

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBM 82 of 2021

IN THE MATTER of an application for constitutional redress pursuant to section 44 (1) and (2) of the Constitution of the Republic of Fiji.

BETWEEN: **PRANIL SHARMA** of 3 Milverton Road, Suva.

APPLICANT

AND: **INOKE TAKIVEIKATA** of Natasiri, Paramount Chief.

1ST DEFENDANT

AND: **ITAUKEI LAND TRUST BOARD** of 431 Victoria Parade, Suva.

2ND DEFENDANT

AND: **FIJI POLICE FORCE** of Ratu Dovi Road.

3RD DEFENDANT

AND: **PC 5077 TIMOCI** of Samabula Police Station.

4TH DEFENDANT

Counsel : Applicant: In person
: 1st Defendant: Ms. N. Mishra
: 2nd Defendant: Ms Vokanavanua.Q
: 3rd and 4th Defendant: Ms. S. Ali and Ms. Pratap S

Date of Hearing : 22.4.2022

Date of Judgment : 27.5.2022

JUDGMENT

INTRODUCTION

1. This is an application seeking constitutional redress in terms of Section 44 of the Constitution of the Republic of Fiji (the Constitution) and Section 25 of the High Court Act 1875. Application was filed by way of motion which stated “an order that ...court issue on the violation of human rights ..” for “failure to act on the law’s (Sic) of 2013 constitution”. Applicant was alleging ‘emotional torture, mental torture and physical torture from the rental property of the landowners in Fiji on the negligence of 2nd 3rd 4th and 5th Respondents. Applicant is also seeking general damages. It is difficult to understand alleged violation of ‘Human Right’ and there were no dates of alleged infringements. If the alleged violations happened prior to 60 days from the date of application, then exceptional circumstances should be presented to the court by applicant to justify hearing of such an application outside sixty day period. All the Respondents sought strike out of the Application on the basis that it discloses no reasonable ‘cause of action’ in terms of Order 18 rule 18 of High Court Rules 1988. Application, is struck off due to lack of clarity as to the alleged violations and also time of violations. An applicant in constitutional redress application needs to provide sufficient particulars, so as to Respondents to reply. Application lacks minimum requirements for Respondents to reply with certainty.

FACTS

2. The Applicant through his Notice of Motion seeks the following relief:
 - “(a) An order that this Honourable Court to issue on the violation of human rights on the land issue which was subject to 2nd Defendant who failed to act on the laws of the Constitution;
 - (b) An order that this Honourable Court to issue on the emotional torture, mental torture, and physical torture from the rental property of the landowners in Fiji on the negligence of the 2nd, 3rd and 4th Defendants of this court proceeding;
 - (c) An order that this Honourable High Court to issue on the general damage and punitive damage against the 2nd Defendant of this court proceeding;
 - (d) An order that this Honourable Court to legalise the Landlord and Tenant Act 2017; and
 - (e) That this Honourable Court to order for travelling of the Applicant of this court proceeding the Ministry of Employment, Productivity and Industrial Relations has issued a letter for the Applicant for seasonal workers and that the action of both Defendants, the applicant is not able to proceed.”
3. The Applicant's Notice of Motion states that the Application for constitutional redress is made under section 44 (1) and (2) of the Constitution.

