

**In the matter of the Appeal By Hon. Alvick
Maharaj against the deregistration of the
Fiji First Party**

Decision on Appeal and also on the Issue of Costs

1. The Appellant Hon. Alvick Maharaj had filed an appeal against the decision of the Registrar of Political Parties to deregister the Fiji First Party, pursuant to her powers set out at section 19 of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 (the Act).
2. The appeal is made pursuant to section 30 of the Act. The decision of the Registrar to deregister the party was made on the 1st of July 2024 and this appeal was lodged on the 12th of July 2024, well within the statutory appeal period.
3. The Registrar of Political Parties (and Supervisor of Elections) engaged counsel, Messrs. Krishna & Co as well as Mitchell Keil & Associates to represent her at the Appeal.
4. The Respondent was represented by Kunal Singh Law
5. The parties did appear before the Commission on 16th August 2024 and the Registrar raised, amongst other things, the issue of standing for the Commission to determine whether the appellant Alvick Maharaj was the correct person to lodge the appeal on behalf of the Fiji First Party.

6. Submissions were heard from both parties and the Commission also set a timetable for submissions to be filed and for a ruling to be delivered.
7. There was apparently a hearing date for the substantive matter fixed, however this was vacated as Mr. Krishna needed to attend to the funeral rites for his late father.
8. In the meantime, there was a change in leadership of the Commission. The former Chair, Ms Malimali, resigned to join another institution and the Ruling remained pending.
9. Prior to her leaving there had been a lot of disputes and allegations and formal complaints between the former Chair and the Elections Office, as a result of which the Police executed a Search Warrant on the premises of the Electoral Commission and seized all of the working files of the Commission, including this Appeal file. These have yet to be returned to the Commission.
10. The Appellant made various inquiries as to what was happening with his appeal, and the Commission formally responded to him in October 2024, advising that the ruling was not ready as there was no Chairperson appointed yet.
11. On the 27th of January 2025, the Appellant, Hon Alvick Maharaj wrote to the Commission advising that he now wished to withdraw his appeal.
12. Before the appeal sat to consider the application to withdraw his appeal, Messrs. Krishna & Co have now made submissions for costs, which they assessed on an indemnity basis for \$25, 000 (twenty-five thousand dollars.)
13. The Commission directed that the Appellant, Honourable Maharaj be given an opportunity to make submissions on this issue. He has accordingly filed submissions on costs on the 12th of March 2025

Submission from the Appellant against Indemnity Costs

14. In his submissions, the Appellant denies very strongly that his appeal was frivolous; a waste of time and expenses and doomed from the start. He submits that the appeal raised a very serious issue that needed to be determined by the Commission.
15. He denies that this appeal was frivolous and a waste of time and instead he contends that the Respondents have engaged in a pattern of procedural obstruction and delay including:
- - (i) Raising multiple preliminary objections that were not disclosed in its initial response, delaying resolution of the substantive issues.
 - (ii) Failing to file submissions within the stipulated timeframe, causing unnecessary adjournments.
 - (iii) Engaging multiple legal counsel yet still failing to ensure timely participation in proceedings.
 - (iv) Repeatedly requesting time extensions, which directly delayed the hearing.
 - (v) Failing to provide clear and timely response to procedural questions, further exceeding the duration of the appeal.
16. The Appellant submits that compounding these issues was the absence of a Chairperson following the appointment of the former Chair, Barbara Malimali as the FICAC Commissioner.
17. The Commission itself confirmed that this administrative vacuum prevented the hearing from proceeding, further contributing to the prolonged delays.

18. By October 2024, despite repeated efforts by the Appellant to secure an expeditious determination the matter remained unresolved. The delay persisted for six months, creating a legal limbo in which the Appellant had no recourse but to withdraw the appeal.
19. The Appellant submit that by March 2025 the appeal had lost practical significance due to intervening political developments. The Appellant, in good faith and in the interest of preserving parliamentary stability, withdrew the appeal.
20. It is therefore wholly incorrect to suggest that the withdrawal was voluntary or amounted to an admission that the appeal was frivolous. The Respondent, not the Appellant, was responsible for the circumstances that led to the withdrawal.
21. The Appellant relies on the following case authorities
- a) Mitchell vs United Kingdom (1983) 7 EHRR 471
 - b) Dey vs Minister for Immigration and Citizenship (2007) FCA 1275
 - c) R (on the application of UNISON) vs Lord Chancellor [2017] UKSC 51
 - d) Trustees of South Seas Club vs Chung Lee [2023] FJCA 88
 - e) Kylie-Jane Anderson vs lowane Salaitoga [1999] 45 FLR 241
22. The Appellant maintains that the appeal was not adjudicated on the merits, due to delays caused by the Respondent.
23. The withdrawal of the appeal was not a concession of defeat, but a necessary response to procedural failures beyond the Appellant's control.
24. In conclusion, the Appellant prays for the following from the Commission: -
- (a) Strike out the Respondent's application for costs in its entirety.
 - (b) Order that each party bear its own costs, in accordance with well-established legal principles.

