IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU 068 of 2024
[In the High Court Action No. HBM 137 of 2023]

BETWEEN : **SALOTE VUIBURETA RADRODRO**

Appellant

AND : **THE CHIEF REGISTRAR**

1st Respondent

THE ATTORNEY- GENERAL OF FIJI

2nd Respondent

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

1st Interested Party

THE COMMISSION OF CORRECTIONS

2nd Interested Party

Coram : **Prematilaka, RJA**

Counsel : **Mr. J. Karunaratne for the Appellant**
Mr. J. Mainavolau for the 01st and 02nd Respondent and 02nd Interested Party
Ms. J. Pane for the 01st Interested Party

Date of Hearing : **02 October 2025**

Date of Ruling : **16 October 2025**

RULING

Criminal proceedings against the appellant

[1] The appellant was charged in the Magistrates Court. The prosecution had made an application for the matter to be transferred to the High Court pursuant to sections 191 and 188 of the Criminal Procedure Act 2009. By a ruling dated 06 December 2021, the Magistrate transferred the matter to the High Court for determination.

[2] The appellant being aggrieved by the said transfer of the matter to the High Court, filed an appeal in the High Court for the matter to be remitted back to the Magistrates Court. The High Court dismissed the appeal on the basis that there was no right of appeal at that stage of the proceedings as the Magistrate had not fully determined the guilt of the appellant when he transferred the matter to the High Court.

[3] While the appellant's substantive case was proceeding in the High Court, she had filed an appeal in the Court of Appeal against the dismissal of the appeal by the High Court relating to the transfer.

[4] In the midst of many interlocutory applications[1] the trial was concluded and on 06 September 2022 the trial Judge delivered the judgment and the appellant was found guilty of both counts and was duly convicted of the charges against her[2]. She was sentenced to 36 months imprisonment, with an immediate custodial term of 30 months imprisonment, non-parole period of 24 months and the remainder of 06 months partially suspended for 05 years.

[5] Being aggrieved by the conviction and sentence, the appellant filed a timely appeal in the Court of Appeal. A single Judge of this court on 12 March 2024[3] determined that no leave

[1] **Fiji Independent Commission Against Corruption v Radrodro** [2022] FJHC 298; HACDM007.2022S (21 June 2022), **Radrodro v Fiji Independent Commission Against Corruption** (FICAC) [2022] FJHC 291; HACDM009.2022S (22 June 2022), **Radrodro v Fiji Independent Commission Against Corruption** [2022] FJHC 322; HACDM011.2022S (29 June 2022), **Fiji Independent Commission Against Corruption v Radrodro** [2022] FJHC 465; HACD007.2022S (8 August 2022)

[2] **Fiji Independent Commission Against Corruption v Radrodro** [2022] FJHC 563; HACD007.2022 (6 September 2022)

[3] **Radrodro v Fiji Independent Commission Against Corruption** AAU 106/2022 (12 March 2024) (unreported).

was required for grounds 1, 2, 17, and 18 as they raise questions of law only and refused leave to appeal on all other grounds of appeal.

[6] The said grounds 1 and 2 involved an interpretation or interplay between sections 180 and 201(a) of the Crimes Act, 2009, ground 18 was on sentence and ground 17 relevant to this matter stated as follows:

> *"THAT in all circumstances, it was an error of law for the matter to be transferred from the Magistrates Court to the High Court despite the Appellant not making any such application for transfer and objection to the said transfer and caused by Political /Judicial Interference thus making the same a Breach of Process, Practical Unfairness, Apparent Bias and great miscarriage of Justice."*

[7] Currently, the appellant's solicitors are in the process of preparing the appeal records for certification by the Chief Registrar so that the Full Court may hear the substantive appeal against her conviction and sentence without delay.

Constitutional Redress proceedings by the appellant

[8] The appellant claims to have discovered certain material that led her to believe that her constitutional rights to have a fair trial may have been breached in the criminal matter and she accordingly made an application to the High Court for Constitutional Redress (HBM 137 of 2023 – 'CR application'). The respondents filed summons to strike out the Constitutional Redress application. The High Court agreed with the respondent's arguments and struck out the matter on **12 April 2024**[4] ('strike out judgment').

