IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBM 07 OF 2024

IN THE MATTER OF an Application for Constitutional Redress pursuant to Section 9, 21, 32 & 44 of the Constitution

BETWEEN : **RAHUL RAJAN NAIDU** of 28 Howra Crescent, Rifle Range Lautoka.

APPLICANT

AND : **COMMISSIONER OF FIJI CORRECTION SERVICE**

THE FIRST RESPONDENT

: **THE ATTORNEY GENERAL OF FIJI**

THE SECOND RESPONDENT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr. Anthony M. with Mr. Swamy V. For the Applicant.
Ms. Raman J. for the Respondents

DATE OF HEARING : 26th November 2025.

WRITTEN SUBMISSIONS : Filed by the Applicant on 26th November 2025.
Filed by the Respondent on 26th November 2025.

DATE OF RULING : 4th February 2026.

RULING

(On Striking Out –Constitutional Redress)

A. <u>Introduction:</u>

1. Before me is a Notice of Motion (an Application) preferred by the Applicant on 25th March 2024 seeking the following Orders from this Court;

   1. A Declaration that the applicant's right to personal Liberty pursuant to section 9 of the constitution was violated by the First Respondent by imprisoning him longer than lawful for 149 days (from 18th September 2023 to on or about 14th February 2024).

   2. A Declaration that the Applicant's Right to Freedom of Movement pursuant to section 21 of the Constitution was violated by the first Respondent by imprisoning him longer than lawful for 149 days (from 18th September 2023 to on or about 14th February 2024).

   3. A Declaration that the Applicant's Right to Economic Participation, pursuant to section 32 of the Constitution, was violated by the First Respondent by imprisoning him longer than lawful for 149 days (from 18th September 2023 to on or about 14th February 2024).

4. An Order that the First Respondent and Second Respondent pay compensation for the above breaches calculated at minimum $5,000.00 (Five Thousand Dollars) per each day of unlawful imprisonment.

5. Costs of this application be costs on the cause.

6. Any other orders this Honorable Court seems just and adequate.

2. The Application is supported by an Affidavit sworn by the Applicant, **Rahul Rajan Naidu,** and filed on 25th March 2024, along with annexures thereto marked as "RRN-1" to "RRN-4".

3. When the matter was first called on 02nd May 2024, State Counsel, who appeared for the First and Second Respondents, having admitted the due service of the Application, moved for time to file Affidavit in opposition, on which the Court directed the Respondents to file and serve the same in 28 days for the Applicant to file reply in 14 days thereafter and fixed the matter to be mentioned on 2nd July 2024.

4. However, instead of filing the Affidavit in opposition, the Respondents on 08th May 2024 filed their Inter-Parte summons seeking to strike out the Application pursuant to Order 18 Rule 18 (1) (a) of the High court Rules 1988 and the inherent jurisdiction of this Court.

5. As this summons did not require the Respondent to file Affidavit evidence in support, the matter was fixed for hearing and when it was taken up for hearing on 26th November 2025, Counsel for both parties, in addition to making oral submissions, filed their written submissions as well.

B. <u>Background History:</u>

6. As per the Applicant's Affidavit in support of his substantive Application, it is stated, *inter alia*, **<u>THAT:</u>**

   a. He was convicted for the offence of Money Laundering and on 18th **September 2028** was sentenced by the High Court of Lautoka for 6 years and 9 months with a non-parole period of 5 years.

   b. He made an Appeal to the Court of Appeal against the Conviction and Sentence; however, the Court of Appeal affirmed the same by its judgment dated 14th June 2023.

   c. As per legal advice and a recent Supreme Court judgment, he should have been released from the Prison on completion of his 5 years of none-parole period on or about 18th September 2023, but he was released only on 14th February 2024 after around 149/150 days of delay.

   d. He had to serve the full non-parole period of 5 years, as his remaining sentence period, after the remission of 1/3 period from the total sentence for a period of 6 years and 9 months (81 months), came to be 54 months, which was lessor than his non-parole period of 5 years (60 months).

e. As a result of his continued unlawful detention, he missed his opportunity to spend time with his loved ones and family, right to movement, economic participation and chance of getting employment. He claims compensation in a sum of $5,000.00 per day. His grievance is that he had to serve around 149/150 days in addition to his 5 years of none-parole period.

