant's application in *limine*. Accordingly, the applicant has filed his, purported, submissions on 08<sup>th</sup> September 2022.
7. The question that lies before me, for the time being, is whether the leave to apply for judicial review should be granted or not?

**B. Background**

8. The applicant had filed his Petition for leave to appeal, together with affidavit in support thereof, on 14<sup>th</sup> September 2020 at the Supreme Court in relation to Civil Appeal No-CBV 0014 of 2020, for which his filing fees was waived as per his request by letter dated 3<sup>rd</sup> September 2020. (Original High Court Action number not provided.)
9. However, by letter dated 29<sup>th</sup> October, 2020, the applicant was informed by the Chief Registrar's Office that his request, by letter dated 26<sup>th</sup> October 2020, for the **waiver of payment of Security for Costs**, was refused on the ground that the filing fees in respect of his leave to appeal had already been waived and as the applicant was employed. Accordingly, he was directed to pay the Security for Costs. A copy of said letter dated 29<sup>th</sup> October, 2020 sent by the Chief Registrar's office was marked as "A" and annexed to the affidavit in support filed by the applicant.
10. The applicant also made a similar request, by his letter dated 30<sup>th</sup> September 2020, for the waiver of the Security for Costs, when he was in the process of filing his Petition and affidavit at the Court of Appeal seeking leave to appeal in ABU 0081/19. (the outcome of this request is not pleaded)
11. The applicant alleges that the Chief Registrar was unfair in his decision that he, having waived his filing fees, insisted that he should deposit **Security for costs**.
12. The Applicant, by his NOTICE OF MOTION , appears to be seeking leave to apply for judicial review in order to move for Mandamus and Certiorari Orders, and for an order that the allegations levelled in this application to be referred to the Judicial Service Commission pursuant to section 104 (2) of the constitution for investigation. ( Vide- 2<sup>nd</sup> and 4<sup>th</sup> paragraphs of the Notice of Motion)
13. In the affidavit in response sworn by RANJANI WATI, a Senior Court Officer, it has been averred that the Chief Registrar had acted in compliance with the Court of Appeal Act 1949 and Supreme Court Act 1998, and moved for the dismissal of the applicant's application with costs against the applicant.
14. By his affidavit in reply sworn and filed on 21<sup>st</sup> December 2021, the applicant admits that the "Notice of Non-Compliance" dated 15<sup>th</sup> February, 2021, issued owing to his failure to pay the

Security for Cost, was received by him from the Supreme Court Registry, along with the letter dated 23<sup>rd</sup> February 2021.

**C. The purported grounds upon which relief is sought.**

- a. *“That the Chief Registrar had willing fully delayed the filing and issuing of my application in three separate occasions at the Fiji Court of Appeal and the Supreme Court and my appeal is now out of time to the appeal court between Paula Malo Radrodro vs Commissioner of Police and Attorney General. [High Court action no. FJHC 674-HBJ 01. 2020 Ltka].*
- b. *That the Chief Registrar was unfair in his decision in that he had accepted my seeking waived of filing fees for Supreme Court appeal petition no. CBV 14/20 but enforced that I pay security for costs in a letter that was served to me by the Lautoka High Court Officer known to me by the name of Mala in October 2020.*
- c. *That the Chief Registrar was unfair in that he denied me the right to have access to a Court of law pursuant to the bill of rights section 15(2).*
- d. *That the Chief Registrar in so denying me access to a Court of Law had literally denied me Justice and his action should be rendered as conspiracy to defeat Justice which is a criminal offence.*
- e. *That the Chief Registrar had failed in his duty pursuant Rule 43(2) of the Court of Appeal (amendment) Rules 1999 to waive fees for appeal to the court of appeal submitted on the 1st of October and security cost because I was unrepresented (letter of chief registrar seeking exception of fees dated 1st October 2020 is annexed in affidavit in support).*
- f. *That the Chief Registrar had failed in his duty in that he has not filed my appeal to the court of appeal dated 1st October 2020 and has not issued the documents to me. [Appeal between Paula Malo Radrodro vs Commissioner of Police and Attorney General].*
- g. *That I seek that any decision made the Chief Registrar in my application to the Court of Appeal and the Supreme Court be quashed pending investigation.*
- h. *That the letters in support of the Chief Registrar’s action in denying me access to a court of Law is attached and annexed in the affidavit in support.*
- i. *That this application is totally relying on the affidavit in support”.*

