

IN THE HIGH COURT OF FIJI AT SUVA

CIVIL JURISDICTION

Action No. HBJ 03 of 2020

IN THE MATTER of an application for leave to apply for judicial review

AND

IN THE MATTER of the decision by **FIJIAN COMPETITION AND CONSUMER**

COMMISSION dated 31 January 2020 when it purported to set increases

to fares for omnibuses

STATE

v.

FIJIAN COMPETITION AND CONSUMER COMMISSION a body corporate

constituted pursuant to Fijian Competition and Consumer Commission

Act 2010 and having its head office at 42 Gorrie Street, Suva.

RESPONDENT

EX-PARTE

FIJI BUS OPERATORS ASSOCIATION

APPLICANT

Counsel : Mr. Singh V. with Ms. Naco M. for the Applicant.
Mr. J. Moti with Ms. Choy C. for the Respondent
Ms. Chand S with Ms. Solimailagi D. for the party sought to be joined.

Date of Hearing : 04th November 2020

Date of Ruling : 30th November 2020

RULING

[1] This is an application seeking leave to apply for judicial review pursuant to Order 53 rule 3(2) of the High Court rules 1988. By way of an application for judicial review the applicant intends to seek the following orders:

- (i) an order quashing the Final Authorisation Decision and directing the Defendant/Respondent to reconsider the matter in accordance with lawful, fair and reasonable, and procedurally sound principles and in accordance with the requirements of natural justice; and
- (ii) an award of damages in a sum to be assessed; and
- (iii) that the costs of and incidental to this application may be paid by the Defendant/Respondent.

[2] On 27th May 2020 the summons was filed seeking to join the Attorney General as an interested party to these proceedings on *inter alia*, the following grounds:

8. that the applicant's leave application which seeks to review a decision taken under the authority of the Fijian Competition and consumer Commission Act 2010, that is ousted by the lack of jurisdiction of the court pursuant to section 38A(1) of the said Act and thus being concurrently challenged by the Applicant in the Constitutional Redress matter, raises a matter of constitutional importance as confirmed by the Applicant in ground (r) of its leave application.
9. that leave application also raises an issue regarding the authority of the Respondent to fix fares or charges of public service vehicles under the Land Transport (Amendment) Act 2019 prior to operation of the said Act, which raises a fundamental matter of statutory interpretation that necessitates a response from the Attorney general.

[3] Paragraph (r) of the applicant's application for leave to apply for judicial review is as follows:

Section 38A(1) of the FCCC Act, which purports to oust the jurisdiction of the court to challenge any decision of the Minister or the Commission in making a price control order, is not applicable in the present circumstances for various legal and Constitutional reasons to be argued upon the hearing, or upon the consideration on the papers, of this application for Leave to Apply for Judicial review, including without limitation the provisions of section 2(2) of the Constitution.

[4] From the above it appears that before considering the application for leave to apply for judicial review the court has to consider whether it has jurisdiction to entertain and deal with this application. The question here is whether section 38A(1) is unconstitutional or it has the effect of violating the rights of the applicant.

[5] Section 2(2) of the Constitution provides:

Subject to the provisions of this constitution, any law inconsistent with this Constitution is invalid to the extent of the inconsistency.

[6] From the above provisions of the Constitution and the FCCC Act it appears that the matter raised by the applicant is whether the provisions of the FCCC Act are

inconsistent with the provisions of the Constitution. In determining this issue the court needs to interpret the constitution and for that the appearance of the Attorney General is necessary.

[7] Order 15 rule 6(2) of the High Court Rules 1988 provides:

Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application-

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely-
 - (i) any person who ought to have been joined as a party or **whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon**, or
 - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter. [*Emphasis Added*].

[8] It appears therefore, that the court has the power to add a party in any cause or matter at any stage of the proceedings if the presence of such party is necessary to determine the matter effectually and completely.

[9] The submission of the learned counsel for the applicant is that in view of the provisions of Order 53 rule 5 of the High Court Rules 1988 a party can be added only after the leave is granted which in my view is a misconception.

[10] Order 53 rules 1 and 2 of the High Court rules 1988 provides:

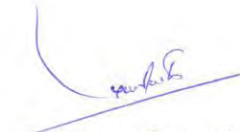
- (1) When leave has been granted to make an application for judicial review, the application shall be made either by originating motion or by originating summons.
- (2) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the court officer or registrar of the court and, where any objection to the conduct of the judge is to be made, on the judge.

[11] Order 53 rule 2 provides for the procedure to be followed after leave is granted. Order 53 rule 2 does not have the effect of restraining the court from adding a party at the leave stage, acting under Order 15 rule 2(b), whose presence is required for the complete adjudication of the matters before it.

ORDERS

1. The Attorney General is joined as an interested party to these proceedings.
2. There will be no order for costs.




Lyone Seneviratne

JUDGE

30th November 2020