

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA FIJI

HBM NO 28 OF 2014

IN THE MATTER of an application for Constitutional Redress and or Interpretation.

AND IN THE MATTER of Section 44 of the Constitution.

BETWEEN : MESAKE LIGAVAI of Natabua Correction Centre at Lautoka in the Western Division.

APPLICANT

AND : THE DIRECTOR OF PUBLIC PROSECUTIONS

FIRST RESPONDENT

AND : THE ATTORNEY GENERAL OF FIJI

SECOND RESPONDENT

AND : THE COMMISSIONER OF POLICE

THIRD RESPONDENT

Appearances:

Applicant appearing In person
Ms. Lee for 2nd and 3rd Respondents

R U L I N G

Introduction

1. This is an application for Constitutional Redress filed by the Applicant against the Director of Public Prosecutions, the Attorney General and the Commissioner of Police. Upon receiving the Notice of this application the Learned State Counsel Ms. Lee appeared to represent the 2nd and 3rd Respondents on the 28th of November, 2014. She pointed out to Court that the Applicant has not submitted an Affidavit in Support of his application.

2. This application is governed by High Court (Constitutional Redress) Rules 1998 as the application is filed prior to 13th March, 2015 the date on which the High Court (Constitutional Redress) Rules 2015 was published in the Gazette and came into force.
3. It is stated in Rule 3(1) of 1998 that an application to the High Court for redress under Section 41(10) of the Constitution may be made by motion supported by Affidavit.
4. In considering the above provision the Court granted time for the Applicant to file an Affidavit which he did before the next call date.
5. When the matter was called on 04/03/2015 Learned State Counsel appearing for the Respondents submitted to Court that the annexures referred to in the Affidavit has not been served on the Respondent. She also submitted that the application for Constitutional Redress is out of time and sought a date to file Summons to strike out the same.
6. Accordingly the Summons to strike out pursuant to Order 18 Rule 18(1)(a) of the High Court Rules 1988 and the inherent jurisdiction of this Court was filed on 12th March, 2015 by the Counsel for 2nd and 3rd Respondents of this matter.

Hearing

7. At the hearing of this matter the Learned State Counsel submitted to Court that this application should be struck out on the following grounds:
 - (i) Applicant has alternative remedies such as filing a case for breach of duties by the Police Officer.
 - (ii) The Affidavit filed does not have the annexures mentioned therein.
 - (iii) The application refers to the matter at issue which arose in 2009 and should not be admitted or entertained as it is after 30 days from the date when the matter at issue first arose. This objection is made pursuant to Rule 3(2) of the High Court (Constitutional Redress) Rules 1998.
8. The applicant in his Affidavit alleges that he was assaulted while in Police Custody and the said officer violated his rights. The date of arresting him is given as 21st September, 2009.

9. **Determination**

It is clear from the Affidavit evidence before me that the matter at issue first arose in the year 2009 well over 5 years before this application is lodged. Therefore I agree with the Learned State Counsel that the Applicant cannot maintain this application as per the High Court Rules mentioned above. I also agree with the Learned State Counsel that the Applicant has alternative remedies for any breach of duties by the Police Officer while he was in Police Custody. I also find that this Court has no jurisdiction to order the Magistrate Court case to be permanently stayed though the Applicant has sought such relief in his Affidavit.

Conclusion

10. (a) Due to the reasons set out above this application for Constitutional Redress is struck out and dismissed.
- (b) Applicant advised on the other remedies available to him.



At Lautoka
28 April 2015

Lal S. Abeygunaratne
JUDGE