

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

CIVIL APPEAL NO. ABU 074 of 2024
[In the High Court Action No. HBM 156 of 2021]

BETWEEN : **ILAISA SOUSOU CAVA**

Appellant

AND : **THE COMMISSIONER OF FIJI POLICE FORCE**

1st Respondent

THE ATTORNEY-GENERAL OF FIJI

2nd Respondent

Coram : **Prematilaka, RJA**

Counsel : **Appellant in person**
Mr. P. Nawaikula for the Respondents

Date of Hearing : **09 October 2025**

Date of Ruling : **23 October 2025**

RULING

[1] On 29 December 2021, the appellant (original applicant) who was convicted¹ and was serving a life imprisonment for murder with a minimum term of 16 years and concurrently

¹ **State v Nute** [2008] FJHC 325; HAC139.2007 (26 November 2008)

07 months imprisonment for the unlawful use of a motor vehicle², sought constitutional redress (CR) from the High Court (HC) on the ground that his constitutional rights under section 26(1) and (3) (i.e. the right to equality and freedom from discrimination) have been infringed, due to the first respondent's delay and inaction to make proper investigation in relation to the new evidence he has provided. He sought an investigation in relation to the new information or 'evidence' provided by another prisoner. I shall deal with the so-called fresh evidence later in detail. The gist of the appellant's complaint is that the 'fresh evidence' he presented, has not been investigated by the first respondent.

[2] On 26 January 2023, the applicant's application for constitutional redress was declined³. The HC also held that the appellant's contention that he has not had a reply from the first respondent is incorrect because the first respondent, by letter of 2 May 2022 (produced by the appellant), informed him that the investigation process had been concluded and the police did not have jurisdiction to investigate the matter further unless directed by Court.

[3] On 05 April 2024, the appellant has filed a notice of motion and supporting affidavit in the Court of Appeal seeking leave to appeal the said HC judgment. In his affidavit he has sought several other reliefs some of those were not even prayed for in the CR application. However, the common theme that runs through his affidavit is that he wants the 01st respondent to arrest of one Paul Dikson Naqeleuvuki and investigate his involvement into the murder of the taxi driver Murad Buksh for which the appellant and two other were convicted and sentenced.

[4] In a subsequent motion and affidavit received on or about 28 August 2024, the appellant seems to have expanded his relief sought from this court in that he has moved this court to direct the 01st respondent to further investigate new evidence provided by one Lepani Temo (a fellow inmate), to apprehend the owner of the 04 fingerprints found inside the taxi and arrest him. He has also explained the reason for the delay as Court of Appeal Registry

² **State v Nute** - Sentence [2008] FJHC 327; HAC139S.2007S (26 November 2008). Nute was one of the co-accused

³ **Cava v Commissioner of Police** [2023] FJHC 31; HBM156.2021 (26 January 2023)

(Registry) misplacing his initial application received by them on 25 August 2023. It appears from the record available to me that the first set of papers received by the Registry on 05 April 2024 had been signed by the appellant on 02 April 2024.

- [5] With the leave of this court the appellant filed the third set of motion and affidavit on 04 December 2024 seeking enlargement of time to appeal the HC judgment. He has in his affidavit said that by the time the information given by Lepani Temo surfaced on 10 December 2015, he had exhausted all his appeals in the Court of Appeal and the Supreme Court. He has also said that his letters to the 01st respondent requesting a further investigation went unanswered. He has also attempted to lead fresh evidence before the Supreme Court again but was told that in view of **Balaggan v State**⁴, the appellant's request for another review cannot be accepted. His letter to the Director of Prosecutions also has not drawn any reply.

