

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBM 04 of 2024

IN THE MATTER of application under the provision of
Section 44(1) and 21(3) of the Constitution of the
Republic of Fiji and Rule 3(1) of the High Court
Rules (Constitutional Redress) Rules 2015.

BETWEEN: **PREMILA DEVI SINGH** of Vuci Road, Nausori.

APPLICANT

AND: **FIJI REVENUE AND CUSTOMS SERVICES**

1st RESPONDENT

AND: **THE DEPARTMENT OF IMMIGRATION**

2nd RESPONDENT

AND: **THE ATTORNEY GENERAL**

NOMINAL DEFENDANT

Before: Hon. Mr. Justice Deepthi Amaratunga

Counsel: Mr. Saneem M for the Plaintiff/Applicant
Mr. Eterika E for the First Respondent
Mr. Nawaikula P for the Second Respondent

Date of Judgment: 2.12.2025

JUDGMENT

A. INTRODUCTION

- [1] This is an application for constitutional redress under section 44(1) of the Constitution of the Republic of Fiji (The Constitution). The Applicant alleges that the first and second Respondents unlawfully restrained her and her two minor granddaughters from departing

Fiji on 17 .12. 2023 due to a Departure Prohibition Order (“DPO”) that was invalid, expired, and improperly maintained in the respective systems of the Respondents.

- [2] The Applicant seeks declarations that her right to freedom of movement under section 21(3) of the Constitution was breached, that the DPO was unlawfully issued and enforced, and that the actions of both Respondents caused humiliation, loss of dignity and emotional injury. She also seeks compensatory damages, special damages for expenses incurred, and costs.
- [3] The Respondents deny liability, asserting that each acted within statutory powers and that any defect in administrative processes did not amount to a constitutional breach warranting compensation. This cannot be accepted as Section 6(7) of the Constitution covers any administrative action as well.

B. FACTUAL BACKGROUND

- [4] The material facts are uncontested.
- [5] On 17 .12. 2023 the Applicant, aged 68, together with her two young granddaughters, arrived at Nadi International Airport to board an international flight to New Zealand for a family holiday. At the customs counter she was informed that a DPO was active against her in the immigration system.
- [6] The Applicant requested a copy of the order or the basis on which it was issued. Immigration officials informed her that the DPO had been issued by the first Respondent and could not be accessed as it was a Sunday.
- [7] The Applicant and the children were thereafter told to sit in a designated area while their luggage was removed. According to the Applicant, the communication was abrupt, lacked courtesy, and caused her significant embarrassment.
- [8] The Applicant maintains that she has no outstanding tax liabilities, and she was never informed or notified of Tax liability and or DPO being placed.
- [9] First Respondent later acknowledged that the DPO had been issued more than three years earlier and, by operation of law, had expired.
- [10] Second Respondent did not provide the Applicant with a copy of the DPO at the airport nor any explanation for why an invalid order remained active in their system and or why DPO was placed against her.
- [11] The Applicant incurred additional expenses in Fiji and her relatives New Zealand incurred additional expenses, due to the cancelled travel arrangements re arrangement to different location due to non availability of tickets to the location she planned to fly earlier.
- [12] The following issues arise:
 - i. Whether the Applicant’s right under section 21(3) of the Constitution — the right to leave Fiji — was breached.

- ii. Whether the first Respondent acted unlawfully or in abuse of process in issuing and/or failing to cancel the DPO which was by law invalid.
- iii. Whether the second Respondent acted unlawfully or negligently in enforcing an invalid DPO.
- iv. Whether the conduct of the Respondents warrants constitutional compensation and, if so, at what quantum.
- v. Whether the Applicant is entitled damages including special damages

LAW

Section 21(3) — Freedom of Movement

[13] Section 21(3) of the Constitution states

“(3) Every citizen, and every other person lawfully in Fiji, has the right to move freely throughout Fiji and the right to leave Fiji.”

