

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CONSTITUTIONAL JURISDICTION

Constitutional Application No. HBM 02 of 2017

ETUATE RULADE

[Applicant]

vs.

COMMISSIONER FIJI CORRECTIONS SERVICE

[1st Respondent]

&

SUPERVISOR OF CORRECTIONS – WESTERN DIVISION

[2nd Respondent]

Counsel : Applicant in Person
: Mr. J. Mainavolau for the Respondents

Date of hearing : 17 February 2017

Date of Ruling : 23 February 2017

R U L I N G

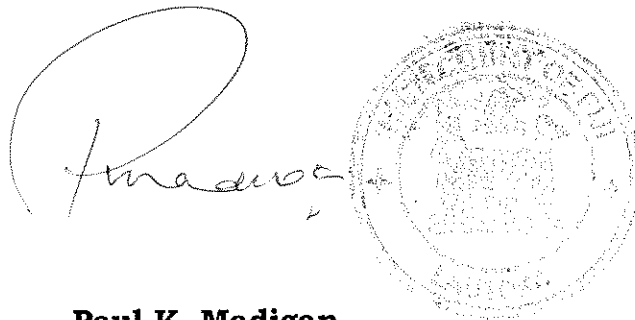
- [1] By way of Notice of Motion and accompanying sworn affidavit, the Applicant makes application for Constitutional Redress.
- [2] He deposes in his affidavit that he is a remand prisoner currently being held with convicted prisoners in the Maximum Corrections Centre at

Naboro, contrary to section 13(1)(e) of the Constitution of the Republic of Fiji 2013 ("the Constitution").

- [3] In addition he claims that while he is being held there, he is being denied facilities in which to prepare his defence in contravention of section 14 (2)(c) of the Constitution.
- [4] The application is well within the time allowed by the High Court (Constitutional Redress) Rules 2015 and was therefore accorded a hearing.
- [5] At the first hearing Counsel for the Respondents sought to have the claim struck out on technical grounds. He submitted that neither the notice of motion nor the accompanying affidavit was in the form stipulated by the High Court Rules. In particular he submitted that the affidavit was not endorsed with the date of swearing in accordance with Order 41.9 (2) and the notice of motion did not clearly state the nature of the claim or the redress sought.
- [6] He continues by citing other High Court Rules that were not complied with.
- [7] In response, the unrepresented applicant stressed his lack of knowledge of the law and legal procedure. He had no assistance in drafting his documents but merely wished to state his grievance as best as he could.
- [8] In assessing this application to strike out and nothing more, I have regard to the very important declarations in the Preamble to the Constitution, *viz*
- That the Constitution is the Supreme law of Fiji;
 - That we are committed to the recognition and protection of human rights and the respect for human dignity;
 - That we are committed to justice.
- [9] Moreover this Court has regard to section 3 of the Constitution which would require application of the principles and rights of the Constitution

over and above any other Law which would appear to be inconsistent with the values enshrined therein.

- [10] With those provisions in mind this Court would refuse the Application to strike out the application made by the remand prisoner. It is perfectly understandable that a lay person drafting homemade pleadings will not be aware of the strict rules of compliance stipulated by the High Court Rules.
- [11] The notice of motion is clear in its requests and the affidavit which has been properly sworn is enough to clearly state the grievances of the prisoner Applicant and the background to that claim of breach.
- [12] It should be very rare indeed that a constitutional redress application made in time should be defeated by technicalities as to form.
- [13] Before a determination of the issues can be made with any declaration necessary or relief ordered, evidence and submissions will need to be brought before the Court.
- [14] To this end I order that the matter be called before Sharma J. on April 5th at 9.30am.

The image shows a handwritten signature in cursive script that reads "Paul K. Madigan". To the right of the signature is a circular official seal. The seal features a central emblem with a crown and two figures, surrounded by the text "HIGH COURT OF THE WESTERN DISTRICT OF NEW ZEALAND".

Paul K. Madigan
Judge

At Lautoka
23 February 2017