

**IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION**

JUDICIAL REVIEW CONSOLIDATED NO. HBJ 4 & 5 OF 2020

IN THE MATTER OF CIVIL AVIATION AUTHORITY OF FIJI

AND

IN THE MATTER of an application by **DAVID LEO JOHN SIRIANNI** for a Judicial Review and with other reliefs including an Order of Certiorari to quash the decision made by the Acting Chief Executive dated 31st August, 2020 and the order of the Enforcement Compliance Committee for or on behalf of the Civil Aviation Authority of Fiji (CAAF) dated 1st and 6th October, 2020.

AND

IN THE MATTER of an application by **TIMOTHY JOHN JOYCE, SUNFLOWER AVIATION PTE LIMITED, JOYCE AVIATION (FIJI) PTE LIMITED** t/a **HELI TOURS FIJI** for a Judicial Review and with other reliefs including an Order of Certiorari to quash the decision made by the Acting Chief Executive dated 31st August, 2020 and the order of the Enforcement Compliance Committee for or on behalf of the Civil Aviation Authority of Fiji (CAAF) dated 1st and 6th October, 2020.

BETWEEN

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

FIRST RESPONDENT

AND

THERESA O'BOYLE- LEVESTAM, Acting Chief Executive of the Civil Aviation Authority of Fiji of CAAF Compound, Nadi Airport, Nadi

SECOND RESPONDENT

AND

DAVID LEO JOHN SIRIANNI, TIMOTHY JOHN JOYCE SUNFLOWER AVIATION PTE LIMITED, JOYCE AVIATION (FIJI) PTE LIMITED t/a **HELI TOURS FIJI**

APPLICANTS

BEFORE : A.M. Mohamed Mackie –J.

APPEARANCES : Mr. A. K. Narayan(jnr) with Ms. Lata, for the Applicants.
: Mr. R. Singh- for the Respondents.

DATE OF HEARING : On 29th September, 2023

WRITTEN SUBMISSIONS: By the Respondents filed on 29th September 2023.
By the Applicants filed on 19th October 2023.
Reply by the Respondents filed on 3rd November 2023.
Reply by the Applicants filed on 24th November 2023.

DATE OF RULING : On 29th February, 2024.

RULING
(On Application for Stay Pending Appeal)

A. INTRODUCTION:

1. This Ruling pertains to two consolidated Applications for stay pending Appeal preferred by the Applicants hereof by way of their ex-parte Summons filed and supported before me on 28th July 2023, seeking the following reliefs;

[1] *A stay of the implementation of the decision by the ECC for or on behalf of the First Respondent dated 1st and 6th October, 2020 against the 1st named Applicant, **David Sirianni**, finding the offence of falsification of documents for the purpose of obtaining an aviation document contrary to section 128(2)(c) of the Air Navigation Regulations 1981 (ANR) as being established imposing the following enforcement measures which includes suspending the Applicant's commercial pilot licenses 2001973 (A) (H)) for 6 months; the roles of the Applicant as the Chief Pilot, Line Pilot and Operations Manager for SAL and Heli- Tours Fiji to be revoked; the COA of DQ-HT J to be revoked and to re-do the test; 2months to be deducted for the suspension pending investigation and the impact it has had on the Applicant's livelihood; 1 month to be deducted for it being the first offence and the Applicant to be suspended for a total period of 3 months notwithstanding sub-paragraphs 4.8.2 and 4.8.3 of the ECC's decision and the suspension period to be from 1st October, 2020 to 31st December, 2020.*

[2] *A stay of the implementation of the decision by the ECC for or on behalf of CAAF dated 1st October, 2020 against the 2nd named Applicant, **Timothy John Joyce**, finding the offence of falsification of documents for the purpose of obtaining an aviation document contrary to section 128(2)(c) of the ANR as being established imposing the following enforcement measures which includes suspending the First Named Applicant's commercial pilot licenses 200928 (A) (H)) for 6 months; the roles of the First Named Applicant as the Chief Pilot, Check and Training Pilot and Line Pilot COA Test Pilot and Heli- Tours Fiji to be revoked; to revoke a Certificate of Airworthiness and to re-do the test for the Helicopter DQ HTM;; 2months to be deducted for the suspension pending investigation and the impact it has had on the First Named Applicant's livelihood; and the First Named Applicant to be suspended for a total period of 4 months notwithstanding sub-paragraphs 6.10 and 6.11 of the ECC decision and the suspension period to be from 1st October, 2020 to 31st January, 2021.*

