THE STATE

v.

MINISTER OF IMMIGRATION

ex parte
VIKTAR JAN KAISIEPO

[HIGH COURT, 1996 (Pain J) 8 February]

Revisional Jurisdiction

Administrative Law- Judicial Review- whether the High Court has jurisdiction to grant a stay against a government minister or other officer of the State- High Court Rules 1988 Order 53 (8); Crown Proceedings Act (Cap 24) Section 15.

The High Court granted leave to a non Fiji national to move for judicial review of a decision of the Minister of Immigration to remove him from Fiji. Upon application for a stay of the minister's decision pending determination of the review the High Court examined the relevant authorities and HELD: that the Court has power to order that the decision of a minister be stayed.

Cases cited:

Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374
Crystal Clear Video Limited v Commissioner of Police & Attorney General Civ. Action 331/86
Epeli Lagiloa v PSC & PS for Education (1994) 40 FLR 237
Factortame Limited & Ors v Secretary of State for Transport [1990] 2 AC 85
M v Home Office and Anr [1994] 1 AC 377
Minister of Foreign Affairs Trade and Industry v Vehicles and Supplies Ltd. & Anor [1991] 1 WLR 550
National Farmers Union v Sugar Industry Tribunal & Ors - Court of Appeal, Civ. App.8/90
R v Customs and Excise Commissioners, ex parte Cooke and Stevenson [1970] 1 All ER 1068
R v Licensing Authority, ex parte Smith Kline & French Laboratories Ltd. [1989] 2 All ER 113
R v Secretary.of State for Education and Science, ex parte Avon County Council [1991] 1 All ER 282
Reg. v Secretary of State for the Home Department, ex parte Phansopkar [1976] Q.B. 606
R v Secretary of State for Home Department, ex parte Rukshanda Begum [1990] C.O.D. 107; The Times 3 April 1989
Yan Xiao Qiu v Director for Immigration (JR 32/90)

A *G. Prasad* for the Applicant
Ms. M. Sakiti for Respondent

Pain J:

The Applicant has applied pursuant to Order 53 Rule 3 of the High Court Rules
B for leave to apply for Judicial Review of the decision of the Respondent made on the 25th October 1995 dismissing the applicants appeal against the refusal of the Permanent Secretary for Immigration to grant him a work permit. The Court directed that this be heard inter partes. The applicant also applied ex parte for a stay of the decision of the Respondent. An interim order for stay was made on the 2nd November 1995 and is presently in force until the 9th February 1996.
C The Respondent opposes both the application for leave to apply for judicial review and the application stay.

Application for leave to apply for Judicial Review

Counsel for the Respondent concedes that the applicant has a sufficient interest
D in the matter to which application relates, as required by Order 53 Rule 3 (5).

It is submitted that leave should not be granted because this is not a case fit for a full substantive hearing on an inter partes basis. Counsel says that the application for review has no prospect of success. The applicant is an alien and the Respondent is fully entitled to deny him a work permit and remove him from
E the country. In support of this submission counsel for the Respondent referred to The Supreme Court Practice 1995 paragraph 53/1-14/30 at page 864 particularly to the case of R v Secretary of State for Home Department, ex parte Rukshanda Begum [1990] C.O.D.107; The Times April 3 1989 cited therein.

Counsel for the Applicant pointed out that no affidavit has been filed by the
F Respondent. Accordingly the facts deposed by the Applicant in his affidavit remain unchallenged for the purposes of this application. It is submitted that those facts establish a prima facie and arguable case entitling the Respondent to leave to apply for Judicial Review.

Certainly the applicant has no right that entitles him to a permit to reside and
G work in this country. The Immigration Act gives the State a wide discretion in these matters. The Permanent Secretary for Immigration, in the first instance has a discretion that is not qualified by the provision of the Immigration Act. Likewise the Respondent, on appeal, has an unqualified discretion to uphold, vary or revoke such decision. Nevertheless such discretions must be exercised reasonably and in good faith in the public interest.

In his 14 page affidavit with 26 exhibits the applicant sets out in detail the history of his application for a work permit. This is the only evidence currently before the Court. It raises such matters as alleged bias, an alleged failure to take into account relevant matters, alleged influence of irrelevant matters, alleged assurances given to the applicant's prospective employer and alleged failure to be given any hearing. These matters raise a sufficiently arguable case (on a prima facie basis) to warrant a full investigation inter partes at a substantive hearing. The grounds could not "properly and reasonably be characterised as frivolous, vexatious or hopeless in the sense of being patently devoid of merit" (National Farmers Union v Sugar Industry Tribunal and Ors - Fiji Court of Appeal, Civil Appeal No.8 of 1990).

