

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

JUDICIAL REVIEW NO: HBJ 02 OF 2022

IN THE MATTER of an application for leave to apply for Judicial Review by Asenaca Maqanatagane ('Applicant')

AND

IN THE MATTER of the decision dated the 9th December 2021 by The Commissioner of Police for termination/ dismissing the employment of the Applicant from the Fiji Police Force

BETWEEN: **ASENACA MAQANATAGANE**

Applicant

AND: **THE COMMISSIONER OF POLICE**, Police Headquarters, Laucala Beach, Nasinu.

First Respondent

AND: **THE ATTORNEY GENERAL OF FIJI**

Second Respondent

CONSOLIDATED WITH HBJ 03 OF 2022

IN THE MATTER of an Application for leave to apply for Judicial Review by Simone Tuivanuavou (Applicant)

AND

IN THE MATTER of the decision dated the 9th December 2021 by The Commissioner of Police for terminating /dismissing the employment of the Applicant from the Fiji Police Force

BETWEEN: **SIMIONE TUIVANUAVOU** of Lot 263 Vomo Street, Lautoka.

Applicant

AND: **THE COMMISSIONER OF POLICE**, Police Headquarters, Laucala Beach, Nasinu.

First Respondent

AND: **ATTORNEY GENERAL OF FIJI**, Suvavou House, Suva.

Second Respondent

Appearances: Mr. Maopa E. for the Applicants
Mr. Mainavolavu J. for the Respondents
Date of Hearing: 27 May 2022
Date of Ruling: 05 September 2022

RULING

1. Ms. Asenaca Maqanatagane and Mr. Simone Tuivanuavou are the applicants in these proceedings. They were officers of the Fiji Police Force.
2. Maqanatagane held the rank of Assistant Superintendent of Police. Tuivanuavou held the position of Inspector. Notably, Maqanatagane was a gazetted officer. Mr. Tuivanuavou was just an inspectorate officer. I gather he was not a gazetted officer.
3. They were allegedly involved in extra-marital affairs whilst being employed in the Fiji Police Force.
4. The allegations led to the following:
 - (a) the convening of a Board of Inquiry (“BoI”) to investigate the allegations
 - (b) investigations by the BoI
 - (c) a finding by the BoI that the Applicants did engage in extra-marital affairs
5. Based on the finding of the BoI, the Commissioner of Police made the decision to terminate the Applicants’ employment in the Fiji Police Force. That decision was communicated to each of the Applicants vide a letter. Both letters were dated 09 December 2021.
6. Each Applicant is aggrieved about the particular decision relating to him/her. They both seek the leave of this Court under Order 53 Rule ___ of the High Court Rules 1988 to issue Judicial Review proceedings concerning the decision in question.
7. The Commissioner of Police’s decision to terminate the Applicants’ employment was based on Administrative Directive 11/13.
8. The Applicants submit *inter alia* that the allegations against them were first heard before a BoI which was chaired by the then Acting Commissioner of Police, Mr. Rusiate Tudravu. That first BoI actually dismissed the allegations.
9. However, a second BoI was later convened on the directive of the Commissioner of Police. Flowing from this, the allegations and the file were re-opened which then led to fresh charges being laid and – ultimately - to the applicants being defaulted and their subsequent termination from the Force.
10. One of the preliminary points raised by the respondents is that the application seeking leave for judicial review is misguided. It is argued that, if the Applicants are aggrieved about their termination being unlawful, then the proper forum for them is to institute proceedings before the Employment Court.
11. The Applicants take issue with the affidavit of Rajesh Krishna which was sworn on 05 May 2022 and filed herein by the Respondents. In particular, paragraphs 5 to 15 are not expressed in the first person and appear to depose to facts which are not within the knowledge of the said Rajesh Krishna. The Applicants submit that these paragraphs offend Order 41 Rule 1(4) and

Rule 5(1) of the High Court Rules 1988. The Applicants also cite Naidu v Fiji forest Industry Ltd [2014] FJHC 735; HBC39.2011 (13 October 2014); DPP v Matalulu FJCA 16; [1999] 45 FLR 24 (12 February 1999) to support their contention that the Court should disallow the use of the said affidavit of Krishna.

12. Apart from that – the Applicants submit that Krishna was not part of any of the investigation team – nor was he involved in the ensuing disciplinary proceedings. It is argued that Krishna therefore was ill-positioned and ill-equipped to depose to any fact or matter in relation to this case - without disclosing his sources – which he has not done.
13. At leave stage, all the Court need consider are the following:
 - (a) that the applicants have sufficient interest
 - (b) that there has been no undue delay
 - (c) that there is an arguable case for review
14. I am satisfied that the Applicants have sufficient interest in the decision which impacts their employment and livelihood and that the application has been filed in a timely manner within the three month period stipulated under Order 53 Rule 4(2) of the High Court Rules 1988.
15. As to whether or not there is an arguable case for review, the applicants allege as follows:
 - (i) the tribunal fails to record in writing the substance and material points and read over to the Applicant during the proceeding. Hence in breach of Section 13 (iv) of the Police Regulation.
 - (ii) after the tribunal found the Applicant guilty, he was never sentenced or made aware of any recommendation on her sentence.
 - (iii) after submitting her written mitigation, the Applicant was never given a date for the hearing of her mitigation or given an opportunity to have her mitigation orally heard before the tribunal.
 - (iv) the first Respondent fails to consider her written mitigation.
 - (v) the Applicant was threatened for dismissal from the Force should she fails to submit her show cause on time.
 - (vi) the Applicant was never given an opportunity to present her show cause orally or be given an opportunity to be heard orally on her show cause before the first Respondent.
 - (vii) the Respondents have taken into consideration irrelevant matters specifically the allegation of extra marital affairs and fraternization with closed mind and unreasonable decision.
 - (viii) there was breaches of procedural fairness and natural justice.
 - (ix) the punishment of dismissal is too hard and excessive and has caused financial hardship to the Applicant.
16. It is therefore, submitted that the materials filed before the Court by the Applicant satisfy that there is an arguable prima facie case granting the relief sought and accordingly grant leave for judicial review on the ground of;
 - (a) breach of natural justice.
 - (b) failing to show the proper procedures before terminating the Applicant's employment.

- (c) failing to consider relevant matters and or considering irrelevant matters, and
- (d) such decision for dismissal is unreasonable, unfair, harsh and excessive.

17. I am satisfied that the Applicants have an arguable case.
18. For the avoidance of doubt, I keep open the issues raised by both parties for determination in the substantive hearing – in particular – the argument that these proceedings are an abuse of process given that the Applicants ought to have brought their grievances before the Employment Court – for which no real argument has been advanced before me at this stage.



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Anare Tuilevuka
JUDGE
Lautoka

05 September 2022