

**IN THE INDEPENDENT
LEGAL SERVICES COMMISSION**

**NO. 009/2009
NO. 010/2009**

BETWEEN: CHIEF REGISGTRAR

Applicant

**A N D: IQBAL KHAN
IQBAL KHAN & ASSOCIATES**

Respondent

Applicant: Ms V. Lidise

Respondent: Mr S. D Sahu Khan for Mr Iqbal Khan

Date of Hearing: 21 June 2010

Date of Ruling: 21 June 2010

**EXTEMPORE RULING
ON NOTICE OF MOTION FOR LEAVE TO APPEAL**

1. The Respondent/Applicant in the Notice of Motion, by Notice of Motion filed today seeks the following orders:-

(a) Leave be granted to the Respondents to appeal out of time for the orders made on the 3rd February 2010 and the 28th April 2010 and leave be granted to appeal against the interim orders of the Commissioner, Mr John Connors dated the 3rd February 2010 dismissing the application to disqualify himself, orders dated the 28th April 2010 and orders made on 21st June 2010 dismissing the Notice of Motion filed on the 17th June 2010 by the Respondent/Applicant.

(b) A stay of all further proceedings pending in the Independent Legal Services Commission against the Respondent/Applicant pending the hearing of this application and/or pending the hearing and determination of the appeal by the Court of Appeal.

2. The Notice of Motion is supported by an affidavit of Mr Khan sworn today.
3. The proceedings before this Commission are governed by the Legal Practitioners Decree 2009. Section 128 of that Decree provides
 - (1) An appeal shall lie to the court of Appeal from any order of Commission at the instance of either the Registrar or any other party to the proceeding;
 - (2) Such appeal shall be made within such time and in such form and shall be heard in such manner as shall be prescribed by the rules of procedure made under section 127.
4. There are no rules of procedure under section 127 at this point of time. However I have in accordance with section 127 issued a Practice Direction prescribing that the rules pursuant to the Court of Appeal shall apply to proceedings before this Commission as if they were proceedings before the High Court in its Civil Jurisdiction.
5. Rule 16 of the Court of Appeal rules provides that an appeal from an interlocutory Order shall be made within 21 days. Such period is to be calculated from the date on which the judgment or order of the Court below was signed, entered or otherwise perfected.
6. Rule 27 of the Court of Appeal rules enables the Court at first instance to enlarge the time prescribed for filing and serving notice of appeal under rule 16 but only if application is made before the expiration of that period.
7. It is acknowledged by counsel for the Respondent/Applicant that this Commission in the circumstances has no capacity to entertain the application for leave to appeal out of time the decision of the Commission of the 3rd of February 2010 and the 28th of April 2010.
8. This leaves therefore for determination by the Commission the application for leave to appeal the decision of the Commission delivered today and if leave be granted to consider whether a stay of those proceedings in accordance with paragraph b of the notice of motion should be granted.
9. The Respondent/Applicant in his affidavit which respect to his application for leave to appeal today's ruling repeats the matters that have been placed before the Commission in the cause of the hearing that application. In additional there is as annexure 13 to his affidavit the proposed notice of appeal.

10. The law with respect to the matters to be considered in an application such as this has been well spelled out by the Fiji Court of Appeal over an extensive period of time,

11. The then President of the Fiji Court of Appeal, Sir Moti Tikaram, in *Toffs Incorporated spor (Fiji) Limited, Richard Evanson v John Leonard Clark and John Lockwood Sellers* – Civil Appeal No. 35 of 1996 at page 15 said:

"It has long been settled law and practice that interlocutory orders and decisions will seldom be amenable to appeal. Courts have repeatedly emphasized that appeal against interlocutory orders and decisions will only rarely succeed. The Fiji Court of Appeal has consistently observed the above principle by granting leave only in the most exceptional circumstances."

12. Thompson JA sitting as a single judge of appeal in *K.R. Latchan Brothers Limited v Transport Control Board and Tul Davullevu Buses Limited* – Civil Appeal No. ABU0012 of 1994 said:

"The granting of leave to appeal against interlocutory orders is not appropriate except in very clear cases of incorrect application of the law. It is certainly not appropriate when the issue is whether the discretion was exercised correctly unless it was exercised either for improper motives or as result of a particular misconception of the law. The learned judge has given full reasons for the order he has made. There is no suggestion of impropriety in the appellant's affidavit. There is an allegation of misconception of the law, but if there was a misconception of the law, it is not a clear case of that. That matter can be made a ground of appeal of any appeal against the final judgment of the High Court, if the appellant is unsuccessful in the proceedings there."

13. And further the Fiji Court of Appeal in *Kellon Investments Limited v Civil Aviation Authority of Fiji* (1995) FJCA 15 – 18 July 1995 relied upon a decision of the Supreme Court of Victoria, Australia (Full Court) in *Niemann v Electronic Industries Ltd* (1978) V.R. 431 where Murphy J. said at page 441:

Likewise in *Perry v Smith*(1901), 27 VLR 66 & *Darrel Lea Case* [1969] V.R. 401, the Full Court held that leave should only be granted to appeal from an interlocutory judgment or order, in cases where substantial injustice is done by the judgment or order itself. If the order was correct, then it follows that substantial injustice could not follow. If the order is deemed to be clearly wrong, this is not alone sufficient. It must be shown, in addition, to affect a substantial injustice by its operation.

It appears to me that greater emphasis therefore must lie on the issue of substantial injustice directly consequent on the order. Accordingly, if the effect of the order is to change substantive rights, or finally to put an end to the action, so as to effect a substantial injustice if the order was wrong.

14. The President of the Court of Appeal then went on in *Kellon* to say:

"If a final order or judgment is made or given and the applicants are aggrieved they would have a right of appeal to the Court of Appeal against such order or judgment. Therefore, no injustice can result from refusing leave to appeal.

The courts have thrown their weight against appeals from interlocutory orders or decisions for very good reasons and hence leave to appeal is not readily given."

15. There is nothing that has been placed before me by way of evidence on this application to suggest that any part of these proceedings would change any substantive rights of the Respondent/Applicant or that the order made in today's application would finally put an end to the action so as to effect a substantial injustice, on the contrary no substantive rights are changed and there is no end put to any action and therefore there can be no substantial injustice.

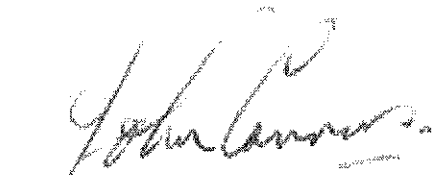
16. Counsel for the Respondent/Applicant refers the Commission to a decision to the High Court of Australia in *The Queen against Watson ex parte Armstrong* (136 CLR 248) a decision in 1976 with respect to family law proceedings.

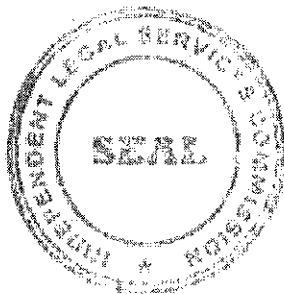
17. The authorities to which I have referred, being authorities of much more recent times are specifically related to Fiji and forms part of the jurisprudence of the Fiji Court of Appeal.

18. I am therefore of the opinion that it would be inappropriate for leave to be granted to appeal the ruling delivered today; that the second Notice of Motion filed alleging bias was an abuse of process.

ORDERS

Notice of Motion is dismissed.


**JOHN CONNORS
COMMISSIONER**



21 JUNE 2010