Section 21(6) states;

“(6) **A law, or anything done under the authority of a law, is not inconsistent** with the rights granted by this section to the extent that the law;

(a) provides for the detention of the person or enables a restraint to be placed on the person’s movements, whether

(i) for the purpose of ensuring his or her appearance before a court for trial or other proceedings in consequence of his or her conviction for an offence; or
 (iii) for the purpose of protecting another person from apprehended violence.(emphasis added)

[14] Section 21(3) confers on every person lawfully in Fiji the right to leave Fiji. Any restriction must be lawful, reasonable and proportionate and must be in accordance with law.

[15] Respondents rely on Section 31 of Tax Administration Act 2009 which states,

[TAA 31] Departure prohibition order

31 (1) Where-

- a) a person **is subject to a tax liability and** the CEO believes on **reasonable grounds that it is desirable to do so for the purposes of ensuring that the person does not depart Fiji** without-
 - i. wholly discharging the tax liability; or
 - ii. making an arrangement satisfactory to the CEO for the tax liability to be wholly discharged ; or
- b) a person whose tax liability has been written off as bad debts and the CEO has reasonable grounds to reinstate the bad debts,

the CEO by order in accordance with he prescribed from, prohibit the taxpayers from departing Fiji. [Sub(1) subst Act 4 of 2023 s 5, effective 1 August 2023]

- (2) The CEO must state the following on the departure prohibition order-
 - a) the name and address of the taxpayer;
 - b) the amount of tax that is or will become payable.
- (3) A departure probation order has effect throughout Fiji, including aboard any vessel or aircraft within the territory of Fiji.
- (4) A copy of a departure prohibition order issued in respect pf a taxpayer must, as soon as practicable, be saved on the taxpayer, and upon the Commissioner of Police and the Director of Immigration.
- (5) If a departure prohibition order is issued in respect of a taxpayer, the Commission of Police and the Director of Immigration must exercise the powers that they lawfully possess, or cause an officer under their direction to exercise such powers, so far as is necessary to prevent the taxpayers from departing Fiji, including the removal and retention of the taxpayers' passport, identity card, visa or other travel document authorising the taxpayers to leave Fiji.
- (7) A departure prohibition order remains in force until revoked by the CEO or **upon the expiration of 3 years from the date of the order being issued, whichever is the earlier.**
- (8) The CEON must revoke a departure prohibition order if-
 - (a) the taxpayers makes payment in full of the tax payable or that will become payable by the taxpayers; or
 - (b) the taxpayers makes an arrangement satisfactory to the CEO for payment of the tax that is or will become payable by the taxpayers.

[Sub (8) am Decree 38 of 2012 s2, effective 1 January 20121; Act 31 of 2016 S 209, effective 1 December 2016; Act 38 OF 2017 s7, effective 1 August 2017; Act 6 of 2022 s2, effective 1 April 2022]

- (9) As soon as practicable after making a decision to revoke a departure prohibition order, the CEO must serve notice o revocation on the taxpayer and on any person on whom a copy of the departure prohibition order was served.
- (10) No proceedings, criminal or civil may be instituted or maintained against the State, the CEO, a tax officer authorised to act under this section, or a customs, immigration, police or other officer for anything lawfully done under this section. “ (emphasis added)

- [16] According to above provision DPO can be placed again a person who has a tax liability and not against any person. This is a prerequisite for DPO.
- [17] Apart from that there are ***reasonable grounds that it is desirable to do so for the purposes of ensuring that the person does not depart Fiji.***
- [18] Respondents were unable to state the tax liability of Applicant and or grounds on which it was reasonable to place a DPO against Applicant.
- [19] Section 31(4) of Tax Administration Act 2009 also requires the DPO be served to the Taxpayer who is subjected to DPO, "as soon as possible". When this was not done it is an abuse of process and violation of Tax Administration Act 2009. This provision allows the Tax payer to know about the DPO and take action.
- [20] In this instance this was also not done and this is an aggravating factor that infringes statutory safeguard under the Tax Administration Act 2009.
- [21] There was no evidence of reasonable grounds or desirable reasons stated in affidavit in opposition. This clearly violate the Tax Administration Act 2009 as well as the Constitutional right of Applicant.
- [22] Section 31(7) of Tax Administration Act 2009 also allows DPO be valid only for three years. Admittedly the unlawful DPO against Applicant, which was also more than three years old and, on this fact, alone should have been removed instantly, but second Respondent had not allowed Applicant to proceed to overseas.
- [23] Section 44(1) empowers this Court to grant appropriate relief where constitutional rights have been breached.
- [24] Rule 3 of the Constitutional Redress Rules 2015 permits applications for declarations, injunctions, and other appropriate orders.