4. Applicant in his Affidavit states that the 1st Defendant has signed legal documents to lease 715 acres of land which was filed with the second Defendant and that it, failed to act on his lease application. There is no violation of rights under Bill of Rights for this inaction.
5. First Defendant is not an official of the state or functioning any work of the state. If he had agreed to provide some land it was done in his private capacity. If the land does not belong to him but iTaukei Land then, second Defendant is the trustee of such land, and the proper authority to deal with that, for the benefit of all the owners.
6. The Applicant also alleges that the landowners are abusing the applicant by not providing a proper agreement and receipts. For this again there is no violation of right under Bill or Rights Chapter in the Constitution.
7. In addition to the above, the Applicant lists details which are summarized in the submissions of third and forth Defendants as follows;
 - a) The Applicant holds a bailiff's certificate;
 - b) The landowner was the subject of a criminal action. For this, the Applicant attaches a court certificate, which in fact shows it relates to the matter of State v David Maharaj Suva Criminal Case No. 543 of 2021;
 - c) The Fijian Competition and Consumer Commission has written to the Fiji Police Force ('FPF') to look into the complaint lodged by the Applicant against the 1st Defendant, but the FPF has not taken any action;
 - d) The FPF has issued to the landowner a letter stating \$10,000.00 to be paid to the Applicant for damages caused to his personal belongings due to the actions of the landowner. However, the attachment relating to this allegation is a complaint against a Maya Lata;
 - e) This Honourable Court to make a declaration on the "breaches by the 2nd Defendant of the Objects of the Society under the Legal Practitioners Act.
8. At the outset Legal Practitioner's Act does not allow Constitutional Redress application filed for any violation under that.
9. Maya Lata is not a party to this Application and cannot be a party, hence Applicant had tried to connect unconnected matters.
10. In light of the above, the Applicant seeks orders for

"breach of the 2013 Constitution, general and punitive damages of a \$100 billion from both Defendants and for the judicial department to legalise the Landlord and Tenant Act 2017."

LAW AND ANALYSIS

11. Applicant had mentioned sub Sections 44(1) and 44 (2) in the motion filed and had made the application under said provisions which reads;
 - “44.- (1) If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in 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.
 - (2) The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.”
12. When a person ‘considers’ that any of the provisions contained in the Bill of Rights chapter is violated that person, may bring an action for Constitutional Redress and Applicant had done so in this instance.
13. This cannot be interpreted to state any person can file any claim which he ‘consider’ to be violations of rights contained in Bill of Rights Chapter of the Constitution. The facts alleged in the application must show violations. If not it can be struck off.
14. Section 44(3) of the Constitution states;
 - “(3) The High Court has original jurisdiction-
 - (a) to hear and determine applications under subsection (1); and
 - (b) to determine questions that are referred to it under subsection (5), and may make such orders and give such directions as it considers appropriate.”
15. This court obtains original jurisdiction to hear any Constitutional Redress application, but rules and procedure are not governed in the Constitution.
16. High Court (Constitutional Redress) Rules 2015 issued in terms of Section 44(10) of the Constitution and Section 25 of the High Court Act 1875, are applicable for Constitutional to Constitutional Redress.
17. Rule 3 of the High Court (Constitutional Redress) Rules 2015 states:
 - “3(1) An application to the High Court for redress under section 44(1) of the Constitution may be made by a motion supported by affidavit-

- (a) claiming a declaration;
- (b) praying for an injunction;
- (c) claiming or praying for such other order as may be appropriate.

(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."(emphasis added)

- 18. So it is mandatory for Applicant, who files an action for a constitutional redress, within 60 day time, to allege the date of violation and if the date is not available at least to tell that violation happened in approximate dates, and those dates fell within 60 day time period. If not court cannot apply above mention rule which state court is not to 'admit or entertain' such an application as of right.
- 19. If the application is filed outside, the time period of 60 days from the alleged violation, at least approximate dates, and additional material needed to show exceptional circumstances to allow any extension. So there is no right for such an Applicant to seek constitutional redress, without showing 'exceptional circumstances'.
- 20. Applicant had not shown any ground to be considered as exceptional circumstances. Considering that time period had lapsed, this was a mandatory requirement. All the indications were the alleged incidents had happened prior to 60 day time period.
- 21. Applicant had annexed some documents to affidavit in support and the first document is a letter of s law firm written to second Defendant on 10.6.2020. This was more than a year ago.
- 22. Second Annexed is irrelevant to alleged violation of a right as it is a Police Clearance for migrate as worker.
- 23. Applicant's bailiff certificate issued by Chief Magistrate is also irrelevant to any alleged violation.
- 24. Next annexed document is certified court proceeding where Applicant was bounded for a two year period not to reoffend and this was on 21.4.2021. Again this was outside 60 day time period.
- 25. The letter of Fiji competition and Consumer Commission (FCCC), is dated 9.9.2020 and this was regarding inaction on police and also pending action. According to said letter alleged inaction on the part of police had happened nearly one year prior to this application, and FCCC had indicated that they will bring this issue to the court in relevant proceedings.

