

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

CIVIL APPEAL NO. ABU 0064 of 2019
[In the High Court at Suva Case No. HBM 07 of 2019]

BETWEEN : **PITA TOKONIYAROI**

Appellant

AND : **THE PRESIDENT OF FIJI**

1st Respondent

THE PRIME MINISTER OF FIJI

2nd Respondent

THE ATTORNEY-GENERAL OF FIJI

3rd Respondent

THE CHIEF JUSTICE OF FIJI

4th Respondent

Coram : **Prematilaka, RJA**

Counsel : **Appellant absent and unrepresented
Mr. W. Mucunabitu for the Respondents**

Date of Mention : **10 March 2025**

Date of Ruling : **13 March 2025**

RULING IN CHAMBERS

[1] The appellant (then an inmate serving an imprisonment for murder and robbery with violence) had filed a timely appeal against the Ruling dated 03 July 2019 of Hamza, J

dismissing his application for Constitutional Redress. There are several appeal grounds in the notice of appeal filed on 23 July 2019. However, on a perusal of the impugned ruling, it appears that the High Court had dismissed his application on the basis that the appellant had earlier filed another application for constitutional redress (HBM 19 of 2016) which too had been dismissed by the High Court¹ on 23 February 2017 because the appellant had filed it after 16 years and therefore in breach of section 3(2) of The High Court (Constitutional Redress) Rules 2015 which stipulates that “*An application must not be admitted or entertained after 60 days from the date when the matter at issue first arose unless a Judge finds there are exceptional circumstances and that it is just to hear the application outside of that period*”. Hamza, J had concluded that the matters set out in the application before him were the same as in the previous one and therefore, the second application was *res-judicata*.

- [2] Further, the impugned ruling states that the appellant had appealed to the Court of Appeal (ABU 30 of 2017²) against the dismissal of his previous application and the Court of Appeal had dismissed the appeal on 30 November 2018 which is factually correct. The appellant had stated that he had appealed to the Supreme Court. The first judgment the Supreme Court had been delivered on the appellant’s appeal on 26 August 2022³. In that judgment the Supreme Court states that the appellant had challenged the judgment of the Court of Appeal - Civil Appeal No. ABU 30 of 2017 - on merits and thereafter, in accordance with Rule 6 of the Supreme Court Rules the Chief Registrar had fixed the security for costs at \$5,000 while the appellant was still serving his sentence. The appellant had then moved a petition seeking dispensing with security for cost and the Hon. Chief Justice had placed the matter for consideration before the Supreme Court. The Supreme Court had dealt with only the question of security in the judgment and not the merits and set aside the order for security for cost and directed that the appeal against the judgment of the Court of Appeal in Civil Appeal No. ABU 30 of 2017 be listed for consideration without the petitioner having to deposit any amount towards security for costs. The merits

¹ **Tokoniyaroi v Commissioner of Police** [2017] FJHC 133; HBM19.2016 (23 February 2017)

² **Tokoniyaroi v Commissioner of Police** [2018] FJCA 235; ABU30.2017 (30 November 2018)

³ **Tokoniyaroi v Commissioner of Police** [2022] FJSC 34; CBV0017.2019 (26 August 2022)

of the appellant's appeal to the Supreme Court challenging the order in HBM 19 of 2016 and judgment in ABU 30 of 2017 had been dealt with in a subsequent judgment delivered on 30 June 2023⁴ where his appeal had been dismissed. The appellant was still in incarceration at the time of this judgment.

[3] As for his appeals against his conviction and sentence on 5 May 2005 the Court of Appeal⁵ (AAU 43 of 2005) and the Supreme Court⁶ (CAV 04 of 2013) have dismissed his appeals.

[4] It appears from a perusal of the court record and the directives made from time to time by this court in his present appeal from 17 March 2021 that the appeal record which includes judge's notes had been certified on 11 January 2022. However, since the appellant had insisted on transcripts of the High Court proceedings the matter has been adjourned to obtain the same and not been listed on a call-over day to fix a date and time for full court hearing of his appeal. On 24 October 2023 the court had directed the appellant to file an affidavit in support of his appeal. The appellant (still an inmate in the prison) had finally filed an affidavit on 26 August 2024. This court on 05 December 2024 (the appellant was present in court on this day) directed both parties to file written submissions; the appellant on 02 January 2025, the respondent on 30 January 2025 and the matter to be mentioned on 05 February 2025.

[5] However, the appellant was absent on 05 February 2025. The officers at the Court of Appeal Registry informed me that the appellant had visited the Registry on the morning on 02 January 2025 and informed that he was not filing any written submissions and his appeal was to be called on that day. The Registry had informed him that his appeal was fixed on the last day to be mentioned on 05 February 2025. I directed the Registry to serve a notice on the appellant and adjourned the matter to 06 March 2025. The appeal was mentioned again on 06 March 2025 and 10 March 2025. However, the appellant was absent on both

⁴ **Tokoniyaroi v Commissioner of Police** [2023] FJSC 24; CBV0017.2019 (30 June 2023)

⁵ **Tikoniyaroi v State** [2011] FJCA 47; AAU0043.2005 (29 September 2011)

⁶ **Tokoniyaroi v State** [2014] FJSC 9; CAV4.2013 (9 May 2014)


days. Since 05 February 2025 the Registry had made numerous attempts to contact the appellant over the mobile phone number given to the Registry by him but the calls had not been answered. The Registry does not have his address either. It appears that by 02 January 2025 he was out of prison.

- [6] The counsel for the respondents made an application on 10 March 2025 that the appeal should be dismissed for non-prosecution in terms of section 20(1)(g) of the Court of Appeal Act.
- [7] It appears to me that the appellant has lost interest in the prosecution of his appeal and his appeal should stand dismissed for want of prosecution. However, I am inclined to afford him one more chance to indicate to this court whether he intends to prosecute his appeal in which event this court would consider reinstatement of his appeal.

Orders of the Court:

- [1] *Appellant's appeal is dismissed in terms of section 20(1)(g) of the Court of Appeal Act.*
- [2] *If the appellant still wishes to prosecute his appeal diligently, he may make an application to reinstate the appeal within a reasonable time of the service of this Ruling on him.*
- [3] *The respondent is directed to serve a copy of this Ruling on the appellant as soon as possible.*




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

Solicitors:

Appellant absent and unrepresented
AG's Chamber for the Respondent