- (c) Acknowledge that the Respondent's procedural conduct was the primary cause of the withdrawal, making any costs order unjustifiable.

25. The Appellant maintains that an award of costs in this matter would undermine electoral accountability, deter future legal challenges and unfairly penalise the Appellant for circumstances beyond his control.

The Submissions of the Respondent

26. The Respondent submits that the withdrawal of the appeal is still pending before the Commission therefore the Commission has not granted leave for the Appellant to withdraw his appeal.

27. The Appellant's submission is based on a two-fold argument wherein the first is the allegation of delaying tactics by the Respondent referred to as procedural obstructions and the second is costs should not be used in an oppressive manner which would amount to restricting legal challenges.

28. The Respondent made these preliminary applications to save time, resources and expenses of not only the Appellant, but the Commission as well.

29. The Respondent submitted that the applications were made necessary due to the Appellant's actions and conduct in the proceedings as follows: -

- (i) The first application was to object to members of Fiji First and members of Parliament to sit in and hear the proceedings when the Appellant was already represented by counsel.
- (ii) The second application was the standing of the Appellant to lodge this appeal pursuant to section 30 of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.

(iii) The third submission was the Appellant was not a member of the Fiji First Party.

30. These preliminary issues needed to be ventilated to save time and resources of the parties. He also contends that these preliminary issues had merits.

31. The Respondent complied with the initial orders in filing the necessary submissions.

32. It is the Appellant himself who has stated in his submissions that the appeal was withdrawn because "the appeal had lost practical significance due to intervening political developments."

33. The Respondent submits that the decision to withdraw the appeal was his choice alone and not as he submits, that the decision to withdraw the appeal was not voluntary.

34. The Respondent further submits that the Appellant has made a very serious allegation that he was somehow coerced and/or pressured into withdrawing the appeal that is the only logical interpretation that can be given.

35. The Appellant has continuously blamed everyone else, every other party, every other third parties, even the Electoral Commission in regard to this matter except himself and his actions and conduct.

36. The Respondent also submits that the authorities relied on by the Appellant are misconceived and can be distinguishable and are not applicable to the facts of this case.

- a) Mitchell vs United Kingdom (1983) 7 ERHRR 471 is a decision by the European Court of Human Rights (ECHR) that dealt with issues related to a fair trial and the prohibition of inhuman or degrading treatment under the European Convention of Human Rights (ECHR) and not specifically the issue of costs.

- b) Dey vs Minister for Immigration and Citizenship (2007) FJCA 1275 is in fact a Magistrate's Court case and the correct citation is Dey vs Minister for Immigration and another [2013] FMCA 113 (11 February 2013). This authority is in fact in support of the Respondent's position because costs of \$4,600 were awarded to the Respondent for the Applicant not being present at the date of the hearing.
- c) The case of R (on the application of UNISON) vs Lord Chancellor (2017) UKSC 51 where the Court held that filing fees imposed in respect of proceedings in employment tribunals and the Employment Appeal Tribunal are unlawful because of their effects on access to justice. The Respondent submits that the Appellant has wrongly interpreted the principles of law and the aforementioned case and it is misleading the Electoral Commission.
- d) Trustees of the South Seas Club vs Chung Lee [2023] FJCA 88; ABU 17 of 2022 (2 June 2023). This case dealt with an application to reinstate Appeal No. ABU 17 of 2022 after it had been deemed abandoned by the Registrar of the Court of Appeal, for non-compliance under Rule 18 of the Court of Appeal Rules and not as interpreted by the Appellant. This case discussed the reinstatement application and not pertaining to costs.

37. The Respondent reiterates its position on costs.

38. The Respondent at law had a right to raise preliminary issues and by the withdrawal proves that the Respondent was correct in raising those issues.

39. The principles of law apply in this matter, which is, costs follow the events.

40. The Respondent has incurred and continues to incur substantial costs in regards to this appeal. The Respondent has provided an itemised Bill of Costs setting out the work done on behalf of the Registrar of Political Parties.

41. The Respondent submits that due to the complex nature of the appeal, a lot of time and resources were dedicated in attending to this matter. As such the Respondent seeks \$25,

000 costs and further costs of \$20, 000 for work carried out due to the Appellant's frivolous grounds of opposition as opposed to making an offer for payment of costs.

