

IN THE HIGH COURT OF FIJI AT SUVA  
APPELLATE JURISDICTION

Civil Appeal No. HBA 16 of 2018

Magistrate's Court No. Misc. 01 of 2017

BETWEEN

ROPATE NAISUA of Maximum Correction Centre, Naboro.

PLAINTIFF - APPELLANT

AND

THE COMMISSIONER OF POLICE of Police Head Quarters,

Vinod Patel building, Ratu Dovi Road, Suva

DEFENDANT - RESPONDENT

Counsel : The Appellant in Person  
Ms. R. Pranjivan for the Respondent

Date of Hearing : 03<sup>rd</sup> February 2020

Date of Judgment : 17<sup>th</sup> February 2020

## JUDGMENT

- [1] The appellant filed this action in the Magistrate's Court seeking \$17,050.00 as damages from the respondent alleging that he was assaulted by the police while in police custody.
- [2] According to his statement of claim the police arrested him on 22<sup>nd</sup> November 2008 and the proceedings in the Magistrate's Court were instituted on 20<sup>th</sup> February 2017.
- [3] On 02<sup>nd</sup> May 2017 the respondent filed a motion to have the matter struck out. The learned Magistrate heard the parties and delivered his ruling on 13<sup>th</sup> July 2018 striking out the appellant's claim.
- [4] The appellant appealed the said ruling of the learned Magistrate on the following grounds:
- 1) That the applicant was prejudiced by the learned Magistrate due to lack of representation by counsel.
  - 2) That the learned Magistrate erred in law and in fact when he failed to make an order to uplift documentary evidence as requested by the applicant to support my application.
  - 3) That the learned Magistrate erred in law when he strike my application was statute barred and the applicant should have applied for enlargement of time but failed to assist the applicant as he was not represented.
- [5] Section 4(1) of the Limitation Act 1971 provides:

The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say-

- (a) actions founded on simple contract or on tort;
- (b) actions to enforce a recognizance;
- (c) actions to enforce an award, where the submission is not by an instrument under seal;
- (d) actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture:

Provided that-

- (i). in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under

any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years; and


- (ii). nothing in this subsection shall be taken to refer to any action to which section 6 applies.

- [6] The limitation applicable to the present action is found in section 4(1)(a) of the Limitation Act 1971.
- [7] The appellant does not deny that the proceedings were instituted more than 2 years after the expiration of the period prescribed by the Act. Therefore, his action is liable to be struck out.
- [8] His allegation is that the learned Magistrate did not assist him since he was not represented. The court has no duty towards a party who appears before it to provide legal assistance or to advise parties as to what they should do. If the appellant intended to have assistance from the Legal Aid Commission he should have informed the learned Magistrate who would have directed the escorting officer to take the appellant to the office of the Legal Aid Commission.
- [9] The appellant knew very well that his action was time barred. He should have first filed an application for enlargement of time which he did not do. He cannot blame the court for his own mistakes.
- [10] For the above reasons I see no merit in the appellant's appeal.

#### ORDERS

1. The appeal of the Appellant is dismissed.
2. I make no order for costs of this appeal.



  
Lyone Seneviratne

JUDGE

17<sup>th</sup> February 2020