Appellant's history of litigation

- [6] As adverted to earlier, the appellant and two others were convicted and sentenced for life imprisonment for murder with a minimum term of 16 years and concurrently 07 months imprisonment for the unlawful use of a motor vehicle in the High Court on 28 November 2008. In doing so, the sentencing judge remarked:

"This was a dreadful crime. A young taxi driver was asked to drive to a remote part of Veisari where he assaulted him, strangled him with a rope, then hung him by the neck at the bridge in Veisari. The facts of the case warrant a minimum term of 17 - 18 years imprisonment. However given your relative youth, I will reduce that to 16 years"

- [7] On 10 November 2009, his enlargement of time to appeal application to the Court of Appeal was refused⁵ by a judge of the court that also said *"He has 22 previous convictions some of which are for offences of violence."* Upon renewal, the Full Court too dismissed his appeal⁶ on 06 December 2013; the ground of appeal against sentence based on the

⁴ [2023] FJSC 3; CAV0022.2016 (27 April 2023)

⁵ **Cava v State** [2009] FJCA 93; AAU0019.2009 (10 November 2009)

⁶ **Nute v State** [2013] FJCA 134; AAU0110.2008; 0019.2009 (6 December 2013)

minimum term imposed ‘was abandoned’ at the hearing according to the judgment. The appellant’s appeal to the Supreme Court was dismissed on 23 April 2015⁷. He applied for a review under section 98(7) of the Constitution against the Supreme Court decision and another division of the Supreme Court (except one of the justices) on 16 October 2015⁸ declined to review the earlier decision.

What is fresh evidence relied on by appellant?

[8] The appellant claims to have discovered the information of Lepani Temo on 10 December 2015. Lepani Temo admittedly was a prisoner serving a life sentence for murder in Taveuni Island. While Lepani and his roommates were discussing a murder in Veisari, Lami in Viti Levu, the room mates had told him that a youth named Sousou implicated in that murder was serving at Maximum Prison. Lepani had written to the appellant in October 2014 what he heard from a person called Paul Dickson Naqelevuki who came to his Vuna village in Taveuni in 2010, stayed with him until Lepani was convicted for murder and sentenced, helping him with farming. It appears from paragraph 8 of Lepani’s affidavit that Paul Dickson had claimed to have been convicted of that murder in Veisari, Lami. As per what Paul Dickson had told Lepani, Paul along with two youths (names undisclosed) had got involved in the robbery of a taxi driver of Indian origin in August 2011 in Suva town who was hired to take them to Tamavua. At Tamavua, the taxi driver was tied and put inside the taxi boot. Who drove thereafter is not disclosed. Lapani had got off the taxi at Lami town and did not know what happened thereafter but later heard that the taxi driver had been found dead at a bridge in Veisari, Lami.

[9] At the trial against the appellant (who was the 02nd accused) and the other two (Paul Dikson was not one of them), the main evidence against the appellant among other circumstantial evidence as summarized by the trial judge was follows:

‘Also giving evidence was Police Constable Nacanieli Lomani, who was one of the police officers manning the Delainavesi Roadblock on the night of the 24th of August 2007. He was on duty from 11pm to 5am. There was a searchlight shining on the road

⁷ **Cava v State** [2015] FJSC 3; CAV0028.2014 (23 April 2015)

⁸ **Cava v The State** CAV0028.2014 (16 October, 2015) - Unreported

and one lane was blocked so vehicles had to slow down to go past the checkpoint. At about 3am he saw a white station wagon taxi coming from Suva towards Lami with "Freedom Taxis" written in red letters on the door. The driver was an Indian man. He recognized Sousou the 2nd Accused as the person sitting next to the driver, and Moto the 1st Accused seated on the back seat. At the back of the taxi he saw stickers and he shared a joke about them with his fellow police officers at the checkpoint. He said that when he recognized the 1st Accused and the 2nd Accused he was standing in the middle of the road an arm's length away from the taxi, and said that he recognized them because he lived with them in Nadonumai Settlement for 20 years. He is also related to the 2nd Accused.'

'At about 5am he saw the same taxi coming back past the checkpoint. This time he could not identify the driver but he saw Moto, the 1st Accused in the same back seat. Someone else was sitting beside Moto, but the seat next to the driver's seat was empty. This time the taxi drove past at high speed towards Suva'.

