

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

CONSTITUTIONAL REDRESS APPLICATION NO. HBM 38 of 2023

BETWEEN : **JOSAIA TAWAKE** **APPLICANT**

AND : **THE ATTORNEY GENERAL OF FIJI** **RESPONDENT**

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Applicant in person.
Mr. Mainavolau, for the Respondents

DATE OF HEARING : 21st September, 2023.

DATE OF RULING : 18th October 2023

RULING

1. The Applicant, who is currently serving at the Lautoka Correction Centre, by the standard form HCCR-1, has filed his, purported, constitutional redress Application on 14th August 2023 seeking the following reliefs;
 - a. A declaration that Fiji Correction service Commissioner’s Order No-25 infringed his right of smoking.
 - b. An injunction allowing the Applicant to smoke Cigarette in the Correction facility,
 - c. Any order, remedy or relief the Honourable Court deem fit.
2. The applicant in paragraph 3 of the application states that it is a very sensitive issue that deals with his health in state custody.
3. When the application came up on 21st September 2023, being the first date of call, it was strongly opposed by the learned counsel for the Attorney-General, who moved to strike out the application on the ground that the application is in breach of the High Court Constitutional Redress Rules in terms of Order 18 Rule 18 (a) (b) & (c) of the High Court Rules 1988.
4. In his application, the applicant has not referred to any section under Chapter 2 (Bill of rights) of the Constitution, pursuant to which his so called right is guaranteed for him to make this application for constitutional redress.
5. He complains in paragraph 4 of his application that Fiji Correction Services Commissioner’s Order No- 025 infringed his right of smoking in the Correction facility.

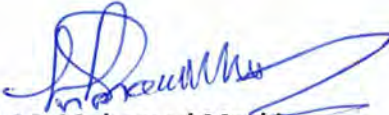
6. I have perused the contents of the said “**Commissioner’s Local Orders 025**” which the Commissioner of Prison has made in exercise of his powers conferred upon him under section 54 of the Correction Services Act 2006, in relation to “INCIDENT REPORTING” in the correction facilities.
7. These orders are made by the Commissioner for the efficient administration of the activities in the correction facilities. This kind of administrative rules and regulations are in place in every state departments and establishments to regulate and ensure the better and efficient administration of the institution. The Correction centre cannot be an exception. The Court cannot lay it hand in the internal administrative affairs of the correction centre or any other institutions or establishments for that matter.
8. However, it is needless to say that the habit of smoking is injurious to health under any given circumstance, and it is an act commonly denounced by the present day’s society. It is not an absolute right to be recognised and permitted by disregarding the rules and regulations that govern the due administration of the correction centre.
9. Further, to the extent that is necessary, a law may limit, or may authorise the limitation of certain rights and freedom enshrined under the Bill of rights.
10. Subsequent to the submissions made the State Counsel seeking to strike out the application, the Court granted the Applicant 14 days’ time to file his counter submissions, if any, as to why the matter should not be struck out for the want of reasonable cause of action and abuse of power. But, no submissions has been filed by the applicant.
11. The High Court has inherent power to prevent an abuse of the court process. There is no reasonable cause of action and it is clearly frivolous an abuse of power. The applicant cannot be allowed to abuse the process of the Court. I accept the submissions made by the counsel for the Respondent.
12. It is for these reasons the application in hand for constitutional redress has to be struck out, however with no order for costs.

ORDERS

(01) The application for **constitutional redress** is hereby struck out.

(02) There be no order as to costs.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 18th day of October 2023.