Sufficient grounds have been made out for the grant of leave to apply for Judicial Review.

Application for Stay

The Applicant has applied pursuant to Order 53 Rule 3(8) of the High Court Rules for an order that the Respondent's decision to dismiss the Applicant's application for a work permit be stayed pending the determination of the application for Judicial Review.

The Respondent opposes the application for stay. Counsel submitted that such a stay would be tantamount to an injunction against the State which is contrary to Section 15 of the Crown Proceedings Act (Cap 24). This 1952 Act amended the law relating to civil proceedings against the Crown and is generally accepted as now applying to the State by virtue of Section 168 of the Constitution of Fiji (1990). Section 15 of the Act provides that in civil proceedings against the Crown (now State), "the Court shall not grant an injunction but may in lieu thereof make an order declaratory of the rights of the parties". Counsel cited and relied upon The House of Lords decision in Factortame Limited & Ors v Secretary of State for Transport [1990] 2 AC 85 and several decisions of this Court in which it has been held that the Court has no jurisdiction to grant an injunction or stay against the Crown/State in judicial review proceedings.

Counsel for the applicant, in a comprehensive written and oral argument submitted that the Court does have jurisdiction to grant an interim injunction against a Minister of State. He principally relied upon the House of Lords decision M v Home Office and anor [1994] 1 AC 377 as authority for the Court's power to grant a stay pursuant to Order 53 Rule 3 (8) and submitted that the balance of convenience clearly favours the granting of a stay in this case.

Over the years there has been considerable conflict in the English cases on the issue of injunctions against the Crown. The decisions cited by counsel in argument

illustrate this diversity. In R v Licensing Authority, ex parte Smith Kline & French Laboratories Ltd. [1989] 2 All ER 113, the Court of Appeal were of the
A view that the phrase 'the proceedings' in Section 31 of the Supreme Court Act 1981 should be construed widely so that a stay could be ordered against the Crown. The majority considered injunctive relief could also be granted. In Minister of Foreign Affairs Trade and Industry v Vehicles and Supplies Ltd. and anor [1991] 1 W L R 550 the Privy Council, (on appeal from the Court of Appeal of Jamaica in a case that had been rendered purely academic and was only argued
B by the appellant) held that the jurisdiction given by the Civil Code to order a stay in proceedings for certiorari or prohibition "had no possible application to an executive decision which had already been made". In R v Secretary of State for Education and Science, ex parte Avon County Council [1991] 1 All ER 282 the Court of Appeal followed R v Licensing Authority ex parte Smith Kline & French Laboratories Ltd. (supra) and held that the Court has jurisdiction, when granting
C leave under Order 53 Rule 3 (10) (a) to apply for judicial review, to grant a stay of the implementation of a decision made by an officer or Minister of the Crown.

The case of Factortame Ltd and Ors v Secretary of State for Transport (supra) needs to be separately considered because it is a decision of the House of Lords and is the authority relied upon by the Respondent in this case. In Factortame
D the appellants had applied for judicial review of decisions of the Secretary of State for Transport as contained in specified regulations of the Merchant Shipping (Registration of Fishing Vessels) Regulations 1988 which ceased the continued British registration of certain fishing vessels after a specified date and rendered the appellants' vessels ineligible to be registered. The appellants also applied for a declaration that the Regulations ought not to apply to them as being
E contrary to EEC law as given effect by the European Communities Act 1972. The Divisional Court decided to request a ruling from the European Court of Justice before proceeding to a substantive hearing. On an application for interim relief the Divisional Court ordered that pending final judgment the operation of Part II of the Merchant Shipping Act and the 1988 Regulations be disapplied and that the Secretary of State be restrained from enforcing them in respect of
F the Plaintiffs and any vessel owned by them. The House of Lords affirmed the decision of the Court of Appeal setting aside these interim orders. It held that the Divisional court had no power to make an order which had the effect of declaring an Act of Parliament not to be the law until some future uncertain date and thereby irreversibly determining in the Plaintiffs favour for that period rights that were necessarily uncertain and (if they failed to establish their rights before
G the European Court of Justice) directly contrary to Parliament's sovereign will. That was sufficient to decide the appeal but the House of Lords went further and considered the jurisdiction of the Divisional Court to grant an interim injunction against the Secretary for State. It overruled the majority decision of the Court of Appeal in R v Licensing Authority ex parte Smith Kline and French Laboratories Ltd. (supra) which held that although the Court had no jurisdiction to grant an interim injunction against the Crown in proceedings begun by writ, it

