

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

Civil Action No. HBC 209 of 2021

PONIPATE VONU QAQA

V

**COMMISSIONER OF POLICE
THE DIRECTOR OF PUBLIC PROSECUTIONS
THE ATTORNEY-GENERAL OF FIJI**

COPY RECORD

**BEFORE MASTER OF THE HIGH COURT MS. V LAL
IN COURT ON 16TH AUGUST 2023**

Counsels: Not Present for the Plaintiff
Ms. S. Ali for the Defendants

Court:

EX – TEMPORE RULING

1. This is the Defendant’s application for striking out of the action as the claim discloses no reasonable cause of action.
2. The Plaintiff’s complaint is that he was wrongfully arrested on 15th October 2018 by the Police Officers under the direction and control of the first Defendant and held in Police Custody without being charged.

Later on 16th October 2018 he was charged and falsely and maliciously prosecuted with the offence of rape.

He had pleaded not guilty and had made representation the Director of Prosecutions for withdrawal of the charge.

On 25th January 2019 the second Defendant entered a Nolle Prosequi.

Accordingly the Plaintiff claims damages for suffering distress, personal injury, injury to his feeling, loss of liberty, loss and damage.

3. According to the Defendants, “it is trite law that when a criminal action has been dismissed there cannot be any costs or damages that can be sought in civil courts on the ground of false and malicious prosecutions.

In their sub, the Defendants’ solicitors is asking this court on a summary application to consider whether the Plaintiff meets the elements necessary to prove false and malicious prosecution.

4. There is no denial that the Plaintiff was charged for rape and later a Nolle Prosequi was filed.
5. However it is not proper for this court to summarily determine whether the defendants in initiating or maintaining proceedings acted maliciously and whether the defendants cited without reasonable and probable cause.
6. These are issues that should be tried by a trial Judge after hearing evidence on oath.

Similar view was held by Wati J. in Mohammed –v- Land Transport Authority a Suva High Court Civil Action HBC 330 of 2009 (Delivered on 20th June 2012).

7. For this reason the Defendants application dated 08th February 2023 is struck out.

No orders for cost is made.

(Sgd) Ms. V. Lal
Master of High Court

CIVIL ACTION NO. HBC 209 of
2021

PONIPATE VONUQAQA
Plaintiff

-v-


THE COMMISSIONER OF FIJI
POLICE FORCE
First Defendant

THE DIRECTOR OF PUBLIC
PROSECUTIONS
Second Defendant

THE ATTORNEY-GENERAL OF
FIJI
Third Defendant


COPY RECORD FOR EX –
TEMPORE RULING

Typed and Prepare by:


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Lusiana Biau
Secretary

Checked with original and
certified to be true copy:


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Meli Vakacegu [Mr]
Actg Senior Court Officer I
High Court, Suva

Date: 24/8/23
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