

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

Judicial Review No. HBJ 08 of 2023

**IN THE MATTER** of the **MINISTER FOR**  
**HOME AFFAIRS & IMMIGRATION**

**AND**

**IN THE MATTER** of the **IMMIGRATION**  
**ACT** and the **IMMIGRATION**  
**REGULATIONS** and the **CITIZENSHIP OF**  
**FIJI ACT** and the **CITIZENSHIP OF FIJI**  
**REGULATIONS**

**AND**

**IN THE MATTER** of an application by **SUNG**  
**JIN LEE, NAM SUK CHOI, BYEONGJOON**  
**LEE, BEOMSEOP SHIN, JUNG YONG KIM**  
and **JINSOOK YOON** for Judicial Review and  
with other relief including an Order of Certiorari to  
quash the decision made by the Minister for Home  
Affairs and Immigration made between 01  
September 2023 and/or 07 September 2023  
**DECLARING SUNG JIN LEE, NAM SUK**  
**CHOI, BYEONGJOON LEE, BEOMSEOP**  
**SHIN, JUNG YONG KIM** and **JINSOOK**  
**YOON** Prohibited Immigrants using his purported  
discretion under section 13(2)(g) of the  
Immigration Act **AND** purportedly making an  
**ORDER** and/or **ORDERING** the removal of **JIN**  
**LEE, NAM SUK CHOI, BYEONGJOON LEE,**  
**BEOMSEOP SHIN, JUNG YONG KIM** and  
**JINSOOK YOON** from Fiji.

**BETWEEN** : **SUNG JIN LEE** currently in immigration detention and/or unlawful custody  
of the Respondent.

**1<sup>ST</sup> APPLICANT**

**AND** : **NAM SUK CHOI** currently in immigration detention and/or unlawful  
custody of the Respondent.

**2<sup>ND</sup> APPLICANT**

**AND** : **BYEONGJOON LEE** currently in immigration detention and/or unlawful  
custody of the Respondent.

**3<sup>RD</sup> APPLICANT**

- AND** : **BEOMSEOP SHIN** currently in immigration detention and/or unlawful custody of the Respondent. **4<sup>TH</sup> APPLICANT**
- AND** : **JUNG YONG KIM** currently in immigration detention and/or unlawful custody of the Respondent. **5<sup>TH</sup> APPLICANT**
- AND** : **JINSOOK YOON** currently in immigration detention and/or unlawful custody of the Respondent. **6<sup>TH</sup> APPLICANT**
- AND** : **THE MINISTER FOR HOME AFFAIRS & IMMIGRATION** of 1<sup>st</sup> and 2<sup>nd</sup> Floor, New Government Wing, Government Buildings, 26 Gladstone Road, Suva. **1<sup>ST</sup> RESPONDENT**
- AND** : **THE ATTORNEY-GENERAL OF AND FOR THE REPUBLIC OF THE FIJI ISLANDS** **2<sup>ND</sup> RESPONDENT**

Appearances : Mr. Ower K. C, Mr. R. Gordon and Mr. N. Prasad for the Applicants  
 : Mr. R. Green and Ms. O. Solimailagi for the Respondents

Date of Hearing : 21 December 2023

Date of Ruling : 20 February 2024

# **R U L I N G**

## **INTRODUCTION**

1. By way of background, the substantive matter in this case is about the Judicial Review of two decisions made in August 2023. The first of these was made by the Minister for Home Affairs and Immigration under section 13 (2) (g) of the Immigration Act. By that decision, the Minister had declared the six Applicants as “PROHIBITED IMMIGRANTS”.
2. The second of these was made by the Permanent Secretary on the same day shortly after the Minister’s decision. By this decision, the Permanent Secretary had ordered that the applicants be detained for the purpose of their removal from Fiji.