Analysis

42. This is an appeal lodged pursuant to section 30 of the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 (the Act). The appeal was a timely appeal, being lodged within the 14 days provided for at section 30 (1) of the Act.
43. Section 30 (2) of the Act provides that the decision of the Electoral Commission on appeal is binding and shall be final.
44. Section 30 (3) of the Act makes provisions for the Electoral Commission to adopt Rules for dealing with such appeals. To date, no such Rules have been drafted, therefore the common law in relation to costs will apply to this situation.
45. Appeals under the Act are in the nature of civil proceedings, and in the absence of specific regulations under the Act, the Commission will get guidance from relevant laws or rules that may assist us.
46. The High Court Rules specifically provide for costs at Order 62, and at Order 62 Rule (3) (6), it defines the various types or headings of costs as follows: -

<i>Term</i>	<i>Effect</i>
"Costs"	<p>(a) Where this order is made in interlocutory proceedings, the party in whose favour it is made shall be entitled to the costs in respect of those proceedings whatever the outcome of the cause or matter in which the proceedings arise; and</p> <p>(b) where this order is made at the conclusion of a cause or matter, the party in whose favour it is made shall be entitled to have the costs taxed forthwith;</p>

“Costs reserved”	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to the costs of the proceedings in respect of which this order is made unless the Court orders otherwise;
“Costs in any event”	This order has the same effect as an order for “costs” made in interlocutory proceedings;
“Costs here and below”	The party in whose favour this order is made shall be entitled not only to the costs in respect of the proceedings in which it is made but also to the costs of the same proceedings in any lower court.
“Costs in the cause or application”	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to the costs of the proceedings in respect of which such an order is made;
“Plaintiff’s costs in the cause” or “Defendant’s cost in the cause”	The plaintiff or the defendant, as the case may be, shall be entitled to the costs of the proceedings in respect of which such an order is made if judgment is given in his [or her] ⁹⁸¹ favour in the cause or matter in which the proceedings arise, but he [or she] ⁹⁸² shall not be liable to pay the costs of any other party in respect of those proceedings if judgment is given in favour of any other party or parties in the cause or matter in question;

47. The general principle on costs in civil proceedings is that costs follow the event. Order 62 Rule 3 (3) of the High Court Rules provides as follows: -

“(3) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except

when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”

48. In this instance the Respondent is asking for cost on an indemnity basis. The Court of Appeal, in New World Ltd vs Vanua Levu Hardware (Fiji) Ltd [2016] FJCA 75; ABU 76 of 2015 (27 May 2016) stated the following on indemnity costs: -

“[24] Finally, I opine, that an order for costs, on an indemnity basis, can only be made, if the following 3 prerequisites are met:

- (1) It has been specifically pleaded.
- (2) Counsel for the party asking for such costs had warned Counsel for the other side that if he continued his argument, then the former would ask for indemnity costs.
- (3) That these costs must pertain exclusively to the proceedings at hand and do not arise from extraneous proceedings or situations.

The basis why I say this is as follows:

Re: (1) This is Trite Law.

Re: (2) I refer to Kirby P’s decision in: Huntsman Chemical Company Australia Limited and Anor v International Pools Australia Pty Limited and Ors [1995] NSWSC 26. His Honour in para 13 alluded to the practice uniformly followed by the Court of Appeal and said if the legal representatives of parties to an appeal consider that the appeal or points in it are obviously hopeless and doomed to fail they should warn their opponents that continued prosecution of the appeal or of the hopeless points will result in an application to the court for a special costs order. (This is an order for costs on an indemnity basis).”Per Alfred J

49. In this instance there are obviously no pleadings, however the Respondent has raised various preliminary objections relating to the Appellant’s standing to appeal, whether he is capable of representing a deregistered political party and whether the appeal is frivolous, without merit and doomed to fail.

50. All of the above issues were unresolved at the time that he withdrew his appeal. There has been no hearing on the substance of the appeal and both parties have been patiently

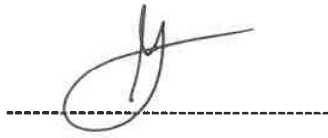
awaiting the outcome of this application to withdraw the appeal as well as the application for costs.

51. As the Appellant body under the above Act, the Electoral Commission has considered the pending matter before us (and the documents that are still available to the Commission).
52. The Commission notes the general principle that costs follow the event, however in this instance, there has been no proper hearing of the substantive matter.
53. The Commission was in the process of determining the preliminary objections when the upheavals happened in the Commission and we lost the Chairperson as well as our files that were seized via executed search warrants.
54. After considering all of the above factors, the Court finds that it is appropriate to allow the appeal to be withdrawn.
55. The Commission also decides that it is appropriate that each party shall bear their own costs.

This is the Ruling of the Commission on appeal: -

- 1. Hon. Alvick Maharaj shall be informed that the Commission accepts his withdrawal of appeal – the appeal against the Registrar of Political Parties’ decision to deregister the Fiji First Party is withdrawn fully and struck out.**
- 2. The parties to this appeal shall bear their own costs.**

So ordered.



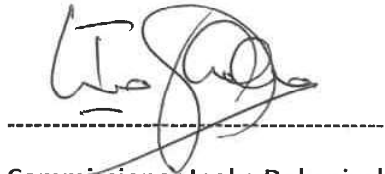
Chairperson Usaia Ratuveli



Commissioner Reginald Jokhan



Commissioner Nemani Mati



Commissioner Inoke Dokonivalu



Commissioner Ami Kohli