[9] The appellant correctly filed summons in the High Court for leave to appeal the strike out judgment dated 12 April 2024 (which was in effect an interlocutory judgment/order)[5]. However, on **8 August 2024**, the High Court refused the application for leave to appeal

[4] **Radrodro v The Chief Registrar** [2024] FJHC 229; HBM137.2023 (12 April 2024)
[5] See Rule 26(3) of the Court of Appeal Rules read with section 12 (2)(f) of the Court of Appeal Act; **South Sea Cruises Ltd v Mody** [2010] FJCA 74; Misc Action 13.2010 (26 August 2010); **Lakshman v Estate Management Services Ltd** [2015] FJCA 26 (27 February 2015)

with no costs[6] ('leave judgment'). Instead of filing a fresh application (also called renewed application) for leave to appeal against the strike out judgment within a reasonable time[7] in the Court of Appeal, the appellant filed a notice of appeal in the Court of Appeal 09 August 2024. It is trite law that without leave an appeal is incompetent against an interlocutory judgment or order[8]. Undoubtedly, the strike out judgment is an interlocutory judgment[9]. It is not clear which interlocutory judgment (or both) was being appealed against as the notice of appeal states that the appellant was dissatisfied with the 'decisions' by the High Court and appealed against the 'above decisions'. However, the grounds of appeal imply that the challenge was to the strike out judgment. The Chief Registrar did not determine the security for costs as he was a party to the appeal and therefore, referred the matter to this court.

[10] Realizing that there was no direct right of appeal against interlocutory judgments, the appellant then filed a notice of motion on 11 October 2024 seeking leave to appeal/leave to appeal out of time to lodge an appeal against the leave judgment of the High Court delivered on **08 August 2024** whereby appellant's application seeking leave to appeal the strike out judgment dated 12 April 2024 was refused. The supporting affidavit of the appellant too makes it clear that the notice of motion was seeking leave to appeal/ leave to appeal out of time in respect of the leave judgment dated 08 August 2024 and not the strike out judgment dated 12 April 2024.

[11] Therefore, at the outset it must be mentioned that the appellant's current notice of motion seeking leave to appeal/leave to appeal out of time to lodge an appeal is misconceived. There is no possibility of appealing, seeking leave to appeal or extension of time to appeal/to seek leave to appeal against the refusal of leave to appeal/ of extension of time to appeal by

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[6] **Radrodro v The Chief Registrar** [2024] FJHC 505; HBM137.2023 (8 August 2024)

[7] The period of time in which to make the second application (also called the renewed application) to the Court of Appeal must be within a reasonable time of the date on which the High Court Judge's judgment or order refusing leave to appeal was signed and entered or otherwise perfected – See **South Sea Cruises Ltd v Mody** (supra); **Wehrenberg v Suluka** [2018] FJCA 112; ABU99.2017 (6 July 2018)

[8] Vide section 12(2)(f) of the Court of Appeal Act.

[9] See **Devi v Nausori Town Council** [2025] FJCA 92; ABU008.2024 (20 June 2025) for a complete discussion on this topic.

the High Court. This Court is exercising a concurrent original jurisdiction on the strike out judgment and it is not the function of the Court of Appeal to review the decision of the learned High Court Judge's leave judgment[10]. The correct procedure is to file a fresh summons ('renewed application') for leave to appeal or enlargement of time to appeal the substantive interlocutory judgment - in this case the strike out judgment by the High Court - and not a notice of motion or summons to appeal the leave to appeal judgment by the High Court.

[12] This fatal procedural defect alone is sufficient to dismiss the appellant's notice of motion filed on 11 October 2024 seeking leave to appeal/leave to appeal out of time.

[13] However, in fairness to the appellant, since all parties had filed written submissions and made oral submissions on the question of enlargement of time to seek leave to appeal the strike out judgment, I shall deal with that as well. The principles applicable to extension of time is well-established[11] and need no ritual repetition. Further, it has long been settled law and practice that interlocutory orders and decisions will seldom be amenable to appeal and that appeals against interlocutory orders and decisions will only rarely succeed; The Fiji Court of Appeal has consistently observed the above principle by granting leave only in the most exceptional circumstances[12]. There is a general presumption against granting leave to appeal an interlocutory decision and that presumption is strengthened when the judgment or order does not either directly or indirectly finally determine any substantive right of either party. The interlocutory decision must not only by shown to be wrong but it must also be shown that an injustice would flow if the impugned decision was allowed to stand[13].