3. On 21 November 2023, this Court granted a stay of the above decisions. At that time, the Court had not even heard or considered the leave application. The hearing would happen on 13 December 2023. This was a little more than a month later. Leave was in fact granted on 19 January 2024. This was just a little over a month after the hearing (see **Sung Jin Lee v The Minister for Home Affairs & Immigration** [2024] FJHC 23; HBJ08.2023 (19 January 2024)).
4. While stay in judicial review proceedings is normally granted at the court’s discretion after leave is granted, the reason why stay was granted in this case before the leave application was even heard, was to preserve the subject matter in light of the continuing threat of deportation.
5. On 21 November 2023 also, a Summons seeking the following Orders was filed by Gordon & Company for and on behalf of Jung Yong Kim (“**Kim**”) and Sung Jin Lee (“**Lee**”).
  1. **THAT** the 1<sup>st</sup> Applicant, Sung Jin Lee, be released from the custody of the Minister for Home Affairs and Immigration and/or the Permanent Secretary of Immigration on terms and/or conditions that this Court deems just, necessary and/or reasonable pending the hearing and determination of this action before this Court.
  2. **THAT** the 5<sup>th</sup> Applicant, Jung Yong Kim, be released from the custody of the Minister for Home Affairs and Immigration and/or the Permanent Secretary of Immigration on terms and/or conditions that this Court deems just, necessary and/or reasonable pending the hearing and determination of this action before this Court.
  3. **ALTERNATIVELY**, and without prejudice to pray (sic) 2 **and this appeal** (sic), the 1<sup>st</sup> Applicant be allowed to remove himself to Vanuatu pending the outcome of this action before this Court.
  4. **THAT** time for the service of this application be abridged to one (1) day.
  5. **THAT** the costs of this action be costs in the cause.
  6. **SUCH** further or other order(s) that the Honorable Court may deem fit, just, expedient and necessary in the circumstances.
  7. **THAT** the costs of this application be paid by the Respondent on a solicitor-client basis.

### **APPLICANTS’ AFFIDAVIT IN SUPPORT**

6. The Summons is supported by an affidavit of Kim. Kim deposes the following key facts at paragraphs 8 to 76 of his affidavit.

### ***Removal Order & Notice of Detention***

7. Kim was arrested by Police Officers on 07 September 2023. Lee was arrested by Police Officers on 05 October 2023.
8. Kim says that he is currently in the custody of the Minister for Home Affairs and Immigration and /or the Permanent Secretary of Immigration. He alleges that the Police Officers who arrested him on 07 September did not shown him a copy of the Removal Order or Notice of Detention. He asserts that he has not been served with any other document in the form of or purporting to be a Removal Order or Notice of Detention.
9. According to Kim, Lee has told him (Kim) that the Police also did not produce any Order or Notice when they arrested her (Lee) on 05 October 2023.

### ***Release/Bail Application – Habeas Corpus***

10. Kim did file a *habeas corpus* application on 26 September 2023. This matter was placed before Mr. Justice Seneviratne. Lee deposes that his *habeas corpus* application includes a plea whereby he seeks an Order to direct the authorities to release him. Seneviratne J ruled that he did not have jurisdiction pursuant to section 13(2)(g) of the Immigration Act. Accordingly, Seneviratne J did not hear or deal with the application.

### ***Constitutional Redress***

11. On 17 November 2023, Kim also filed an application for Constitutional Redress at the Lautoka High Court. That matter is also currently before Seneviratne J. By that process, Kim also seeks an Order that he be released forthwith.
12. Seneviratne J did grant an interim order on 17 November 2023 to restrain the Department of Immigration from removing the applicants from Fiji until the determination of the Constitutional Redress matter.

### ***Personal Circumstances***

13. Kim is the President of the Grace Road Group. The Grace Road Group has invested tremendously in Fiji. He annexes a copy of a Fact Sheet which outlines Grace Road's commercial and business undertakings in Fiji and its investment plans for 2023 and 2024. Kim says that Grace Road has more projects earmarked for 2024. He says that, as President of the Group, it is important that he attends personally to these projects.

### ***Not a Risk!***

14. Kim asserts that he is not a risk to the wellbeing, peace, defence or public safety of the people of Fiji – nor is he a risk to the order, public morality, public health, security or good government of the people of Fiji. He further deposes that he is not a flight risk. He says that he has no criminal convictions in Fiji or in the Republic of Korea and that he is a law abiding person. He believes that Lee is not any of the above risks at all to the people of Fiji.

### ***Not an Expense to the Republic of Fiji***

15. Kim's deposes that he has written to the Minister for Home Affairs and Immigration and/or the Permanent Secretary for Immigration to allow him to be liberty subject to strict conditions and with payment of a considerable sum of money. He said he even suggested that he pay for the cost of his own security if he is released. There has been no substantive reply from the Minister or the Permanent Secretary.
16. Kim's solicitors also wrote to the Solicitor-General on 07 November 2023. However, the Solicitor-General has not responded. He says that he has exhausted all avenues to try and resolve the matter but to no avail.

