IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Constitutional Redress Application No. HBM 36 of 2017

SEREVI VANANALAGI

[APPLICANT]

vs.

ATTORNEY GENERAL OF FIJI

[1ST RESPONDENT]

&

THE DIRECTOR OF PUBLIC PROSECUTION

[2ND RESPONDENT]

Counsel	:	Applicant in Person
	:	Mr. J. Mainavolau for the Respondents
Date of Hearing	:	30th January, 2018
Date of Ruling	:	15th February, 2018

RULING
[Constitutional Redress]

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1. The Applicant SEREVI VANANALAGI, currently detained at Maximum Correction Centre, Naboro, by his Notice of Motion dated and filed on 20th September, 2017 moves this Court as follows;

   "For Constitutional Redress and or Interpretation"

   > *"……for an Order and Interpretation whether* *Serevi Vananalagi* *is entitled to raise a new point or new ground of Appeal in the Supreme Court of Fiji and whether the Supreme Court is entitle to hear and entertain a new point and ground of Appeal for the first time "*

2. It appears that the Applicant through the above Notice of Motion applies for constitutional redress to remedy his perceived breach of legal right to argue on his

new grounds of appeal or raise a new point he wishes before the Supreme Court of Fiji.

3. The Notice of Motion is supported by an affidavit sworn by Serevi Vananalagi on 20th September 2017 in which he, among other things, avers the following:

   (i) That he had filed a petition for special leave to appeal to the Supreme Court of Fiji seeking special leave to appeal under section 98(3) (c) of the Constitution of Fiji.

   (ii) That the grounds of appeal were new points or grounds and they were not raised in the Court of Appeal.

   (iii) That he is aggrieved and dissatisfied with the Supreme Court decision refusing to hear and consider his new grounds of appeal. (Paragraph-8)

4. In paragraph 7 of his affidavit, by drawing the attention of this Court to Section 7(2) of the Supreme Court Act, he says that the new grounds raised by him meets the threshold criteria for special leave to appeal.

5. In paragraph 9,10 of his affidavit he argues that;

   a. He has a right of appeal to the Supreme Court on any new ground and to deny him by not having the new grounds heard and considered is a substantial and grave injustice could otherwise occur.

   b. That section 15 (1) of the Constitution gives him the right to a fair trial.

   c. That the Supreme Court erred in failing to hear and determine the new grounds of appeal raised in the special leave application.

   d. To deny him by not hearing the new grounds is a substantial and grave injustice.

6. In paragraphs 11 and 12 of his affidavit he raises the following issues respectively;

   a. That the question asked is, whether the Supreme Court on appeal has the jurisdiction to hear and determine any new ground or new point raised for the first time?

   b. If yes, what type of new grounds or new points that is the Supreme Court on appeal hear and determine.

7. He then prays for the following reliefs in paragraph 17:

a. An Order that the new grounds or new points raised for the first time on appeal in the Supreme Court involving a miscarriage of justice should be heard and determined.

b. An interpretation whether the Supreme Court on appeal is entitled to hear and determine new grounds and new points involving miscarriage of justice.

c. An Order for the oral hearing to be relisted to hear and determine the new grounds that were not allowed by the Supreme Court.

8. On behalf of the Respondents an Affidavit dated 22nd November 2017 by one **Sakisua Vewili**, Supervisor of Correction, has been filed. Counsel for the Respondents on the date of hearing filed helpful written submissions as well, for which I am grateful.

9. On perusal of the averments in paragraphs 9 to 12 of the reply affidavit of SAKIUSA VEIWILI, and the arguments advanced in the written submission, both filed on behalf of the Respondents, I agree :

a. That the Supreme Court being the apex Court of Fiji, has finally determined the issues raised by the Applicant and the propriety of it cannot be canvassed in this forum,

b. Its decision cannot be re-viewed in any lower Court and the Constitutional redress jurisdiction of this Court is not a panacea.

c. The applicant is attempting to re-litigate issues.

