IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

Civil Case No. HBM 070 of 2021

IN THE MATTER of an application for Constitutional Redress and interpretation made pursuant to the High Court (Constitutional Redress) Rules 2015

BETWEEN	**:**	**JOHN SAMISONI** **Applicant**
AND	**:**	**CORPORATE MANAGEMENT SERVICES PTE LIMITED trading as THE HOT BREAD KITCHEN** **First Respondent**
		MINISTER FOR EMPLOYMENT, PRODUCTIVITY & INDUSTRIAL RELATIONS **Second Respondent**
		MINISTER FOR HEALTH **Third Respondent**
		ATTORNEY-GENERAL OF FIJI **Fourth Respondent**
Counsel	**:**	**Mr J Karunaratne & Mr S Nandan for the Applicant** **Mr N Kumar for the 1st Respondent** **Mr V Chauhan for the 2nd, 3rd and 4th Respondents**
Hearing	**:**	**25 April 2025**
Judgment	**:**	**7 May 2025**

JUDGMENT

(Application to enlarge time to file leave to appeal)

[1] I issued a decision on 29 July 2024 striking out the Applicant's claim. He seeks leave to appeal to the Court of Appeal from the decision. However, the application for leave was filed more than 6 months out of time and, therefore, he seeks an enlargement of time.

[2] This proceeding raises an important constitutional issue, namely whether the Health and Safety at Work (General Workplace Conditions) (Amendment) Regulations 2021 ("the 2021 Regulations") are lawful. The 2021 Regulations required workers to be COVID vaccinated before being permitted into the workplace. Employers were permitted to terminate a workers employment where the worker failed or refused to be vaccinated. The First Respondent terminated the Applicant's employment in such circumstances. The Applicant brought these proceedings on the basis that the 2021 Regulations were ultra vires, being allegedly in contravention of his rights under the Constitution.

[3] In *Fijian Teachers Association v State* [2024] FJHC 431 (15 July 2024), I determined that the 2021 Regulations were lawful. In light of that decision, I struck out the Applicant's claim – the parties accepted that this issue was determinative of the entire proceeding.

[4] On 4 March 2025, the Applicant's new counsel filed an application for an enlargement of time to seek leave to appeal to the Court of Appeal. In the supporting affidavit from the Applicant, he explained the delay filing an application for leave. The Applicant stated that he was financially unable to fund any appeal. He has now been re-employed with the First Respondent and is now in a better financial position.

[5] The First Respondent confirms the fact of the employment. It has entered into a Terms of Settlement with the Applicant wherein the First Respondent has agreed not to oppose the application for an enlargement and leave in consideration for the Applicant agreeing not to pursue its claim against the First Respondent for his previous termination.[1]

[1] The Terms of Settlement was executed on 28 March 2025.

[6] The Second, Third and Fourth Respondents oppose any enlargement on the basis that the delay seeking leave is excessive, the reasons for the delay are meritless and the substantive appeal weak. Further, the delay has caused the respondents prejudice with the cost of defending the same.

Decision

[7] The Applicant was required to file and serve the application for leave to appeal within 21 days from the date of my decision on 29 July 2024.[2] The court has a discretion to enlarge the time where the application is filed and/or served late. The factors for the court to consider are; the length of the delay, the reasons for the delay, the merits of the appeal and any prejudice to the respondent if an enlargement is granted. The most important factor is the merits of the appeal and the overriding consideration is the interests of justice.

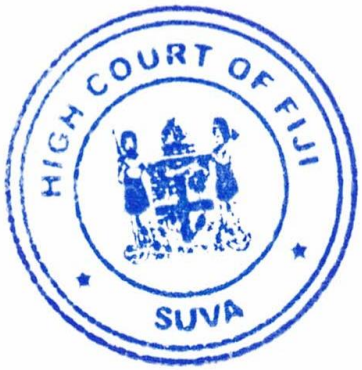
[8] The delay by the Applicant filing the application for leave is a little over 6 months – the application was required to be filed by 19 August 2024 but was not filed until 4 March 2025 (and not served until 17 March 2025). That is an inordinate delay. The reasons are far from compelling and certainly light on proof. The Applicant states that he has been unemployed since his termination in 2021 and recently re-employed by the First Respondent. He says he has been living off his savings. The Applicant does not provide the date of his re-employment. The fact that the Applicant has not been employed does not of itself demonstrate impecuniosity. It may well be that the Applicant is asset rich or receives dividends, rentals etc. The Applicant has been economical with the information supplied.

[9] That said, I am satisfied that the issue on appeal is of considerable public interest and there are compelling reasons for the higher courts to consider the matter. Moreover, the 2021 Regulations affected a large number of people causing their termination of employment. I am satisfied that the issue is at least arguable. The issue is not moot for the Applicant despite his re-employment – he was out of pocket for the period between his termination and re-employment.

[2] As per s 12(2)(f) of the Court of Appeal Act 1949 and r 16 of the Court of Appeal Rules 1949.

[10] As for prejudice, the respondents will have incurred the costs of the appeal even if the application for leave was timely.

[11] Accordingly, I grant the enlargement of time for the Applicant to file and serve his application for leave to appeal to appeal to the Court of Appeal. There will be no order as to costs.



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D. K. L. Tuiqereqere

JUDGE

Solicitors:

Karunaratne Lawyers for Applicant

Diven Prasad Lawyers for 1st Respondent

Attorney-General's Chambers for 2nd, 3rd & 4th Respondents