### ***Treated like any other Prisoner!***

17. Kim says that while he is in custody, he is kept in a prison facility and made to wear prison clothes and eat food which prisoners eat. His hair has been cut by prison authorities to the same style or design of convicts serving a sentence. His family and friends are allowed visitations at the same time as those of other prisoners. At times, he is kept in solitary confinement. He deposes to the following piece of advice he purportedly received from his lawyers:

I am advised that the purpose of immigration detention is not to perpetually deprive me of my liberty. It is designed for the purpose of removal. Since I have a stay on the removal order, I ought to be at liberty and I verily believe that I am not a threat to the Respondents or the Republic of Fiji to justify any further detention in the form and manner that chosen by the Respondent which is, in itself, a form of punishment.

***Not a Flight Risk!***

18. Kim strongly opposes being removed from Fiji. He says this is evident in the many originating and interlocutory processes which he has filed in Court and before the Citizenship Appeals Tribunal. He says that if he is released, his whereabouts can be controlled. For example, he could be released on terms similar to the conditions which a court may impose whilst granting bail.

e.g. be on 24 hour watch or supervision. Meaning an immigration officer or police officer can be present with me at all times. I undertake to pay the cost of the immigration officer or police officer.

e.g. be subject to a curfew. Whether a 12 hour curfew or a 24 hour curfew. I could remain and reside at one place – at the Grace Road Head Office along Queens Road, Navua next to Rampur College.

e.g. to report to the Navua Police Station every Monday, Wednesday and Saturday between 6am and 6pm. This will give the Minister for Home Affairs and Immigration and/or the Permanent Secretary of Immigration a form of control over my whereabouts to a great extent.

e.g. to place five sureties. These sureties are to be:

- (a) respected people of Fiji with whom Kim has associated with in business or in his personal life.
- (b) people with a reasonable degree of influence and control over Kim to ensure he attends Court or surrender Kim to the Minister and/or the Permanent Secretary of Immigration as and when required;
- (c) he could be subject to a bond of a large sum of money (he suggests \$10,000.00).

19. Kim further promises that he will agree to any condition which the Court may consider necessary.

***Cash Bond***

20. Kim proposes to pay an appropriate cash bond. He offers the sum of \$50,000. He suggests that this be forfeitable to the State if he fails to surrender himself to the Minister and/or the Permanent Secretary as and when required. In addition, he is willing to subject himself to liability of a punitive sum if he fails to come to Court or surrender himself to the Minister and/or the Permanent Secretary as and when required. He is also prepared to compensate the State/Minister and/or the Permanent Secretary to defray costs incurred in having to look for him.

### ***Prejudice***

21. Kim deposes that he and Lee suffer tremendous prejudice when, while engaging the Court and pursuing their right to exhaust its (Court) processes, they are being kept in a place, and under conditions, similar to those of convicts. Kim says:

*I am currently kept with a person who has been found guilty of murder and other dangerous crimes. I am being seriously prejudiced and not the State. This also applies to Sung Jin Lee.*

*Clearly, there is no inconvenience to the Minister for Home Affairs and Immigration and/or the Permanent Secretary of Immigration if Sung Jin Lee and I am at liberty and subject to strict conditions.*

*There is no harm to the public or prejudice to the public in having Sung Jin Lee and I in Fiji.*

22. Kim adds that the prejudice to him and Lee personally, which is occasioned by their continued detention, and the prejudice to the Grace Road Group as an entity, far outweigh any prejudice or inconvenience which the State may raise.

### ***Support from the local Business Community***

23. Kim points out that he has seen letters from local people and entities. These are people and entities who have a stake in some ongoing Grace Road projects. The following letters are exhibited in Kim's affidavit:

- (a) a letter from BSP Bank dated 23 October 2023.
- (b) a letter from the Namara Trust dated 20 October 2023.
- (c) a letter from Bobby Raniga – Tiara Enterprise – dated 19 October 2023.
- (d) a letter from Hamen Lodhia, Engineer, dated 24 October 2023.
- (e) an email dated 14 October 2023 from Hari Punja.

