

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. **HBM 147** of 2022

BETWEEN: **RAJESH RAMAN** of Lot 8 Waidamudamu Settlement 10 miles, Nakasi,
Nausori, Self-employed.

APPLICANT

AND: **THE COMMISSIONER OF POLICE** of Fiji Police Force Headquarters,
Vinod Patel Building, Ratu Dovi Road, Suva.

FIRST RESPONDANT

AND: **THE ATTORNEY - GENERAL OF FIJI** of Suvavou House, Victoria Parade,
Suva.

SECOND RESPONDANT

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

COUNSEL: **Mr. Rajesh Raman** as the Plaintiff (In person)
Mr. Cagilaba T. for the Respondants

DATE OF JUDGMENT: 17th April, 2025

JUDGMENT

[Summons to Strike Out the Plaintiff's Constitutional Redress Application]

Introduction

1. **First and Second Defendants** filed a Summons seeking to strike out the Plaintiff's application for Constitutional redress filed on 20th December 2022 be wholly struck out under **Order 18 rule 18 (1) (a) (b) and (d)** of the High Court Rules, 1988 **on the following Grounds:**

- (a) It is scandalous, frivolous, or vexatious and
- (b) it is an abuse of the process of the Court

AND upon the following further grounds:

- (a) contrary to *Rule 3 (2) of the High Court (Constitutional Redress) Rules 2015* the Plaintiff has instituted proceedings for constitutional redress beyond the statutory time limit of 60 days from the date when the matter at issue first arose; and
 - (b) Pursuant to *section 44 (4) of the Constitution of the Republic of Fiji* the Plaintiff has as an adequate alternative remedy available to seek the reliefs sought in his application for constitutional redress.
2. The Plaintiff filed an affidavit in opposition and subsequently, the Defendants filed a reply.
 3. Both parties to the proceedings furnished Court with their written submissions.

Respondents Contention

4. The Plaintiff has filed the Constitutional Redress application beyond the statutory time limit of 60 days from the date when the matter first arose.
5. The Plaintiff has an adequate alternative remedy available to seek the reliefs sought in his application for constitutional redress.
6. The alleged cause of action arose between 2009 and 2014.
7. The Plaintiff's affidavit deposed on 17 December 2022 and filed on 29 December 2022 does not provide any reasons to explain the Plaintiff's delay in filing this application out of time.
8. The Court must not entertain any application for Constitutional Redress made after 60 days pursuant to **Rule 3 (2) of the High Court (Constitutional Redress) Rules 2015**.
9. It has been filed approximately 8 years and 11 months after his Constitutional rights were allegedly breached.

10. The prescribed time period within which an application for Constitutional redress must be filed is **60 days from the date when the matter** at issue first arose. Hence, the Applicant in this instant instituted proceedings for Constitutional Redress on 03 September 2020, after an estimated time period of one (1) year and six (6) months from the prescribed statutory time limit from the time that his rights were allegedly being breached.

Plaintiff's Contention

11. Denied constitutional Rights.
12. Adopt my written submissions.
13. No defence/opposition served and 7 years unchallenged and seek compensation.
14. I rest my case.

Determination

15. The Plaintiff Commenced proceedings via Originating Summons and sought Inter alia, relief for an alleged breach of his Constitutional Rights between 2009 and 2014 respectively and seeks for Compensation of \$250,000 for violating Constitutional Rights and all Police Officers involved to be charged.
16. The application was made pursuant for section 44 (1) of the Constitution of Fiji and the Inherent Jurisdiction of this Court.
17. However, the First and second Defendants filed a **Summons to Strike Out** the Plaintiff's Constitutional redress application filed on 20 December 2022 on two grounds:
 - (a) It is scandalous, frivolous, or vexatious and
 - (b) It is an abuse of the process of the Court
18. *Section 3 (2) of the High Court (Constitutional Redress) Rules 2015* stipulates that:

"An application for constitutional Redress 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 that period."

