

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Constitutional Redress No. HBM 156 of 2021

Ilaisa Sousou Cava  
Applicant

v

Commissioner of Police  
First respondent

Attorney General  
Second respondent

The Fiji Human Rights Commission  
Amicus Curiae

The applicant in person

Ms G. Naigulevu with Mr V. Ram for the respondents

Date of hearing: 15<sup>th</sup> September, 2022

Date of Judgment: 26<sup>th</sup> January, 2023

**Judgment**

1. By notice of motion filed on 29<sup>th</sup> December, 2021, the applicant, a serving prisoner in Naboro Medium Prison seeks constitutional redress on the ground that his constitutional rights under section 26(1) and (3) have been infringed, due to the first respondent's delay and inaction to make proper investigation in relation to the new evidence he has provided. The applicant seeks (i) a declaration that the first respondent conduct a proper investigation in relation to his complaint and, (ii) that he be released from custody.

2. The applicant, in his supporting affidavit states that on 18<sup>th</sup> January, 2016, he sent a letter of concern to the first respondent seeking reinvestigation in relation to the “*new revelation of evidence*” provided by prisoner Lepani Temo. Lepani Temo, in his affidavit of 10<sup>th</sup> December, 2015, stated that he met a person namely Paul Dickson Naqelevuki who verbally confessed to him that he knew and was part of the group of boys who robbed and murdered Murad Buksh outside Veisari in Lami between 24<sup>th</sup> and 25<sup>th</sup> August, 2007. The affidavit of Lepani Temo is attached. The applicant states that he forwarded follow up letters on 16<sup>th</sup> March, 2016, 21<sup>st</sup> February, 2019, 29<sup>th</sup> December, 2020, 5<sup>th</sup> and 12<sup>th</sup> February, 2021, and 1<sup>st</sup> and 4<sup>th</sup> April, 2022. He has been exhausting his avenues to get a reply from the first respondent and hence his delay in bringing this application,
3. The first respondent has filed summons to strike out the application on the grounds that it discloses no reasonable cause of action; is contrary to Rule 3,(2) of the High Court (Constitutional Redress) Rules, as these proceedings for constitutional redress are filed after a period of 60 days from the date the matter arose; and, the applicant has an adequate alternative remedy under section 44(4) of the Constitution.

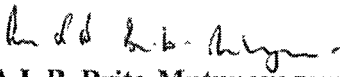
***The determination***

4. The applicant complains that his constitutional rights under section 26(1) and (3) of the Constitution have been infringed. He seeks an investigation in relation to the new information or evidence statement provided by another prisoner and release from custody,
5. Section 26 enshrines the right to equality and freedom from discrimination.
6. At the hearing, the applicant states that he has fresh evidence, which has not been investigated by the first respondent. The first respondent has not replied to his letter of 18<sup>th</sup> January, 2016. He has been discriminated by the first respondent and not treated equally.
7. On 26<sup>th</sup> November, 2007, the applicant was convicted for the offence of murder. He was sentenced to life imprisonment. He is serving his sentence. On 6<sup>th</sup> December, 2013, the Court of Appeal affirmed his conviction. His application for enlargement of time to appeal was dismissed by the Supreme Court.

8. On the first respondent's contention of delay in filing this application, I note that there has been a communication from the first respondent to the applicant as referred to in the next paragraph.
9. The applicant's contention that he has not had a reply from the first respondent is incorrect. The first respondent, by letter of 2<sup>nd</sup> May, 2022, informed the applicant that the investigation process has been concluded and the Police do not have jurisdiction to investigate the matter further unless directed by Court. The letter was produced in Court by the applicant.
10. The applicant seeks that he be released from custody.
11. As Wati JA stated in *Silatolu v The State*, Civil Appeal ABU 123 of 2016(3 July, 2018) :

*The Court does not have any power under the above provisions of the law to consider the question of the appellant's release on an application for constitutional redress. Any attempt by the court to exercise its powers under the above provisions would be ultra vires.*

12. In my view, given that the investigation process has been concluded, the applicant's remedy is to put forward the new evidence, (which he contends was not available to him earlier) by way of an appeal, as pointed out in the submissions filed on behalf of the first respondent.
13. In my judgment, this application for constitutional redress is misconceived. There is no breach of his rights.
14. **Orders**
  - a. The applicant's application for constitutional redress is declined.
  - b. I make no order as to costs.

  
A.L.B. Brito-Mutunayagam  
JUDGE  
26<sup>th</sup> January, 2023