[14] As far as the instant application is concerned, it is obvious to me that the most important and decisive consideration is the merits and success of the purported grounds of appeal and

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[10] See **Newworld Ltd v Vanualevu Hardware (Fiji) Ltd** [2015] FJCA 172; ABU76.2015 (17 December 2015) at [5]
[11] See for e.g. **Devi v Kumar** [2025] FJCA 91; ABU067.2020 (12 June 2025) at [4].
[12] **Totis Inc v Clark** [1996] FJCA 49; ABU0035.1996 (12 September 1996)
[13] **Shankar v FNPF Investments Ltd** [2017] FJCA 26; ABU32.2016 (24 February 2017); **Parshotam Lawyers v Dilip Kumar (trading as Bianco Textiles)** [2019] FJCA 176; ABU13.2019 (25 September 2019)

not the other considerations for enlargement of time. This similar to the threshold for leave to appeal on interlocutory orders[14]. The key consideration is whether the appellant's purported appeal grounds have a realistic prospect of success. The test simply is *'whether the appellant has a realistic chance/prospect of success as opposed to fanciful or remote chance/prospect of success*?' in order to decide the question "*is there a ground of appeal that will probably succeed?"*[15] That said, I shall now proceed to consider the legal issues raised by the appellant in her grounds of appeal.

Constitutional Redress application

[15] The appellant had alleged that her right to a fair trial before court was violated by the transfer of the trial from the Magistrates court to the High Court in breach of section 15 (1) of the Constitution of the Republic of Fiji ('Constitution'). The second respondent's summons seeking to strike out the appellant's CR application was based on Order 18 Rule 18 (1) (a), (b), and (d) of High Court Rules 1988 and also inherent jurisdiction of the court.

[16] It appears from the strike out judgment and leave judgment, that the High Court had allowed the respondent's application and struck out the appellant's CR application on two grounds; availability of an adequate alternative remedy and abuse of process.

Availability of an adequate alternate remedy

[17] This proposition arises from section 44(2) and 44(4) of the Constitution. In terms of section 44(2), the right to make an application for constitutional redress is without prejudice to any other action with respect to the matter that the applicant may have. However, section 44(4) qualifies that right by stating that the High Court may exercise its discretion not to grant relief if it considers that an adequate alternative remedy is available to the applicant. One cannot treat these two provisions in isolation.

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[14] **Malani v Director of Public Prosecutions** [2025] FJCA 82; ABU019.2022 (6 June 2025) at [6] – [8]
[15] **Fatiaki v Mobil Oil Australia Pty Ltd** [2025] FJCA 52; ABU80.2024 (26 March 2025) at [11] – [16]

[18] The appellant argues that in terms of section 44(2), she has an unfettered right to seek constitutional redress despite the pending criminal appeal AAU 106 of 2022 where she has alleged as part of 17th ground of appeal and succeeded in obtaining leave to appeal that the transfer of her trail from the Magistrates court to the High Court was '*caused by Political /Judicial Interference thus making the same a Breach of Process, Practical Unfairness, Apparent Bias and great miscarriage of Justice'.* This is more or less similar (if not identical in its letter and sprite) to the very basis on which the appellant sought relief in her CR application.

[19] Section 44(1) enables a person complaining of any contravention or likely contravention of any rights under Bill of Rights to apply for constitutional redress. To me, what section 44(2) does is to preserve that person's right to apply for constitutional redress notwithstanding any other action that person may have regarding the same matter. It does not assign superior status to a CR application over any other action. Constitutional redress applications do not sit at the top of the hierarchy of actions either. Section 44(2) explains why the appellant was able to apply for constitutional redress while the appeal against her criminal conviction and sentence was on foot despite the fact that in both proceedings the appellant complained of possible breach of right to a fair trial as a result of the transfer of the trial from the Magistrates court to the High Court. However, section 44(4) clearly demonstrates that the framers of the Constitution did not want to have the right to constitutional redress under section 44(1) to be absolute. That is why section 44(4) qualifies that right by the conferring a discretion on court not to grant relief it is considers that an adequate alternative remedy is available. Section 44(2) does not betray this legislative scheme. It is just part of that delicate balance designed in the Constitution under 'Enforcement' of Bill of Rights and abuse of judicial process. The High Court has been endowed with a discretion to maintain this fine balance. Section 44(4) not only checks abuse of judicial process but also prevents unwarranted clashes among multiple courts on the same or similar subject matter of concern. It averts duplicity of judicial work and discourages multiplicity of litigation both of which are not in the larger public interest.