[3] *There be a further stay of an any action, or further contemplated action, or withholding the processing of or refusal to issue any aviation documents or renewals thereof and/or revoking, cancelling and/or suspending the Air Operator's Certificate for any of the Applicants by the First and Second Respondents based on the findings and decision given by the ECC for or on behalf of the First Respondent dated 1st October, 2020 for the alleged*

offence of falsification of documents for the purpose of obtaining an aviation document contrary to section 128(2)(c) of the ANR until the hearing of the Application herein;

[4] *Alternatively, for an order restraining the Respondents whether by themselves, their servants or agents otherwise and howsoever form taking an any action, or further contemplated action, or withholding the processing of or refusing to issue of any aviation documents or renewals thereof and/or revoking, cancelling and/or suspending the Air Operator's Certificate for any of the Applicants based on the findings and decision given by the Enforcement Compliance Committee for or on behalf of the First Respondent dated 1st October, 2020 for the alleged offence of falsification of documents for the purpose of obtaining an aviation document contrary to section 128(2)(c) of the Air Navigation Regulations (ANR) until the hearing of the Application herein;*

2. Having heard the learned Counsel for the Applicants ("the Applicants' Counsel") and perused the contents of the Affidavit in support sworn by TIMOTHY JOHN JOYCE and those of the annexures thereto marked as "TJJ-1" to "TJJ-10" this Court on 28th July 2023 granted an interim stay , as prayed for in paragraphs 1 and 2 of the prayers to the Summons, of the decisions dated 1st and 6th October 2020 made by the "**Enforcement Compliance Committee**" (ECC) on behalf of the first Respondent "**Civil Aviation Authority**" (CAA), and adjourned the matter for 7th August 2023.
3. In other words, what the Applicants are seeking is the Stay of the judgment pronounced by this Court on 20th of July 2023, by which this Court dismissed the Applicants' substantial Applications for judicial review on the basis that the Applicants had an alternative remedy that they should have exhausted before seeking the intervention of this Court by way of judicial review.
4. In relation to the current summons, my directions for filing of the Affidavits in opposition and reply thereto being duly complied with, the inter-partes hearing was fixed for 29th September 2023 and this Court made further order for the interim stay to remain in force till the determination of the stay Applications in hand. Accordingly,
 - a. An Affidavit in opposition sworn on 10th August 2023 by **RIGAMOTO AISAKE**, the Executive Manager, was filed on 14th August 2023, along with series of annexures marked as "A".
 - b. An Affidavit in reply sworn by **TIMOTHY JOHN JOYCE** on 25th August 2023 was filed on 28th August 2023.
5. At the inter-partes hearing held on 29th September 2023 , this Court heard the Counsel for both parties, and the Respondents' counsel filed their initial written submission as well. The written submissions of the Applicants and reply submissions of both the parties were also filed on subsequent dates as stated above.
6. In addition to the reliefs 1 and 2 sought in the Summons for Stay, the Applicants have also prayed for reliefs No. 3 and 4, where the latter one is an alternative relief in the form of an injunctive Order against the Respondents.

7. Though, the ruling was initially fixed for 7th December 2023, due to my early departure from Fiji on 4th December 2023 on account of the annual judicial vacation, the pronouncement of ruling had to be re-fixed. I tender my apologies for the delay.

B. BACKGROUND:

8. The events that led the Applicants to this Court, seeking for the relief of judicial review, are succinctly narrated in paragraph 5 to 7 of my substantive judgment dated 20th July 2023, which I do not intend to reproduce in order to avoid verbosity.

C. THE LEGAL FRAMEWORK:

9. COURT OF APPEAL RULES (CAR) 26 (3) states:

“26 (3) Wherever under these Rules an application may be made either to the court below or to the Court of Appeal it shall be made in the first instance to the court below.”

10. CAR 34 (1) states:

“34 (1) Except so far as the court below or the Court of Appeal may otherwise direct-

(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;

(b) no intermediate act or proceeding shall be invalidated by an appeal.

D. GOVERNING PRINCIPLES OF STAY:

11. The governing principles applicable to an application for stay pending Appeal were stated by the Fiji Court of Appeal in **Natural Waters of Viti Limited v Crystal Clear Mineral Waters (Fiji) Limited [2005] FJCA13; ABU0011.2004S (18 March 2005)** as follows [at para. 7]:

“[7] The principles to be applied on an application for stay pending appeal are conveniently summarized in the New Zealand text, McGechanrocedure (2005(2005):

Duncan v Os Building Ltdg Ltd (1992) 6 PRNZ 85 (at p 87.

(a) Whether, if no stay is granted, the applicant’s right of appeal will be rendered nugatory (this is not determinative). Phillip Morris (NZ) Ltd Lt & Myers Tobacco Co (NCo (NZ) Ltd [1977] 2NZLR 41 (CA).

(b) Whether the successful party will be injuriously affected by the stay.

