

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

JUDICIAL REVIEW NO. HBJ 01 OF 2020

IN THE MATTER of an Application for
leave to apply for Judicial Review by

PAULA MALO RADRODRO (Applicant)

AND

IN THE MATTER of the decision dated 10
February 2019 by the Fiji Police Force.

BETWEEN : **PAULA MALO RADRODRO** of Lot 45 VM Pillay
Road, Lautoka.

APPLICANT

AND : **THE COMMISSIONER OF POLICE**

FIRST RESPONDENT

AND : **THE ATTORNEY GENERAL OF FIJI**

SECOND RESPONDENT

Appearances : The applicant in person
: Mr V. Chauhan for the respondents
Date of Hearing : 13 July 2020
Date of Ruling : 21 August 2020

R U L I N G

[on leave to apply for judicial review]

Introduction

- [01] This is an application for leave to apply for judicial review. It seeks to judicially review the decision of the Fiji Police Force (*"first respondent" or "respondent"*) that there was no sign of foul play in respect of the police complaint made by the applicant.
- [02] By his application dated and filed 11 February 2020 (*'the Application'*), Paula Malo Radrodro, the applicant (*"the applicant"*) seeks the following orders:
- i. Mandamus.*
 - ii. Prohibition.*
- [03] The application is supported by an affidavit of the applicant sworn on 10 February 2020, which appears to be verifying the facts relied upon.
- [04] The application is made under Order 53, Rule 3 (2) of the High Court Rules 1988, as amended (*'HCR'*).
- [05] The respondent has filed an affidavit of Rajesh Krishna, the Director Legal of the Fiji Police Force sworn on 05 March 2020 in response, to which the applicant has filed an affidavit in reply.
- [06] At the hearing, the parties tendered their respective written submissions, and there was no oral submission.

Background

- [07] At around 10.56am on 10 February 2019, the applicant called the Lautoka Police Station by telephone and lodged a report that his scientific documents were missing and stolen from his house.
- [08] The police officers attended and made preliminary investigations into the complaint lodged by the applicant, and found that there being no likelihood of success into the investigation.

[09] Thereafter, the officers of the Lautoka Police Station closed off the applicant's report as there was no sign of foul play. This was verbally informed to the applicant.

[10] Subsequently, on 22 May 2019, the applicant then filed a constitutional redress application against the Commissioner of Police on the basis that the police had never bothered to investigate the complaint he lodged between January and March 2019. The court dismissed that application on 15 November 2019.

[11] The applicant now seeks leave to apply for judicial review of the first respondent's decision to close his report on the ground that there was no sign of foul play.

The relief sought

[12] The applicant seeks the following relief:

1. *Mandamus,*
2. *Prohibition:*
 - a. *That an order made to direct performance by the first respondent on reports made at the Lautoka Police by me under the Police Act, section 5 and section 7.*
 - b. *That an order made to the first respondent to prohibit any one from using or making or copying my format of my invention on immunization for mosquito.*
 - c. *The first respondent [be] ordered under section 16, (1) a, b, c to be fair and prompt in their duty on my report or give me in writing the reason for delay in investigation.*
 - d. *That the first respondent [be] ordered under section 18 to make complaint to a magistrate on intrinsic fraud and theft.*

The grounds upon which relief is sought

[13] The grounds which the relief is sought upon are as follows:

1. That this application was made pursuant to allegations, evidence and orders sought for in Miscellaneous Action No. 20 of 2019 *Paula Malo Radrodro vs Commissioner of Police and Attorney General*.
2. There is sufficient evidence of breach of duty by first respondent in investigation of fraud and theft in the report I made to Lautoka Police in constitutional redress application Miscellaneous Action No. 20 of 2019 *Paula Malo Radrodro vs Commissioner of Police and Attorney General* to conclude that there is a reasonable cause of action in the action to have a judicial review of the matter.
3. That it was held that the right procedure of proceeding Miscellaneous Action No. 20 of 2019 *Paula Malo Radrodro vs Commissioner of Police and Attorney General* was a judicial review.

