

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBM 34 of 2021

IN THE MATTER OF an application for
Constitutional Redress pursuant to Section 44 (1)
of the Constitution of the Republic of Fiji 2013.

BETWEEN : **ANARE GALECIA**

APPLICANT

AND : **COMMISSIONER OF POLICE FORCE**

FIRST RESPONDENT

AND : **THE ATTORNEY GENERAL OF FIJI**

SECOND RESPONDENT

Appearances :
For the Applicant : Applicant in Person
For the Respondents : Mr. J. Mainavolau
Date of Hearing : 07 June 2022
Date of Ruling : 01 August 2022

J U D G M E N T

INTRODUCTION

1. Before me now is the Respondent's ("State") Summons to Strike out the Constitutional Redress action instituted by the Applicant ("Galecia") pursuant to Order 18 Rule 18(1) (a) of the High Court Rules 1988 on the ground that the Constitutional Redress Application does not disclose a reasonable cause of action.

BACKGROUND

2. The background is outlined by Galecia in his submissions in opposition to the striking out application which was filed on 04 July 2022. Galecia does not raise this in his founding affidavit. I reproduce paragraphs 1 to 7:
 - 1) This is an application for Constitutional Redress against the Fiji Police Force and the Attorney Generals Office regarding certain violation of the Applicant's Constitutional Rights during the investigation of the matter currently serving.
 - 2) The Applicant was found guilty after trial of one count of Robbery contrary to Section 310 (1) (a) of the Crimes Act 2009 by the Resident Magistrates Ms. Seini Puamau at the Nadi Magistrates Court.

- 3) The Applicant was charged together with one Abdul Riyaz Khan with one count of Act with Intent to Cause Grievous Harm contrary to Section 255 (a) of the Crimes Act and one count of Aggravated Robbery contrary to Section 311 (1) (a) of the Crimes Act 2009.
 - 4) On a Ruling on No Case To Answer delivered on the 10th of December, 2020, the Resident Magistrates found Abdul Riyaz Khan not guilty on both counts and was acquitted accordingly and the Applicant was proceeded to trial on the lesser offence of Robbery.
 - 5) The Learned Trial Magistrates find the Applicant guilty on the count of Robbery and the count of Act with intent to cause Grievous Harm was declared as being a constituent elements of the Robbery charge and the Resident Magistrate declared the plea in bar of autrefois convict to the count of Robbery and is terminated forthwith on the 15th of January 2021.
 - 6) The Applicant was then found guilty on a Judgment delivered on 15th January 2021 and sentenced the Applicant to 3 years imprisonment with a non-parole period of 6 months.
 - 7) The National Lockdown coupled with the Fiji Corrections Lockdown contributed enormously to the unreasonable delay in making the application within time.
3. According to the State's counsel, Galecia's Constitutional Redress seeks three declarations:
- (a) whether the post charge delay of 1 year 8 months 10 days breached Section 15 (3) of the Constitution.
 - (b) whether the method of investigation in the laying of charge breached Section 14 (2) (g) of the 2013 Constitution.
 - (c) that the method of investigation by the Nadi Police Station was incompetent, unprofessional and not according to the Judges Rule and therefore breached Section 14 (2) of the 2013 Constitution.
4. The Constitutional redress action relates to a criminal case before the Nadi Magistrates Court (Criminal file number was 253 of 2015). That the Criminal Case was determined in 2021.
 5. The Orders which the Applicant raises in his Constitutional Redress should have been raised as voir dire and appeal grounds in the Criminal case.
 6. The State also argues that the application was filed out of time contrary to section 2, (3) (2) of the High Court Constitution Redress Rules of 2015.

CONSTITUTIONAL REDRESS APPLICATION – OUT OF TIME?

7. Mr. Mainavolau refers the Court to the records which shows that the Applicant had filled the Standard Form HCCR which is usually given for inmates wishing to apply for Constitutional Redress.
8. The Form was then submitted to the Chief Registrar, the Fiji Court of Appeal in Suva on 01 November, 2021. A copy of this form was then filed here at the Lautoka High Court Registry.