(c) The bona fides of the applicants as to the prosecution of the appeal.

(d) The effect on third parties.

(e) The novelty and importance of the questions involved.

(f) The public interest in the proceeding.

(g) The overall balance of convenience and the status quo.”

12. The above principles have been adopted by Fiji courts. Recently, the Supreme Court of Fiji (His Lordship the Chief Justice Gates) approved the Natural Waters' principles in ***Native Land Trust Board v Shanti Lal & Ors (Civil Appeal CBV0009/11)***.

E. THE APPEAL:

13. The Applicants have on 28th July 2023 lodged an Appeal in the Fiji Court of Appeal against the judgment of this Court pronounced on 20th July 2023, by which this Court dismissed the Applicants' Application for judicial review on the ground that the Applicants had not exhausted the alternative remedy available to them in terms of Section 12 F of the Civil Aviation Authority Act of Fiji to be utilized, by making an Appeal to the Second Respondent Chief Executive Officer (CEO) against the decision of the Enforcement Compliance Committee (ECC) made on behalf of the first Respondent Civil Aviation Authority (CAA),

F. GROUND OF APPEAL:

14. The Applicants have adduced 5 main grounds of appeal, with several other ancillary grounds under those 5 grounds as per the Notice of Appeal. I will not reproduce those grounds here as my decision on the stay Application in hand will be on a different ground for the reason adumbrated hereunder.

G. DISCUSSION & DETERMINATION:

15. The main relief sought by the Applicants, as per paragraphs 1 and 2 of the prayers to their Summons for stay, was the stay of the implementation of the orders made by the **Enforcement Compliance Committee (ECC)** on behalf of the First Respondent **Civil Aviation Authority (CAA)** against the First Applicant on the 1st and 6th October 2020, and against the Second Applicant on 1st October 2020, which were appealable to the Second Respondent Chief Executive Officer (CEO) pursuant to Section 12 F of the CAA Act of Fiji, and the Applicants, admittedly, had opted not to appeal.
16. It was due to the very reason of not exhausting their Appellate right before the Second Respondent CEO, in terms of Section 12 F of the Civil Aviation Authority Act of Fiji, this Court did not grant any relief to the Applicants by going into the merits and dismissed the substantial Applications for Judicial review. This means, this Court has not on its part made any positive Order, Ruling or Judgment in favor of the Respondents to be executed against the Applicants. The final judgment given by this Court on 20th July 2023 was a negative one, with no reliefs to be executed in favor of the Respondents and against the Applicants.
17. Accordingly, when this Court had not granted any executable relief in favor of the Respondents, a question arises as to what is there to be stayed by this Court. An order or judgment that has not granted any relief to a party can neither be executed nor stayed. What the Applicants seek to stay is the Orders made by the ECC on behalf of the first Respondent CAA, on which this Court has no any say, and any attempt by this court to

meddle with those Orders can be seen as interfering with second Respondent's authority recognized by the Act.

18. Conversely, if the Applicants, upon the adjudication of the substantial matter, were granted any relief by this Court, as prayed for in the form of Certiorari, Mandamus and /or damages, the Applicants become entitled to have it executed, however, subject to an Appeal by the Respondents. At the same time, the Respondents against whom such a judgment or Ruling was made are at liberty to come before this seeking for a stay, provided they have made an Appeal.
19. Presently, there is no such a scenario before this Court. Because, none of the parties hereof have so far obtained, in either of their favor, any relief that can be executed for the benefit of such party, for this Court to intervene and stay such execution pending the Appeal. The interim stay granted by this Court on 28th July 2023 to the Applicants is only a temporary relief pending an inter-partes hearing and this Ruling.
20. The Orders sought to be stayed, as per the prayers 1 and 2 of the Summons for Stay filed and supported on 28th July 2023, are the Orders that had been made by the Enforcement Compliance Committee (ECC) on behalf of the First Respondent Civil Aviation Authority (CAA). This Court has nothing to do with those Orders, which are internally appealable only to the Second Respondent Chief Executive Officer (CEO).
21. This Court has already dismissed the substantial Application of the Applicants for Judicial Review on the basis that the Applicants should not have resorted to this Court without exhausting the alternative remedy of making an Appeal to the Second Respondent CEO. Having decided so, this Court cannot now make any order affecting the decision of the ECC that was made on behalf of the First Respondent.
22. I was made to understand, during the inter-partes hearing of this Stay Application, that after the dismissal of the substantive Application by this Court, the Applicants have now made an Appeal to the CEO and moved for the stay of those Orders and the Application for stay has been turned down, but the Appeal is yet to be heard. Thus, it is not permitted for this Court to interfere with the functions of the Second Respondent by making any Orders affecting the process of Appeal before the second Respondent.
23. Any form of intervention by this Court at this juncture by granting a stay or otherwise, would effectively preclude the Respondents from exercising their statutory functions. It is only after the Second Respondent CEO plays her role pursuant to Section 12 F of the Act, this Court will come on board, if a fresh Application seeking leave to apply for judicial review is made, as alluded to by the Counsel for the Respondents in his written submissions.
24. After the pronouncement of the judgment by this Court on 20th July 2023 dismissing the Applicant's substantial Applications for Judicial review, the Applicants, having made an Appeal to the Court of Appeal, have also made an Appeal to the Second Respondent CEO pursuant to section 12F of the Act. Counsel for the Respondent argued to the effect that