had such a jurisdiction in proceedings on an application for Judicial Review. Lord Bridge delivered the principal opinion, with which the other Law Lords concurred. He noted that historically injunctions had not been available against the Crown and this was preserved by Section 21 of the Crown Proceedings Act 1947. He then considered the provisions of Sections 31 (1) and (2) of the Supreme Court Act 1981 and noted that they were in identical terms to Order 53 Rule 1 (1) & (2) which was first promulgated in 1977. Section 31(1) provides that claims for the remedies of mandamus prohibition or certiorari shall be made by way of application for judicial review and subsection (2) states:

> "(2) A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review, seeking that relief, has been made and the High Court considers that, having regard to - (a) the nature of the matters in respect of which relief may be granted by orders or mandamus, prohibition or certiorari; (b) the nature of the persons and bodies against whom relief may be granted by such orders; and (c) all the circumstances of the case, it would be just and convenient for the declaration to be made or the injunction to be granted, as the case maybe".

Lord Bridge held that Section 31 could not be construed (as was done in R v Licensing Authority ex parte Smith Kline & French Laboratories Ltd) as "having the effect ..... of conferring a new jurisdiction on the court to grant injunctions against the Crown" (page 149). He then gave three reasons for this and concluded that "as a matter of English law, the absence of any jurisdiction to grant interim injunctions against the Crown is an additional reason why the order made by the Divisional Court cannot be supported" (page 150).

This is the law that has been applied in the decisions of this Court that counsel for the Respondent has referred me to. In Crystal Clear Video Limited v Commissioner of Police and Attorney General (Civil Action 331 of 1986) the learned judge refused to make an order that would effectively be a mandatory injunction against the State as it would be contrary to Section 15 of the Crown Proceedings Act. In Yan Xiao Qiu v Director for Immigration (Judicial Review Action 32 of 1990) the learned Judge applied the Factortame decision and set aside an interim stay order that had been made against the Director of Immigration and the Minister in judicial review proceedings. In Epeli Lagiloa v Public Service Commission and Permanent Secretary for Education (1994) 40 FLR 237 the learned Judge noted the inconsistent decisions in England. He applied Factortame and held that in judicial review the Court does not have jurisdiction to grant an injunction against the State and, a fortiori, no jurisdiction to grant an interim injunction or a stay which has the same effect.

However these decisions and the Factortame case itself, must now be appraised in the light of the later House of Lords decision of M v Home Office (supra)

which is relied upon by the Applicant. In that case the Secretary for State directed removal from the United Kingdom of a foreigner claiming political asylum. An application was made for leave to apply for judicial review of that decision. The Judge hearing this application considered it desirable that the applicant should remain in the United Kingdom pending determination of the application and he understood that counsel for the Secretary for State gave an undertaking to that effect. However, owing to a misunderstanding, the applicant was removed from the country. The judge then issued a mandatory order that the Home Secretary procure the return of the applicant to the jurisdiction of the court. The Secretary of State then applied for a discharge of the order. The judge after hearing argument, held that he had no jurisdiction to make the order and discharged it. Proceedings were then brought on behalf of the applicant against the Secretary of State for contempt ofcourt in failing to comply with the judge's order while it was in force. The judge at first instance dismissed the proceedings on the ground that the Court had no jurisdiction because orders made against the Crown were not enforceable by compulsion. On appeal the Court of Appeal held that although the Crown was not subject to the contempt jurisdiction of the Courts, ministers of the Crown and civil servants were subject to the jurisdiction. Accordingly the Secretary of State was guilty of contempt in withholding action to return the applicant in terms of the judges order. An appeal by the Secretary for State to the House of Lords was dismissed. A crucial issue that the House of Lords decided was that the court has jurisdiction to make injunctions against Ministers of the Crown in judicial review proceedings. It held that the Judge in chambers had jurisdiction to grant the injunction against the Secretary of State requiring him to procure the return of the applicant. The Secretary had therefore been properly found to be in contempt for failing to comply with that order.

