

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBM No. 15 of 2019 (LTK)

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

AND

IN THE MATTER of the
Section 44(1), 7(1), 11(1) and
26(1) of the 2013
Constitution of Fiji.

BETWEEN: MOHAMMED SHAHEEN

APELLANT

AND: THE ATTORNEY GENERAL

FIRST RESPONDENT

AND: THE FIJI CORRECTIONS SERVICE (MR ONISIMO RABAILIKU)

SECOND RESPONDENT

BEFORE: Hon. Mr Justice Vishwa Datt Sharma

COUNSELS: Applicant - In Person
Ms. Ali N. - 1st & 2nd Respondents

Date of Decision: 21st October, 2019 @ 9.30 am

DECISION

*[Applicant's Constitutional Redress application filed pursuant to
Section 44(1), 7(1), 11(1) and 26(1) of the 2013 Constitution]*

INTRODUCTION

- [1] Before Court is a Constitutional Redress application filed by the Applicant pursuant to Section 44(1), 7(1), 11(1) and 26(1) of the 2013 Constitution of Fiji. The application is supported by two (2) Affidavits. First is deposed by the Applicant whilst the second is deposed by the Applicant's father.
- [2] The Applicant is a serving prisoner at the Medium Correction Centre. He alleges that he was assaulted, threatened and intimidated by Correction Warden, Onesimo Rabuiliku and was subjected to oppressive treatments.
- [3] The Application was served on the First and the Second Respondents and both were represented by a counsel from Attorney General's Chambers.
- [4] On the returnable date of the application, the counsel representing the Respondents submitted that the application was filed out of time and should be accordingly dismissed.
- [5] The counsel referred to Section 3(2) of the High Court (Constitutional Redress) Rules 2015 which 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."

The counsel further submitted the application for Constitutional Redress should be made within 60 days from the date when the matter at issue first arose.

The counsel added that the alleged assault took place on 21st January 2019 and 60 days' time from the date of alleged assault expired on 2nd March 2019.

The application was filed 26 days late on 17th April 2019.

- [6] The Applicant admits that he was assaulted on 21st January 2019 and his application was filed in court on 17th April 2019.
- [7] However, he informed court that he had given his application to the Officer In-charge of Correction Services on 1st April 2019 and it was the officer in charge who delayed the filing of his application.
- [8] In response to the Applicant's submission, the counsel representing the Respondents stated that the application was still late by 9 days even if he had given his application to the officer in charge on 1st April 2019 and therefore asked court to deliver the decision.
- [9] Upon a careful perusal of the file records, it can be ascertained and now confirmed the following:
 - (i) The alleged assault took place on 21st January 2019. There is no dispute about the date of the alleged assault.
 - (ii) The covering correspondence from the Fiji Corrections Service accompanying the Applicants Notice of Motion coupled with the application for Constitutional Redress is dated at 1st April, 2019.

(iii) However, the Notice of Motion for Constitutional Readdress is dated 17th April 2019 bearing the High Court Seal and a received stamped of 17th April 2019.

- [10] The date on the application and the date the application was received by the High Court Registry is the same i.e. 17th April 2019.
- [11] Therefore this confirms that this application was received and filed at the Court registry on 17th April 2019 which was outside the 60 days requirement of the law.
- [12] I have also perused the Affidavit in Support deposited by the Applicant's father Mohammed Hakik on 4th June 2019 whereby he stated at paragraph 5:-

- "That on 9th March 2019 he visited the Applicant who had informed him that he was assaulted by warden Onesimo Rabuiliku. He made an official complainant to Central Police Station (Now Totogo Police Station) via Report No. RR293/2019 as referenced therein. That his report will be transferred to the Lami Police Station for investigation. The Applicant had informed the father that the Applicant had made complaints to the Office in Charge and Chief Officer of the Medium Correction Centre but nothing was done. That the father was concerned about the Applicant's safe keeping in Prison Custody and to assault him was a criminal offence."

- [13] The Applicant has admitted in court that he was allegedly assaulted on 21st April 2019 and gave his application for Constitutional Readdress to officer in charge of the Corrections Service on 1st April 2019. He blames the officer in charge for the delay in filing his application in court on 17th April 2019.
- [14] The Applicant had neither informed court of any exceptional circumstances nor do I find any exceptional circumstance in terms of Section 3(2) of the Constitutional Redress Rules 2015 shown by the Applicant that would tantamount to just and fair to allow me to hear the Applicant's application outside of 60 days' time frame.
- [15] If in fact the Applicant was assaulted on 21st January 2019 as alleged by him, then he should have filed a timely constitutional Redress application within 60 days timeframe as was required in terms of Section 3(2) of Constitutional Redress Rules 2015.
- [16] I find that the Applicant had failed to do so in the required circumstances.
- [17] The court has the discretionary power to refuse relief sought by the Applicant under Article 44(4) of the Constitution if an adequate remedy was available to him.
- [18] However, at this stage it would be appropriate for me to consider whether adequate alternative remedy is available to the Applicant in the given circumstances.
- [19] The Applicant had the following alternative remedy available to him for the concern alleged assault on him and could have reverted to the same:-
- (i) Complain to police about the alleged assault and initiate criminal proceedings.
 - (ii) File a Writ action in the High Court for his injuries

- [20] The Applicant's father in his Affidavit deposed that he had reported the assault on his son Applicant to the Totogo Police Station which on transfer to the Lami Police Station is subject to investigation.
- [21] So an alternative remedy was sought on behalf of the Applicant by his father who had in fact lodged a complaint to the Totogo Police Station vide report no. RR293/2019 and the matter was under investigation unless to date any decision had been made which this court has not been made aware of this Applicant.
- [22] Reference is also made to the Prisons Act 86 which contains relevant provisions for addressing issues concerning the welfare of the inmates in terms of Section 44 of the Act. This particular section allows visits by Resident Magistrates to every prison and Prisons Regulation 157 enumerates the duties that the visiting Justices must carry out pursuant to Section 44 of the Act.
- [23] Provisions of Regulation 157 (1)(a) and (d) provides as follows:
- (a) *To enquire into every complaint which any prisoner makes to him and*
 - (b) *Ensure that any abuses in connection with any prisoner which comes to his knowledge are brought to the notice of the Controller of Prisons.*
- [24] I have not been made aware by the Applicant by any means whether he had taken advantage of the provisions of regulation 157 (1) (a) & (d) and complained of the alleged assault and threat against the Prison Warden concerned. If the Applicant had made a complaint then the visiting magistrate would have heard the complaint and made enquiries required thereof accordingly. The visiting magistrate therefore would have been the proper authority to address the Applicant's complaint instead.
- [25] I find that adequate alternative statutory remedy was readily available to the Applicant to address his complaint to the visiting magistrate and he had failed to take the advantage of the same in the circumstance.
- [26] For the aforesaid reasons, I have no alternative but to dismiss strike out the Applicant's application seeking Constitutional Redress accordingly.

ORDERS

- (i) Applicant's application seeking Constitutional Redress is dismissed.
- (ii) Orders accordingly.

DATED AT SUVA THIS 21st DAY OF OCTOBER, 2019



VISHWA DATT SHARMA
JUDGE
SUVA

cc. Attorney General's Chambers, Suvavou House, Suva