26. Annexed A5 to affidavit in support, dated 5.3.2021 and relate to damage to Applicant's item due to cyclone Ana where a third party had unlawfully locked a house occupied by Applicant.
27. Annexed A6 is dated 15.7.2021 and this is a Medical Examination Form where Applicant was assaulted by forth Respondent, relating to a land issue in terms of paragraph 15 of the affidavit in support. This does not show an official act.
28. So even from the annexed documents it is clear that alleged incidents had happened prior to 60 days from this application and Applicant had failed to adduce exceptional circumstances to entertain this application outside 60 day time period.
29. So on this ground alone this application can be struck off in *limine*.
30. Even If I am wrong on the above considering the affidavit in support it is not clear what was the alleged violation contained in the Bill of Rights Chapter and how each party to this application had contributed to such violation.
31. Rule 4(3) of the High Court (Constitutional Redress) Rules 2015 , states that:
 - "A notice of motion under paragraph (1) of rule 3 must state -
 - (a) concisely the nature of the claim; and
 - (b) the relief or remedy required."
32. Application has not revealed a claim under Bill of Rights chapter. Defendants are prejudiced to be allowed to answer to such an affidavit and or vague allegations.
33. High Court (Constitutional Redress) Rules 2015, Rule 7 states;
 - "Except as otherwise provided in these Rules, the jurisdiction and powers conferred on the High Court in respect of application made by any person in pursuance of either section 44(1) or 44(5) of the Constitution are to be exercised in accordance with the practice and procedure, including any rules of Court, for the time being in force in relation to civil proceedings in the High Court, with any variations the circumstances require."
34. From the above Rule 7 of High Court (Constitutional Redress) Rules 2015, High Court Rules 1988 can be applied *mutatis mutandis*.
35. Accordingly Order 18 rule 18 of High Court Rules 1988 is applied with necessary changes and Applicant had failed to disclose a reasonable claim for the Defendants to

reply for constitutional redress.

36. Second Defendant had filed to strike off this Application on the basis of abuse of process, too. There is no affidavit filed by second Respondent, so I have to rely only on the affidavit of Applicant for this.
37. Applicant is a bailiff and in paragraph 6 of the affidavit in support stated;

“That the high court to note applicants (sic) bailiff certificate No 10/20. Annexed as exhibit A2 of this affidavit”
38. This indicate that Applicant was aware of court proceedings and is a person who provide services as bailiff to lawyers, hence aware of liability to cost , when an action is lost.
39. As such this Application is struck off in *limine* for failure to disclose reasonable violation of a right contained in the Bill of Rights Chapter in the Constitution. So I do not need to consider whether there is an abuse of process or any other grounds stated in the summons filed by second Defendant other than non disclosure of a claim for constitutional redress.

CONCLUSION

40. Application for constitutional redress is struck off. The cost of this application is summarily assessed at \$1000 to be paid to second Respondent and third Defendants (\$500 each) within 21 days. No cost granted to first and forth Respondents as they were represented by Legal Aid and the state respectively.

FINAL ORDERS

- a. Application for constitutional redress is struck off.
- b. Cost of this application is summarily assessed at \$1000 (\$500 each for Second and third Defendants).

Dated at Suva this 27th day of May, 2022.




Justice Deepthi Amaratunga
High Court, Suva