The reasons for the decision of the House of Lords are contained in the opinion of Lord Woolf, with which the other law lords agreed. Lord Woolf first examined the development of proceedings against the Crown prior to the Crown Proceedings Act 1947 and concluded (at pages 409-410):

> 'The position so far as civil wrongs are concerned, prior to the Act of 1947, can be summarised, therefore by saying that as long as the plaintiff sued the actual wrongdoer or the person who ordered the wrongdoing he could bring an action against officials personally, in particular as to torts committed by them, and they were not able to hide behind the immunity of the Crown. This was the position even though at the time they committed the alleged tort they were acting in their official capacity. In those proceedings an injunction, including, if appropriate, an interlocutory injunction, could be granted".

Lord Woolf then considered the provisions of the Crown Proceedings Act 1947, particularly Section 21 which imposes restrictions on the grant of injunctions

against the Crown and officers of the Crown. He concluded that the existing jurisdiction of the Court to grant injunctions against an officer of the Crown had not been affected. He said at page 412:

> "Returning to Section 21, what is clear is that in relation to proceedings to which Section 21(1) provisos (a) and (b) apply, no injunction can be granted against the Crown. In addition there is the further restriction on granting an injunction against an officer of the Crown under Section 21(2). That subsection is restricted in its application to situations where the effect of the grant of an injunction or an order against an officer of the crown will be to give any relief against the Crown which could not have been obtained in proceedings against the Crown prior to the Act. Applying those words literally, their effect is reasonably obvious. Where, prior to 1947, an injunction could be obtained against an officer of the Crown, because he had personally committed or authorised a tort, an injunction could still be granted on precisely the same basis as previously since, as already explained, to grant an injunction could not affect the Crown because of the assumption that the Crown could do no wrong."

and at pages.412 to 413:

> 'There appears to be no reason in principle why, if a statute places a duty on a specified minister or other official which creates a cause of action, an action cannot be brought for breach of statutory duty claiming damages or for an injunction, in the limited circumstances where injunctive relief would be appropriate, against the specified minister personally by any person entitled to the benefit of the cause of action. If, on the other hand, the duty is placed on the Crown in general, then section 21(2) would appear to prevent injunctive relief being granted, but as Professor Sir William Wade Q.C. has pointed out ("Injunctive Relief against the Crown and Ministers" (1991) 107 L.Q.R. 4, 4-5) there are likely to be few situations when there will be statutory duties which place a duty on the Crown in general instead of on a named minister. In broad terms therefore the effect of the Act can be summarised by saying that it is only in those situations where prior to the Act no injunctive relief could be obtained that section 21 prevents an injunction being granted. In other words it restricts the effect of the procedural reforms that it implemented so that they did not extend the power of the courts to grant injunctions. This is the least that can be expected from legislation intended to make it easier for proceedings to be brought against the Crown."

Lord Woolf then considered the historical development of relief against the Crown in prerogative proceedings, focusing on mandamus and prohibition "since they are indistinguishable in their effect from final injunctions" (page 415). He noted that from early times "the prerogative remedies could not be obtained against the Crown directly" (page 415) and "this difficulty could not be avoided by bringing the proceedings against named Ministers of the Crown" (page 416). However, "where a duty was imposed by statute for the benefit of the public upon a particular Minister, so that he was under a duty to perform that duty in his official capacity, then orders of prohibition and mandamus were granted regularly against the Minister" (page 416). He referred to the case of R v Customs and Excise Commissioners, ex parte Cooke and Stevenson [1970] 1 All ER 1068 as an example. Lord Woolf referred to further developments and concluded by saying at page 417:

> "Furthermore, by the time of the introduction of the remedy of judicial review the position had developed so that the prerogative orders, including prohibition and mandamus, were being granted regularly against ministers without any investigation of whether a statutory duty, which had not been complied with was placed upon the minister or someone else in the department for which the minister was responsible. Thus the Immigration Act 1971 places some duties on immigration officers and others on the Home Secretary, but even where it is the immigration officer who has not complied with the statutory duty it is the practice to make an order of mandamus against the minister (an example is provided by Reg. v Secretary of State for the Home Department, ex parte Phansopkar [1976] Q.B. 606). As a result of even more recent developments, illustrated by the decision in the Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374 a distinction probably no longer has to be drawn between duties which have a statutory and those which have a prerogative source."

