

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBM 25 of 2025

BETWEEN: **ALFRED OGOMEBUNEM MOZIA** of Ogboli Quarters Isseleuku, Delta State, Nigeria, Farmer.

PLAINTIFF

AND: **DIRECTOR OF IMMIGRATION**

FIRST DEFENDANT

AND: **COMMISSIONER OF POLICE**

SECOND DEFENDANT

AND: **ATTORNEY GENERAL OF FIJI**

THIRD DEFENDANT

BEFORE **:** **Hon. Justice Vishwa Datt Sharma**

COUNSEL: **Ms. Tupou Draunidalo for the Plaintiff**
 Mr. Mainanavolau J. for First & Second Defendants

DATE OF DECISION: 06th March, 2025

DECISION

[Habeas Corpus]

Introduction

1. The Plaintiff filed an Inter Parte Notice of Motion coupled with an Affidavit in Support, which was subsequently made Inter Partes and sought for the following Orders:
 - (1) That forthwith a Writ of Habeas Corpus Ad-Subjudiciendum issue against:
 - (a) The Director of Immigration Fiji and/or
 - (b) The Commissioner of Fiji Police and/or
 - (c) Such other person as the Court or Judge may direct.
 - (2) Alternatively and/or further the Court make such other or further Orders under Order 54 Rule 2 of the High Court Rules;
 - (3) An Interim Injunction restraining the Director of Immigration and/or the Commissioner of Fiji Police and/or Airports Fiji Limited and/ or Civil Aviation Authority of Fiji and/or Air Pacific Limited and/or Fiji Airways and/or Air Terminal Services of Fiji and/or their officers, employees, servants, agent and/or workmen and/or such other person or persons, entities and/or Government Institutions from removing and/or causing to remove and/or assisting in the removal of ALFRED OGOMGBUNEM MOZIA Sun from Fiji and/or the jurisdiction of Fiji and/or beyond the borders of Fiji in and/or by an aircraft, vessel, ship and/or by any means, form method and/or manner whatsoever until further Order of the Court and/or until the return of the Writ of Habeas Corpus Ad Subjudiciendum;
 - (4) Costs of this application be paid by the Defendant(s);
 - (5) Such other Order(s) or further Orders that the Court deems just, equitable, expedient and necessary in the circumstances.
2. Both parties to the proceedings made oral submissions to the Court. However, the Counsel representing the Respondents asked Court to grant time to allow them to file and serve an affidavit in opposition coupled with written submissions. This Court accordingly granted the Respondent time to file and serve his Affidavit in Opposition and both Counsels to furnish Court with their respective written submissions.
3. Written submissions were filed by both parties, however, no Opposition as sought for by the Respondents was filed to the current and has failed to adhere to the Court Directions of 24 February 2025.

Brief Facts

4. The Plaintiff arrived at the Nadi International Airport on a flight from Auckland, New Zealand on Wednesday 19 February 2025.
5. He came for his wedding in Fiji scheduled for the weekend.
6. However, he was detained by the Immigration officials for giving the incorrect information on his arrival documents at the border.
7. The Plaintiff was assessed that he was not a genuine visitor to Fiji and that he would be repatriated by the next available flight.
8. The Counsel Representing the Plaintiff sought Immigration authorities to release the Plaintiff under supervision by the Defendants just for the discretion of his wedding ceremony and he would then voluntarily board the next flight available out of Fiji, However, his request was refused.
9. He was repatriated on the next flight on 25 February 2025 when this matter was scheduled in Court. This court proceeded to hear the application on the request of the parties.

Determination

10. The application by the Plaintiff sought for an order for a Writ of Habeas Corpus Ad-Subjudiciendum against the Director of Immigration Fiji, The Commissioner of Police and also on Interim Injunction restraining the Director of Immigration and/or the Commissioner of Police and/or Airports Fiji Limited and others from removing Alfred Ogamegbunem Mozia from Fiji.
11. The Applicant had only filed an Inter Parte Notice of Motion coupled with an affidavit in Support of one Maxwell Chiazor who had not annexed any authority of the Plaintiff to depose this affidavit on his behalf.
12. Further, the motion and the affidavit was not filed together with a substantive matter. Hence, the proceedings filed were not in accordance and conformity with **Order 5 of the High Court Rules, 1988** that deals with the mode of beginning proceedings.
13. In absence of the substantive Action accompanying the Interlocutory Motion seeking for Orders is not procedurally correct and the application must then accordingly fail initially.

14. Further, the Court was informed on the morning of the schedule date of the current case on Monday 24 February 2025 that the Plaintiff has been put on the flight and repatriated out of the Fiji jurisdiction.
15. In absence of the physical presence of the Plaintiff in Fiji Jurisdiction makes the proceedings Moot. The Court does not have any material or basis to deal with the matter then.
16. Accordingly, the Plaintiff's application being moot now, and that no substantive action has been filed in terms of the **Order 5 of the High Court Rules 1988** and that the Plaintiff had been repatriated out of the Fiji Jurisdiction prompts this Courts no alternative but only to proceed to dismiss the application forthwith accordingly.
17. The Plaintiff's application for non-compliance with the Rules of the High Court in terms of beginning proceedings in the High Court and subsequently being moot is dismissed in its entirety.

Costs


18. Although the application proceeded to hearing with parties making oral submissions and later filing written submissions, this court will not make any orders for costs at the discretion of this court.

Orders

- (i) The Plaintiff's application is moot and in non-compliance of the High Court Rules is dismissed in its entirety.
- (ii) No order as to costs.
- (iii) File closed.

Dated at Suva this 06th day of March ,2025.




VISHWA DATT SHARMA
PUISNE JUDGE

CC: Tupou Draunidalo, Suva
Director of Immigration, Suva
Commissioner of Police, Suva
Attorney General, Suva