**D. The Law.**

15. The relevant law in Fiji applicable to leave to apply for judicial review is found under O 53, R 3 of the HCR 1988.
16. The law pertaining to the subject was correctly stated in the speech of Lord Evershed in *‘Ridge v Baldwin’* [3]. Lord Evershed referred to;

*“a danger of usurpation of power on the part of courts... under the pretext of having regard to the principles of natural justice.... I do observe again that it is not the decision as such which is liable to review; it is only the circumstances in which the decision was reached, and*

*particularly in such a case as the present the need for giving to the party dismissed an opportunity of putting his case."*

Therefore, the judicial review is concerned, not with the decision, but with the decision-making process. Lord Brightman in "*Chief Constable of the North Wales Police v Evans*"[4] said *unless that restrictions on the power of the court is observed, the court will under the guise of preventing the abuse of power, be itself guilty of usurping power"*.

17. Lord Templeman in '*Reg v Inland Revenue Commissioner, Ex-parte Preston*'[5] said;

*"Judicial review is available where a decision-making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which is no reasonable tribunal could have reached, or abuse its powers."*

#### **E. Test For Granting Leave:**

18. The test for granting or refusal of leave for judicial review largely depends on the interest that the applicant has in the subject and whether an arguable case has been shown. Further, granting of leave requires 'a realistic prospect of successes. Leave can be refused if the applicant has not exhausted his alternative remedies. Further, the delay in making the Application or if the claim is premature, it too can lead to the denial of leave.

19. In *State v Connors*, ex parte Shah[6] it was held:

*At leave stage, the threshold is low. What needs to be established is 'an arguable case' to be resolved only by a full hearing of the application for judicial review. At this stage a full review of the facts is unnecessary. Nonetheless, a court is obliged to sufficiently pursue the material provided to determine whether an applicant raises an issue arguably involving an error in law, a serious error in fact; a violation of natural justice or procedural fairness, or an excess of jurisdiction by the decision-maker the subject of the application.*

20. Following observations were cited by the Court of Appeal in the case of *Maisamoa v Chief Executive Officer for Health* [7].

*"In the case of Nair v Permanent Secretary for Education [8] it was held: In an application for leave to apply for judicial review, the court must ask.*

- a. Does the applicant have sufficient interest in the application?*
- b. Is the decision susceptible to judicial review – that is, is it of a private or public nature?*
- c. Is the decision non-reviewable in accordance with the terms of the Public Service Act?*
- d. Are alternative remedies available to the applicant and, if so pursued by the applicant?*
- e. Does the material available disclose an arguable case favoring the grant of the relief sought? or what might, on further consideration, be an arguable case?"*

#### **F. Discussion:**

21. The application for leave to apply for judicial review may be determined on papers filed, without a hearing and where a hearing is considered necessary, the Court will hear and determine the application inter parte (see O 53, R 3 (3) (ii). In this case, I was of the view that this application should be heard inter parte for the reason that the respondent should be

given an opportunity to have his say on the propriety of the, purported, application before the court makes an order.

22. Before, I proceed to delve deep into the questions raised in paragraph 20 above , answer to which decides the granting or not of the leave , let me, at the outset, go into the propriety of the so called application made by the applicant.
23. The Order 53 Rule 3 (1) stipulates that “**No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule**”. The applicant has filed a Notice of Motion supported by an affidavit seeking the purported reliefs a, b, and c stated under paragraph 1 above. **The applicant in his prayers has not specifically sought for the initial relief of leave to apply for judicial Review.** At least, in his oral or written submissions even, he has not drawn my attention for a prayer moving for such a relief in his Notice of Motion. Thus, Notice of Motion dated 10<sup>th</sup> December 2020 can be struck off in *limine* on account of this failure.
24. However, even if I am wrong in making the above observation, which is detrimental I to the applicant, for the reasons to be adumbrated bellow and in view of the stance taken by the Counsel for the Respondent in his oral submissions, I hold a firm view that the applicant’s application should be dismissed in *limine*.
25. The purpose of the rules under Order 53 of the HCR appears to be a mechanism for weeding out hopeless or frivolous applications at an early stage and protecting the public functionaries from harassment. It may also assist the system in curtailment of the wastage of its precious resources and time that could be utilized for most deserving matters.
26. However, without prejudice to my finding above on the maintainability of this application in the absence of a prayer for leave, let me have a glance at the purported substantial reliefs prayed for by the applicant in his Notice of Motion, in the light of the obvious answers to the questions raised in paragraph 20 above.
27. What is alluded by the applicant in his application before this court as a “decision” is only a direction made by the Chief Registrar, for the applicant to deposit the Security for Costs, for his Petition of Appeal to the Court of Appeal and the leave to Appeal Application to the Supreme Court to be processed with at the respective courts. This requirement was purely, in compliance with the Court of Appeal Act 1949 and the Supreme Court Act 1998 respectively.
28. The above direction of the Chief Registrar was only a routine duty performed by him at his discretion by virtue of the aforesaid Acts. It was not a decision given by him pursuant any judicial, quasi- judicial function or as the head/ member of a forum, tribunal or any other decision making or administrative body for it to be subjected to scrutiny by way judicial review by this Court.
29. Further, as per the Notice of Motion , the applicant as his substantial relief moves this court to refer his allegation to the Judicial Service Commission (JSC) pursuant to section 104 (2) of the constitution for investigation, . Under this section, the function of the J.S.C is to