C. The Law

7. The Respondents in making this Strike Out Application rely on Order 18 Rule 18(1)(a) of the High Court Rules of Fiji 1988 (HCR) and the inherent jurisdiction of this Court. Counsel for the Respondents has also drawn my attention to Rule 7 of the Constitutional Redress Rules (CRR), which provides that the practice and procedure of the High Court Rules 1988 apply to the constitutional redress applications. He also relies on Rule 3 (2) of the CR Rules 2015 and on section 44 (1) & (4) of the Constitution

Section 44 (1) of the Constitution states that:

(1) *"If a person considers that any of the provisions of this Chapter has been or is likely to be contravenedin relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) may apply to the High Court for redress."*

Section 44 (4) of the Constitution States:

(4) *The High Court may exercise its discretion not to grant relief in relation to an application or referral made under this section, if it considers that an adequate alternative remedy is available to the person concerned.*

1. Rule 3(2) of the Constructional Redress Rules states:

3(2). *An application under paragraph (1) must not be admitted or entertained after 60 days from the date when the matter at issue first arose, unless a Judge finds there are exceptional circumstances and that it is just to hear the application outside of that period.*

2. Order 18 Rule 18 of the High Court Rules 1988 states as follows:

18.-(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

(a) **it discloses no reasonable cause of action or defence, as the case may be; or**

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be...

D. DISCUSSION:

8. Justifying the Respondents' reliance under order 18 Rule 18 (1) (a) of the HCR, Counsel for the Respondents submitted that the cause of action exist only within the timeframes specified under law and when an action is time barred, the cause of action ceases to exist, unless it is extended by the Court through the relevant application.

9. Counsel for the Respondents argued further that the Applicant's application hereof is time barred, there is no evidence of extension of time limitation period, and accordingly,

no cause of action exists. He argued that it is how the Order 18 Rule 18(1) (a) of the High Court Rules 1988 applies with respect to the Applicant's Application and Affidavit in support.

10. As the Respondent's Summons to strike out is founded on paragraph (a) of the Order 18 Rule 18 above, it does not require any evidence. Thus, no affidavit in support was filed by the Respondent. However, both parties have filed their respective written submissions in order to substantiate their positions on this Application for strike out in hand.

11. I find that the counsel for the Respondents has filed forceful submissions, supported by some convincing case law authorities, to the effect that the Applicant does not have a reasonable cause of action, his application is out of time and he has alternative remedies. Accordingly, counsel for the Respondent moves for that the application for constitutional redress be dismissed with costs.

12. Thus, the issues that seek answer at this juncture are;

   a. Weather this application for constitutional redress is filed in contravention Rule 3 (2) of the constitutional redress rules – 2015?
   b. Weather the applicant has an adequate alternative remedy?
   c. If the issue (a) above attracts an affirmative answer, should the Application for Constitutional Redress be dismissed for want of cause of action?

Delay in Filing the Application:

13. The first and foremost ground relied on by the Respondents in support of their application for strike out is the, admitted, delay on the part of the Applicant in making his application, which is outside the prescribed time frame of 60 days.

14. Rule 3 of the High Court (Constitutional Redress) Rules 2015 provides:

> *"(2) An application under paragraph (1) must not be admitted or entertained after 60 days from the date when the matter at issue first arose unless a Judge finds there are exceptional circumstances and that it is just to hear the Application outside of that period".*

15. As per the Applicant, he should have been released on or about 18th of September 2023, on completion of his none-parole period of 5 years imprisonment, but he was released only 14th of February 2024, after around 4 months and 26 days.

16. The matter at issue appears to have first arose to the applicant on account of his continued detention only after 18th September 2023, on which date he should have been released as aforesaid. His cause of action, if any, should have arisen on or about 19th September 2023. The time period of 60 days, within which he should have made his application expired on or about 19th November 2023. But he made his impugned application only on 25th March 2024 after a delay of around four (4) months and Six (6) days.

17. The applicant neither made an application seeking leave for the extension of time to make the substantive application, nor included a prayer in his belated substantive Application for the extension of time. Moreover, he has not adduced any exceptional circumstances

to excuse his said delay for this Court to admit the application despite the delay and hear it by acting under rule 3(2) of the High Court (Constitutional Redress) Rules 2015.

18. The Applicant appears to be holding a view that his being in detention during the time material itself, should necessarily qualify his belated application to be admitted. The provision made under Section 44(1) of the Constitution for another person to make an application for and on behalf of an inmate, appears to have escaped the attention of the Applicant.

19. The Applicant, on account of his sentence by the High Court, had been in detention from 18th September 2018 and his detention was not something that befell on him all of a sudden just prior to the time period within which he should have made his application. Being an inmate for such a long term and knowing that he should have been released on or about 19th September 2023, when he found that he was not to be released after the expiry of 5 years non-parole period, he could have acted diligently either on his own or through some other person as provided by section 44(1) of the constitution.

