



INTERLOCUTORY APPLICATIONS IN CIVIL LITIGATION

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KEY POINTS

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2. Some Types of Interlocutory Applications
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WHAT ARE THESE APPLICATIONS

Made To Courts Or Tribunals During The Pendency Of ANY ORIGINATING Proceedings.

Serve As A Way To Request Interim Relief, Address Procedural Issues, Seek Decisions From The Court Before The Final Resolution Of The Action.

Serve To Preserve Rights, Prevent Harm, And Expedite Or Delay The Litigation To Finality, Provide Greater Clarity, And Perhaps Brevity To The Issues.

SOME TYPES OF APPLICATIONS

1. Preliminary Issues (O. 12, r 7, O. 33, r. 3)
2. Summary Judgments (O. 14)
3. Joinder of Parties or Consolidation of Actions(O. 15, r. 1)
4. Striking Out (O. 18 r. 18 (1))
5. Amendment of Pleadings (O.20)
6. Security for costs (O. 23)
7. Discovery and Inspection of Documents (O. 24)
8. Variation of Order (O. 24, r. 17)
9. Summons for Direction (O. 25)
10. Interrogatories (O. 26)
11. Interim Injunctions (O.29)
12. Interim Payment (O. 29 r (10)))
13. Enlargement of Time (O. 32, r. 9(e), O. 3, r. 4)
14. Adjournment of Trial (O. 35, r. 3)
15. Evidence (O. 38)
16. Leave to Appeal (O. 59, r11)
17. Application for Cost (O. 62)

THE CATERGORIES OF INTERIM AND/OR INTERLOCUTORTY APPLICATIONS ARE ENDLESS

PURPOSE OF THE APPLICATIONS

- **Preventing harm or injustice during litigation:** They ensure that one party is not unfairly prejudiced while the action is pending and being prepared for trial
- **Maintaining the status quo:** Many interlocutory applications seek to preserve or stay the existing situation until the action is decided, preventing changes that could render a judgment ineffectual or cause grave prejudice to a party.
- **Expediting, delaying or managing the progress of litigation (efficient case management):** They may resolve procedural issues or delay certain steps in the action helping manage the pace and efficiency of the case.
- **Ensuring that rights are protected:** For example, preventing the destruction of evidence or freezing assets to ensure that a judgment will be enforceable. E.g. Mareva Injunctions, Anton Pillar Orders, and Writ Ne Exeat Civitate.
- **Facilitating access to justice:** Interlocutory orders can protect a party's rights and interests while they await a final resolution of the case, procedural orders assist in applying Substantive justice and right to fair hearing; Section 15(2) of the Constitution of Fiji 2013.

KEY FEATURES OF THE APPLICATIONS

1. **Interim or Temporary Nature:** They are usually temporary measures or interim orders that apply until the final decision in the action.
2. **Urgency:** Interlocutory applications maybe filed in response to situations that require urgent attention to prevent harm, preserve evidence, or protect the rights of a party.
3. **Do Not Resolve the substantive Claim and reliefs:** Unlike a final judgment, interlocutory orders do not conclude the action although many times it could have that effect. They address specific procedural or substantive issues that arise along the way.
4. **Legal Framework:** They are governed by the rules of civil procedure in the High Court, Magistrates Court, Court of Appeal, Supreme Court and various Tribunals and require the applicants to demonstrate that their request is reasonable, justified and fair.

OBJECTIVES OF THE APPLICATION

1. **Granting or Denying Interim Relief** - Securing interim relief could provide immediate benefits to a party, such as preserving the status quo or preventing harm. Denying such relief can result in serious consequences, such as irreparable damage or loss of assets.
2. **Strike-Out or Dismissal of Claims** - If a court agrees to strike out claims early, it can limit the scope of the case, potentially saving the defendant time and resources. On the other hand, if a claim is not struck out, it might proceed to trial, where it could potentially succeed.
3. **Discovery and Disclosure** - Obtaining key evidence through successful interlocutory applications can strengthen a party's case. Failure to secure important evidence can weaken a party's ability to prove their claims with facts, documents and witnesses.
4. **Procedural Issues** - Poorly managed procedural applications can cause delays or non-compliance with deadlines resulting adverse consequences, like the dismissal of claims or defences. Proper management can streamline the case and provide strategic advantages.
5. **Security for Costs** - If a party is ordered to provide security for costs and fails to do so, they may be unable to continue with their claim. Conversely, the provision of security can help protect the defending party's position in case they prevail.
6. **Preliminary Issues and Summary Judgment** - A successful summary judgment application can result in the early dismissal of the action or parts of it, saving time and resources. Conversely, if the application is denied, the action may proceed to trial, with the outcome less predictable for the parties.
7. **Appeals of Interlocutory Orders** - If a party successfully appeals an interlocutory order (e.g., a denial of an injunction), it can change the direction of the action in their favour. Conversely, unsuccessful appeals may leave them at a disadvantage or delay the action.