[20] The appellant argues that section 44(4) comes into play only at the stage of granting relief in that availability of an adequate alternative remedy does not constitute a ground for striking out but only for refusing the relief sought. In other words, the High Court cannot strike out the CR application until the trial process is fully exhausted and it reaches the threshold of awarding relief. I do not agree. Once the court is satisfied that the aggrieved person has an adequate alternative remedy, it does not matter whether the CR application has reached the final stage or not. Prolonging a CR application until it reaches its 'maturity' (i.e. the time to grant or not to grant relief) merely to literally comply with section 44(4) itself would be an abuse of judicial process and waste of valuable judicial time. The operative and controlling words in section 44(4) are 'adequate alternative remedy' and not the word 'relief'; in other words the stage of the CR application in not material. Striking out a CR application obviously has the same effect of not granting relief except, perhaps, with regard to the costs on the unsuccessful party, the applicant. In both, the matter comes to an end with the same result of the applicant not being successful.

Is there an adequate alternative remedy?

[21] The appellant has also made an application to lead fresh evidence namely a statutory declaration presumably made by one of the Magistrates who made the transfer order of the trial from his court to the High Court. This application is now before the Full Court for determination along with the main appeal.

[22] It appears that the appellant seeks to urge the Court of Appeal to uphold the 17th ground of appeal based on this statutory declaration. It is very pertinent to consider the Full Court judgment in **Prakash v Fiji Independent Commission Against Corruption**[16] in this connection. Mr. Prakash was similarly charged by FICAC whose trial too was transferred to the High Court by the Magistrate. Mr. Prakash also sought to introduce a copy of a statutory declaration made by Mr. Jeremaia Savou, the Resident Magistrate who

[16] [2024] FJCA 124; AAU013.2023 (26 July 2024)

determined the FICAC's application to transfer the charges to the High Court. I believe that it is the same statutory declaration that the appellant seeks to introduce as fresh evidence before the Full Court. The Full Court decided to grant Mr. Prakash's application in terms of section 28 of the Court of Appeal Act and admitted that evidence.

[23] The Court in ***Prakash*** considered as the third appellate point whether the Magistrates Court's decision to transfer the charges to the High Court is affected by the appearance of bias, and if so, whether such appearance of bias also taints the High Court proceedings to an extent that Mr. Prakash did not receive a fair trial (the apparent bias issue). The court accepted that the focus of the ground of appeal based on the transfer of the charges from the Magistrate's Court has changed but in substance, the appeal point always challenged the fairness of the trial in the High Court. The Court said that this position had not changed, even though the "new" evidence would bring an added dimension to the way in which the fair trial issues should be considered.

[24] It is obvious to me that the real scope of the appellant's 17th ground of appeal is more or less the same as in ***Prakash*** though slightly differently couched. The court in ***Prakash*** considered whether there was apparent bias on the part of the Resident Magistrate who made the transfer decision and, if so, whether that could have given rise to a miscarriage of justice sufficient to impugn the convictions. Having considered these questions fully, the court concluded:

> 55. *While we conclude that a fair-minded but informed observer might reasonably apprehend or suspect that the Resident Magistrate had been influenced inappropriately by powerful outsiders in deciding to transfer the various criminal prosecutions to the High Court, we do not consider that apparent bias of that type vitiates the convictions entered after a High Court trial. In our view there is nothing to suggest that the High Court Judge who presided over Mr. Prakash's trial was influenced by knowledge of the conversation between the Chief Justice and the Resident Magistrate. No allegation of actual bias has been made against the High Court Judge. To the contrary, the record indicates that the trial Judge exhibited fairness in the way in which the trial was conducted. Save for the legal issue relating to the time at which the accused ought to have been entitled to make his election to give evidence himself, no process complaints have been made about the way in which Kumarage J conducted the trial.*