The law

[14] The relevant law applicable to leave to apply for judicial review is the HCR, O 53, R 3, which provides:

“Application for leave to apply for judicial review (O 53, R 3)

3 (1) *No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this Rule.*

(2) *An application for leave must be made upon filing in the Registry-*
(a) *a notice in Form 32 in Appendix 1 hereunder containing statement of-*

(i) *the particulars of the judgment order, decision or other proceeding in respect of which judicial review is being sought;*

(ii) *the relief sought and the grounds upon which it is sought;*

(iii) *the name and description of the applicant;*

(iv) *the name and address of the applicant’s solicitors (if any); and*

(v) *the applicant’s address for service;*

(b) *an affidavit which verifies the facts relied on.*

(3) (a) *Copies of the application for leave and the affidavit in support must be served on all persons directly affected by the application.*

- (b) *The Court may determine the application without a hearing and where a hearing is considered necessary the Court shall hear and determine the application inter partes.*
 - (c) *Notice of hearing of the application shall be notified in writing to the parties by the Registrar.*
 - (d) *Where the Court determines the application without a hearing, the Registrar shall serve a copy of the order of the Court on the applicant.*
- (4) *Without prejudice to its powers under Order 20, Rule 8, the Court hearing an application for leave may allow the relief sought and the grounds thereof to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.*
- (5) *The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.*
- (6) *Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.*
- (7) *If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.*
- (8) *Where leave to apply for judicial review is granted, then-*
- (a) *if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;*
 - (b) *if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.*
- (9) *Upon granting leave the Court may, if satisfied that such a course is justified, direct that the grant shall operate either forthwith or conditionally as an entry of motion under Rule 5 (4) and may then proceed to judgment on the application for judicial review or may give such further directions as may be warranted in the circumstances.'*

Test for granting leave

[15] To grant leave to apply for judicial review, the court has to be satisfied that:

- (a) There is an arguable case for review;
- (b) The claimant has a '*sufficient interest*'; and
- (c) There has not been '*undue delay*'.

Discussion and decision

[16] The applicant applies for leave to apply for judicial review of the first respondent's decision of 10 February 2019. He seeks the relief in the nature of *mandamus* and *prohibition*. However, he did not provide judicial review grounds for seeking such relief. He simply relies on evidence of breach of duty attached in his constitutional redress application filed on 30 May 2019, which was subsequently dismissed. He has only attached in this application a copy of the ruling pronounced in his redress application but not the copy of the affidavit in support filed therein. Nonetheless, the respondent had provided a copy of the affidavit in support filed by the applicant in his redress application.

[17] As required in R 3 (2) (i), the applicant has not attached a statement of the particulars of the decision in respect of which judicial review is sought. However, the respondent has annexed copies of the applicant's report and his statement in their affidavit in response.

[18] The application for leave to apply for judicial review may be determined without a hearing and where a hearing is considered necessary, the Court will hear and determine the application *inter partes* (see O 53, R 3 (3) (ii)). In this case, I was of the view that this application should be heard *inter partes*.

[19] The application provides name, description and address of the applicant. The applicant has filed an affidavit, which verifies the facts relied upon. This complies with the requirement of the HCR, O 53, R 3 (2) (b). There was no dispute in regard to the formality of the application.

[20] I now turn to apply the test for granting leave to apply for judicial review.

Sufficient interest

[21] The court will not grant leave unless it considers that the applicant has a sufficient interest (standing) in the matter to which the application relates (see O 53, R 3 (5)).

[22] The question of sufficient interest is to be decided:

1. In the light of the circumstances of the case before the court (it cannot be decided in advance of litigation).
2. It has to be judged in the light of relevant statutory provisions-who is to be allowed to challenge decisions made under the statute?
3. It has to be judged in the light of substance of the complainant's complaint. (In *R v Somerset CC, ex p Dixon* [1998] Env LR 111, Sedley J said that *provided the claimant had an arguable substantive case, leave should not be refused on the basis of lack of standing unless the claimant was a 'busybody' or a 'troublemaker'*.).
4. Whether the claimant's interest is sufficient depends to some extent on the seriousness of the alleged breach of administrative law. Whatever the claimant's interest, the more serious the breach, the more likely that interest is to be sufficient.

[23] The purpose of the standing rules under O 53 appears to be a mechanism for weeding out hopeless or frivolous cases at an early stage and protecting public functionaries from harassment.

[24] The test for deciding whether a claimant has sufficient interest was considered by the House of Lords in *R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Business Ltd* [1982] AC 617, where it was held:

'That not only was standing a ground in itself upon which permission could be granted, it should also be considered at the substantive hearing after the relevant law and facts were examined in full.'

[25] The decision sought to be judicially reviewed affects the applicant's right to complain an offence and have it investigated. The decision directly affects his personal right to complain an offence to the police. At this stage, the respondent

did not dispute the applicant's interest in the matter. For the current purpose, I am satisfied that the applicant has sufficient interest in the matter to which the application relates.

