IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Constitutional Redress Application No. HBM 32 of 2017

ETUATE RULADE SUGUTURAGA

[APPLICANT]

vs.

SUPERVISOR CORRECTIONS, WESTERN DIVISION (Sakiusa Veiwili)

[1ST RESPONDENT]

&

OFFICER IN CHARGE, LAUTOKA REMAND CENTRE (Orisi Kuboutawa)

[2ND RESPONDENT]

&

ATTORNEY GENERAL OF FIJI

[3RD RESPONDENT]

Counsel	:	Applicant in Person
	:	Mr. J. Mainavolau for the Respondents
Date of Application	:	5th September, 2017
Date of Hearing	:	19th February, 2018
Ruling Pronounced on:		12th April, 2018

RULING

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1. By way of Notice of Motion dated 20th August, 2017 and accompanying Affidavit sworn on 4th September, 2017 the Applicant, on 5th September, 2017 applied for constitutional redress pursuant to section 44(1) of the Constitution of Fiji.

2. The grounds on which the applicant seeks redress are set out in his said affidavit filed in support of the application. The affidavit states as follows:

2 (1) That he has been in remand since June 2016 on account of pending matters at the Magistrate's Court of Nadi, for which he is produced time to time. That sometimes between February and June 2017 he had a pending Constitutional Redress Application in the High Court of Lautoka (Application HBM No:-02 of 2017) and when he returned to the Remand Centre after the hearing on 26th June, 2017, being informed by the duty officer of the Remand Centre that upon the directives of the 2nd Respondent he was to be segregated to the Solitary confinement, he was initially confined for 10 days from 26th June, 2017 to 6th July, 2017 in a cell reserved for convicted prisoners, who commit serious prison offences.

2 (2) That during that first 10 days, he was subjected to treatment meant for those offending prisoners, which included total denial of visitation. That he was not given a table and chair for the purpose of preparation of his defence and as a result of his writing to the 2nd Respondent on 5th July, 2017, he was transferred back to his old dorm on 6th of July, 2017. (Letter annexed as ERS-1)

2 (3) That when he was told about the reason for the segregation and stoppage of visitation for about 10 days he felt alienated, marginalized, isolated and thereafter once again on 14th July, 2017 he was shifted to the solitary confinement and on his inquiry from an officer to know the reason for his confinement in this manner, he was informed that airing about his earlier Constitutional Redress matter over a News channel at 6.00 pm on 13th July, 2017 was the reason for same.

2 (4) Though, he wrote several letters to the 1st and 2nd Respondents to know the actual reason for his solitary confinement and denial of visitation, those letters were not duly responded, except for verbally informing through an officer that his confinement will continue for safety reasons, which was in response to his letter dated 24th July, 2017 (marked as ERS-3)

2 (5) He further alleges that he has been subjected to physical, mental or emotional torture and cruel, inhumane, degrading or disproportionate severe treatment or punishment contravening section 11(1) of the 2013 Constitution.

3. **The Applicant seeks following orders:**

1. "THAT the Defendants pay the Plaintiff the damages as encapsulated on the Indorsement of Claim in the Writ of Summons.

2. A DECLARATION that the Plaintiff's right to be free from torture of any kind enshrined in section 11 (1) of the 2013 Constitution has been breached.

3. A DECLARATION that the Plaintiff's right to a fair, rational and lawful administrative action pursuant to section 16 (1) (a), (b) of the 2013 Constitution has been breached.

4. A DECLARATION that the Plaintiff's right to visitation has been breached pursuant to section 13 (1) (k) of the 2013 Constitution.

5. A DECLARATION that the Plaintiff's right to physical exercise pursuant to section 13 (1) (j) of the 2013 Fiji Constitution has been breached.

6. ANY further Orders or Relief that this Honorable Court may deem fit and necessary in all the circumstances of the case."

Discussion:-

(a) **Claim For Damages**

4. At the outset, the applicant has to be told that financial relief or damages, as he has prayed for in 1st paragraph above, could only be awarded if he were to pursue the matter by way of writ of summons and not through this constitutional redress application.