[25] Although, Mr. Prakash did not succeed in his appeal ground based on the transfer of the trial from the Magistrates court to the High Court purportedly as a result of extraneous influence, the Court of Appeal judgment in ***Prakash*** demonstrates unequivocally that the appellant has more than an adequate alternative remedy in her appeal AAU 106 of 2022 not only to pursue her application to lead fresh evidence by way of the statutory declaration by the Magistrate but also to canvass the issue raised by the appellant in her CR application before a Bench of three judges of the Court of Appeal who will review it thoroughly and compressively in the same manner they did in ***Prakash***. Therefore, I am satisfied that the appellant's criminal appeal AAU 106 of 2022 pending for hearing before the Full Court in the Court of Appeal is more than an adequate alternative remedy aired in her CR application and the High Court was right in striking out the appellant's CR application based on section 44(4) of the Constitution.

Was there an abuse of process? What is the interplay between abuse of process & availability of adequate alternative remedy?

[26] The High Court had considered Order 18 Rule 18 of High Court Rules in conjunction with section 44(4) of the Constitution and stated that it is an abuse of process to file parallel proceedings by way of constitutional redress, for denial of fair trial when the same issue is pending in the Court of Appeal. A claim is considered an abuse of process if it is oppressive, pointless, or seeks to re-litigate issues already decided. In **Hunter v Chief Constable of the West Midlands Police**[17] , the House of Lords struck out an action that sought to re-litigate issues already decided in criminal proceedings, reinforcing the principle against abuse of process; In **Henderson v Henderson**[18] , a case was struck out on the principle that parties must bring forward their entire case in one proceeding rather than fragment litigation.[19]

[17] [1981] UKHL 13; [1982] AC 529 (HL)
[18] [1843] EngR 917; (1843) 3 Hare 100
[19] See also **Waqaninavatu v State** [2025] FJCA 33; ABU07.2024 (13 March 2025) at [2]

[27] It is trite law that the boundaries of what may constitute an abuse of the process of the court are not fixed[20] and the categories are not closed and considerations of **public policy** and the **interests of justice** may be very material[21]. Lord Diplock said[22] of abuse of process:

> *'…. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power….'*

[28] To seek constitutional relief where there is a parallel legal remedy will be an abuse or misuse of the court's process in the absence of some feature *'which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate'*[23]. This approach prevents unacceptable interruptions in the normal court process, avoids encouraging technical points which have the tendency to divert attention from the real or central issues, and prevents the waste and dissipation of public funds in the pursuit of issues which may well turn out to be of little or no practical relevance in a case when properly viewed at the end of the process. This approach also promotes the **rule of law** and the **finality of litigation** by preventing a claim for constitutional relief from being used to mount a **collateral attack** on, for example, a judge's exercise of discretion or a criminal conviction, in order to bypass restrictions in the appellate process (see e.g. **Chokolingo v A-G of Trinidad and Tobago** [1981] 1 All ER 244 at 248–249, [1981] 1 WLR 106 at 111–112).

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[20] **Brandt v Commissioner of Police (Montserrat)** [2021] 4 All ER 637 at 646-647

[21] As per Stuart-Smith LJ in **Ashmore v British Coal Corp** [1990]2 All ER 981 at 984

[22] **Hunter v Chief Constable of West Midlands** [1981] 3 All ER 727 at 729, [1982] AC 529 at 536

[23] **Brandt v Commissioner of Police (Montserrat)** (supra); See also comments of Lord Nicholls, delivering the judgment of the **Board in A-G v Ramanoop** [2005] UKPC 15, (2005) 66 WIR 334, [2006] 1 AC 328(at para [25]; **Harrikissoon v A-G of Trinidad and Tobago** (1979) 31 WIR 348 at 349, [1980] AC 265 at 268; **Thakur Persad Jaroo v A-G** [2002] UKPC 5, (2002) 59 WIR 519, [2002] 1 AC 871(at para [39]; **Warren v State** [2018] UKPC 20, [2019] 3 LRC 1 at para [11]

