

IN THE HIGH COURT OF FIJI
AT LAUTOKA

JUDICIAL REVIEW NO. HBJ 5 OF 2018

IN THE MATTER of CIVIL AVIATION
AUTHORITY OF FIJI

AND

IN THE MATTER of an application by TIMOTHY JOHN JOYCE, SUNFLOWER AVIATION LIMITED, JOYCE AVIATION (FIJI) LIMITED t/a HELI TOURS FIJI, TALL PINES LIMITED t/a PACIFIC FLYING SCHOOL and TANDEM SKYDIVE (FIJI) LIMITED for a Judicial Review and with other reliefs including an Order of Certiorari to quash the decision made by the Civil Aviation Authority of Fiji (CAAF) and Mr Ajai Kumar, the Manager Corporate Services of CAAF made on the 27th December 2017 on an apparent review of the Applicants failure to comply with Safety of Aircraft Operation contrary to section 70(1) of the Air Navigation Regulation (ANR) 1981 and deeming the Applicant no longer a fit and proper person to hold or be issued an aviation document under Regulation 53 of the ANR and revoking his Fiji Commercial Pilots Licenses for aeroplanes and helicopters; deeming him no longer a fit and proper person to hold and nominated post holder position under the provisions of CAAF Standards Document and revoking the same; that he no longer be deemed to be a fit and proper person to hold any aviation document for a period of 10 years to commence from the date of the Applicants conviction by the Nadi Magistrates Court as per section 6(1) of the Rehabilitation Act.

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

FIRST RESPONDENT

AJAI KUMAR, Manager Corporate Services of the Civil Aviation Authority of Fiji of CAAF Compound, Nadi Airport, Nadi.

SECOND RESPONDENT

EX-PARTE TIMOTHY JOHN JOYCE Lot 28, Sovereign Quays, Denarau Island, and Sunflower Hanger, Nadi, Fiji, Pilot and Businessman, SUNFLOWER AVIATION LIMITED, JOYCE AVIATION (FIJI) LIMITED t/a HELI TOURS FIJI, TALL PINES LIMITED t/a PACIFIC FLYING SCHOOL and TANDEM SKYDIVE (FIJI) LIMITED all limited liability companies having their registered office at Ernest & Young Bhuwan Investments Limited Building, 131 Vitogo Parade, P O Box 1068, Lautoka, Fiji.

APPLICANTS

Appearances : Mr A. K. Narayan (Snr) with Ms V. Buli for the applicants
: No appearance for the respondents
Date of Hearing : 30 November 2018
Date of Decision : 30 November 2018

R U L I N G

[On interim stay]

[01] This is an *ex parte* application for an interim stay of execution until the hearing of the application for stay pending appeal *inter partes*.

[02] By his *ex parte* summons for stay pending appeal and injunctive relief supported by the affidavit of Timothy John Joyce, the applicant sworn on 30 November 2018 (the '*application*'), the applicant seeks the following orders:

[01] *There be a stay of execution of direction for the respondents' to go through the decision making process again and reconsidering and reaching a decision on the issue of the first named applicant's conviction in accordance with the findings and guidelines suggested by this Honourable Court in the Judgment delivered on 26 October 2018, pending the hearing and determination of the appeal to the Fiji Court of Appeal and/or until the inter parte hearing of this application.*

[02] *Alternatively, there be an order restraining the first and second respondents whether by themselves, their servants or agents otherwise and howsoever from going through the decision making process again and reconsidering and reaching a decision on the issue of the first named applicant's conviction in accordance with the findings and guidelines suggested by this Honourable Court's in the Judgment delivered on 26 October 2018, pending the hearing and determination of the appeal to the Fiji Court of Appeal and/or until the inter parte hearing of this application.*

[03] *The costs of this application abide the result of the appeal.*

[03] This application is made under the Rules 26 and 34 of the Court of Appeal Rules (CAR), Order 29 of the High Court Rules 1988, amended (HCR) and the Inherent Jurisdiction of this Court.

[04] At the hearing, Mr Narayan of counsel appearing the applicant informed the court that he is not pushing for an injunctive relief at this stage.

[05] CAR, R 34, dealing with stay of execution states that an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below except so far as the court below or the Court of Appeal may otherwise direct.

[06] Mr Narayan submits that there has been urgency in this matter for seeking an *ex parte* interim stay until the hearing of the application *inter partes*.

[07] The applicant put forward the following reasons [at paras 9-12 of the affidavit in support] making such an application:

“... ”

9. *On behalf of the applicant companies and myself, I seek a stay of execution of the directive given to the respondents' to go through the decision making process again and to reconsider and reach a decision on the issue of my conviction in accordance with the findings and guidelines suggested in the Judgment as there was no safety concern.*
10. *Without the stay the Appeal to the Court of Appeal will be rendered nugatory and become an academic exercise. If the matter continues to further re-hearing by the respondents' they will be bound to follow the findings, directions and guidelines given in the Judgment. I will also be constrained as to the matters I would be able to raise at the re-hearing.*
11. *The matter of my conviction by the Magistrate's Court at Nadi is also the subject of an appeal to this Honourable Court. The appeal was filed against sentence. However, during the course of the hearing of the appeal counsel on my behalf made submissions seeking the invocation of the Courts revisionary power to also consider whether the provisions of section 12D of the Civil Aviation Authority of Fiji Act 1979 relating to the issue of an infringement notice was mandatory or directory. In the event of this Court finds, it was mandatory counsel seeks that the conviction be set aside as the procedure in CAAF Act had not been followed. The appeal was heard on 15 October, 2018 and the decision is scheduled to be given on 30 January, 2019.*
12. *If the stay is not granted an adverse decision suspending my licence would impact my capacity to earn a living by practicing in my chosen profession as a pilot. My companies also employ several staff whose livelihood would be affected. If I am not able to fly for my companies there will be a significant loss caused. Staff will have to be reduced. It is very expensive to hire pilots for both types of aircrafts that I am able to fly. Following the decision to suspend me for ten years my companies suffered a loss of approximately FJ\$680,000.00.*

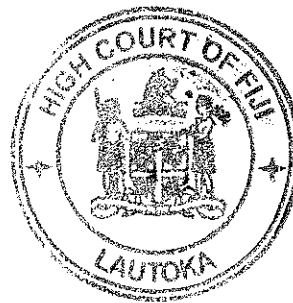
...”

[08] Having carefully considered the papers filed on behalf of the applicant and submissions made in Court by his counsel at the *ex parte* hearing, I am satisfied that there is urgency in this case because the respondent has issued a notice to the applicant to appear before the respondent to deal with the conviction, which is under appeal. The applicant has also filed a notice of appeal against the part of this court's decision namely the directive given to the respondents to go through the decision making process again and to reconsider and reach a decision on the issue of the applicant's conviction in accordance with the findings and guidelines suggested in the judgment. I am also satisfied that if an interim stay is not granted the respondent would proceed with the investigation on the applicant's conviction and that there is likelihood of the applicant's pilot licence being suspended. I would, therefore, grant an interim stay as sought in Order [1] of the *ex parte* application, until the *inter partes* hearing of the application. This order together with all the relevant documents is to be served to the respondent by Monday. The *inter partes* summons is set down for hearing at 9.30 am on 22 January 2019.

M.H. Mohamed Ajmeer
30/11/18

.....
M.H. Mohamed Ajmeer

JUDGE



At Lautoka

30 November 2018

Solicitors:

For the applicant: M/s A K Lawyers, Barristers & Solicitors