### ***Sung Jin Lee***

24. As for Sung Jin Lee, Kim deposes that he is told by Lee that she (Lee) is also willing to subject herself to all the above conditions. Like Kim, Lee is not a risk to Fiji. She is a valuable senior member of the Grace Road Group and is a key player in terms of:

*“...strategic long-term decisions, business operations and for the purposes of our theological growth within Grace Road church”.*

25. Kim believes that he and Lee have a good case before the Fiji Court of Appeal. The appeal from the decision of Seneviratne J on the *habeas corpus* matter will test the “current interpretation of pertinent provisions of the Immigration Act and the Constitution of the Republic of Fiji but also tests the application of settled interpretations with nuances that apply to [Kim’s] factual circumstances”

***Vanuatu Citizenship***

26. Kim reveals that he has now obtained citizenship of the Republic of Vanuatu. He does not wish to go to South Korea or Korea. He exhibits his Certificate of Citizenship dated 03 October 2023 and a copy of a letter from the Government of the Republic of Vanuatu. He also encloses a copy of his Vanuatu Passport Number RV0154470.

27. In the event that his appeal is not successful, Kim pleads that he be taken to Vanuatu instead of being deported to South Korea. He relies on section 15(6) of the Immigration Act which provides as follows:

(6) A person against whom a removal order has been made may be removed to the place from where the person came or **to the country of which the person is a citizen**, or **to any other country or place to which the person consents to be removed**, if the Government of the country or place agrees to receive the person.

28. He further says:

I consent to being removed to the Republic of Vanuatu, and as a citizen of the Republic of Vanuatu, the Republic of Vanuatu must/will accept me and allow me to enter the Republic of Vanuatu.

.....

Furthermore, without prejudice to my appeal and Court cases, including this action, I ought to be allowed to leave Fiji to the Republic of Vanuatu or any country I wish to go to and so long as I remove myself from Fiji and stay out of Fiji.

I ought not to be forced to go to South Korea or Republic of Korea.

**RESPONDENTS’ AFFIDAVIT IN OPPOSITION**

29. The Respondents have filed three affidavits. The first was sworn by the Director of Immigration, Ms. Amelia Komaisavai. The second affidavit was sworn by the Permanent Secretary, Mr. Mason Smith. The third one was sworn by the Commissioner of Prisons, Ms. Salote Panapasa.



*Amelia Komaisavai*

30. Komaisavai deposes that the question about the legality of the detention of the applicants has already been determined by Seneviratne J in HBM 40 of 2023 on 27 October 2023. The applicants have appealed that decision. The matter is currently before the Fiji Court of Appeal. This appeal is likely to be heard soon. Komaisavai also annexes to her affidavit copies of the **updated Red Notices**.

*Mason Smith*

31. At the outset, Smith reserves his power as Permanent Secretary under section 15 of the Immigration Act 2003 to detain the Kim and Lee for their removal from Fiji.
32. Smith asserts that Kim and Lee were only detained at the Suva Remand Centre and at the Lautoka Remand Centre. They are being detained for the purpose of their removal from Fiji. They are being removed from Fiji because they have been declared prohibited immigrants by the Minister for Home Affairs and Immigration under section 13(2) (g) of the Immigration Act.
33. Smith adds that there are still **Red Notices** in place against all the applicants including Kim and Lee.
34. Smith challenges Kim's authority to depose an affidavit for and on behalf of Lee. He says there is no written authority from Lee annexed to Kim's affidavit to that effect.
35. Smith also asserts that this application for release is an abuse of process because the issues concerned have been argued before Seneviratne J. Seneviratne J had given a Ruling which is currently before the Fiji Court of Appeal. Smith adds that the applicants are relying on the same material which is placed before the Fiji Court of Appeal. This is evidence of duplication of facts and issues. This is an abuse of process.
36. Smith refutes Kim's claim that no Removal Order or Notice of Detention were shown to him (Kim) and Lee when immigration officers took them into custody on 07 September and 05 October 2023 respectively. Smith asserts that immigration officials did produce the documents to the applicants and also explained the documents to them. Smith adds:

Notwithstanding the same, I am advised ... that the exercise of my powers under section 15 ...does not require the procedural requirements referred to therein. I also say that once a person becomes a

prohibited immigrant under section 13(2) (g) of the Immigration Act, I may exercise my discretion for removal under section 15 of the said Act and such process may involve placing the person concerned into custody before leaving the country, as the case here.