[29] **Singh v Director of Public Prosecutions**[24] was an appeal where the High Court summarily dismissed the appellant's application for constitutional redress. The prosecution had intended to adduce evidence of the secretly taped conversations between the appellant and the state witness in the criminal trial against the appellant on three charges of attempting to pervert the cause of justice. The appellant filed an application seeking constitutional redress concerning the secret use of the tape recorder and the intended evidence of the recorded conversation between the appellant and the state witness. The respondents contended that that criminal trial (including a voir dire) was an adequate alternative remedy justifying the refusal of constitutional relief and the summary dismissal of the appellant's application. The summary dismissal of the CR application was based on several grounds including the availability of an adequate remedy and abuse of process. The Court of Appeal noted that the Privy Council has consistently laid down that where an adequate alternative remedy is available then constitutional redress will be refused. It has regarded an application for constitutional relief in these circumstances as an abuse of process and as being subversive of the Rule of Law which the Constitution is designed to uphold and protect. The Court concluded that once stated it becomes abundantly clear that the appellant has an adequate alternative remedy within section 41(4) of the then Constitution, ***the High Court was fully entitled to exercise its discretion to summarily dismiss the appellant's CR application*** and applying the principles so firmly established by the Privy Council to the circumstances of the case the appellant's application for constitutional redress was deemed an abuse of process and considered properly dismissed.

[30] In **Tokoniyaroi v Commissioner of Police**[25] the Supreme Court concerned itself with an application for special leave to appeal against the judgment of the Court of Appeal, dismissing the petitioner's appeal against the Ruling of the High Court, in dismissing the petitioner's application for constitutional redress under section 44(1) of the Constitution. The petitioner had been found guilty of the offences of murder and robbery with violence. He was sentenced to life imprisonment for the murder and, 4 years for robbery with

[24] [2004] FJCA 37; AAU0037.2003S (16 July 2004)
[25] [2023] FJSC 24; CBV0017.2019 (30 June 2023)

violence to run concurrent with his life sentence. He was to serve 12 years minimum term. His application for constitutional redress was filed in the High Court more than a decade later. The Supreme Court quoted ***Singh*** with approval and said:

> *'[44] Nevertheless, our courts must not be seen as stifling or inhibiting the grant of constitutional redress under section 44 (1) where the claim for grievance is clearly established and the alternative relief is not available, bearing in mind Lord Diplock's timely warning in* ***Maharaj v A-G of Trinidad and Tobago (No.2)*** *[1978] 2All ER 670 and echoed by Lord Bingham in* ***Hinds v. Attorney General & Or*** *[2001] UKPC 287 at p.303:*
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> > *"...a claim for constitutional relief does not ordinarily offer an alternative means of challenging a conviction or a judicial decision, nor an additional means where such a challenge, based on constitutional grounds has been made and rejected."*

[31] Therefore, there is ample jurisprudence in the Commonwealth and Fiji that seeking constitutional redress when an adequate alternative remedy is available amounts to an abuse of process and is liable to be summarily dismissed. I am satisfied that the appellant's CR application was an abuse of process as she clearly still has an adequate alternative remedy in the form of her criminal appeal AAU 106 of 2023 and from there to the Supreme Court. In these circumstances seeking constitutional redress while her criminal appeal is still pending in the Court of Appeal where she would be urging the same or similar allegation of external interference on the transfer of the trial from the Magistrates court to the High Court, amounts to an abuse of process. Therefore, I do not see any merit in the appellant's contention that it was wrong for the High Court to have dismissed her CR application for abuse of process arising from the availability of an adequate alternative remedy as articulated in the grounds of appeal for his extension of time application.

