

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Judicial Review No. HBJ 02 of 2016

BETWEEN

THE STATE

AND

REGISTRAR OF TITLES a person appointed under the Land Transfer Act
to administer the provisions of such Act.

RESPONDENT

AND

BULA ISLAND FOOD SUPPLIES LIMITED a limited liability company with
the registered office at Lot 9 Bila Street, Careras Road, Votualevu, Nadi.

FIRST INTERESTED PARTY

AND

RAJSAMI INVESTMENT LIMITED having its registered office at
8 mile, Nasinu.

SECOND INTERESTED PARTY

AND

HARISH CHAND trading as iTAUKI FOOD INDUSTRIES of Level 1
Unit 1/9 Lot 9 Bila Street, Careras Road, Votualevu, Nadi.

APPLICANT

Counsel : Mr. K. Vuataki for Applicant
Ms. S. Ali for Respondent
Ms. S. Devan for 2nd Interested Party

Date of Hearing : 11th November, 2016

Date of Order : 31st January, 2017

ORDER

(On the application for judicial review)

[1] The applicant to this application seeks leave to apply for judicial review pursuant to Order 53(3)(2) of the High Court Rules 1988 against the decision of the respondent to remove the caveats bearing No. 827773 and 819709. The applicant is seeking to

challenge the removal of these two caveats by way of Judicial review on the ground that before removing caveats the respondent failed give him notice of removal required to be given under section 110(1) of the Land Transfer Act.

[2] The respondent's position is that when he received the applications from the first interested party to remove the caveats, on 06th July, 2016 he informed the applicant by e-mail that an application for the removal of caveats has been filed and that the notices would be sent to the addresses provided by him and sent notices on 07th July, 2016.

[3] The respondent opposed the application for leave on the following grounds;

1. The decision sought to be challenged is not amenable to judicial review.
2. The applicant has not exercised his rights under the statute.
3. There is no arguable case.
4. The applicant has failed to seek appropriate alternative remedy.

[4] The test for whether permission should be granted remains whether an arguable case has been shown, although now the court will be aware of the defendant's case. Consideration of the defendant's case – even if only in summary – will surely sometimes lead to the conclusion that the claimant's case is unarguable, thus leading to the denial of permission in cases in which would otherwise be granted. These changes have been criticised as unlikely to lead more efficient procedure and as being unfair to the claimants. Although some lawyers find even the most obvious propositions 'arguable', the grant of permission requires 'a realistic prospect of success'. Permission may also be refused because of delay or the availability of an alternative remedy or because the claim is premature. [**Administrative Law by Wade and Forsyth, 10th Edition, Pages 555 & 556**].

[5] In *State v Connors, ex parte Shah* [2008] FJHC 64; HBJ47.2007 (7 April 2008) 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 provide 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.

[6] These observations of the High Court cited with approval by the Court of Appeal in the case of **Maisamoa v Chief Executive Officer for Health** [2008] FJCA 41; ABU0080.2007S (10 July 2008).

[7] Section 110(1) of the Land Transfer Act provides as follows;

Except in the case of a caveat lodged by the Registrar the caveatee or his agent may make application in writing to the Registrar to remove the caveat, and thereupon the Registrar shall give twenty-one days' notice in writing to the caveator requiring that the caveat be withdrawn and, after the lapse of twenty-one days from the date of the service of such notice at the address mentioned in the caveat, the Registrar shall remove the caveat from the register by entering a memorandum that the same is discharged unless he has been previously served with an order of the court extending the time as herein provided.

[8] On 06th July, 2016 the respondent has informed the applicant by e-mail about the application for removal of the caveats by the first interested party and the notices required to be sent under the above provisions had been sent to the following addresses;

The notice of the removal of caveat No. 819709 had been sent to "Harish Chand C/- Tuifagalele Legal P.O. Box 2605, Government Buildings, Suva and

the notice of the removal of caveat No. 827773 had been sent to Harish Chand, P.O. Box 12010, Nandi”.

- [9] The copies of the said notices are annexed to the affidavit filed on behalf of the respondent marked as “TS 6” and “TS 7” respectively. The notice sent to P.O. Box 12010 had been returned to the sender. The envelope is annexed to the affidavit filed on behalf of the respondent marked as “TS 8”.
- [10] The applicant admits that the respondent responded to his e-mail and informed him that an application had been filed by the caveatee to have the caveats in question removed.
- [11] Section 110(3) of the Land Transfer Act provides that the caveator is entitled to make an application to the Registrar of Titles before or after the service of the notice of cancellation. This motion has been filed the day after the date appears on the notice of cancellation. The applicant has not explained to court what made him to file a motion seeking an order restraining the respondent from removing the caveats without any application to that effect before the respondent.
- [12] The applicant alleges that the notice of cancellation was not served on him. The law does not require the personal service of the notice. Section 176(1) of the Land Transfer Act provides as follows;
- Any notice required by or under the provisions of this Act to be served or given to any person may be served or given by being sent by registered post to that person at his address for service.
- [13] When the notice is sent by registered post to the address provided by the caveator it is presumed that such notice has been duly served on him. Once it is established that the notice has been sent to the address provided by the caveator the burden shifts to the caveator to satisfy the court that he did not receive it. In this case there is sufficient proof of sending notices cancellation of the caveats to the addresses provided by the caveator. The notice sent to P.O. Box 12010, Nadi was returned for no fault of the respondent.

[14] Therefore, the allegation that the respondent did not comply with the provisions of section 110(1) of the Land Transfer Act is without merit.

[15] In the circumstances it cannot be said that the applicant has an arguable case entitling him to obtain leave for judicial review.


[16] As I have stated earlier in this order, the applicant, before making the present application for leave for judicial review, has invoked the jurisdiction of the civil court and at the time this application was made the matter was already under consideration in another court. On this basis also the applicant is not entitled to leave to apply for judicial review.

[17] Since the court has decided not to grant leave to apply for judicial review the question of stay does not arise for consideration.

[18] For the reasons aforesaid I make the following orders:

1. The applications for leave to apply for judicial review and for an order staying the operation of the decision of the respondent to remove caveats in question are refused.
2. The applicant shall pay the respondent and the 1st and 2nd interested parties \$3000.00 (\$1000.00 each) as costs of this application within fourteen (14) days from today.




Lyone Seneviratne,

JUDGE

31st January, 2017.