37. Smith adds that the Grace Road Group comprises several companies. These companies are separate legal entities. They can continue to operate without Kim's physical presence or supervision in Fiji.
38. Smith adds that, given that the Fiji Court of Appeal is currently considering the question as to whether or not the section 13(2) (g) ouster clause is applicable, this Court is not in a position at this time to consider whether or not Kim and Lee are a risk to Fiji. To do so is to circumvent the authority of the Fiji Court of Appeal.
39. Smith attests to the advice he has received from the Office of the Solicitor General that section 15(4) of the Immigration Act empowers the Permanent Secretary to authorize the detainment of Kim in prison, in police custody or in any other place before leaving Fiji and while being conveyed to the place of departure. Whilst being lawfully detained in a remand center, Kim will be subject to the rules, regulations and/or protocols to which an individual in the lawful custody of the Fiji Corrections Service is subject.
40. With regards to the conditions of release which Kim proposes, Smith says they are inappropriate. He reasons that the applicants are unlawfully residing in Fiji. Not only have they been declared a prohibited immigrant under section 13(2) (g), they have also had their Korean passports cancelled.
41. Smith further attests to the advice he has received that the proposed conditions are moot as the matter is currently on appeal before the Court of Appeal and is *sub judice*.
42. Smith reiterates that matters concerning the Grace Road Group are irrelevant in these proceedings. There are matters of national security and good governance at stake. Kim's continued detainment and presence in Fiji is prejudicial to these considerations.
43. Smith attaches a letter dated 01 November 2023 from the Immigration Department in Vanuatu which appears to confirm that Kim's Vanuatu passport, being Passport No. RV0154470 was cancelled at some point after it was issued.

### ***Salote Panapasa***

44. Panapasa deposes that on 31 August 2023, her office received the Notices of Detention in relation to Kim and Lee. She adds that Kim and Lee are being detained either at the Lautoka Remand Centre or Suva Remand Centre. At the time Panapasa was deposing this affidavit, Kim and Lee were being detained at the Lautoka Remand Centre. This was because their court matters are being heard in the Lautoka High Court. They have never ever been placed in the correctional facilities where convicted prisoners are kept. She adds that, at the remand center, Kim and Lee are subject to the relevant Commissioner’s Orders. These Orders regulate the administration and conduct of prisoners including their attire, meals and confinement arrangement.
45. Panapasa refutes the allegation that Kim and Lee were ever placed in isolation. She adds that they have their own cells. They are able to access most of the services that prisoners may access. These include reading and writing materials and telephone services. She adds that Kim and Lee are entitled to receive visitors every Tuesdays and Thursdays and also meet their counsel.

### **COMMENTS**

46. I start by reiterating that the Minister did declare the applicants “prohibited immigrants” on 31 August 2023 under section 13(2)(g) of the Immigration Act 2003. Following that decision, the Permanent Secretary then acted on the powers under section 15 of the same Act, to take the applicants into custody for the purpose of removing them from Fiji. The applicants then responded by filing (i) an application for *habeas corpus* which was before Seneviratne J, (ii) the judicial review proceedings which is currently before me (iii) and constitutional redress application which is before Seneviratne J.
47. The current application for release is filed as an interlocutory application in the Judicial Review proceedings which is before me – and for which I did grant leave on 19 January 2024.
48. On 27 October 2023, Seneviratne J made a ruling on the *habeas corpus* application. He did rule that the ouster clause in section 13(2)(g) of the Immigration Act 2003 and section 173(4)(d) of the Constitution do not allow him to exercise jurisdiction over the *habeas corpus* application. That decision is currently before the Fiji Court of Appeal.

49. That same question has been raised before me. I have not made a finding on whether or not the ouster clause in section 13(2)(g) and section 173(4)(d) would disallow me from exercising jurisdiction in the review of the Minister's and the Permanent Secretary's decision of 31 August 2023. Rather, I have reserved these questions for full argument before me during the substantive hearing of the Judicial Review matter.
50. However, if, before this Judicial Review matter is heard, the Fiji Court of Appeal should disallow the appeal, then, it would seem, that such a decision would lend some support to the continued detainment (and later deportation) of the applicants . Such a decision would also conclusively determine the fate of these judicial review proceedings before me now.
51. On the other hand, in the event that the Fiji Court of Appeal should allow the appeal and hold that the ouster clause cannot be interpreted to exclude from judicial review a decision which is based on an error of law or in excess of jurisdiction, then this court must proceed to review the Minister's decision in question.
52. However, in proceeding with the review, several other questions would then be raised. These are the same questions which Mr. Green had alluded to and which I had highlighted at paragraphs 34 and 35 of my ruling of 19 January 2024. I set these out below:
- (a) is Judicial Review available in decisions pertaining to the 'national security' of Fiji?
  - (b) if it is, to what extent should this court be satisfied that there is in fact, a matter of national security at stake?
  - (c) flowing from that, to what extent should the Court enquire as to whether or not the Minister's decision to declare the applicants "prohibited immigrants" was in fact influenced by matters of national security?
  - (d) is the Court entitled to call for an affidavit from the Minister in pursuit of that inquiry?
  - (e) is the Minister immune from disclosing any documentation relating to national security and the defence of the country? Can the Court require from the Minister evidence to prove that the disclosure of documents (Taskforce Report) would compromise national security concerns?
  - (f) even if the Report were to be disclosed, is this Court, or anyone else for that matter, equipped to review the Minister's factual assessments and the substance of his decisions?
53. Having said that, I note that the Minister's decision of 31 August 2023 has never been quashed or set aside by any Court. As I have said, whether or not any Court can quash or set aside the decision in