- [10] The other crucial evidence against the appellant came from the 03rd accused's testimony under oath at the trial. On the day of the murder, at Albert Park he had met the 01st and 02nd accused both of whom he knew from the time he lived at his grandfather's house at Nadonumai. Both the 01st accused and the appellant (02nd accused) were from at Nadonumai. They hired the deceased taxi driver in Suva. The taxi went past the police checkpoint at Delainavesi, with the 3rd accused sitting next to the driver, and the other two sitting in the back seat. The taxi did not stop at Nadonumai. It went instead to Veisari with the appellant telling the others that he wanted to pick something up in Veisari. At the driveway to Prakash's dairy farm he and the driver (the deceased) said there were no houses and no lights ahead. Then the 01st accused put a kitchen knife to his neck, and the appellant did the same to the taxi driver. Then there was an assault by the 01st accused and the appellant of the taxi driver just outside the taxi, that he (the 03rd accused) was tied up with a rope by the 01st accused inside the taxi and that he saw the other two take the taxi driver away by force over the bridge. They returned after a while without the driver. He drove the taxi back under duress by the other two who got off at Nadonumai. He then carried various passengers around Suva and then stole the deceased's taximeter and mobile phone which were later duly identified. Thus, the 03rd accused did directly implicate both the 01st accused and the appellant on all counts of the Information by his evidence that the deceased was assaulted by them, then dragged to the bridge. Thus, an inference could be drawn from

his evidence that the two then killed the taxi driver, or that they were part of a joint enterprise to kill him.

[11] 01st accused and the appellant in their sworn testimonies denied any involvement in the murder of the taxi driver. They raised evidence of *alibi* but gave the prosecution notice of *alibi* just before the trial commenced and not 21 days before as required by law.

[12] It appears that the assessors unanimously opined that the appellant was guilty of Murder and Unlawful Use of Motor Vehicle but acquitted him of Larceny. The High Court judge agreed and convicted and sentenced him accordingly. The Court of Appeal and the Supreme Court affirmed the convictions. The Supreme Court even declined to review its earlier decision. Thus, every tier of the criminal justice system has accepted and acted upon the above incriminating evidence against the appellant.

[13] Could their decisions have been any different if (hypothetically though) Paul Dickson's version were available to them? I do not think so. Firstly, as per sworn affidavit of Lepani, Paul Dickson had told him in 2011 that he was involved in a murder in Veisari, Lami (by participating in the robbery of the taxi but unaware of anything beyond) and convicted. It is unexplained how Paul Dickson after his conviction happened to be in Vuna village in Taveuni where Lepani first met him in 2010 in the company of church elders if he was convicted of the incident involving murder of a taxi driver when the actual incident itself happened in August 2007 and it would have taken a few years for the trial to conclude and him to serve the sentence. Paul Dickson had not revealed the names of others involved in the so-called murder of a taxi driver nor any other details about their trial etc. to Lepani. The whole scenario as allegedly described by Paul Dickson to Lepani relating to the robbery and murder is quite different to what the 03rd accused had revealed at the trial against the 01st accused, 03rd accused and him. I will not go into details of these irreconcilable differences. Suffice it to say that they are many. Thus, to say the least Paul Dickson, if he actually said what Lepani attributes to him, comes up as incredibly untrustworthy. His evidence would not have made any difference to the outcome of the trial against the appellant and two others or in any subsequent appeal proceedings.

Has the 02nd respondent taken any action on the appellant's complaint against Paul Dickson? Arrest of Paul Dickson and comparison of his finger prints.

[14] The appellant and his parents had written to the 02nd respondent in March 2016 seeking immediate arrest of the murder suspect who was obviously Paul Dickson. It appears from the documents marked ND2 and ND3 attached to the affidavit in opposition by the Deputy Director Legal of the Fiji Police Headquarters that the police had investigated the complaint made by the appellant and his parents and Paul Dickson had been arrested and interviewed under caution on 22 March 2017. However, Paul Dickson had denied any involvement in the murder of taxi driver Murad Buksh and told the police that he was in Vanua Levu on the alleged date and time of the incident. He had consented for his finger prints to be taken for verification with those uplifted from the taxi driven by Murad Buksh. The CID had sent 02 sets of Paul Dickson's finger prints to the Forensic Science Service for verification on 28 March 2017. However, it appears that no action on it had been taken until July 2022 and when Forensic Science Service tried to locate the finger prints recovered from the scene, they could not locate them. As a result, all what they could encountered was an entry by ex ASP Iliesa Bula to the effect that only the 03rd accused's finger prints were identified from those uplifted from the taxi. Thus, no comparison of Paul Dickson's finger prints with those uplifted from the taxi was possible.

