

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**Constitutional Redress Application No. HBM 10 of 2018**

**DAVID LOCKINGTON**

[APPLICANT]

vs.

**THE STATE**

[1<sup>ST</sup> RESPONDENT]

&

**THE COMMISSIONER OF POLICE**

[2<sup>ND</sup> RESPONDENT]

&

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

[3<sup>RD</sup> RESPONDENT]

&

**THE ATTORNEY GENERAL OF FIJI**

[4<sup>TH</sup> RESPONDENT]

**Counsel** : Applicant in Person  
: Mr. J. Mainavolau for the Respondents  
**Date of Hearing** : 23<sup>rd</sup> August 2018 & 18<sup>th</sup> September 2018  
**Date of Ruling** : 18<sup>th</sup> September, 2018

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**R U L I N G**

[Constitutional Redress]

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1. The applicant, while being a serving prisoner at Maximum Correction Centre in Naboro, by Notice of Motion dated 17<sup>th</sup> January 2018, together with his even dated affidavit, supported by a Medical examination form marked as DL-1, filed this constitutional redress application on **12<sup>th</sup> February 2018** pursuant to section 44(1) of the Constitution of the Republic of Fiji 2013 (“the Constitution”)

2. In his affidavit he states;

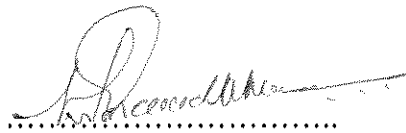
**That** he was prosecuted by the Respondents above at the High Court of Lautoka for one count of aggravated robbery under case number 194 of 2013 and thereafter was acquitted by the High Court.

**That** he was tortured by the Respondents mentally, physically and emotionally.

3. He prayed for a declaration that the prosecution in the H.C case 194 of 2013 for aggravated robbery was unlawful, he was subjected to torture and he has the right to get compensation.
4. The Respondents , having filed the acknowledgment of service on 8<sup>th</sup> March 2018, filed an Inter-parte summons on 6<sup>th</sup> April 2018 to strike out pursuant to Order 18 Rule 18 (1) (a) (b) & (d) of the High Court Rules 1988, supported by an affidavit of Mr. Rajesh Krishna , Director of legal unit at Fiji Police Headquarters.
5. Thereafter, the matter being adjourned for several dates for the applicant to obtain legal Aid, to file his affidavit in response, if needed, and to get ready for hearing, when it was mentioned on 23 of August 2018, this court was informed that his application for Legal Aid was rejected.
6. Accordingly, on applicant's request, time was given to retain a private counsel, to get ready for hearing and finally nothing being eventuated, the learned counsel for the Respondents on 23<sup>rd</sup> August 2018 made submissions to strike out the application as per the summons filed on behalf of the Respondents.
7. After hearing the learned counsel for the Respondents, this court granted the Applicant an adjournment to make his reply submission either through his private counsel or by him appearing in person and accordingly this court heard the applicant in person today 18<sup>th</sup> September 2018.
8. This application has been filed, in relation to an alleged incident of torture said to have taken place **in the year 2013**. No exact date of the alleged incident is given in the affidavit.
9. The applicant's Notice of Motion was filed in this Court on the **12<sup>th</sup> of February 2018**, almost after 5 years of the alleged improprieties.
10. Section 3(2) of the High Court ( Constitutional Redress ) Rules 2015 states that an application must not be admitted or entertained after 60 days from the date when the matter at issue first arose unless the Judge finds there are exceptional circumstances and that it is just to hear the application outside of that period.

11. The rule is stated in mandatory terms and requires the Court not to entertain an application for constitutional redress after the stipulated period.
12. The alleged incident of torture said to have taken place **in the year 2013**. The applicant's motion was filed on **12<sup>th</sup> of February 2018**. The applicant has not pleaded any reason to grant him the indulgence to pursue this application out of time.
13. I do not find any "exceptional circumstances" to hear this application after the lapse of the mandatory 60 day period stipulated in the High Court (Constitutional Redress) Rules, 2005
14. This application being some 5 years out of time, it will not be entertained. This application warrants nothing but dismissal. Accordingly, this constitutional redress application is hereby dismissed.
15. A copy of this ruling may be dispatched to the Maximum Correction Centre in Naboro to be served on the applicant. A copy may also be sent to the learned counsel for the respondents.



  
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A.M.Mohammed Mackie  
**Judge**

**At Lautoka  
18<sup>th</sup> September, 2018**