

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

HBM No. 175 of 2019

BETWEEN: TILA WILLIAMS

APPLICANT

AND: OFFICE OF THE ATTORNEY GENERAL

FIRST RESPONDENT

AND: DIRECTOR OF PUBLIC PROSECUTIONS

SECOND RESPONDENT

BEFORE: Hon. Mr Justice Vishwa Datt Sharma

COUNSELS: Applicant Present In Person  
Ms. Taukei S. with Mr. Sharma B for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents.

Date of Decision: 06<sup>th</sup> February, 2020 @ 9.30 am

DECISION

*[Constitutional Redress application filed by the Applicant  
pursuant to Section 44(1) of the Republic of Fiji]*

## INTRODUCTION

- [1] The **Applicant** brings this action for **constitutional redress** on the following grounds:
- (i) That the trial court had failed to act fairly in not properly assessing the identity evidence during trial;
  - (ii) That it is too dangerous to identify the accused in the dock for the first time without an identification parade in police station and without evidence at the time of arrest; and
  - (iii) That the trial was a miscarriage and needs an independent assessment of his constitutional rights.
- [2] The Applicant did not file any affidavit in support of this application.
- [3] Subsequently, the Respondents filed and served an application seeking striking out of the Applicant's Constitutional Redress Application in terms of *Order 18 Rule 18 (1)(a) and (d) of the High Court Rules 1988*.
- [4] Both parties to this proceeding made oral submissions, arguments and filed their respective written submissions for court's consideration of the Redress Application.

## THE LAW

### High Court (Constitutional Redress) Rules 2015:

- [5] *Order 3 of the High Court (Constitutional Redress) Rules 2015* in relation to instituting an application for constitutional redress states:
- "(1) An application to the High Court for redress under *section 44(1) of the Constitution of the Republic of Fiji* may be made by a motion supported by affidavit -
- (a) *claiming a declaration;*
  - (b) *praying for an injunction;*
  - (c) *claiming or praying for such other order as may be appropriate.*
- [6] Further, *Order 7 of the High Court (Constitutional Redress) Rules 2015* in relation to practice and procedure states -
- "Except as otherwise provided in these Rules, the jurisdiction and powers conferred on the High Court in respect of applications made by any person in pursuance of wither section 33(1) or 4(5) of the Constitution of the Republic of Fiji are to be exercised in accordance with the practice and procedure, including any rules of Court, for the time being in force in relation to civil proceedings in High Court, with any variations the circumstances require."*
- [7] The **Respondent's Counsel** on the returnable date of the Applicant's Application informed Court that she was only served with a **Letter** written by the **Applicant** and not his **application seeking for Constitutional Redress**.

- [8] The Application was assigned with a returnable date of 04<sup>th</sup> November 2019 whereby:
- (a) Counsel for the Respondents raised preliminary concerns about the Letter being an improper mode of bringing an action before the High Court;
  - (b) Counsel for the Respondents expounded on the fact that there was no information in the Letter which would enable the Respondents to provide a response. As such, counsel for the Respondents made an oral application for the matter to be struck off for being fatal and defective in law; and
  - (c) Subsequently, counsel for the Respondents was served with the Applicant's Application in Court. The Court directed the Respondents to file a response to the Applicant's Application within 14 days and thereafter granted 7 days for the Applicant to respond and fixed the matter for hearing.
- [9] Subsequently, on 15 November 2019, the Respondent filed a **Summons to Strike Out** the Applicant's application pursuant to *Order 18 Rule 18(1)(a) and (d) of the High Court Rules 1988* on the following grounds:
- (i) **The Application is irregular, defective in nature and does not comply with Order 4 Rule 3 of the Constitutional Redress Rules 2015;**
  - (ii) **It is bad in law;**
  - (iii) **It discloses no reasonable cause of action; and**
  - (iv) **It is otherwise an abuse of court process.**
- [10] This strike out application was served upon the Applicant on 28 November 2019.

#### *Consideration of the Application*

- [11] There are two simultaneous applications before Court for determination -
- i. **Substantive Constitutional Redress Application filed by the Applicant; and**
  - ii. **Striking out Application filed by the Respondents.**
- [12] On 4<sup>th</sup> November 2019, the Applicant's Constitutional Redress Application was listed before this Court when -
- a. Counsel for the Respondents raised preliminary concerns about the letter being an improper mode of bringing an action before the High Court;
  - b. Counsel for the Respondents expounded on the fact that there was no information in the letter which would enable the Respondents to provide a response. As such, counsel for the Respondents made an Oral Application for the matter to be struck-off for being fatal and defective in law; and
  - c. Subsequently, counsel for the Respondents was served with the Applicant's application in court. The Court directed the Respondents to file a response to the Applicant's application within 14 days and thereafter granted 7 days for the Applicant to Respond and fixed the matter for Hearing.

The counsel further apprised Court that no Affidavit in Support of his application was filed in Court.

[13] Subsequently, on 15<sup>th</sup> November 2019, the Respondents filed a **Summons to strike-out the Applicant's Constitutional Redress Application pursuant to Order 18 Rule 18(1)(a) and (d) of the High Court Rules 1988** and sought for the following Orders:

- i. The application is irregular, defective in nature and does not comply with Order 4 Rule 3 of the Constitutional Redress Rules 2015;
- ii. It is bad in law;
- iii. It discloses no reasonable cause of action; and
- iv. It is otherwise an abuse of Court process.