(b) **Allegations of Torture & Unfair Administrative Actions**

5. The 1st Respondent- Supervisor of Corrections (Superintendent SAKIUSA VEIWILI) of the Fiji Corrections Service Headquarters – Western Division in his affidavit, while denying the most of the allegations, avers that the Applicant was not in solitary confinement and in fact seen by the 2nd respondent every day during unlock checks in the Mornings and lockup checks in the afternoon and he was informed the reason for his segregation was for his safety and security of the institution.

6. In response to the allegation of denial of visitation, the Officer avers that there was a miscommunication between the officers at the remand Centre regarding the applicant's visitation as they had assumed that being segregated means his visitation should be ceased. However, the Applicant was later informed of this miscommunication and was offered the opportunity to receive visitors, if he wished to.

7. The Officer specifically states that the particular segregation cell at the remand Centre was meant only for the remand inmates, who need safety and commit prison breaches.

8. The most vigorous argument, advanced on behalf of the respondents at the hearing, was the availability alternative remedies to the Applicant and those remedies must be exhausted before the Applicant can resort to Section 44 (1) application under the Constitution.

9. Section 44 (4) of the Constitution states that the High Court has discretion not to grant relief if it considers that an adequate alternative remedy is available.

10. In ***Harikisoon v. Attorney General of Trinidad and Tobago [1979] 3 WLR 62***, it was said that "to use the Constitutional Redress process as a substitute for normal procedure is to devalue the utility of this Constitutional remedy. Mere allegation of constitutional breach was insufficient to invoke this remedy".

11. In ***Harrikissoon*** (supra) the Appellant was transferred in his employment without the required 3 months' notice. Instead of availing himself of the review procedure available in the Regulations, the Appellant applied to the High Court for constitutional redress. He sought a declaration that his rights had been violated. He was unsuccessful in the High Court, the Court of Appeal and the Privy Council in delivering the opinion of their Lordships, Lord Diplock said at p.64:

> *"The right to apply to the High Court under section 6 of the Constitution, for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom."*

12. Moreover, there is a complaint procedure, whereby an inmate could bring his or her grievances to the notice of the visiting Magistrate or judge through the prison authorities or directly to the Magistrate when he is produced before the Magistrate. The applicant who found time and will to write to the Hon. Chief Justice, the Human Right Commission and to the Commissioner of Correction services, did not choose to write or complain to the Magistrate on his prison visit or when the applicant was produced before the Magistrate.

13. However, he admits in his supporting affidavit that as a result of his complaints dated 17th July, 2017 made to the Commissioner of Corrections and to the Human Right Commission of Fiji, separate inquiries were conducted and final reports on same have not yet been released.

14. It is an established practice, almost equivalent to a rule of law that all remandees need to be produced before judicial officer fortnightly for the extension of remand period. This practice is being followed to ensure that the communication between the judicial officer and the remandees is maintained so that former can hear grievances and receive complaints, if any, from the latter. Applicant does not say that he was not produced before the Magistrate according to this established practice. Therefore, I am compelled to believe that no formal complaint, on the alleged torture or inhumane treatment, had been made to the relevant authority, visiting or sitting Magistrate by the Applicant before coming to this Court for Constitutional Redress.

Segregation or Solitary Confinement

15. According to Applicant's affidavit, he says that he was initially in segregation or solitary confinement for 10 days from 26th June, 2017 and on 6th July, 2017 was transferred to his old dorm on his request, where he had the table and chair for him to prepare his documentation for his cases. Thereafter, he was once again transferred to the segregation on 14th July, 2017, where he alleges that he is still languishing and subjected to physical, mental or emotional torture and form of cruel, inhumane, degrading treatment or punishment.

16. When the contents of the applicant's letter dated 5th June, 2017, annexed to the supporting affidavit marked as **ESR-1**, are carefully gone through, I find a complete different picture regarding the date, time period of his alleged solitary confinement and the condition of the cell, where he is said to be unreasonably confined and subjected to alleged ill treatments and torture.

17. According to this letter dated 5th June, 2017, it appears that he is in the so called solitary confinement from a date prior to 5th of June, 2017. But in his supporting affidavit for reason/s best -known to him he complains that his solitary confinement occurred for the 1st time only from 26th of June, 2017.