Lord Woolf then considered the introduction of judicial review in 1977 by Order 53 of the Rules of the Supreme Court which was later given statutory authority by primary legislation in Section 31 of the Supreme Court Act 1981. He noted that the relevant provisions of Section 31 do not differ materially from the corresponding provisions of Order 53. After citing the provisions of Section 31 Lord Woolf said (at page 418):

> "In Section 31 the jurisdiction to grant declarations and injunctions is directly linked to that which already existed in relation to the prerogative orders. The jurisdiction to award damages by contrast is restricted to those situations where damages are recoverable in an action begun by writ. It has never been suggested that a declaration is not available in proceedings against a minister in his

official capacity and if Order 53 and section 31 apply to a minister in the case of declarations then, applying ordinary rules of construction, one would expect the position to be precisely the same in the case of injunctions. As an examination of the position prior to the introduction of judicial review indicates, because of the scope of the remedies of mandamus and prohibition the availability of injunctions against ministers would only be of any significance in situations where it would be appropriate to grant interim relief. Even here the significance of the change was reduced by the power of the court to grant a stay under Ord. 53 r. 3(10)."

Lord Woolf then dealt at length with the contrary decision in Factortame Ltd. v Secretary of State for Transport (supra) in which the House of Lords had concluded that an injunction could not be granted against a Minister in Judicial Review proceedings. He considered in detail the reasons in that case for the limited interpretation given to Section 31 of the Supreme Court Act 1981. He carefully explained why he did not regard those reasons as justifying the exclusion of jurisdiction to grant injunctions, including interim injunctions, on applications for judicial review against ministers of the Crown. Lord Woolf concluded, at page 422:

"I am, therefore, of the opinion that, the language of section 31 being unqualified in its terms, there is no warrant for restricting its application so that in respect of ministers and other officers of the Crown alone the remedy of an injunction, including an interim injunction, is not available. In my view the history of prerogative proceedings against officers of the Crown supports such a conclusion. So far as interim relief is concerned, which is the practical change which has been made, there is no justification for adopting a different approach to officers of the Crown from that adopted in relation to other respondents in the absence of clear language such as that contained in section 21(2) of the Act of 1947. The fact that in any event a stay could be granted against the Crown under Ord. 53, r 3(10) emphasises the limits of the change in the situation which is involved."

There is a conflict between the two House of Lords decisions of Factortame Limited v Secretary of State for Transport (supra) and M v Home Office (supra). In my view the later decision of M v Home Office (supra) should now be accepted as the leading authority. In coming to its decision the House of Lords had the benefit of extensive argument on the whole historical development of civil proceedings against the Crown and prerogative writs which is traversed by Lord Woolf and influenced his opinion. He also considered in detail the reasons for the decision in Factortame Ltd. v Secretary of State for Transport (supra) and rejected them. Thus, in M v Home Office (supra) the House of Lords with full

knowledge and consideration of its earlier decision in Factortame Ltd. v Secretary of State for Transport (supra) and for the reasons given by Lord Woolf, came to the very clear conclusion that the court has jurisdiction in judicial review proceedings to grant injunctions, including interim injunctions, against Ministers and other officers of the Crown.

It is also pertinent to note the case of R v Secretary of State for Education and Science, ex parte Avon County Council [1991] 1 All ER 282 which was decided after Factortame Ltd. v Secretary of State for Transport (supra). In that case the Court of Appeal was required to consider whether the Court had jurisdiction on judicial review to grant a stay of the implementation of a decision made by the Secretary of State. Lord Justice Glidewell delivered the leading judgment in which Taylor L.J. and Sir George Walter concurred. He noted that the Factortame case decided that the Court had no power to grant an injunction against officers of the Crown but "their Lordships were not concerned with, and did not consider the power of the court to stay a decision made by an officer of the Crown under Order 53 Rule 3 (10)(a)" (page 285). He considered that the phrase "a stay of the proceedings" in that Rule was wide enough to include a stay of decisions made by the Secretary of State and the process by which he reached those decisions and that such an order is not properly described as an injunction. He concluded at pages 285 - 286:

> "Proceedings for judicial review, in the field of public law, are not a dispute between two parties, each with an interest to protect, for which an injunction may be appropriate. Judicial review, by way of an application for certiorari, is a challenge to the way in which a decision has been arrived at. The decision maker may appear to argue that his, or its, decision was reached by an appropriate procedure. But the decision maker is not in any true sense an opposing party, any more than an inferior court whose decision is challenged is an opposing party. Thus the distinction between an injunction and a stay arises out of the difference between the positions of the persons or bodies concerned. An order that a decision of a person or body whose decisions are open to challenge by judicial review shall not take effect until the challenge has finally been determined is, in my view correctly described as a stay.
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> For these reasons I am of the opinion that a decision made by an officer or minister of the Crown can, in principle, be stayed by an order of the Court."