[14] The Jurisdiction and powers conferred on the High Court in respect of Applications made by any person in pursuance of either **Sections 41(1) or 44(5)** of the **Constitutional (Redress) Rules 2015** are to be exercised in accordance with the practice and procedure, including any rules of court, for the time being in force in relation to Civil proceedings in the High Court, with any variations, the circumstances require. Therefore, applications for Constitutional Redress are governed by the High Court Rules, Mutatis Mutandis accordingly. The application seeking striking-out in terms of Order 18 Rule 18 of the High Court Rules 1988 applies to an application for Constitutional Redress as well and the High Court may strike out a pleading on the ground that there is no reasonable cause of action and may order that the action be stayed or dismissed or Judgment be entered accordingly, as the case may be.

*No Reasonable Cause of Action*

[15] The Respondents submitted that the Applicant's Constitutional Redress Application does not disclose a reasonable cause of action and ought to be struck out.

[16] On the other hand, the Applicant reiterated all along that the remedies he sought in his Application with regards to -

- a. Review of the evidence of criminal courts in Criminal Case Number 251 of 2011;
- b. Issue of improper dock identification; and
- c. Miscarriage of Justice and Assessment of Constitutional Rights.

[17] Reference is made to Supreme Court Practice (UK) 1999 Vol1, Paragraph 18/19/10 at page 349 which states:

*"a reasonable cause of action means a cause with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in Drummond Jackson v British Medical Association [1970] 1 ALL E.R 1094, C.A.)..."*

[18] The Respondents Counsel has outlined the **background** of the Applicant's criminal case which has nexus to the current Constitutional Redress Application -

*"The Applicant was found guilty after trial by the Magistrates' Court on 15/8/2012 and on 27/8/2012, Sentenced to a term of imprisonment. The Applicant filed for leave to Appeal against both conviction and sentence before a single Judge of the Court of Appeal and leave was granted against conviction and sentence. On hearing, Court of Appeal dismissed the Appeal against*

conviction but partially allowed the appeal against sentence. He applied for leave to Appeal against the decision of the Court of Appeal which was subsequently refused.

- [19] It is fairly evident from the aforesaid background of the Applicant's criminal case that has been disposed off that the Applicant is now seeking this Court to review the evidence of the hierarchy of the criminal courts with regards to the identity of the accused in the criminal trial.

Further, as apprised by the Respondents counsel, that the issue of improper dock identification of the Accused (Applicant) in the criminal trial was duly heard and determined by the Court of Appeal and the Supreme Court and accordingly dismissed.

Hence, the dismissal of the Accused's (Applicant's) matter by both the Court of Appeal and Supreme Court which is within the Criminal Jurisdiction does not give rise to a "cause of action" sufficient to support or maintain a Civil Proceedings against the State in one way or the other.

Res Judicata

- [20] *Res Judicata* also known as claim preclusion, *refers to either of two concepts: in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal; and the legal doctrine meant to bar (or preclude) re-litigation of a claim between the same. In the case of res judicata, the matter cannot be raised again, either in the same court or in a different court. A court will use res judicata to deny reconsideration of a matter. The doctrine of res judicata is a method of preventing injustice to the parties of a case supposedly finished but perhaps also or mostly a way of avoiding unnecessary waste of resources in the court system. Res judicata does not merely prevent future judgments from contradicting earlier ones, but also prevents litigants from multiplying judgments, and confusion.*
- [21] The issue of improper dock identification of the Accused (Applicant) in Criminal Case Number 251 of 2011 has already been determined by the Court of Appeal and the Supreme Court respectively. The matter has reached its finality by the Supreme Court which is the highest Appellate Court and therefore cannot be brought via a Constitutional Redress Application within a Civil Jurisdiction as the Applicant has done so herein.
- [22] Taking into consideration above and the Orders sought herein by the Applicant in terms of his Constitutional Redress Application, I reiterate, the same have already been determined by the Supreme Court within the Criminal Jurisdiction and therefore any powers exercised by the current Civil High Court will only result in usurping these functions of the Criminal Court accordingly.
- [23] The Applicant has failed to satisfy this court that there was any breach of his constitutional rights when the Criminal Courts heard and determined his case accordingly.
- [24] I find that the current application by the Applicant does not disclose any reasonable cause of action.
- [25] Further, the Constitutional Redress Application of the Applicant filed via Civil Jurisdiction is an abuse of the Court process.

[26] Accordingly, there is no merit in the Applicant's Constitutional Redress Application for the above given rationale.

[27] In the result -

- (a) Applicant's Constitutional Redress Application is struck out as it discloses no reasonable cause of action accordingly;
- (b) The Respondents Application seeking striking out of the Applicant's Constitutional Redress Application in the circumstances succeeds;
- (c) There will be no Order as to costs.

DATED AT SUVA THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2020



VISHWA DATT SHARMA  
JUDGE  
SUVA

cc: Tila Williams (Applicant)  
Attorney General's Chambers, Suvavou House, Suva