[15] This is confirmed by the evidence at the trial as found in the summing-up:

The taxi of the deceased was dusted for fingerprints. You heard the evidence of Inspector Iliesa Bula who compared three prints found on the rear vision mirror and front driver's door of the taxi with Manoa's prints. He found that Manoa's prints were on the taxi. He said he had no doubt that the prints found were Manoa's prints. Under cross-examination he said that the prints were uplifted by Corporal Sakiusa Jitoko on the 27th of August 2007 and given to IP Bula on the 5th of September 2007. He was given Manoa's prints for comparison purposes after Manoa was charged.

Corporal Jitoko gave evidence of how he dusted the taxi under the supervision of IP Bula and uplifted the three prints. He also visited the crime scene and drew the sketch plan. He said that the drag marks measured 27 metres from the track to the bridge where the body was found. Under cross-examination he said that no fingerprints could be obtained from the rope because it had a rough surface that the fingerprints he had

uplifted were kept in his locker until he handed them over to IP Bula and that no one could have tampered with them.

[16] In the light of this evidence, the failure to compare Paul Dickson's finger prints with those uplifted from the taxi becomes immaterial. There were only three finger prints uplifted and all three tallied with those of the 03rd accused. Thus, there is no possibility that any one of them would have belonged to Paul Dickson for no two people have the same finger prints. In any event, the prosecution never alleged that the appellant's finger prints were found in the taxi. Thus, his complaint of the police not having compared Paul Dickson's finger prints with those uplifted from the taxi would not advance his interests at all.

[17] Therefore, the hypothesis of new evidence arising from the alleged confession of Paul Dickson to Lepani advanced by the appellant as to the appellant's guilt holds little water. It has no prospect of success at all.

Appellant's previous attempt at judicial review

[18] In 2019⁹, the appellant sought judicial review against the Commissioner of Police for failing to take steps against a constable named, Nacanieli Lomani of the Fijian Police Force whose crucial evidence against the appellant was summarized above. The High Court judge describes the nature of it as follows:

2. *The complaint against Constable Lomani is that he gave false evidence when testifying in Court to the effect that he identified the Applicant travelling in the vehicle of the murdered taxi driver; that as a result of such false evidence the Applicant was convicted and sentenced to imprisonment; that Constable Lomani visited the residence of his parents and "confessed" to his mother – in the presence of his grandmother – that he had actually not been able to identify the Applicant contrary to what was stated in his testimony; that Lomani had asked his mother, Ms. Mareca Vakatalai, to forgive him, and given an assurance that he would make a fresh statement. Lomani's visit to his mother's house was on 6 November 2011.*

⁹ **Cava v Commissioner of Police** [2019] FJHC 600; HBJ5.2018 (19 June 2019)

3. *Constable Lomani's visit to the Applicant's mother's house is not in dispute. That Lomani apologized to the Applicant's mother is also not in dispute. These matters are admitted in the statement given by Lomani. What is in dispute is whether or not Lomani gave false testimony; which Lomani has denied and has stuck to his original statement. It is on this question, and on the alleged inaction of the Police Commissioner in response to the complaints made by Mr. Cava and his mother, that this application for Judicial Review has been preferred.*

[19] However, the High Court refused leave to apply for Judicial Review and the appellant's application was dismissed on 19 June 2019.

Appellant's challenge to the sentence

[20] On 28 October 2020, the appellant filed an application for leave to appeal out of time in the Supreme Court to challenge the sentence (despite having abandoned the sole ground of appeal on sentence at the hearing into the his appeal by the Court of Appeal on conviction and sentence and not urged the same in the Supreme Court) passed by High Court for the offence of murder. While striking out and dismissing the application, then Chief Justice advised the appellant to seek enlargement of time to appeal from the Court of Appeal¹⁰. Accordingly, he sought enlargement of time from the Court of Appeal to challenge the sentence and a judge of this court allowed enlargement of time to appeal against sentence primarily on the basis that *'whether the 'abandonment' of the sentence appeal by the appellant's counsel is valid in law and if not, whether his sentence appeal is still pending and undecided are questions of law'*¹¹. The Full Court heard his sentence appeal but dismissed the same¹² on 28 November 2024 subject to a very minor variation.