Whether the Applicant's s.21(3) rights were breached

- [25] It is undisputed that the Applicant was prevented from boarding her scheduled international flight.
- [26] The only basis for this restriction was the DPO recorded in the second Respondent's system which it had allowed and it had also relied.
- [27] There is no room for two government institutions who work in unison to blame each other for violations of the rights under Bill of Rights in the Constitution. In this instance both are jointly and severally liable for serious infringement of right to movement out of Fiji by a citizen. At border if a person is prevented is seriously inconvenient and embarrassment for the person and both first and second Respondents should take extra care that they follow the due process in regard to DPO allowed under Tax Administration Act 2009 or similar legal provisions in other statues that allows DPO placed against individuals.

- [28] The evidence shows that the DPO had expired by effluxion of time. The first Respondent's failure to remove it from its system, and second Respondent's failure to verify its legal effect before enforcing it, resulted in an unlawful restriction on the Applicant's right to leave Fiji.
- [29] A constitutional right cannot be limited by an invalid administrative act. The interference was unlawful, arbitrary, and lacked justification and clearly abuse of Tax Administration Act 2009, which had caused serious infringement of constitutional right of Applicant.
- [30] I therefore find that the Applicant's right under section 21(3) was breached.

Liability of the 1st Respondent

- [31] The first Respondent accepts that a DPO had been issued, but maintains that its officers acted within statutory authority but failed to give reasons for that. It had not provided any explanation as to why DPO was not removed after statutory expiration.
- [32] The legislation governing DPOs requires periodic review and imposes temporal limits. A DPO cannot be left active in perpetuity. The first Respondent failed to ensure that its records were up to date and failed to notify the second Respondent of its expiry.
- [33] Apart from that there was no evidence that Applicant was informed about DPO which is a mandatory requirement to keep the DPO valid beyond initial placement for urgency. So as soon as possible DPO must be served to person against whom it was issued.
- [34] The conduct of first Respondent amounts to administrative negligence and a breach of statutory duty.
- [35] The Applicant's humiliation and emotional impact were a direct result of this failure.

Liability of the 2nd Respondent

- [36] Second Respondent relied solely on the electronic record without verifying the legal status of the DPO or clear law that expired a DPO after three years. Second Respondent should be aware of the clear law that allows such expiration in terms of Section 31(7) of Tax Administration Act 2009.
- [37] Immigration officers are not passive conduits. They are required to ensure that restrictions on liberty are lawfully imposed lawfully as it had allowed first Respondent to place DPO on their system. So, second Respondent should also take necessary precautions such as access to each other's records through a point of contact all the time as departures of flights can be during holydays and after office hours. This should not hinder co-operation between the two government institutions in emergency verification similar to this incident.
- [38] The manner in which the Applicant was addressed was also unsatisfactory. She was dealt abrupt, dismissive and without providing information lacked procedural fairness and courtesy.

[39] Second Respondent therefore acted unlawfully in enforcing an invalid order and in failing to provide basic information to the Applicant.

CONSTITUTIONAL DAMAGES

[40] The purpose of constitutional damages is compensatory, not punitive, but must be sufficient to vindicate the constitutional right.

[41] In Fiji in terms of Human Rights and Anti Discrimination Commission Act 2009, damages are allowed for violations of 'Human Rights' or 'unfair discrimination' so these are causes of action that statutorily created civil liability for damages when proceedings instituted under said law. In my mind this can be applied to individuals. If not there will be discrimination to Applicant.