Abuse of process & inherent jurisdiction

[32] The High Court has also considered abuse of process under inherent jurisdiction of court in the leave judgment and stated that there is inherent jurisdiction to strike out actions

including CR applications. There appears to be sufficient authority for this proposition both in Fiji and the Commonwealth. So long as there are no statute or Rules limitations, the Court has inherent jurisdiction imbued with general powers to control its own procedure to stop it being abused[26]. ***Singh*** is an example where the Court of Appeal accepted the exercise of discretion of the trial judge in a criminal proceedings to summarily dismiss an application for constitutional redress under the 1998 High Court (Constitutional Redress) Rules 2015 which govern the jurisdiction and powers conferred on the High Court in respect of civil jurisdiction for constitutional redress (Rule 7 of The High Court (Constitutional Redress) Rules 2015).

[33] The inherent power which any court must possess is to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would bring the administration of justice into disrepute among right-thinking people[27]. ***Hunter*** held that the abuse of process which the case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made[28].

[34] Therefore, it is clear that though an application for constitutional redress is not inconsistent with literal application of law and procedural rules, if it is manifestly unfair to a party to litigation or if it would nevertheless bring the administration of justice into disrepute among right-thinking people or if it is brought for mounting a collateral attack on a final decision against another party previously made by another competent court, then constitutional redress matter may be struck out or dismissed under the broad consideration of abuse of process in inherent jurisdiction of court.

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[26] **Bremer Vulcan Schiffbau Und Maschinenfabrik v South India Shipping Corp. Ltd** [1981] AC 909 as quoted in ***Tokoniyaroi***
[27] **Hunter v Chief Constable of the West Midlands Police** [1982] AC 529at p. 536C
[28] **Hunter v Chief Constable of the West Midlands Police** [1982] AC 529at 541 B-C

[35] **Lord Bingham**[29] elaborated and even expended in some respects the scope of inherent jurisdiction to control abuse of process and set out the following legal premises:

> 1. *There should be finality in litigation and that a party should not be twice vexed in the same matter and this public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole.*
>
> 2. *It is not necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive,*
>
> 3. *There will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party.*
>
> 4. *one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not……..While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances..*
>
> 5. *Properly applied, and whatever the legitimacy of its descent, the rule (against abuse of process) has a valuable part to play in protecting the interests of justice.*

[36] Lately, in further expanding the scope, greater clarity and flexibility have been brought by legal jurisprudence onto the inherent jurisdiction to strike out proceedings by stating that they can be struck down as an abuse of process where there has been no unlawful conduct, no breach of relevant procedural rules, no collateral attack on a previous decision and no dishonesty or other reprehensible conduct. Indeed, the power exists precisely to prevent the court's process being abused through the lawful and literal application of the rules, and most likely would not be needed or engaged where a party was acting unlawfully or in breach of procedural rules, where established rules of law or procedural sanctions would usually suffice to protect the court process[30].

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[29] **Johnson v Gore Wood & Co** [2002] 2 AC 1 at p30H-31F
[30] **JSC VTB Bank v Skurikhin & Ors** [2020] EWCA Civ 1337 (21 October 2020)

[37] The High Court has accordingly concluded that in the exercise of inherent jurisdiction of the High Court to control its proceedings, the appellant's CR application could not proceed in as much as it would be an abuse of process to allow it to proceed though literal application of law may allow such an application to be filed in court. The High Court has explained that the applicant was convicted after a trial on evidence presented to the court and allegation of denial of fair trial is based on the transfer of the said action from Magistrates Court to the High Court; whether the allegation has merits can adequately dealt with in appeal by Court of Appeal.

[38] Considering the above principles of law on inherent jurisdiction of court to strike out a matter based on abuse of process, I do not see any reason to disagree with the conclusion arrived at by the High Court. However, I am satisfied that even without resorting to inherent jurisdiction, the High Court was right in striking out the appellant CR application an abuse of process on the basis of availability of an adequate alternative remedy under section 44(4) of the Constitution.

Orders of the Court:

1. *Notice of motion filed on 11 October 2024 seeking leave to appeal/leave to appeal out of time is dismissed.*
2. *Notice and Grounds of Appeal filed on 09 August 2024 is incompetent and pro forma dismissed.*
3. *Appellant is directed to pay costs of $1250.00 each to the 02nd respondent and 01st interested party within 21 days hereof.*

COURT OF APPEAL FIJI

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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Karunaratne Lawyers for the Appellant
AG's Chamber for the 1st and 2nd Respondents and 2nd Interested Party
FICAC for the 1st Interested Party