18. This seems to be a wilful suppression of the actual date of his so called solitary confinement conceivably with an ulterior motive of avoiding the hurdle of 60 days' mandatory time bar, he would otherwise have faced, had he divulged in his affidavit the actual date of his confinement.

19. Had he relied on 5th June, 2017 as the actual date of the alleged violation of his right (segregation), his application filed on 5th of September, 2017 would have been, undoubtedly, out of time.

20. The above contents of the letter ESR 1 and the apparent delay on the part of the applicant seems to have escaped the attention of the learned Counsel for the Respondents.

21. Another noteworthy aspect that I observe is in paragraph 5 of this letter marked **ESR-1,** which is reproduced bellow for easy reference.

> ***5. "While I appreciate the fact that this segregation cell is 100% better than the old cell in terms of conditions and facilities. However I am handicapped of doing proper writing without a Chair"*** *(Emphasis mine)*

22. The above paragraph in the Applicant's own letter marked ESR-1, clearly shows that there had not been any inconvenience or shortcoming in the new cell, except for the lack of a Table and a Chair for his paper works, which were subsequently made available by transferring him to his old dorm. He has expressed his fullest satisfaction about the facilities in the new cell and if he had any dissatisfaction, ill treatment meted out to him

or felt that he had been unduly segregated from others, he would, undoubtedly, have aired those grievances in this 1st letter itself. But he did not choose to make a complaint by that letter.

23. His only grievance of non-availability of a Chair and Table has been duly redressed and I do not find any major issues for him to invoke the jurisdiction of this Court in this manner. His allegations to the effect that he misses his daily shower, breakfast and other activities including physical exercise owing to his segregation are not averred in his supporting affidavit for the Respondents to duly reply. These allegations are seems to be his after thoughts.

24. There is no credible evidence to show that he was tortured or subjected to any inhumane treatment. He has expressed his total satisfaction about his new place of detention in his said letter marked ESR-1 and the true ground situation would have been observed by the member of the Board of inquiry and the representative of the Human Right & anti-Discrimination Commission of Fiji, who visited the premises on the complaint made by the Applicant and had there been any truth in it would have been highlighted in the respective reports.

25. In his letters to the Officer at the Remand Centre, he has not complained about the, alleged condition of the new Cell, or about the torture and ill treatment, except for inquiring the reason for his so called solitary confinement.

26. The report of the Board of inquiry, though only the last part of it is filed in Court, clearly shows that the allegations levelled by the Applicant are baseless. The letter sent by the HRC to the Remand Centre does not specifically points out any major short comings or about the alleged cruel or degrading treatment towards the Applicant except for giving general instruction with regard to the rights of persons in incarceration.

27. With regard to the curtailing of visitation, the Officer has given plausible explanation that it was due to a miscommunication it was stopped only on one occasion initially and the applicant was given opportunity for continued visitation thereafter. The applicant has not proved that his visitation was stopped permanently during his stay in the new cell. At least he has not filed an affidavit from his family members about the alleged continued denial of visitation.

28. The authorities are clear and consistent. A constitutional redress application will not automatically succeed. It would be an abuse of process should this be regarded as an absolute path to redress. All other avenues must first be explored and exhausted.

Conclusion

29. The applicant has not substantiated his averments. This Court is of the view that all these allegations of solitary confinement, torture, denial of rights and curtailing of visitation are totally unfounded made with an ulterior motive of achieving of his own agenda.

30. In any event, if the applicant was of the view that his, rights were violated, the Court holds that the Applicant had adequate alternative remedies for him to exhaust before invoking the jurisdiction of this Court.

31. The applicant has not been produced or appeared in Court after the hearing on 19th February, 2018. It is learnt that he has been bailed out. He has not given his private address for him to be noticed. Hence, this ruling is produced in his absence, with instructions to the Registry to issue a copy to the applicant if he makes request from the Registry.

Orders

1. Application for Constitutional Redress is dismissed.

2. I direct the Registry to issue a copy of this ruling to the applicant, if request is made.

3. 30 days to appeal to the Court of Appeal.

HIGH COURT OF FIJI LAUTOKA

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A.M.Mohammed Mackie
Judge

At Lautoka
12th April, 2018