The arguable case for review

- [26] The second test for granting leave is that a claimant must demonstrate to the court upon 'a quick perusal of the papers' that there is an arguable case for granting relief (*R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Business Ltd* (above)).
- [27] In determining an arguable case for granting the relief sought, the court will not go into the matter in depth. The court will only see, upon perusal of the papers, whether there is an arguable *prima facie* case for granting the relief.
- [28] The applicant challenges the impugned decision of the first respondent on the grounds that there is a breach of duty by the first respondent.
- [29] Mr Chauhan of counsel appearing for the respondents contends that: there has been undue delay (1 year) in making the application for judicial review, and there is no justification for the delay, the applicant is seeking to judicially review the decision of the Fiji Police Force for not further investigate the allegation of theft reported by the applicant based on the findings of insufficient information obtained and no likelihood of success into the investigation. The Fiji Police Force performed its duty diligently as the applicant's complaint was recorded and his statements were taken.
- [30] In *Fiji Airline Pilots Associations v. Permanent Secretary for Labour and Industrial Relations* [1998] FJCA 14, the Court of Appeal said:
- "That the basic principle is that the judge is only required to be satisfied that on the material available and disclosed is what might, on further consideration, turn out to be an arguable cause in favour of granting relief."*
- [31] Hon. Justice Callanchini (as he was then) in *Ramasi v Native Lands Commission* [2015] FJCA 83; ABU 00562012, concluded at paragraph 11 that:

“... However, in this case the challenge by the Appellant went to the merits of the Tribunal’s decision and for that reason there was no right to apply for judicial review.”

- [32] Turning to the case at hand, the applicant challenges the decision of the first respondent of 10 February 2019 whereby they closed off the applicant’s report of theft of his invention of immunization for mosquito.
- [33] The applicant seeks leave to apply for judicial review of the first respondent’s decision on the ground that there is sufficient evidence of breach of duty by first respondent in investigation of fraud and theft in the report he made to Lautoka Police.
- [34] His ground for challenge appears to be police inaction of his theft complaint. This is because he is seeking writ of mandamus as relief.

Mandamus (mandatory order)

- [35] The mandatory order is designed to enforce the performance of duties. Breach of statutory duty can take form either of nonfeasance (i.e. failure to perform the duty) or misfeasance (i.e. substandard performance). A person claiming a mandatory order only needs to have a ‘sufficient interest’ in the performance of the duty.
- [36] The general powers and duties of police officers include the detection and bringing offenders to justice, and apprehension of all persons whom he or she is legally authorised to apprehend and for whose apprehension sufficient ground exists (see Police Act 10 of 1965, section 17 (3)).
- [37] The nature of the applicant’s complaint to police was that his scientific documents were stolen from his house on or about between December 2018 and January 2019. It should be noted that he did not provide a definite date on which the documents were stolen by unknown person/s. He made the complaint to the respondent on 10 February 2019. In truth, his complaint was attended to by the respondent, and after a preliminary investigation they determined that there was insufficient evidence to pursue the matter, and no arrest was made.

[38] Since his complaint was attended to and investigated, the applicant is not entitled to seek relief in nature of mandatory order to enforce the performance of statutory duty on the ground of breach of that duty.

Prohibiting orders

[39] The prohibiting order performs that function of ordering a body amenable to it to refrain from illegal actions. Its issue presupposes that some function of the body remains to be performed.

[40] It is not clear what illegal action on the part of the respondent, the applicant seeks to prohibit. The respondent had performed their statutory duties to the best of their abilities. Therefore, the applicant is not entitled to seek relief in the nature of prohibiting order.

Undue delay

[41] The applicant intends to challenge the decision of the respondent made on 10 February 2019. The respondent verbally informed the applicant of the decision on the same day. He has made the application for leave to apply for judicial review on 11 February 2020. It has been made after a year from the date of the decision.

[42] The court has the discretion to refuse to grant leave for the making of the application for judicial review; or any relief sought on the application if the court considers that there has been undue delay in making an application for judicial review (see HCR, O 53, R 4).

[43] The delay of one year remains unexplained. The applicant did not put forward any reason for the delay. It is reasonable to say that the delay is substantial, which remains unexplained. In this case, the delay also can be taken as an additional ground for not granting the leave.

[44] In my view, a superficial consideration of the application fails to demonstrate that there is an arguable case for granting relief. The grounds relied upon to challenge the respondent's decision that there was insufficient evidence to pursue the complaint attempts to attack the merits of its decision.

Conclusion

[45] For the reasons set out above, I conclude that the applicant fails to demonstrate an arguable case for judicial review. I would accordingly refuse to grant leave to make an application for judicial review of the respondent's decision made on 10 February 2019.

The result

1. Leave to apply for judicial review refused.
2. There will be no order as to costs.



M. H. Mohamed Ajmeer
21/8/20

M. H. Mohamed Ajmeer

JUDGE

At Lautoka
21 August 2020

Solicitors:

For the applicant: Unrepresented

For the respondent: Office of the Attorney General, Lautoka