

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CONSTITUTIONAL JURISDICTION

Constitutional Redress Case No. HBM 26 of 2016

JOSUA NATAKURU

v

1. ATTORNEY GENERAL OF FIJI
2. COMMISSIONER OF POLICE

Applicant in person
Mr Mainavolau (A.G.'s Office) for the two Respondents

Dates of Hearing: 27 April, 29 May
and 19 June 2017

Date of Judgment: 29 June 2017

JUDGMENT
(Constitutional Redress)

- [1] By way of Notice of Motion with accompanying affidavits, the Applicant applies for constitutional redress to compensate perceived breaches of his constitutional rights to adequately prepare for trial and to be free from physical torture.
- [2] These rights are enshrined in sections 14(2) (c) and 11(1) of the Constitution of the Republic of Fiji 2013 ("the Constitution").
- [3] Apart from declarations, the applicant seeks injunctions to prevent prison officers committing assaults on prisoners and compensation by way of damages of F\$5,000 for personal injury and an additional F\$500,000 for special damages.
- [4] At the first hearing of the matter the applicant accepted the fact that financial relief could only be awarded if he were to pursue the matter by way of writ of summons and also that he was not competent to make applications on behalf of other parties.

- [5] The applicant deposes in his affidavit sworn on 14 November 2016 that on the 12th September 2016 he was at the Lautoka Magistrates Court cell block after being remanded in a matter. He as given permission by the escort Officer in Charge to use a table and chair in the cell to prepare the closing submissions for his case.
- [6] After a short time an argument and brief fight broke out between the applicant and another remand prisoner over a beverage in the cell. The fight was stopped by two escorting Police Officers. The applicant deposes that these two officers assaulted him and pushed him to the floor. While on the floor he was kicked twice in the ribs by one of the officers.
- [7] He was later taken to the Lautoka Police Station to be transferred to Suva for other matters. The applicant lodged a complaint of assault against the officers concerned at Totogo Police Station. He was subsequently medically examined and his body x-rayed. The medical form dated 12 October 2016 shows that the applicant had a transverse fracture of 3 ribs (8,8 and 10) along the axillary line.
- [8] The applicant argues that as a result of this assault his right to prepare for his defence, as well as his right to freedom from physical torture were both violated because of the Police action.
- [9] Both the Attorney and the Police Commissioner oppose the application.
- [10] The application is brought before the Court pursuant to section 44 (1) of the Constitution.
- [11] Section 44 (4) of the Constitution provides "*The High Court may exercise its discretion not to grant relief in relation to an Applicationif it considers that an adequate alternative remedy is available to the person concerned.*"
- [12] The Respondents argue that the Applicant has to exhaust the alternative remedies available before seeking the redress claimed. One such remedy is the complaint of assault by the Police, the complaint being made to the Police. The complaint has not been satisfactorily addressed.
- [13] In the case of **Abhay Kumar Singh v D.P.P. and Attorney General** AAU 0037/2003 the Court of Appeal said:

"we note 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.”

[14] In **Aiyaz Ali v State** [2005]FJHC, HBM 0079 of 2004, the applicant therein complained of assault by a Police Officer. A medical certificate attached to his application showed a fracture of his nasal bone. The applicant was seeking damages for the assault and for the officer to be prosecuted even though he had been subject to internal discipline by the Prisons Department.

[15] Singh J. said this:

“An isolated incident of assault is an offence under the Penal Code and may also be subject of damages in tort. To elevate these under the evocative banner of abuse of human rights is really an abuse of process. The redress Rules do not provide a parallel process where other remedies are available. To use the Constitutional redress process as a substitute for normal procedures is to devalue the utility of this constitutional remedy. The applications under the Redress Rules are not a short cut or a system to by-pass existing mechanisms in law. Section 41 (of the then 1997 Constitution) is not an Aladdin’s cave which contains all the remedies for all the ills.”

[16] The court in that case dismissed the application because of other remedies being available.

[17] In the Privy Council case of **Harrikissoon v A.G. of Trinidad and Tobago** [1979]3 WLR 62, Diplock L.J. said:

“The right to apply to the High Court... for redress when any human right or fundamental freedom is or is likely to be contravened is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. The mere allegation that a human right or fundamental freedom of the applicant has been or likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court ...if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the Court”

[18] The applicant in his affidavits stresses that he has laid complaint about the assault, with no response as yet. Quite

clearly, he is aware of his rights to complain and even to launch a prosecution and these alternative remedies must be exhausted before a constitutional redress application could even be contemplated.

- [19] The authorities are clear and consistent. A constitutional redress application will not automatically succeed. It would be an abuse of process should this be regarded as an absolute path to redress. All other avenues must first be explored and exhausted.
- [20] A formal complaint has been made and it is to be hoped that the police will action this complaint in an independent and fair manner.
- [21] In the premises, the application does not succeed.
- [22] The Court exercises its discretion not to grant relief, given that a straightforward alternative remedy is available and is in process.

Order

1. The application is dismissed
2. There be no order for costs.



Paul K. Madigan
Judge

At Lautoka
29.06.17