



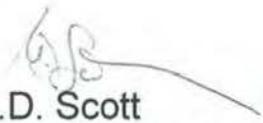
3. Put briefly, it appears that the Applicant was suspected of having misappropriated \$7000 from the office safe. In April 2010 the Applicant was suspended. In October 2010 he was dismissed from the Public Service. In December 2010 he was acquitted by the Magistrates' Court on one or more charges of theft, apparently connected with the missing \$7000. After his acquittal, the applicant sought re-instatement but in PSC Decision 360 of 13 October 2010 his dismissal was reconfirmed.
4. In paragraph 58 (iv), (v) and (vi) the Applicant claimed that the decision to dismiss him was
  - (iv) unfair ;
  - (v) biased and based on inappropriate considerations; and
  - (vi) unreasonable.
5. On 10 August 2011 counsel appeared under the provisions of Order 39 Rule 3(1). I explained to Mr Fa'otusia that the relevant procedures under consideration were those contained in the Public Service (Disciplinary Procedures) Regulations (Cap 04.36.2). Without being informed in what way the Respondents were alleged to have acted with procedural impropriety and/or wholly unreasonably, the Court could not be satisfied that the Applicant should be granted leave.
6. Mr Kefu also pointed out that the decision which it was sought to impugn was that of October 2010. He pointed out that under O 39 r 2(2) an application for leave must be made promptly and "in any event within 3 months from the date when grounds for the application first arose". In the absence of any advanced grounds for extending the 3

month period the application should be refused as being out of time. In answer to this submission Mr Fa'otusia relied on the fact (paragraph 52 of the Statement of Claim) that his representations to the PSC were not rejected until 4 March 2011. On this analysis it could be argued that since this application was filed in June 2011 it was only just out of time.

7. In my view the 3 month period commences from the decision to dismiss, not the decision to refuse to review that decision and I therefore agree with Mr Kefu that the application is well out of time. On the other hand, the consequences for the Applicant of the decision to dismiss him were obviously very serious ; if good grounds are placed before the Court for suggesting that an error was made then the Court may well extend the 3 month period providing that such an extension will not duly affect good administration. With these considerations in mind I allowed Mr Fa'otusia to make further submissions and adjourned the application hearing part-heard to 12 September 2011.
8. On 31 August 2011 Mr Fa'otusia filed an amended Statement of Claim. Having studied this document with care I have reached the conclusion (a) that it does not disclose any shortcomings in the procedures followed prior to the decision being taken to dismiss the Applicant and (b) that it has not been shown that is arguable that the decision that was taken was wholly unreasonable. It is very important to bear in mind that Judicial review is not a form of appeal.
9. In my view the application is out of time and no good reason for extending the time advanced. I am also satisfied that the Applicant

has not demonstrated that he has an arguable case for judicial review.  
Accordingly, the application is dismissed.



  
M.D. Scott  
CHIEF JUSTICE

DATED: 23 September 2011.

N. Tu'uholoaki  
21/9/2011.