10. In ***Singh v Director of Public Prosecutions [2004] FJCA 37; AAU0037.2003S (16 July 2004)***, the Fiji Court of Appeal said (emphasis mine):

> *In Chokolingo v. Attorney General of Trinidad and Tobago [1981] 1 WLR 106 the appellant had been committed to prison for 21 days for contempt. He did not appeal against that committal. Two and half years later, he made an application for constitutional redress seeking a declaration that his committal was unconstitutional and in breach of human rights and fundamental freedoms. This applicant was also unsuccessful in all courts. In dismissing the appeal to the Privy Council Lord Diplock stated at pp.111-2:*
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> *"Acceptance of applicant's argument would have the consequence that in every criminal case, in which a person who had been convicted alleged that the judge had made any error of substantive law as to the necessary characteristics of the offence, there would be parallel remedies available to him: one by appeal to the Court of Appeal, the other by originating application under section 6(1) of the Constitution to the High Court with further rights of appeal to the Court of Appeal and to the Judicial Committee. These*

parallel remedies would be also cumulative since the right to apply for redress under section 6(1) is stated to be "without prejudice to any other action with respect to the same matter which is lawfully available." The convicted person having exercised unsuccessfully his right of appeal to a higher court, the Court of Appeal, he could nevertheless launch a collateral attack (it may be years later) upon a judgment that the Court of Appeal had upheld, by making an application for redress under section 6(1) to a court of co-ordinate jurisdiction, the High Court. To give to Chapter 1 of the Constitution an interpretation which would lead to this result would, in their Lordship's view, be quite irrational and subversive of the rule of law which it is a declared purpose of the Constitution to enshrine".

We note that Mr. Shankar cited portion of this passage in his submissions but that he omitted the last sentence which we consider highly relevant to the proper application of s.41(4) and the application of the Constitution as a whole.

11. In Hinds v Attorney General and Another[2002] 4 LRC 287 – one of the cases cited by Shameem J. in her ruling – the appellant had been charged with and convicted of arson in a trial where his application for legal representation was refused by the trial judge. The Court of Appeal dismissed his appeal. The appellant then applied for constitutional redress. Section 24 of the Constitution of Barbados contains a provision which is similar to s.41 (4). In dismissing the Appellant's application the Privy Council held:

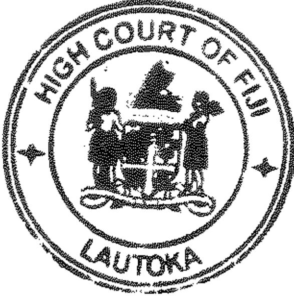
"As it is a living document, so must the Constitution be an effective instrument. But Lord Diplock's salutary warning remains pertinent: a claim for constitutional redress does not ordinarily offer an alternative means of challenging a conviction or judicial decision, nor an additional means where such a challenge, based on constitutional grounds, has been made and rejected. The appellant's complaint was one to be pursued by way of appeal against the conviction, as it was; his appeal having failed, the Barbadian courts were right to hold that he could not try again in fresh proceedings based on s.24."

12. I also agree with the contention of the learned Counsel for the Respondents that this application by the Applicant is an abuse of process.

13. In any event, the Applicant is clearly out of time. Even if he is within the stipulated time period or being not so, satisfies this Court with the exceptional circumstances for this Court to disregard the delay and to hear the application outside of that period, which task of course he has failed to fulfil, yet for the reasons adumbrated above this application cannot succeed. Further, this application does not disclose a reasonable cause of action and it constitutes an abuse of the Court process. The Application has to be, necessarily, dismissed.

14. I cannot even, in my wildest imagination, think of going into the issues raised by the Applicant in his application, as it could mean that this Court is sitting on a final Judgment of the Supreme Court. That is not the function of a Constitutional Redress Court.

15. Application dismissed.



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A.M.Mohammed Mackie
Judge

At Lautoka
15th February, 2018