question, is one of the main questions tied to the ouster clause issues. They are, as I have said, also pending before the Fiji Court of Appeal.

54. All this means that, technically, the applicants are still “prohibited immigrants”, *albeit*, the processes which were set in motion by the state for their removal from Fiji have been stayed.
55. The question then arises:

“While the applicants remain prohibited immigrants as such, and while the executive decisions which led to their being declared as such, are under review, and while their removal from Fiji is being stayed, should this Court order their release from detention?”
56. The manner in which the applicants argued their case before me appeared to focus principally on the balance of convenience. In other words, if they are not a risk to national security, and if they are not a flight risk, why detain them? Why not release them subject to strict reporting conditions?
57. At the heart of these questions, is a constitutional balancing exercise which must be carried out and determined within the context of the question: the values that underlie a democratic society based on human dignity, equality and freedom (see section 3 of the Constitution).
58. I imagine that in the Constitutional Redress application pending before Seneviratne J, one of the first things that the applicants will have to establish in order to secure their release is that a constitutional right of theirs has been breached. In this case, it would have to be the right to liberty.
59. One of the questions which would then arise is whether or not a prohibited immigrant who is under detention as such has the same right to personal liberty as any other person, or whether the exception to personal liberty as set out under section 9(1)(i) of the Constitution, read together with section 15(4) of the Immigration Act 2003, do work to reduce their entitlement as such?
60. The other question would be, even if the Permanent Secretary was validly exercising a statutory authority under section 15(4) to detain Kim and Lee, and was pursuing a legitimate aim in the interest of national security as argued by Mr. Green, could keeping Kim and Lee in prolonged detention pending all their applications – be contrary to the “*values that underlie a democratic society based on human dignity, equality and freedom*” as per section 3(1) of the Constitution?
61. These questions raise an issue of proportionality which, in my view, is best left to Seneviratne J to deal with in the Constitutional Redress application before his Lordship.

62. I am mindful of Mr. Owers’ submission that the appeal from Seneviratne J’s decision only relates to the question of jurisdiction – and that if the appeal were to succeed, the matter would be referred back to Seneviratne J to determine the question as to whether or not the detention is unlawful.
63. Mr. Green submits that the same arguments being raised by Mr. Owers in these proceedings were placed before Seneviratne J and that there is already an appeal on foot before the Fiji Court of Appeal. He submits that the *habeas corpus* proceedings was the appropriate forum to deal with the issue as to the lawfulness or otherwise of the detention – and that the issue before the Court of Appeal is whether or not Seneviratne J had jurisdiction to determine the question. He submits that it is an abuse of process for a party to raise any claim in subsequent litigation which they ought properly to have raised in a previous action (**Henderson v Henderson** [1843] EngR 917; [1843-60] All E.R. 378 at 381).

### **CONCLUSION**

64. I should postpone dealing with this issue to see how the Fiji Court of Appeal deals with the appeal decided on the appeal from Seneviratne J’s decision on the *habeas corpus* application.
65. In my view, the question about the applicability of the ouster clauses is sub judice before the Fiji Court of Appeal and is best left alone for now.
66. On whether or not Kim and Lee should be released, the Constitutional issues raised are best left to Seneviratne J to consider in the Constitutional Redress application pending before him.
67. I must decline the application. Costs in favour of the Respondents which I summarily assess at \$1,500 (one thousand five hundred dollars only).



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Anare Tuilevuka

**JUDGE**

20 February 2024