

**IN THE HIGH COURT OF FIJI AT LAUTOKA**

**CIVIL JURISDICTION**

**Action No. HBJ 07 of 2022**

**IN THE MATTER** of an application by **MOHAMMED HAKIM** aka **MOHD HAIM**

for judicial review under Order 53 of the High Court Rules 1988.

AND

**IN THE MATTER** of a decision made on or about 13<sup>th</sup> day of May 2020 by

**THE DIRECTOR OF LANDS OF FIJI** whereby: it purported to charge

penal rental in the sum of \$139,000.00 to the applicant.

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**STATE**

**V**

**THE DIRECTOR OF LANDS**

**RESPONDENT**

**EX-PARTE**

**MOHAMMED HAKIM aka MOHD HAIM**

**APPLICANT**

**Counsel** : Mr Naidu D.S. for the Applicant  
Mr Kant S. for the Respondent

**Date of Hearing** : 30<sup>th</sup> June 2023

**Date of Ruling** : 26<sup>th</sup> July 2023

**RULING**

[1] The applicant filed the Notice of Motion seeking the following orders:

- 1) That leave be granted to the applicant to apply for judicial review in respect of a decision made by The Director of Lands of Fiji (“the Respondent”) on or about 13<sup>th</sup> day of May 2020 whereby:
  - a. it purported to charge penal rental in the sum of \$139,000.00 to the Applicant.
- 2) That the grant of leave shall operate as a stay of the said decisions and stay of all proceedings, actions or dealings in respect of the Respondent’s decisions in respect of the charge of penal rental in the sum of \$139,000.00.

[2] The applicant seeks leave to file an application for judicial review seeking the following reliefs:

- a) An order of Certiorari to remove the decision of the Respondent to charge penal rental in the sum of \$139,000.00 to the Applicant into this Honourable Court and the same be quashed and/or set aside.

- b) A Declaration (in any event) that the Respondent has acted unfairly and/or Rules of Natural Justice and/or arbitrarily and/or unreasonably and/or made errors of law and/or with bias and/or exceeded his jurisdiction in purporting to charge penal rental in the sum of \$139,000.00 to the applicant without complying to condition 3 of State lease No. 19360.
- c) Damages.
- d) The payment of penal rental amounting to \$139,000.00 be refunded to the Applicant.
- e) Further declarations or other relief as to this Honourable Court may deem just.
- f) Costs of this action on an indemnity basis

[3] In paragraph 2 of the Notice of Opposition the respondent has raised a preliminary objection that the applicant's application had been filed out of time and states further that pursuant to Order 53 rules 4(1) and (2) of the High Court Rules 1988 an application is required to be filed within 30 days from the decision sought to be challenged.

[4] Order 53 rule 4 of the High Court Rules 1988 provides:

- (1) Subject to the provisions of this rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which paragraph (2) applies, the application for leave under rule 3 is made after the relevant period has expired, the Court may refuse to grant-
  - (a) leave for the making of the application, or
  - (b) any relief sought on the application,
- (2) if, in the opinion of the Court, the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

In the case of an application for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is three months after the date of the proceeding.

(3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

[5] The applicant requested for the consent to transfer the subject property Prasad & Prasad Holdings Pte Ltd on 20th November 2019 and the respondent by letter dated 13th May 2020 the respondent informed the applicant that consent had been granted subject to payment of penal rent amounting to \$139,000.00 for breach of lease condition 3 which is as follows:

[6] The lessee shall not subdivide the land without the prior consent of the lessor first had and obtained and then only in accordance with a plan of subdivision approved by the lessor in writing.

[7] However, in paragraph 25 of the respondent's affidavit in response it is stated that reference to condition 3 of the letter is clearly an error and the applicant was fully aware that he was in breach of conditions 4 and 23 of the Lease. This error cannot be considered as prejudicial to the applicant. The applicant, in this matter challenges the penal rent ordered by the respondent.

[8] In reply to the letter dated 13th May 2020 the applicant sent the letter dated 12th June 2020 undertaking to pay \$139,000.00 reserving the right to challenge the decision of the respondent which shows that the applicant received the respondent's letter requiring him to pay \$139,000.00 as a precondition to granting the consent for the subdivision between 13th May 2020 and 12th June 2020.

[9] However, the applicant filed on 24th May 2022 which is almost two years after he was made aware of the decision to charge penal rental on him. The application of the applicant is therefore, clearly in breach of Order 53 rule 4(3) of the High Court Rules 1988.

[10] In the case of **State v Civil Aviation Authority of Fiji, ex parte Joyce** [2018] FJHC 588; HBJ5.2018 (5 July 2018) it was held:

[24] The application to apply for leave to judicial review of the decision made on 27 December 2017 seeks quashing orders (certiorari) to vacate it.

[25] The court may, under O 53, R 4, refuse to grant leave for the making of the application or any relief sought on the application, if the

court considers that there has been undue delay in making the application for judicial review. The applicant seeks to judicially review the decision of the respondent by issuing an order of certiorari to quash and to remove that decision.

[26] The HCR, O 53, R 4 (2), dealing with the time frame, states:

‘(2)In the case of an application for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is 3 months after the date of the proceeding. (Emphasis provided)’

[27] R 4 (2) applies to this application as an order of certiorari is sought to remove the respondent’s decision. The applicant states that the decision sought to be judicially reviewed was made on 27 December 2017 and he was informed of the decision on the same day. The applicant filed his application for leave on 12 June 2018.

[28] In R (Anufrijeva) v Secretary of State for Home Department [2003] UKHL 36; [2004] 1 AC 604, the court said the date runs when notice of a decision was given to the applicant and not the date of a decision.

[29] The applicant must have filed his application for leave within 3 months of the date when he was informed of the decision. The applicant appears to be late in filing his application.

[11] Learned counsel for the applicant submitted that the court has power to grant an extension of time in the exercise of its inherent jurisdiction. However, there is no application for extension of time made by the applicant. The counsel for the applicant submitted that the court can make an order for extension of time relying on prayer (e) of the application which reads as follows:

‘Further declarations or other relief as to this Honourable Court deem just’

[12] In this matter the applicant was well aware that his application was out of time and therefore, he should have made an application for extension of time or at least include a prayer in the Notice of motion and give reasons for delay for the court to consider, but the applicant sought not to adduce any grounds for his

long delay in filing the application. The court cannot be expected to go on a voyage of discovery in finding facts for the parties.

[13] It is also pertinent to note that any party to a proceeding has the right to oppose any application made by the other party. If this court grants extension of time without hearing the other party this court would be in breach of the basic rule of natural justice, *audi alteram partem*.


[14] For the above reasons the court upholds the preliminary objection that the applicant's application is time barred and the same is struck out.

[15] Since the application of the applicant is time barred, the will not consider the application on its merits.

#### **ORDERS**

1. The application of the applicant is struck out.
2. The applicant is orders to pay the respondent \$1000.00 as costs of this application.



  
Lyone Seneviratne

**JUDGE**