there is a dual proceeding before two forums in relation to a same issue between the same parties. This argument on the propriety of dual proceedings is best suited to be raised before the Court of Appeal and this Court should not venture into it as this Court exercises only a limited role at this juncture.

25. The party applying for stay should be able to demonstrate, not only that the stay is ought to be granted on consideration of one or more of the principles that govern the issue of stay, but also must satisfy that the Court has the jurisdiction in the matter in hand. For this Court to issue a stay in favor of the Applicants, there should be a judgment by this Court itself against the Applicants, which the Respondents intend to move for the execution against the Applicants before the Appeal, in any, is determined. Now the Applicants are said to be before the Second Respondent CEO in terms of section 12 (f) of the Act. As such this Court, having not made any Judgment / order for a tangible relief in favor any party, has no any role to play.
26. What the Applicants now have, hanging over their heads, are orders made by the ECC on behalf of the first Respondent CAA on 1st and 6th October 2020, against which the reliefs rightly lie before the Second Respondent as per the Act. This Court will not extend its helping hands to the Applicants in a matter where the jurisdiction is with the Second Respondent as per section 12F of the Act.
27. Apart from the reliefs of stay sought in terms of paragraphs 1 and 2 of the prayer to the Summons, the Applicants are moving for further Orders as well in terms of paragraphs 3 thereof for an order staying any further actions....., and as per paragraph 4 thereof for an alternative relief restraining the Respondents whether by themselves, their servants or agents otherwise and howsoever from taking an any action, or further contemplated action, or withholding the processing of or refusing to issue of any aviation documents or renewals thereof and/or revoking, cancelling and/or suspending the Air Operator's Certificate for any of the Applicants based on the findings and decision given by the Enforcement Compliance Committee for or on behalf of the First Respondent.
28. Finally, let me reiterate that this Court is not in a position to make any further orders as prayed for by the summons, though this Court has initially made orders in terms of paragraph 1 and 2 of the summonses on ex-parte basis, which now I realize should not have been made in favor of the Applicants for the reasons stated above.
29. Now, I understand from the annexure marked as "TJJ-7", which is a letter dated 27th July 2023 from the First Respondent Authority to the Applicant Timothy. J. Joyce informing that his Commercial Piloting license will stands expired from 28th October 2023. The Orders dated 1st and 6th October 2020 made by ECC have not so far been enforced due to the stay initially granted by consent of the parties and thereafter due to the ex-parte stay granted by this court on 28th July 2023. It has been notified by the said letter that even if the Applicant applies for the renewal of same, the Application will be considered only after expiry of 4 months, which is the period of sentence imposed on the Applicant **Timothy J Joyce**.

30. There is no evidence whether an application for renewal of the commercial piloting license was made or not. However, until the Applicant, Timothy. J. Joyce, makes his application for renewal, the first Respondent Authority will not be in a position to put it on hold for 4 months' time in lieu of his impending sentence as intimated by the letter dated 27th July 2023. Thus, his avoidance to apply may indirectly serve him as a **“self-earned stay”**. This is why the Applicants in paragraph 3 and 4 of their prayer to the Summons moved for further orders, including injunctive relief, which this Court declined to issue for the reasons stated above.
31. For the reasons stated above in this Ruling, this Court decides to decline the Applications for stay pending Appeal. The Applications for stay have to be dismissed with a summarily assessed costs in a sum of \$1,500.00 (One Thousand Five Hundred Fijian Dollars) payable by the Applicants jointly and severally unto the Respondents.

H. FINAL ORDERS:

1. The Stay pending Appeal sought by the Applicants is declined.
2. The Applications filed by the Applicants for stay are hereby dismissed.
3. The Applicants shall pay the Respondents jointly and severally a sum of \$1,500.00 (One Thousand Five Hundred Dollars) being the summarily assessed costs.




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 29th day of February, 2024.

SOLICITORS:

For the Applicants:

Messrs. A.K. Lawyers. Barristers and Solicitors

For the Respondents:

Messrs. Patel & Sharma Lawyers. Barristers & Solicitors