

(INTERIM CIVILIAN GOVERNMENT DECREE NO. 22)

IN exercise of the powers vested in the Interim Civilian Government by section 4 of the Interim Civilian Government (Transfer of Executive Authority) Decree No. 19 of 2000, I, Josefa Iloilovatu Uluivuda, President of the Republic of Fiji, acting on the advice of the Cabinet, make this Decree—

Short title and commencement

1. This Decree may be cited as the Judicature Decree 2000 and is deemed to have commenced on 13th July, 2000.

Judicial Services Commission

- 2.—(1) There shall be a Judicial Services Commission consisting of—

- (a) the Chief Justice who is to be its Chairperson;
- (b) the President of the Fiji Law Society; and
- (c) the Chairman of the Public Service Commission.

- (2) The Chief Registrar of the High Court shall be the Secretary of the Judicial Services Commission.

Appointment of Chief Justice etc.

- 3.—(1) The Chief Justice shall be appointed by the President on the advice of the Prime Minister.

(2) Justices of Appeal and Puisne Judges of the High Court shall be appointed by the President on the advice of the Judicial Services Commission.

(3) All persons holding appointment on 12th July, 2000 in any of the offices under subsections (1) and (2) continue to hold such offices and appointments.

(4) The remuneration and other terms and conditions of persons appointed under this section or continued under subsection (3) shall not be altered to their disadvantage after their appointment or continuation of office.

Functions of the Judicial Services Commission

- 4.—(1) The Judicial Services Commission may make appointments to the following offices—

- (a) Central Agricultural Tribunal;
- (b) Master of the High Court;
- (c) Chief Registrar of the High Court;
- (d) Deputy Registrar of the High Court;
- (e) Chief Magistrate;
- (f) Resident Magistrate;
- (g) Third Class Magistrate;
- (h) Senior Court Officer;
- (i) Court Officer;
- (j) Assistant Court Officer.

(2) The Judicial Services Commission shall have the power to suspend, dismiss or take other disciplinary action against persons holding office under section 4(1).

(3) The power to appoint persons under section 4(1)(h), (i) and (j) may be delegated by the Judicial Services Commission to the Chief Registrar of the High Court.

(4) The term of appointment of the Master of the High Court and a magistrate expires upon his or her reaching the age of 65, and a person shall not be appointed or re-appointed to those offices if he or she has reached that age.

The High Court

5.—(1) The High Court of Fiji established by the Constitution of Fiji 1990 and the High Court Act (Cap. 13) is re-established under this Decree and shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Decree or any other written law.

(2) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate Court and may make such orders, issue such writs and given such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such Court.

Judges of the High Court

6.—(1) The Judges of the High Court consist of the Chief Justice and such number of Puisne Judges that is not less than 12 as may be prescribed by Decree after consultation with the Chief Justice.

(2) Persons eligible for appointment as Judges of the High Court of Fiji shall—

(a) hold or have held judicial office at least equivalent to the office of a Judge of the High Court of Fiji in any country outside Fiji but within the Commonwealth or such other country as the Judicial Services Commission deems appropriate; or

(b) have had not less than 7 years practice as a qualified legal practitioner in Fiji or such other country as the Judicial Services Commission deems appropriate.

(3) Computation of the period of qualification for the purpose of subsection (2) includes any period served as a judicial officer in addition to any time spent as a qualified legal practitioner as required by subsection (2).

(4) During any vacancy in the office of Chief Justice or if the Chief Justice is unable for whatever reason to perform the functions of such office, then until an appointment has been made or the Chief Justice has resumed office, those functions shall be performed by a Puisne Judge of the High Court as the President, acting on the advice of the Judicial Services Commission, may appoint for that purpose.

(5) During any vacancy in the office of a Puisne Judge for whatever reason or where the President is advised by the Chief Justice that the state of business in the High Court requires a temporary increase in the number of Judges, the President may appoint a person or persons qualified for appointment to act as a Judge of the High Court for a period not exceeding 12 months on the advice of the Judicial Services Commission.

(6) Notwithstanding the expiry or revocation of appointment of an acting judge under subsection (5), an appointee shall deliver judgement or do anything necessary in relation to the proceedings that were commenced before such judge.

(7) The Chief Justice and Puisne Judges of the High Court shall hold office until attaining the age on which date they shall vacate office.

(8) Where a judge has attained retiring age, the judge may continue in office for so long therefore as may be necessary to enable judgements to be delivered or to do any act in relation to proceedings commenced before such judge prior to attaining retiring age.

(9) Subject to subsection (7)—

(a) the retiring age of the Chief Justice is 75; and

(b) the retiring age of Puisne Judges of the High Court is 70.

(10) The Chief Justice and the Puisne Judges of the High Court may, notwithstanding subsection (7) be appointed for a term of not less than 2 years.

Removal of Judges

7.—(1) The Chief Justice, the President of the Court of Appeal, the Justices of Appeal and the Puisne Judges of the High Court may be removed from office only for inability to perform the functions of their office (whether from infirmity of body or mind or any other cause) or misbehaviour.

(2) Removal of the Chief Justice, President of the Court of Appeal, Justices of Appeal and Puisne Judges of the High Court from office shall only occur in accordance with this section.

(3) Where the question of removal has been raised either by the Chief Justice or by the President, it shall be referred to a Tribunal to be set up by the President.

(4) The Tribunal referred to under subsection (3) consists of a Chairperson and 2 other members, selected by the President in consultation with the Judicial Services Commission from among persons who have held high judicial office at least at the High Court level in Commonwealth countries or such countries as may be deemed appropriate by the Judicial Services Commission or from retired Fiji Puisne Judges or Justices of Appeal.

(5) The Tribunal shall enquire into the matter and report on the facts together with a recommendation and advise the President whether he should order removal of such Judge.