20. I find that the applicant's letter dated 5th September 2023 addressed to the Hon. Attorney General, marked as "RRN-3" and tendered along with his Affidavit in support, shows that he had started rolling on question of his release at least from **22nd July 2023**. It is also on record, that he on an earlier date had requested for a Prison Visit by the Legal Aid and the Legal Aid in turn had sent the letter dated 1st November 2023 addressed to the Acting Commissioner of Correction.

21. The above correspondences marked as "RRN-3" amply demonstrate that the Applicant was concerned about and working on his release on the due date (19th September 2023) with the completion of 5 years non-parole period. Since his release on 19th September 2023 did not materialize, with the same diligence he could have made the Application on his own or through another person as aforesaid. But, for the reason best-known to him, he did not make or cause some other person to make an Application within the prescribed time period.

22. It is to be observed, that even after his release on 14th February 2024, it took around 1 month and 10 days for him to lodge this application on 25th March 2024. He has not given any reason for his inordinate delay on his part in making this application.

23. In ***Sheik Mohamed V the Attorney General of Fiji –HBM -02 of 2019*** His Lordship Hon. L. Seneviratne-J (as he then was) inter alia, made the following observations.

> *"[9] The applicant's position is that taking into consideration the parole period and the remission of sentence he should have been released from the prison on 15th February 2018. From the contents of the affidavit of the applicant the matter at issue arose on 15th February 2018. This application for constitutional redress was filed on 20th May 2019 which is clearly out of time.*
>
> *[10] The applicant has not given any reason of the delay in coming to court and therefore, the court does not have any grounds to act under rule 3(2) of the High Court (Constitutional Redress) Rules 2015 and to hear the application made outside the period of time prescribed by the said rules.*
>
> *[11] For the above reasons the application of the applicant must necessarily fail and is liable to be struck out".*

24. It is also pertinent to refer to what His Lordship Hon. Alfred had to say in paragraphs 19 to 22 of his judgment dated 25th April 2018 in Sun Insurance co Ltd Vs Attorney General Civil Action No HBM 31 of 2018 Sun

> *"19. I turn now to r 3(2). At first blush it appears to close the door to applying for constitutional redress, for it uses the words "must not be admitted or entertained after 60 days from the date when the matter at issue first arose". There is no difficulty about what "admitted" means. What does "entertain" mean? It means "be ready to consider". And "the date when the matter at issue first arose"?. This I have already opined is 14 or 18 July 2018.*
>
> *20. So, putting s.44 (1) and r.3 (2) together, the legal or constitutional arrangement is there for all to see and I shall paraphrase it as follows: If a person becomes aware that his rights are expected to be contravened in the future, he must within 60 days of first becoming aware of this, apply to the High Court for constitutional redress. The period of 60 days starts to run from the date when he first became aware of an expected future contravention of his rights. In my view, this must necessarily be so, for the maxim of public policy is. "Ignorance of the law which everybody is supposed to know does not afford excuse" (Osborn's Concise Law Dictionary).*
>
> *21. But if the door is closed at the end of 60 days it can be opened if I find there are exceptional circumstances and that it is just to hear this application. This entails my deciding the Summons while observing both the letter of the law and the spirit of the law. It is this that Shakespeare's Portia achieved with elan in dealing with the case of the Merchant of Venice.*
>
> *22. Thus it is incumbent upon the Plaintiff to show there are exceptional circumstances and that it is just that I hear this application. I find that the Plaintiff has failed to provide any cogent evidence of any such exceptional circumstances. On the contrary the evidence provided points in the opposite direction. For instance Sharma's affidavit's paras 34,35 and 36 make it crystal clear that the Plaintiff was fully aware that the AC Act had been passed and assented to on 14 July 2017 and gazetted on 14 July 2017 (sic). Then Annexure LKS 42 show that Sharma was on 17 July 2017 informing the media that the Plaintiff's revenue through third party insurance would decline by about $4.5 million a year because of "the setting up of the Accident Compensation Commission after the passing of the bill in Parliament last week".*

25. The above case law authorities, cited by the Counsel for the Respondents, are convincing and I would follow the same in this matter too as I am satisfied that the Applicant in this matter has not preferred his application within the stipulated time. He also has failed to make an application or to include a prayer in the substantive application seeking leave for the extension of the time period and adduce any exceptional circumstances to disregard his delay and to hear the application. Thus, the issue in paragraph 12 (a) above should necessarily attract an affirmative answer warranting the Applicant's application for constitutional Redress to be struck out.