9. The first question on this Form requires the Applicant to identify the date of the event or action taken against him which he says was against his rights under the Constitution. In that, the Applicant stated that he was arrested on 25 March 2015 and that his case was reported on the 13 June 2013.
10. Mr. Mainavolau submits that, in that regard, the cause of action accrued in 2013. Section 3 (2) of the High Court Constitution Redress Rules requires that an application must not be admitted or entertained after sixty (60) days from the date when the matter at issue first arose unless the Court finds that there are exceptional circumstances to hear the application outside of the period. The Constitutional Redress application should therefore be struck out.
11. The Affidavit in Support filed by the Applicant does not set out the reasons for the delay in bringing this application.

MERITS OF THE CASE

12. Mr. Mainavolau further submits that the Applicant has actually raised appeal grounds in his application.
13. In paragraphs 6.1 to 9.1 and 9.2 of his Affidavit, the Applicant complains about the manner in which the investigation of his Criminal case was carried out. He alleges that there was a delay in which the caution interview was conducted and especially in the recording of his caution statement and the charge statement.
14. Mr. Mainavolau argues that these should and ought to have been raised by the Applicant by way of *voir dire* during the Criminal trial.
15. The applicant has already been tried, convicted, and sentenced for the related criminal charge in the Magistrates Court.
16. In that case, all these issues become appeal grounds which should and ought to have been raised before the High Court in the Criminal Division sitting on appeal from the Magistrates Court.

ALTERNATIVE REMEDY

17. Mr. Mainavolau submits that the Constitution is clear that when there is an alternative remedy available, the Applicant should exhaust that alternative remedy before he can come to Court and pursue a Constitutional Redress case.

APPLICANT WAS REMANDED FROM 2013 & SENTENCED IN 2021?

18. The applicant started serving his sentence in 2021. This point is not clearly pleaded in Galecia's Constitutional Redress application.
19. I did question Mr. Mainavolau as to whether that changes his position about the constitutional redress application being time barred and whether he would object to another chance being given to the Galecia to amend his application so he can plead the fact that he was in fact sentenced on 15 January 2021 – and considering that he has not had the benefit of legal counsel.

20. Mr. Mainavolau argues that there is little point in allowing Galecia time to amend his application. Even if Galecia was to amend his application, at the end of the day, he would still be confronted with the same question in the substantive hearing, that is, that this is a matter that should have been brought up in mitigation before sentencing and, if Galecia is still aggrieved - on appeal after sentencing.

APPLICANT'S ARGUMENTS

21. The applicant argues that his application is only nine (9) months 16 days out of time because his cause of action accrues from the date of sentencing. He also submits that he has written a letter to the Fiji Human Rights Commission dated 10 November 2022 but the Commission has not bothered to respond or even acknowledge his letter.
22. He highlights the following:
- (a) The Police investigation was incompetent, unprofessional and not according to the Judges Rules and violates section 14(2)(a)(j)(e) of the 2013 Constitution.
 - (b) He submits that, I quote:

“...the actual incident of Act With Intent to Cause Grievous Harm and Robbery took place on the 22nd of May 2013 and the matter was reported to Police on the 15th of June 2013 which is about 24 days later”
 - (c) He was cautioned interview twice. First interview was on 28 May 2013. Second one was on 25 March 2015. The record of the first interview is missing.
 - (d) The contents of both interviews were similar as:

“I have honestly informed the interviewer the facts behind the commission of the offence”
 - (e) “The delay of almost two years in the investigation of this matter makes the whole case a suspicious and questionable one”.
 - (f) After a lapse of 1 year 8 months 10 days, the Fiji Police Force reopened the investigation and recorded statements of eight people altogether including Galecia’s as well as the statements of the investigating, interviewing and arresting officers.
 - (g) “...it is evident that the whole arrangement for the assault of Mohammed Rafiq was done by Abdul Jameer and Abdul Riyaz Khan due to the remarriage of Mr. Khan’s wife with Mr. Rafiq’s son. The Applicant submits that the unprofessional investigation by the Nadi Police Station and their failure to apply the legal principles of Joint Criminal Enterprise makes the whole matter flawed and a travesty of justice.

REMARKS

23. I must agree with Mr. Mainavolau's submission that the matters are more appropriately appeal matters. Galecia must pursue this further by an application seeing leave to enlarge time for appeal against sentence (as per Lutunasobasoba v State [2020] FJCA 158; AAU0106.2017 (2 September 2020)).
24. Application for Constitutional Redress is struck out as disclosing no reasonable cause of action.



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Anare Tuilevuka
JUDGE
01 August 2022