(6) The President shall act in accordance with the advice given under subsection (5).

(7) Pending the conduct of the inquiry and its recommendations the Judge so affected shall be suspended from office, such suspension to be revoked forthwith on receipt of the Tribunal's recommendation that no action be taken for the removal of the Judge.

Oath of office

8.—(1) The Chief Justice or a Puisne Judge of the High Court of Fiji shall not enter upon the duties of the office until such judge has subscribed to the oath of allegiance and due execution of office as are prescribed by *Schedule 1*.

(2) For the purpose of subsection (1) no person shall be required to take either of such oaths if the person shall have taken such oaths within Fiji on any previous occasion.

The Court of Appeal

9. The Court of Appeal of Fiji established by the Constitution 1990 is re-established under this Decree and shall have such jurisdiction and powers as are conferred on it by the Court of Appeal Act (Cap.12) or any other written law.

Composition of the Court of Appeal

10.—(1) The Justices of the Court of Appeal shall consist of:

- (a) a Justice of Appeal who shall be appointed President of the Court of Appeal;
- (b) such Justices of Appeal as may be appointed under this Decree;
- (c) the Puisne Judges of the High Court.

(2) The Chief Justice shall be an *ex-officio* member of the Court of Appeal and shall take precedence whenever he or she sits in that Court.

Appointment of Justices of Appeal

11.—(1) A person shall not be qualified to be appointed a Justice of Appeal unless such person is qualified for appointment as a Puisne Judge of the High Court.

(2) The appointment or re-appointment of a Justice of Appeal (including the President of the Court of Appeal) shall be for a term of years or for one or more sessions of the Court and shall expire no later than the date on which he or she reaches the age of 75.

Justices not to sit on certain appeals

12. A Justice of the Court of Appeal who was a member of the Court that decided the matter which is the subject of an appeal to the Court of Appeal must not sit on the hearing of that appeal.

Oath of office

13.—(1) A Justice of Appeal shall not enter upon the duties of his office until he or she has taken and subscribed the oath of allegiance and the due execution of the office as is prescribed by *Schedule 1*.

(2) For the purpose of subsection (1), no person shall be required to take either of such oaths if that person has taken such oaths within Fiji on any previous occasion.

Right of Appeal

14. An appeal to the Court of Appeal shall lie from decisions of the High Court in the following cases:
- (a) as of right from final decisions in any civil or criminal proceedings;
 - (b) as of right from final decisions given in exercise of the jurisdiction conferred on the High Court by section 5(2); and
 - (c) in such other cases as may be prescribed.

Final appellate court

- 15.—(1) The Court of Appeal shall be the final court of appeal for the Republic of Fiji.
- (2) The Court shall be duly constituted as provided by section 6 of the Court of Appeal Act (Cap 12).
- (3) If the Court so constituted under subsection (2) is satisfied that the subject matter of an appeal pending before it raises a matter of great general public importance it shall be joined by 2 more Justices of the Court and shall then proceed to hear and determine the appeal.

Repeal and saving

- 16.—(1) The Supreme Court Act (Act No.14 of 1998) is repealed.
- (2) The Administration of Justice Decree (Decree No.5 of 2000) is repealed.
- (3) Any judgment or decision of the court of Appeal that was pending in the former Supreme Court on 28 May, 2000 shall be heard and determined by a Court of Appeal consisting of 5 Justices of the Court of Appeal none of whom was a member of the Court of which delivered the judgment or decision which is under appeal and provided that the Court of 5 Justices of Appeal is satisfied that the pending appeal in the former Supreme Court raises a matter of great general public importance.
- (4) For the avoidance of doubt and subject to any changes that the appointing authority may introduce or otherwise, nothing in this Decree affects the continuance in office of the Chief Justice, President of the Court of Appeal, Justices of Appeal or Puisne Judges of the High Court holding office before 13th July 2000.
- (5) For the avoidance of doubt and subject to any changes that the appointing authorities may introduce or otherwise, nothing in this Decree affects the continuance in office of all persons listed in the posts specified in section 4(1).
- (6) Nothing in this Decree affects any pending appeal in respect of any appointment or promotion relating to an officer or position set out under section 4(1) before the commencement of this Decree.
- (7) If there is any inconsistency between this Decree and any other written law, this Decree shall prevail.

Interpretation

17. In this Decree, unless the context otherwise requires—
- “President” means the Interim President of the Republic of Fiji appointed under section 2(1) of the Interim Civilian Government (Transfer of Executive Authority) Decree No.19 of 2000;
- “Justice of the Court of Appeal” includes the Chief Justice, the President of the Court, a Justice of Appeal appointed under section 3(2) and a Puisne Judge of the High Court;
- “Judge” includes a Judge of the High court (including the Chief Justice) and a Justice of Appeal (including the President of the Court of Appeal);
- “Judicial office” means any of the offices included in paragraphs (a), (b), (c), (d), (e), and (f) of section 4(1).
- “Judicial Services Commission” means the Judicial Services Commission established by section 2;
- “Oath” includes affirmation.

SCHEDULE
(Section 12)

OATH OF ALLEGIANCE

I do
(swear/solemnly affirm) that I will be faithful and bear true allegiance to the Republic of Fiji, according to law. So help me God
(To be omitted in affirmation).

OATH FOR DUE EXECUTION OF JUDICIAL OFFICE

I do
(swear/solemnly affirm) that I will well and truly serve the Republic of Fiji in the office of () and will do right to
all manner of people in accordance with the laws and usages of Fiji without fear or favour, affection or ill-will. So help me God.
(To be omitted in affirmation).

Made at Suva this 17th day of August, 2000.

J. I. ULUIVUDA
President of the Republic of Fiji.