[42] Section 41 of Human Rights and Anti Discrimination Commission Act 2009 states

"[HRA 41] Damages

41 (1) In proceedings under section 38 for unfair discrimination or a contravention of human rights, the High Court may award damages against the Defendant in respect of any one or more of the following:-

- a) Pecuniary loss suffered or expenses incurred by the complainant or the aggrieved person as a result of the conduct complained of;
- b) Expenses reasonable incurred by the complainant or the aggrieved person in seeking redress for the conduct complained of;
- c) Loss of any benefit; whether or not of a monetary kind the complainant or the aggrieved person might reasonable have been expected to obtain but for the conduct complained of;
- d) Humiliation, loss of dignity and injury to feelings if the complainant or the aggrieved person."

[43] Interpretation of Human Rights under the above-mentioned law is defined exclusively as;

Human rights means the rights embodied in those United Nations covenants and convention on human rights which are rectified by the State of Fiji, and the rights and freedoms as set out in the Constitution of the Republic of Fiji;

[def am Act 31 of 2016 s99, effective 1 December 2016]

[44] Above provision allows damages be assessed for rights and freedom as set out in the Constitution and this includes rights under Bill or Rights.

[45] The above law is applicable when an application is made under said act but this can be guideline for assessment of damages. If not there will be clearly discrimination between applications under this Act and also by individuals. This is not warranted.

[46] The following factors are relevant:

- The Applicant is an elderly woman travelling with minor children.
- She experienced public embarrassment, anxiety, and distress.
- The Respondents accepted no responsibility and provided no apology.
- The breach was unnecessary, avoidable, and resulted from systemic administrative failure.
- The right to leave Fiji is fundamental; its arbitrary denial is serious.

[47] The Applicant claims \$100,000, but there is no basis for an award of that magnitude in light of local jurisprudence.

[48] Taking into account the emotional harm, loss of dignity, vulnerability, and the failure of both Respondents to act responsibly, an award of \$30,000 is fair, reasonable and proportionate to vindicate the breach.

[49] I have also taken in to consideration that respondents had allowed removal of DPO without further delaying and blaming each other on the following day.

SPECIAL DAMAGES

[50] The Applicant claims:

- FJD \$8,945.49 (expenses in Fiji)
- NZD \$1,290 (expenses in New Zealand)

[51] These amounts are supported by receipts exhibited in the affidavit evidence. They are not excessive or remote. They were incurred as a direct consequence of the unlawful restraint. The extra expenses incurred in New Zealand was incurred by an aggrieved party who were awaiting to receive them. Though this sum can be recovered as an 'Aggrieved person' in terms of Section 41 of Human Rights and Anti Discrimination Commission Act 2009 they are not parties to this action. So on that basis that sum is rejected, but this was also taken as aggravating factor in awarding \$30,000.

[52] Special damages are therefore awarded for a sum of FJD 8,945.49.

COMPENSATORY DAMAGES

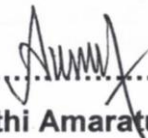
[53] (4) The Respondents, jointly and severally, shall pay the Applicant FJD \$30,000 as constitutional damages for humiliation, loss of dignity and injury to feelings. This amount was considered taking in to consideration type of violation and humiliation disruption to enjoyment of life of Applicant. One aggravating factor was that there were two minor children accompanying her who also went through the ordeal and also manner in which this was dealt.

[54] Cost is summarily assessed at \$4,000 to be paid within 21 days.

FINAL ORDERS:

- a. A declaration that the Applicant's right to freedom of movement under section 21(3) of the Constitution was breached by the unlawful and arbitrary restraint imposed on 17.12.2023 by Defendants jointly and severally.
- b. A declaration that the DPO issued by the first Respondent was invalid at the time of enforcement.
- c. A declaration that the second Respondent unlawfully enforced an invalid DPO and failed to provide adequate information to the Applicant.
- d. First and second Respondents jointly and or severally pay special damage of **FJD \$8,945.49** and general damages \$30,000 (total of \$38,945.49).
- e. Cost of this action is summarily assessed at \$4,000.




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Deepthi Amarātunga
Judge

At Suva this 02nd day of December, 2025.

Solicitors

Saneem Lawyers

Fiji Revenue Customs Service

The Attorney-General chambers