[21] Not stopping at challenging his sentence appeal unsuccessfully in the Court of Appeal, the appellant made an application to the Supreme Court to lead fresh evidence of Lepani Temo on 16 April 2021. Though the Supreme Court Registry acknowledged the filing of the appellant's application, it was refused by the Registry on 07 September 2023 on the

¹⁰ Cava v State [2022] FJSC 1; CAV 0028 of 2014 (13 January 2022)

¹¹ Cava v State [2023] FJCA 115; AAU0019.2009 (27 June 2023)

¹² Cava v The State [2024] FJCA 226; AAU0019.2009 (28 November 2024)

strength of the decision in *Balaggan v The State* (supra) stating that it was an abuse of process.

Appellant's first attempt at constitutional redress

[22] The appellant on 11 November 2021, filed his first application for constitutional redress seeking an interpretation of the Constitutional provisions relating to release of prisoners serving minimum term for murder. The High Court held that it is clear that the applicant's sentence is life imprisonment and that he may only be considered for a release once he had served a minimum term of 16 years. His application for constitutional redress was therefore considered misconceived and dismissed on 01 July 2022¹³.

Analysis of Lepani Temo's affidavit evidence

[23] Suffice it to say, that since Lepani Temo's evidence as found in his affidavit on 10 December 2015 much water has flown under the bridge. Paul Dickson has clearly denied any knowledge or connection with the murder of taxi driver Murad Buksh. All three finger prints uplifted from the taxi were already proven to be those of the 03rd accused. In this context, Lepani Temo's evidence has no value or weight. He has not seen the incident and only allegedly heard a confession from Paul Dickson. However, Paul Dickson completely detached himself from the murder of Murad Buksh. There is nothing to indicate that Paul Dickson had either known or confessed to Lepani. Thus, no purpose would have been served except wasting valuable judicial time and administrative costs in allowing the appellant to pursue his application to lead fresh evidence. In any event, by that time, the appellant's review application also had been refused by the Supreme Court.

Enlargement of time to appeal the impugned HC decision

[24] The principles applicable to extension of time is well-established¹⁴ and I intend no repetition here. I have very recently dealt with in great detail this topic in relation to a constitutional

¹³ *Cava v Attorney General of Fiji* [2022] FJHC 351; HBM143.2021 (01 July 2022)

¹⁴ See for e.g. *Devi v Kumar* [2025] FJCA 91; ABU067.2020 (12 June 2025) at [4].

redress matter¹⁵. 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 circumstances¹⁶. 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 be shown to be wrong but it must also be shown that an injustice would flow if the impugned decision was allowed to stand¹⁷.

[25] As far as the appellant's 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 not the other considerations for enlargement of time. The prospect of success threshold for enlargement of time to appeal is similar to leave to appeal on interlocutory orders¹⁸. 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?*"¹⁹.

[26] The summons to strike out by the 01st and 02nd respondents was based on (i) Order 18 Rule 18(1)(a) of the High Court Rules and inherent jurisdiction of court, and additionally (ii) the fact that the appellant's application was out of prescribed time of 60 days [see Rule 3 sub rule 2 of the High Court (Constitutional Redress) Rules] and (iii) there is an adequate available remedy as per section 44(4) of the Constitution.

[27] I have canvassed the principles relating to striking out a constitutional redress matter in *Salote Vuibureta Radrodro v Chief Registrar and others* (see foot note 15) under section

¹⁵ **Salote Vuibureta Radrodro v Chief Registrar and others** ABU 68 of 2024 (16 October 2025) (unreported)

¹⁶ **Totis Inc v Clark** [1996] FJCA 49; ABU0035.1996 (12 September 1996)

¹⁷ **Shankar v FPNF 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)

¹⁸ **Malani v Director of Public Prosecutions** [2025] FJCA 82; ABU019.2022 (6 June 2025) at [6] – [8]

¹⁹ **Fatiaki v Mobil Oil Australia Pty Ltd** [2025] FJCA 52; ABU80.2024 (26 March 2025) at [11] – [16]

44(4) of the Constitution (availability of an adequate alternative remedy), the interplay between ‘adequate alternative remedy’ & ‘abuse of process’ and abuse of process under inherent jurisdiction.