19. Firstly, the Plaintiff's substantive application and/or affidavits filed on 17 December 2022 and 29 December 2022, application has not sought or provide Court with any reasons to explain the delay in filing his constitution redress application out of time.
20. Upon calculation of the time period from 2009 and 2014 for the alleged breach of the Plaintiffs Constitutional rights, and the date of the substantive constitutional redress application filed on 29 December 2022, the difference of time period adds up to approximately 8 years and 11 months, hence the Plaintiff's application filed approximately 8 years and 9 months out of time, way beyond 60 days' time from as allowed by Rule 3 (2) of the High Court (Constitutions Redress) Rules, 2015. It is statute barred.
21. Further, it is noted that the Plaintiff had earlier on about 10 June 2019, filed a claim against the Defendants in Civil Action No. HBC 182 of 2019 [**Rajesh Raman v Ajesh Mani & others**].
22. Civil Action No. HBC 182 of 2019 was based on the same cause of action and same factual background.
23. Above Civil claim HBC 182 of 2019 was struck out for writ of prosecution and parties to bear their own costs by the Learned Master of the High Court on 18 February 2021.
24. The Plaintiff, if he still intended to proceed with Civil Action No. HBC 182 of 2019, then the Plaintiff should have filed an application for reinstatement of the same.
25. Further, the parties in Civil Action No 182 of 2019 and the same and filed and founded on the same facts as appears in the current case [Civil Action No HBM 147 of 2022] may be the Plaintiff had added the first defendant Ajesh Mani as the crime officer it makes no difference. Therefore, I also find that the current action is a res-judicata.

Abuse of Court Process.

26. On 10 June 2019, the Plaintiff filed Civil Action No. HBC 182/2019 against Rajesh Raman, Commissioner of Police and the Attorney General of Fiji, and for his nonappearance matter struck out for writ of prosecution.
27. Subsequently on 15 June 2022, the Plaintiff brought private criminal proceedings against the servants of the first defendant on the same factual background being Criminal Action No. 36 of 2022 at Nasinu Magistrates Court. However, these proceedings were withdrawn on 19 August 2022 after the office of DPP reviewed the evidence and made an application to withdraw the charges.
28. It is noted that the Plaintiff initiated proceedings on the same founded facts in Civil and/or criminal and private proceedings and either fails to appear and is withdrawn. The Plaintiff should have known better that either he files a civil action, criminal proceedings and/or

criminal proceedings against the defendants, further, if he chose to file proceedings founded on the same factual background, then it would tantamount to a res-judicata.

29. I find that the current civil proceedings filed by the Plaintiff for constitutional redress is an abuse of the Court process and prompts me to strike out the same.

In Conclusion

30. The constitutional redress application has been filed by the Plaintiff outside the 60 days' time frame required pursuant to *Rule 3 (2) of the High Court (Constitutional Redress) Rules 2015* and therefore cannot be admitted or entertained.
31. The previous Civil Action No. **HBC 182 of 2019** between **Rajesh Raman v Ajesh Mani & Others** was founded on the same cause of action and same factual background and was struck out for want of prosecution on 18 February 2021.
32. On 15 June 2022, the Plaintiff filed in a private criminal proceedings against the servants of the first defendant on same factual background at Nasinu Magistrates Court, however were withdrawn on 19 August 2022.
33. Considering the history of filing various proceedings on the same factual background, it tantamount to both res- judicata and the abuse of the court process.
34. The Defendants Summons for striking out of the Plaintiff's constitutional redress application filed via originating summons succeeds.
35. The Plaintiff's originating summons is for aforesaid rational, dismissed in its entirety.

Costs

36. The Plaintiff to pay the Defendants, costs of \$1,000 within 14 days timeframe.

Orders

- (i) The First and Second Defendants Summons seeking for the striking out of the Plaintiff's constitutional redress application filed on 29 December 2022 succeeds.
- (ii) The Plaintiff's substantive originating summons together with the affidavit in support filed on 29 December 2021 is struck out and accordingly dismissed in its entirety.

- (iii) The Plaintiff to pay the Defendants a sum of \$1,000 as summarily assessed costs within 14 days timeframe.

Dated at **Suva** this **17th** day of **April**, 2025.



cc: Rajesh Raman, 10 miles Nausori
Attorney General Chambers, Suvavou House, Suva