Thus, not withstanding the decision in Factortame Limited v Secretary of State for Transport (supra), there is subsequent Court of Appeal authority in England that a stay can be ordered against a Minister of the Crown in judicial review proceedings. However this distinction between a stay and an injunction becomes

academic if (as I believe it should), the authority of the later case of M v Home Office (supra) is accepted in preference to the Factortame case.

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Traditionally the Courts of this country have followed the English law and decisions. This is particularly so in judicial review proceedings as evidenced by the decisions of this Court that I have earlier referred to. Moreover the relevant law and procedure in Fiji for judicial review applications and proceedings against the Crown are materially the same as those in England. Sections 21 and 23 (2) of the Crown Proceedings Act 1947 which are considered in the English B decisions are identical to Sections 15 and 18 (2) of the Crown Proceedings Act (Cap 24) in Fiji. The procedure for judicial review was introduced in England in 1977 by Order 53 of the Supreme Court Rules and subsequently given statutory authority by Section 31 of the Supreme Court Act 1981. Woolf J. in M v Home Office (supra) said at page 417 that the relevant provisions of Section 31 "do not differ materially from the corresponding provisions of Ord.53". These provisions C have been adopted in Order 53 of the Fiji High Court Rules which is the same in all material respects and on some important matters identical. In particular, Order 53 Rule 3 (8) providing for stay of proceedings on the grant of leave to apply for judicial review is identical to Order 53 Rule 3 (10) of the English Rules.

One difference is that the English rules have been given statutory effect by Section D 31 of the Supreme Court Act 1981. There is no corresponding legislation in Fiji. However Section 25 (3) of the Supreme Court Act Cap 13 (now High Court) gives specific power for rules to be made with respect to any matter dealt with by the Rules of the Supreme Court in England and Section 18 gives the Court all the "jurisdiction, powers and authorities which are for the time being vested in or capable of being exercised by Her Majesty's High Court of Justice in England". E This latter section has traditionally been given a liberal interpretation. In Factortame Ltd. v Secretary of State for Transport (supra) it was suggested that Rules can only legislate in matters of practice and procedure and if Order 53 purported to extend the jurisdiction of the High Court to grant injunctions against a Minister of the Crown it was ultra vires. However this proposition was rejected in M v Home Office (supra). It was said that Order 53 had always been F accepted as extending the circumstances in which a declaration could be granted against a representative of the Crown and authorising the grant of interim injunctions against other respondents. As a matter of construction the injunctive provisions must also be applied to Ministers. It must also be remembered that the House of Lords, earlier in the opinion of Lord Woolf, had already found that historically injunctions, prohibition and mandamus were granted against officers G of the Crown. Such injunctive relief was not a totally innovative remedy introduced by Order 53.

For the reasons I have given, I consider that this Court should now follow the House of Lords decision in M v Home Office (supra) and accept that the Court has jurisdiction to grant injunctions, including interim injunctions against Ministers

and other officers of the State in judicial review proceedings. In those circumstances it is immaterial whether or not a stay under Order 53 Rule 3 (8) is tantamount to an injunction. A stay can be granted and, even if it is tantamount to an injunction, the Courts jurisdiction is not negated by Section 15 of the Crown Proceedings Act.

Accordingly the Court has jurisdiction to grant the stay sought by the applicant in this case. The question is whether, in all the circumstances, it ought to be granted.

In my view the balance of convenience clearly favours the applicant. If a stay of the implementation of the respondent's decision is not granted, the applicant will be removed from Fiji. This will impose considerable inconvenience and hardship for him and his family, moreso if the application for judicial review be successful. Indeed, his removal may effectively nullify his ability to proceed with the application. It has not been suggested that the granting of a stay will in any way prejudice the Respondent. The status quo should be maintained by the granting of a stay until the application for judicial review has been determined.

Accordingly I make the following order

1. Leave is granted to the applicant pursuant to Order 53 Rule 3 (2) of the High Court Rules to apply in terms of the application dated 2nd November 1995 for Judicial Review of the decision of the Respondent made on or about the 25th October 1995 dismissing the applicant's appeal under Section 18 (1) of the Immigration Act for a permit to work in Fiji.

2. That the operation of the said decision of the Respondent be stayed and no action or proceedings be taken to implement the decision or remove the applicant or his family from Fiji until the determination of the application for Judicial Review or further order of this Court.

(Leave granted to move for judicial review.)

(Editor's note: see pages 205 & 258 post.)