

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

Civil Appeal No. ABU 30 of 2017
(High Court Civil Action No. HBM 0019 of 2016)

BETWEEN : **PITA TOKONIYAROI**
Appellant

AND : 1. **COMMISSIONER OF POLICE**
2. **COMMISSIONER OF CORRECTIONAL SERVICES**
3. **DIRECTOR OF PUBLIC PROSECUTIONS**
4. **THE ATTORNEY GENERAL OF FIJI**
5. **THE SOLICITOR GENERAL**
Respondents

Coram : Basnayake, JA
Lecamwasam, JA
Almeida Guneratne, JA

Counsel : In Person
Mr. J. Mainavolau for the Respondents

Date of Hearing : 15 November 2018
21 November 2018

Date of Judgment : 30 November 2018

JUDGMENT

Basnayake JA

[1] I agree that this appeal should be dismissed.

Lecamwasam JA

[2] This an appeal filed by the Appellant on 5th April 2017 (appeal dated 24/02/2017) against the ruling of the learned High Court Judge dated 23rd February 2017. By that ruling the learned High Court Judge had dismissed the application of the appellant for the reason that it is time-barred.

[3] The Appellants' notice of motion is dated 11th March 2016 (pages 5 – 7 record of the High Court). It reads thus (page 6 tagged):

"My grounds of this application are as follows:

- i. Discrimination*
- ii. Unfair proceedings*
- iii. ill treatment (in state custody)*
- iv. inordinate delay*
- v. Abuse of process*

THAT: *An order is granted to the applicant in regards to an constitution redress in criminal action No: HAC 0012/01, criminal appeal No: Criminal appeal No: CAV 0004/13.....*

This applicant is made pursuant to the inherent jurisdiction of honourable court and section 44(1), (2) of the 2013 constitution...

3. **TAKE NOTICE THAT:**

This is my affidavit in support of Notice of Motion.

I Pita Tokoniyaroi, 40 years of age make an oath and say the following:

- a) ***THAT:*** *At about 7pm on the 19th day of November, 2000, I was arrested and severely assaulted by a term of Police Officers led by crime officer Francis Naqesa at Nawaka, Nadi and continuously assault at Nadi*

Police Station and Lautoka Police Station during the period of interrogation...I wrote a letter to the Fiji Human Rights Commission and lodge my complaint at Ba Magistrate Court, but there was no action taken until today...

- b) **THAT:** *My Constitution rights were become a dead letter throughout the interrogation until the conclusion of this indictment...*
- i. *Inadequate time and facilities*
 - ii. *Inordinate delay (four(4) years four months for non trial*
 - iii. *After four years (4) and four (4) months and I received my full case documents before the proceeding of proper trial which only two weeks given to an unlearned accused to access to the record...*
 - iv. *Alibi witness were not allowed to give evidence*
 - v. *Medical practitioner was not allowed to give evidence*
 - vi. *Second medical report of your humble application was lost in the hands of the Director of Public Prosecution ...*
- c) **THAT:** *I was ill treated at the Police custody, which is inhumane condition.*
- d) **THAT:** *The learned Trial Judge failed to recuse himself from hearing my case as he said "he knows the father of the victim many years ago"*
...
- e) **THAT:** *After one year the delivered of the voire dire ruling and the proper trial proceeds...*
- f) **THAT:** *After four(4) years and the appeal was heard at court of appeal, and there was two judgment of the court of appeal: (1) the conviction was quashed and Re trial was ordered*
(2) *The appeal was dismissed...*
- g) **THAT:** *There was two judgment at the Supreme Court my Constitutional rights of equality before the law is a dead letter....*
- h) **THAT:** *I was ill-treated from the date I enter the prison gate until today...*
- i) **THAT:** *The chronology of events will spell out the breaches of my constitutional rights and abuse of process...*
- j) **THAT:** *I do have the right to alter, amend, add, correct and submit further grounds of this application.*

***THAT:** Under this circumstance I have no choice, but, to seek the jurisdiction of your honourable court for a constitutional redress, and I humbly pray this most honourable court to grant my application as spelt out in the Notice of Motion filed herein.... ”*

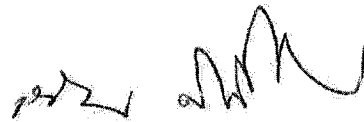
- [4] The procedure with regard to the manner of disposal is laid down by High Court (Constitutional redress) Rules 2015. In terms of Rules 3(2) an application to High Court for redress under Section 44 (1) of the Constitution must not be admitted or entertained after 60 days from the date when the matter or issue arose unless a Judge finds there are exceptional circumstances and that it is to hear and try the application outside that period. It is the appellant who should satisfy Court that the circumstances prevented him from bringing this application within the time period of 60 days.
- [5] From the material provided it appears that the complaint is related to a date in November 2000. The Appellant states that he made the complaint to Fiji Human Rights Commission on 21st November 2001. He also gives reference number as HAC 0012/01. However, the appellant has not provided us with any other information regarding the same. The only application that is before us is the notice filed dated 11th March 2016. This motion refers to an incident dated 19th November 2000 where the Appellant was allegedly assaulted by the police.
- [6] However there appears to be no continuation and these inquires appear to have been abandoned. There is no record of any previous cases. Therefore I am of the view that the learned Judge had no alternative but to dismiss the application on the ground that it is out of time.
- [7] The hearing before the learned High Court Judge was not in relation to a revision application. It was a new application. Therefore the learned Judge did not commit an error in dismissing the application. Therefore, I see no merit in this application and hence it is refused and the appeal is dismissed.

Almeida Guneratne JA

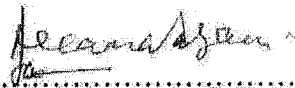
[8] I agree with the judgment of Lecamwasam JA.

Orders of the Court:

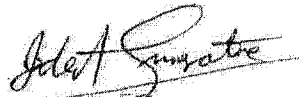
Appeal dismissed.



.....
Hon Justice E. Basnayake
JUSTICE OF APPEAL



.....
Hon. Justice S. Lecamwasam
JUSTICE OF APPEAL



.....
Hon. Justice Almeida Guneratne
JUSTICE OF APPEAL