investigate the complaints against the Judicial Officers. The performance of his official duty by the Chief Registrar in the manner expected of him pursuant to the respective Acts of the Supreme Court and the Court of Appeal cannot warrant a complaint against him to the Judicial Service Commission under section 104(2) of the constitution.

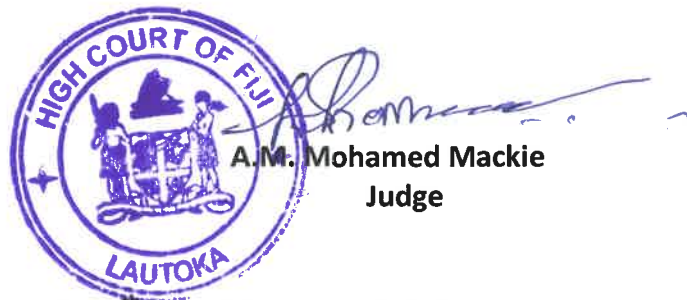
30. If these types of allegations and complaints are to be entertained and acted up on, it will seriously affect the functions of the Office of the Chief Registrar in facilitating the smooth and effective operations of the Courts in our system and it would, undoubtedly open the flood-gate paving way for frivolous application before our courts.
  31. I am at a loss to understand as to on what basis the applicant moves for Writs of Mandamus and Certiorari as per paragraph one of his Notice of Motion. He did not provide grounds for seeking such relief
  32. His Lordship Madan B Lokur- J, with the agreement of their Lordships Priyasath Dep-J, and Priyantha Jayawardhana-J, in the recent judgment dated 26<sup>th</sup> August 2022 in ***PITA TOKONIYAROI V COMMISSIONOR OF POLICE & 4 others –CIVIL PETITION No: CBV 0017 Of 2019***, stated that “ *an order for security for costs is a procedural order and not a judicial order. The order of the Chief Registrar for deposit or not making a deposit for security of costs is a discretionary order made under rule 6 of the Supreme Court Rules*”.
  33. Though, the Chief Registrar is empowered to make order for security for cost up to \$30,000.00, he has no power to reduce it or to dispense with it.
  34. If the applicant was dissatisfied with the direction of the Respondent Chief Registrar for the deposit of Security for Costs, he could have made a request to the Hon. Chief Justice seeking to reduce the amount to be deposited or to dispense with it, as the Petitioner did in ***PITA TOKONIYAROI V COMMISSIONOR OF POLICE & 4 others –CIVIL PETITION No: CBV 0017 Of 2019***, (*Supra*) for the Supreme Court to consider his grievance, if he deserves such a relief.
  35. It has to be emphasized in clear terms that the remedy of judicial review is not a “panacea” for all the ills and aches. The applicant’s application for judicial review hereof is ill-advised, frivolous and an abuse of process.
- G.** In view of the above, I need not go deep into the aforementioned tests that decides the granting or refusal of the leave to apply for judicial review, which in this matter would only be a mere academic exercise.

**H. Conclusion**

The applicant’s Notice of Motion should primarily fail on account of the absence of a prayer for leave to apply for judicial review. However, without prejudice to above, this court is of the view that the refusal by the Chief Registrar to accede to the applicant’s request to dispense with the security for costs is not a decision or an order that warrants the intervention of this court by way of judicial review. I would, accordingly, refuse to grant leave to apply for judicial review.

I. **The result**

- a. Leave to apply for judicial review refused.
- b. Notice of Motion seeking judicial review is struck off.
- c. No order for costs made.



At High Court Lautoka this 9<sup>th</sup> day of September, 2022.

**SOLICITORS**

For the Plaintiff: In Person

For the Defendant: Attorney General's Chamber