

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**HBM 106 of 2020**

**BETWEEN:**                    **TAFIZUL RAHIMAN**

**APPLICANT**

**AND:**                            **THE STATE**

**RESPONDENT**

Appearances:                    Mr. Rahiman (In Person) for the Applicant  
   Mr. Kant S. for the Respondent  
   Ms. Devi on instructions of R. Vananlagi & Associates for the Fiji Human Rights  
   Commission  
Date of Hearing:                    27 June 2022  
Date of Ruling:                    20 July 2022

**RULING**

1. Before is an application filed by the Office of the Attorney-General seeking an Order to strike out the Notice of Motion for Constitutional Redress by the Applicant.
2. I have read the submissions filed by the Office of the Attorney General and I agree with it.
3. In essence, the application for Constitutional Redress is an attempt to move this Court to revisit the entire process from the police investigations to the trial of the matter which led to the conviction of the applicant to a charge of murder and a sentence for life imprisonment for which the applicant has already served more than fourteen years in prison.
4. In particular, the Applicant's Constitutional Redress application seeks the following Orders:
  - (a) The Applicant's conviction and sentence be quashed or a presidential pardon be granted with non-pecuniary damage or any other appropriate, just and expedient orders necessary with the circumstances of this matter.
  - (b) An order on the issue of unfair trial proceedings or other orders may be appropriate to prevent human rights abuse whilst in custody.
  - (c) An order for damages – done to him during his High Court trial and Supreme Court proceeding.
  - (d) An order that the Supreme Court hear his petition and to supply the Applicant with the documents which he requested for in his petition.

- (e) A declaration that Police Officers violated his rights under Section 13 (1) (i) (ii) and (ii) of the 2013 constitution ('Constitution') as he did not understand anything that was written down against him.
- (f) A declaration that Police orders had violated his rights under Section 11 (1) and (2) and 131 (d) of the Constitution on 3 January 2005.
- (g) A declaration that the Defendant violated his rights under sections (2) (g) and (l) and 15 (3) of the Constitution by failing to abide by the time limit for trial and failing to accord the Applicant a fair trial on 28 April 2008.
- (h) A declaration that the Defendant violated Section 14 (2) (c) of the Constitution by failing to give the Applicant an opportunity to prepare his defence in the High Court on 28 April 2008.
- (i) A declaration that the Defendant violated Section 15 (1) of the Constitution in the High Court on 28 April 2008.
- (j) A declaration that the Defendant violated Sections 14 (2) (d) and (o), 15 (1) and Section 26 (1), (2) and (3) by failing to give the Applicant an opportunity to prepare his defence in the Supreme Court on 16 October 2012 and again on 18 October 2012, and;
- (k) A declaration that the State violated Section 16 (1) (a) (b) and (c) and Section 26 (4) of the Constitution, which was breached through the Chief Registry Office.

5. The background to Rahiman's conviction as summarized by the Supreme Court in (see **Rahiman v State** [2012] FJSC 24; CAV0002.2011 (24 October 2012)) is as follows:

- (1) The accused Appellant Tafizul Rahiman was charged in the High Court at Lautoka on the 7th March 2005 with the murder of Juliet Burre Sanchez contrary sections 199 and 200 of the Penal Code Chapter 17, said to have been committed on 3rd January 2005 at Nadi in the Western Division.
- (2) The appellant was found guilty of murder by the assessors unanimously after trial before the Learned High Court Judge, Kishor Govind and on 20th May, 2008 he was convicted and sentenced to life imprisonment.
- (3) The appellant by a letter dated 10th June, 2008 appealed the decision of the High Court against the conviction and sentence to the Full Court of Appeal. The Court of Appeal after hearing the appeal dismissed the appeal on 12th May 2011. The appellant being dissatisfied with the decision of the Court of Appeal by the letter dated 5th June, 2011 has sought special leave to appeal the decision of the Court of Appeal on several grounds of appeal.

6. The Attorney-General's Office submits as follows:

- (a) Section 44 (4) of the Constitution entitles the Court to decline a Constitutional Redress application if an alternative remedy is available.
- (b) The application for Redress is out of time and under Rule 3(2) of the Constitutional Redress Rules, should not be entertained.
- (c) Order 18 Rule 18(1)(a) of the High Court Rules gives power to this court to summarily strike out any proceeding if it discloses no reasonable cause of action.
- (d) The allegations of breach against the Police Officers should have been raised in a voir dire proceedings in the criminal trial proper.

(e) The applicant should have then appealed the decision.

7. I agree that the applicant should have appealed the conviction and the sentence – which I understand he did – and was unsuccessful. He even sought special leave to appeal in the Supreme Court which was also declined (see Rahiman v State [2012] FJSC 24; CAV0002.2011 (24 October 2012)).
8. It is an abuse of process to attempt to move the Court to revisit these issues in a Constitutional Redress application.
9. In the final, I agree with the submissions of the Office of the Attorney-General and in the result, I strike out the applicants Constitutional Redress application.



Anare Tuilevuka  
**JUDGE**  
Lautoka

20 July 2022