[28] Section 44(4) states 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. 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*'²⁰.

[29] What happens if an applicant has already exhausted his adequate remedies without success but now attempts to canvass the same grievance by way of a constitutional redress application. One may argue that section 44(4) would apply not only when there is an adequate remedy still available but also when those adequate remedies that are available have already been exhausted. Even if that argument does not succeed, I think, such a situation will amount to an abuse of process and the constitutional redress application could be struck out on the ground of abuse of process ignoring section 44(4).

[30] Abuse of process is one of the grounds for striking out under Order 18 Rule 18(1)(d) of the High Court Rules. However, in addition to Order 18 Rule 18(1)(d), an action may be struck out on the basis of abuse of process under inherent jurisdiction of court as well. Nevertheless, the concept of ‘abuse of process’ is the same in both situations. It is trite law that the boundaries of what may constitute an abuse of the process of the court are not fixed²¹ and the categories are not closed and considerations of **public policy** and the **interests of justice** may be very material²².

²⁰ **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]

²¹ **Brandt v Commissioner of Police (Montserrat)** [2021] 4 All ER 637 at 646-647

²² As per Stuart-Smith LJ in **Ashmore v British Coal Corp** [1990]2 All ER 981 at 984

- [31] The approach that should be adopted is to promote 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).
- [32] 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**²³, 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.
- [33] The appellant argues that the matters he urged before this court regarding police investigations in to Paul Dickson in connection with the murder of the taxi driver Murad Buksh of which he and two others were convicted, came to light after he had already exhausted appeal process. Hence, his application for constitutional redress.
- [34] I have taken great pains to analyze the appellant's grievance but finds that the substantive matters he has raised with the police have been adequately investigated to the maximum possible limits with the available material at that time. Their investigations have not revealed that Paul Dickson had anything to do with the murder of taxi driver Murad Buksh. I have also demonstrated that Lepani's evidence (even if led but is likely to be hearsay) would not in any way adversely affect the conviction of the appellant. All finger prints founds inside the taxi belonged to the 03rd accused and the fact that the police could not compare Paul Dicksons' finger prints with those uplifted from the taxi is not crucial, for already they were identified as those of the 03rd accused and could not belong to anyone else.
- [35] In the circumstances, it would be an abuse of process if the dismissed constitutional redress application of the appellant were to continue to be litigated in the Court of Appeal. The inherent power which any court must possess is to prevent misuse of its procedure in a way

²³ [1981] UKHL 13; [1982] AC 529 (HL)

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 people²⁴. Such actions can be struck down as an abuse of process even 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 process²⁵. Therefore, the appellant's constitutional redress application amounts an abuse of process and could be dismissed under Order 18 Rule 18(1)(d) of the High Court Rules and inherent jurisdiction.

[36] I may even conclude that in all the circumstances I have discussed there is non-disclosure of a reasonable cause of action by the appellant which is another ground for striking out under Order 18 Rule 18(1)(a) of the High Court Rules.

[37] Therefore, the impugned striking out order of the High Court could be justified on several grounds I adverted to above. I therefore see no realistic prospect of the appellant's appeal grounds succeeding in the Court of Appeal.

[38] Further, the same respondents have already faced 01 judicial review application and 02 constitutional redress application by the appellant. Thus, no more prejudice should be caused to the respondents. The appellant has used criminal justice system to pursue multiple appeals and applications. I have not considered the delay against the appellant as he has been serving an imprisonment in prison.

[39] Therefore, the appellant's application for enlargement of time to appeal should be dismissed. I order no costs against him only because the appellant is a serving prisoner.


²⁴ **Hunter v Chief Constable of the West Midlands Police** [1982] AC 529 at p. 536C

²⁵ **JSC VTB Bank v Skurikhin & Ors** [2020] EWCA Civ 1337 (21 October 2020)

Order of the Court:

1. *Appellant's enlargement of time to appeal the High Court judgment dated 26 January 2023 is dismissed.*




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

Solicitors:

Appellant in person
Attorney-General's Chambers for the Respondents