

FIJI
SUPREME COURT ACT
(CHAPTER 9)

SUPREME COURT (AMENDMENT) RULES, 1981

IN exercise of the powers vested upon me by subsection (2) of section 25 of the Supreme Court Act I have made the following Rules:-

Short title

1. These Rules may be cited as the Supreme Court (Amendment) Rules, 1981, and shall come into force on the 9th day of January 1981.

Order 53 replaced

2. Appendix I of the Supreme Court Rules 1968 is amended by substituting the following Order for Order 53 of the applied Rules:

“ORDER 53
APPLICATIONS FOR JUDICIAL REVIEW

Cases appropriate for application for judicial review (0.53, r.1).

1.-(1) An application for an order of mandamus, prohibition or certiorari shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the court may grant the declaration or injunction claimed if it considers that having regard to -

(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,

(b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and

(c) all the circumstances of the case,

it would be just and convenient for the declaration [sic] or injunction to be granted on an application for judicial review.

Joinder of claims for relief (0.53, r.2).

2. On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

Grant of leave to apply for judicial review (0.53, r.3).

3.-(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.

(2) An application for leave must be made *ex parte* and must be supported -

(a) by a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and

(b) by affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application to the Principal or District Registry not later than the day before the application is made and must at the same time lodge in such Registry copies of the statement and every affidavit in support.

(4) Without prejudice to its powers under Order 20, rule 8, the Court Bearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

(5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(6) Where leave is sought to apply for an order of certiorari to reprove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(8) Where leave to apply for judicial review is granted, then-

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

Delay in applying for relief (0.53, r.4).

4.-(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,

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.

(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 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.

Mode of applying for judicial review (0. 53 r. 5).

5.-(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.

(3) Unless the judge granting leave has otherwise directed, there must be at least ten days between the service of the notice of motion or summons and the day named therein for the hearing.

(4) A motion must be entered for hearing within 14 days after the grant of leave.

(5) An affidavit giving the names and addresses of, and the places, and dates of service on, all persons who have been served with the notice of motion or summons must be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(6) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

Statements and affidavits (0. 53, r. 6).

6.-(1) Copies of the statement in support of an application for leave under rule 3 must be served with the notice of motion or summons and, subject to paragraph (2), are grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on

such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

Claim for damages (0.53, r.7).

7.-(1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if -

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and

(b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

Application for discovery, interrogatories, cross-examination etc. (0. 53 r. 8).

8.-(1) The Court may hear any interlocutory application in proceedings on an application for judicial review.

In this paragraph “interlocutory application” includes an application for an order under Order 24 or 26 or Order 38 rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(2) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

Hearing of application for judicial review (0.53, r.9).

9.-(1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has lodged in the Principal or District Registry a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the

motion or summons.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into Court.

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had begun by writ; and Order 28, rule 8, shall apply as if, in the case of an application made by motion, it had been made by summons.

Saving for person acting in obedience to mandamus (0.53, r.10).

10. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

Meaning of "Court" (0.53, r.11).

11. In relation to the hearing by a judge of an application for leave under rule 3 or of an application for judicial review, any reference in this Order to "the Court" shall, unless the context otherwise requires, be construed as a reference to the judge.

Made at Suva this 30th day of December 1980.

T. U. TUIVAGA
Chief Justice

NOTE

(This note is not part of the above Rules but is intended for general information).

In relation to the above Rules the Honourable The Chief Justice has issued the following Practice Direction:-

IN THE SUPREME COURT OF FIJI
No. 1 OF 1981

PRACTICE DIRECTION

Supreme Court (Amendment) Rules, 1981

TUIVAGA, C.J.: For the purposes of applications under the Supreme Court Rules Order 53 the forms set out in Atkin's Encyclopaedia of Court Forms (Second Edition) Volume 14 (1980 Issue) at Page 70 *et sequentes* shall be used where applicable with necessary alteration in the Court of trial and with such variations as the circumstances of the particular case require.

At Suva,
8th January 1981.
