IN THE HIGH COURT OF FIJI
IN THE WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Miscellaneous Action No.: HBM 20 of 2019

BETWEEN : **Paula Malo Radrodro of Lot 45, VM Pillay Road, Lautoka.**

APPLICANT

A N D : **THE COMMISSIONER OF POLICE**

1ST RESPONDENT

A N D : **THE ATTORNEY-GENERAL OF FIJI**

2ND RESPONDENT

Appearances : **Applicant in person**
: **Mr. Vishal Lal Chauhan for the respondents**

Hearing : **Friday, 04th October, 2019**

Ruling : **Friday, 15th November, 2019**

R U L I N G

[01] The applicant applies for Constitutional Redress by way of Notice of Motion and Affidavit. The applicant relies on Article 44(3) of the Constitution. The applicant filed this Constitutional Redress application on 22/05/2019. The application is supported by an Affidavit sworn by the applicant on 21/05/2019. The applicant's Notice of Motion and the Supporting Affidavit was served on the respondents.

[02] The application for Constitutional Redress was strongly opposed by the respondents. The Attorney-General filed an Affidavit in Response through Mr Vishal Chand, the Legal Officer of the Fiji Police Force on 26/07/2019 followed by an Affidavit in Reply thereto. On the 04th October, 2019, the matter was taken up for hearing and the parties presented oral submissions to Court.

[03] Essentially, the applicant claims that thieves have broken into his house and had stolen his scientific inventions and discoveries. The thrust of his allegation is that the Police has never bothered to investigate the complaint that he lodged between January to March, 2019.

In reply, the respondents say that necessary actions were taken by the Police Officers to investigate the complaint lodged by the applicant. The respondents further state that there being no likelihood of success into the investigation, the applicant's report file was closed by Officers of the Lautoka Police Station.

[04] Finally, the applicant alleges Police inaction and lack of response to his complaint against one 'Ilisoni Uganidavui' for making changes in the birth certificates of his grandson.

[05] In their opposition, the respondents raised two preliminary points *in limine*. They are;

(A) The applicant has an adequate alternative remedy.

(B) Public Policy Immunity.

The respondents' main point concerned the availability of adequate alternative remedy.

Alternative remedy

[06]

The applicant's constitutional redress application was filed pursuant to article 44(3) of the constitution.

Article 44(3) provides;

> *(3) The High Court has original jurisdiction-*
>
> *(a) to hear and determine applications under subsection (1); and*
>
> *(b) to determine questions that are referred to it under subsection (5), and may make such orders and give such directions as it considers appropriate.*

It is pertinent to note Article 44(1) and 44(4) of the constitution;

> *(1) If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress.*

> *(4) The High Court may exercise its discretion not to grant relief in relation to an application or referral made under this section if it considers that an adequate alternative remedy is available to the person concerned.*

Therefore, the Court has discretionary power to refuse relief under Article 44(4) of the constitution if an adequate alternative remedy was available.

[07] As noted, the thrust of his allegation is Police inaction to investigate the complaints and not the failures in police investigation. It is true that the primary duty of the Police is the prevention of crime and the arrest of criminals. The applicant claims that his stolen scientific discoveries emerge from the world in the field of medicine. The case is founded on the failure of the Police Officers to investigate any of his complaints that he had lodged. He claims that the police breached their duty in failing to investigate any of his complaints.

[08] The Police owe a duty to members of the public to enforce the law, the way in which the courts should, if necessary, enforce that duty by an order of mandamus. In the present case, the Police duty on which the applicant sought to rely was the duty to investigate complaints. By common law Police Officers owe the general public a duty to enforce the criminal law[1]. That duty may be enforced by mandamus, at the instance of one having title to sue. If there was a breach of duty that is a matter of public law that it might be possible to investigate by means of judicial review but not in constitutional redress proceedings. As a matter of public policy, the Police authority should not be exposed to this type of litigation because the Police have a wide measure of discretion as to how their duty is to be discharged, which it would be hardly be appropriate to ask the Court to investigate in an application for redress.

[09] So, in the end, I am driven to conclude that Counsel for the respondents is right. If there was a breach of duty, that is a matter of public law that it might be possible to investigate by means of judicial review, but not in redress proceedings. The redress application is not an appropriate vehicle for investigating the efficiency of Police Force.

The applicant has an adequate alternative remedy that is sufficient for the disposal of the redress application. Therefore, the constitutional relief was premature and inappropriate and that the application was an abuse of process of the Court. It is for these reasons the application for Constitutional Redress is dismissed and relief refused.

[10] **In the matter of an application for constitutional redress by Josefa Nata[2]**, Singh J declared:

> *"...the Constitution provides that a Court may refuse to grant relief if adequate alternative remedy is available to the person concerned". The Redress Rules do not provide a parallel procedure to be invoked where*

[1] R v Metropolitan Police Comr, ex parte Blackburn (1968) 1 ALL.E.R. 763, (1968) 2. Q.B. 118
[2] Civil Action No. HBM 35 of 2005

alternative remedy is available. To use the Constitutional Redress process as a substitute for normal procedure is to devalue the utility of this Constitutional remedy. Mere allegation of constitutional breach was insufficient to invoke this remedy – **Harrikissoon v. Attorney General – (1979) 3 WLR 62.**

The judgment of the Court of Appeal in **Abhay Kumar Singh v Director of Public Prosecution and Anor**[3], cited Lord Diplock in **Harrikissoon v A.G**[4] as follows:

The right to apply to the High Court under section 6 of the Constitution 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. In an originating application to the High Court..., 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 under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the Court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.

In **Abhay Kumar Singh v D.P.P. and the Attorney General** (supra) it was held:

"*we note that the privy council has constantly 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 Rules of Law which the constitution is designed to uphold and protect.*"

In **Aivaz Ali v Attorney General**[5] (supra) Singh J. made the following observations:

"*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 procedure 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 Aladin's cave which contains all the*

[3] (2004)FLR 297 at pg 306;
[4] [1980] AC 265 at pg 268
[5] (2005)FJHC, HBM 0079 of 2004

remedies for all the ills and the Redress Rules the magical words "open sesame, which are keys to those remedies".

Public Policy Immunity

[11] Counsel for the respondents' second point *in limine* is that on public policy, the Police are immune from an action investigating their efficiency.

I cannot accept this submission.

It is true that the manner of conduct of an investigation must necessarily involve a variety of decisions to be made on matters of policy and discretion, for example as to which particular line of inquiry is most advantageously to be pursued and what is the most advantageous way to deploy the available resources. Many such decisions would not be regarded by the Courts as appropriate to be called in question.

The policy decisions are protected by public policy immunity but operational decisions are not. The alleged failures in the present case are of an operational nature.

ORDERS

[1] The application for Constitutional Redress is dismissed.

[2] There will be no order as to costs.

HIGH COURT OF FIJI
LAUTOKA

15/11/2019.

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Jude Nanayakkara
[Judge]

At Lautoka
Friday, 15th November, 2019