

**IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CIVIL DIVISION)**

**CA NO. 3/13**  
(PLAINT NO. 2/13)

**IN THE MATTER** of an appeal against the judgment of the Honourable Williams J in respect of a decision made 2 April 2013 declining an application for certiorari by the Appellant

**BETWEEN** **KAVE RINGI**, Immigration specialist, of Rarotonga  
**Applicant**

**AND** **JIM GOSSELIN**, Secretary of Immigration and Foreign Affairs, residing on Rarotonga  
**First Respondent**

**AND** **THE HON. HENRY PUNA MP**, Attorney-General  
**Second Respondent**

**Date:** 8 May 2013

**Counsel:** Mr Mason for the Applicant  
Ms Henry for the Respondents

**Judgment:** 9 May 2013

---

**JUDGMENT OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**  
**(Application for Leave to Appeal)**

---

[DSS 0837]

[1] Yesterday I granted the appellant leave to appeal the judgment of this Court dated 2 April 2013. I said I would issue a brief judgment on jurisdictional aspects to clarify the relevant statutory provisions that apply on such an appeal.

[2] The appellant challenged his actual or purported dismissal as “Director of Immigration” by way of certiorari. All issues were determined against him in the High Court.

[3] The Judicature Amendment Act 2008 (2008, No.18) amended the Judicature Amendment Act 1980-81 by inserting Part 1A as a new part relating to Judicial Review. Section 50I provides:

Appeals – Subject to the provisions of the Constitution and to Part II of this Act, any party to an application for review who is dissatisfied with any final or interlocutory order in respect of the application for review may appeal to the Court of Appeal.

[4] The appellant proceeded by way application for certiorari, not by way of judicial review.

[5] Section 58 of the Judicature Amendment Act 2011 (2011, No.12) provides in s 58(3):

An appeal shall lie to the Court of Appeal with leave of the High Court –

- (a) if, in the opinion of the High Court, the question involved in the appeal ought to be submitted to the Court of Appeal for decision because of –
  - (i) its general or public importance; or
  - (ii) the magnitude of the interest affected;
- (b) from a judgment of the High Court in relation to judicial review, any extraordinary remedies, injunctions or statutory relief;
- (c) where the justice of the case so requires.

[6] For the sake of completeness I refer to s 58 (2)(b) which provides for an appeal as of right to the Court of Appeal when the matter in dispute on the appeal amounts to or is of the value of \$4000 or more. Counsel noted that the monetary provision in this section conflicts with Article 60(2)(c) of the Constitution which provides for an appeal as of right where the matter in dispute has a value of \$400 or upwards. Counsel submitted that s 58(2)(b) may well be in breach of the Constitution. However, I do not consider these provisions applicable in this case. Clearly s 58(3) as set out above relates to an appeal from a judgment of the High Court in relation to extraordinary remedies.

[7] The criteria in s 58(3)(a) (that the matter be of general or public importance or because of the magnitude of the interest affected) ,do not appear to apply when the appeal is in relation to judicial review, extraordinary remedies, injunctions, or statutory relief, under s 58(3)(b). I consider s 58(3)(c) would apply.

[8] However, I am satisfied that both criteria in s 58(3)(a) are met in this case. I note the Crown accepts that the questions in issue here are of public importance.

[9] I further note that under Rule 29(2)(b) of the Court of Appeal Rules 2012 the Court does not need to give its reasons for giving leave to appeal. It is sufficient that I briefly state that I am satisfied the justice of the case here requires leave to be granted.

*Potter, J.*

---

**Judith Potter, J**