HOW APPLICATIONS ARE FILED

- An interlocutory application typically consists of:
- 1. Either by Notice of Motion or Summons : This document outlines the specific relief or orders sought, as required by the Rules (O. 8, r. 2). It should clearly state the grounds for the application and the legal basis.
- 2. Affidavit: The affidavit supports the application, providing facts, evidence, documents and reasons for the relief requested. The affidavit should address the issues raised in the Notice of Motion or Summons in a concise manner.
- Draft Order: A proposed order that sets out what the applicant wants the court to decide (e.g., granting an injunction, making a procedural order); would be helpful to the Judge in complex matters and could be handed up to the Judge at the hearing.

PROCEDURE

1. Submit the Notice of Motion or Summons, Affidavit, and supporting documents, along with payment of filing fees (generally \$54.50 in the High Court) to the relevant Registry where action is filed. Consider whether an Ex-Parte Application can be made where the Act or Rules permit, giving notice would cause delay or may result in serious injury or where no other party would be adversely affected by that Order. If the application is made Ex-Parte, full and complete disclosure of evidence is required.
2. Once the Court approves the application, the Court staff will stamp the documents with the filing date and call date, and provide a copy for your records and service. You are to serve the opposing parties in Inter-Parte Applications and must be served 2 clear days.
3. After initial call over and responses are filed, a hearing date will be set, where both parties present their arguments, either orally and/or in written form.
4. If the Application is successful, the court will give an order as applied or varied, with or without costs either summarily or in cause.

WHAT IS GENERALLY CONSIDERED IN SUCH APPLICATIONS

- **Filing:** The applicant files the application with an affidavit outlining the facts and legal grounds, and serves notice to the other party.
- **Urgency:** If urgent, consider ex-parte. The applicant can request an immediate hearing. The Court to decide whether to schedule the hearing right away or later or on notice to any other party.
- **Consideration:** Procedural compliance and substantive fairness:
- **Merits:** Likelihood of success in the substantive cause of action.
- **Balance of convenience:** Whether the harm to the applicant outweighs harm to the respondent.
- **Irreparable harm:** Whether harm cannot be remedied by damages.
- **Adequate remedy:** Whether other remedies besides the applications are required.
- **Hearing:** The parties present arguments, often in an oral hearing with written submissions.
- **Discretion:** The Courts decide based on common law principles, legislation, evidence, and facts, issuing a ruling that may grant, refuse, or vary the applications based on procedural and substantive fairness.
- **Orders:** The Court may issue orders like injunctions, stay of proceedings, discovery, or costs, etc and provide directions for the action's next steps.
- **Appeals:** Dissatisfied parties can appeal the decision to a higher Court with leave in most cases, though this is less common for interlocutory decisions.
- **Interim Orders:** Courts can issue temporary orders to preserve rights or prevent harm, subject to further review.

WHETHER ORDERS ARE INTERLOCUTORY OR FINAL

There has been much confusion as to whether a decision is interlocutory or final.

We refer to the Fiji Court of Appeal decision in the case of Vinod Raj Goundar v Minister for Health [2008]

At Paragraphs 37 and 38 of the decision, the Court said:

“37. This is the position. Where proceedings are commenced in the High Court in the Court’s original jurisdiction and the matter proceeds to hearing and judgment and the judge proceeds to make final orders or declarations, the judgment and orders are not interlocutory.

38. Every other application to the High Court should be considered interlocutory and a litigant dissatisfied with the ruling or order or declaration of the Court needs leave to appeal to that ruling order or declaration

The following are examples of interlocutory applications:

- 1. an application to stay proceedings;*
- 2. an application to strike out a pleading;*
- 3. an application for an extension of time in which to commence proceedings;*
- 4. an application for leave to appeal;*
- 5. the refusal of an application to set aside a default judgment;*
- 6. an application for leave to apply for judicial review.”*

APPEALS OF INTERLOCUTORY ORDERS

- If a party, is dissatisfied with an interlocutory decision, it can apply for leave appeal to a higher court by Summons supported by Affidavit to be filed and served within 14 days of the delivery of the Order (O. 59, r. 11).
- Also see Section 12(1) of the Court of Appeal Act and Section 12(2) as to in what matters there is no right to appeal.
- See Section 12(2)(f) as to where no leave is required. E.g. liberty of subject, custody of infant, injunction, appointment of Receiver, certain Companies Act matters, admiralty decision determining liability.
- Interlocutory Orders and decisions we generally be not amenable to appeal and unlikely to succeed unless you show substantive injustice, unfairness, error of law or discretion by the Courts. See *Totis Incorporated & Ors v John Clark & Ors*- Civil Appeal No. 35 of 1996. Also see *Yasin v Basic Industries Limited* [2001] FLR 88.
- Therefore, it is very important to ensure that interlocutory applications are done comprehensively and with all relevant information likely to persuade the Court to allow the application.

**THANK
YOU**



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