Alternative Remedy

26. The Applicant has not adduced any evidence showing that he has already exhausted those remedies. He could have commenced a civil claim against the alleged incarceration beyond the period of his sentence ordered by the High Court. Hence, Section 44(4) of the Constitution can stand against the Applicant justifying the striking out of his Application in hand.

27. His Lordship Hon. Justice Premathilaka , in paragraphs 17 to 19 of his judgment dated 16th October 2025 in **Civil Appeal No-ABU 68 of 2024 Radrodro v Chief Registrar [2025] FJCA 157** stated as follows;

> *"[17] This proposition arises from section 44(2) and 44(4) of the Constitution. In terms of section 44(2), the right to make an application for constitutional redress is without prejudice to any other action with respect to the matter that the applicant may have. However, section 44(4) qualifies that right by stating that the High Court may exercise its discretion not to grant relief if it considers that an adequate alternative remedy is available to the applicant. One cannot treat these two provisions in isolation.*
>
> *[18] The appellant argues that in terms of section 44(2), she has an unfettered right to seek constitutional redress despite the pending criminal appeal AAU 106 of 2022 where she has alleged as part of 17th ground of appeal and succeeded in obtaining leave to appeal that the transfer of her trail from the Magistrates court to the High Court was 'caused by Political /Judicial Interference thus making the same a Breach of Process, Practical Unfairness, Apparent Bias and great miscarriage of Justice'. This is more or less similar (if not identical in its letter and sprite) to the very basis on which the appellant sought relief in her CR application.*
>
> *[19] Section 44(1) enables a person complaining of any contravention or likely contravention of any rights under Bill of Rights to apply for constitutional redress. To me, what section 44(2) does is to preserve that person's right to apply for constitutional redress notwithstanding any other action that person may have regarding the same matter. It does not assign superior status to a CR application over any other action".*

28. On his failure to exhaust the adequate alternative remedy available to him renders his applications to be misconceived and premature. The learned counsel for the Respondent submitted in his written submission that the applicant has an adequate alternative remedy and this application for the constitutional redress must be dismissed pursuant to Section 44 (4) of the Constitution. Section 44 (4) of the Constitution states that:

> *"The High Court may exercise its discretion not to grant relief in relation to an application or referral made under this section if it considers that an adequate alternative remedy is available to the person concerned."*

29. The matters raised by the applicant in his purported applications can be addressed in an appropriate civil proceedings. As such the intervention of this Court is not warranted. Therefore, I am satisfied that the applicant already has an adequate alternative remedy pursuant to Section 44 (4) of the Constitution.

It is a settle legal principle in the domains of constitutional, human rights and criminal laws, not to allow an application for constitutional redress, if there an adequate alternative remedy available. Having discussed the principles laid down by the Privy Council in number of cases, the Fiji Court of Appeal in **Singh v Director of Public Prosecutions [2004] FJCA 37; AAU0037.2003S (16 July 2004)** held that:

> "We note that the Privy Council has consistently laid down that where an adequate alternative remedy is available then constitutional redress will be refused. It has regarded an application for constitutional relief in these circumstances as an abuse of process and as being subversive of the Rule of Law which the Constitution is designed to uphold and

protect. These cases set out the relevant principles for the court to follow when considering and applying s.41 (4) of the Constitution."

Cause of Action:

30. With the affirmative answer arrived at for the issue in paragraph 12 (a) above, I agree with the argument of the learned Counsel for the Respondents that on the expiry of 60 days period allowed to file an Application for Constitutional Redress under Rule 3(2) of the CR Rules, no cause of action could have survived for the Applicant to file his Application for constitutional Redress. Hence, the Respondent's Application for strike out should succeed.

E. CONCLUSIONS:

31. The Application for Constitutional Redress is clearly out of time. He has not adduced any exceptional circumstances to justify his undue delay for this Court to accept and act upon, on the assumed basis that he has a cause of action and no alternative remedy available. Accordingly, for the aforementioned reasons, I find that the Applicant's Constitutional Redress Applications should be struck out and dismissed, however with no order for costs. Parties shall bear their own costs.

F. FINAL OUTCOME;

a. The Respondents Summons filed on 8th May 2024, seeking to strike out the Applicant's Constitutional Redress Applications, succeeds.

b. The Applicant's Notice of Motion filed on 25th March 2024, for Constitutional Redress, is hereby struck out.

c. There will be no order as to costs.

A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 4th day of February, 2026.

SOLICITORS:

For the Applicant: **Messrs. MILLBROOK HILLS LAW PARTNERS, Barristers & Solicitors**
For the Respondent: **Attorney General's Chambers**