

IN THE HIGH COURT OF FIJI
AT LAUTOKA
WESTERN DIVISION

Civil Action No. HBM 03 of 2025

IN THE MATTER OF an application for a Writ of
Habeas Corpus ad-Subjiciendum.

BETWEEN : **HONG LIU**, presently at the Grand Melanesian Hotel, Namaka Lane, Nadi.

PLAINTIFF

AND : **THE DIRECTOR OF IMMIGRATION** of the Fiji Immigration Department, 969
Rodwell Road, Suva.

FIRST DEFENDANT

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

SECOND DEFENDANT

AND : **THE ATTORNEY-GENERAL OF FIJI**

THIRD DEFENDANT

Appearances : Mr. Etonia Moce for the Plaintiff
No Appearance for the Defendants

Date of Hearing : 06 May 2025 (Hearing in Lautoka)

Date of Ruling : 07 May 2025 (Delivered at Veiuto in Suva)

R U L I N G

INTRODUCTION

1. On 04 April 2025, Vosarogo Lawyers filed an *ex-parte* Notice of Motion pursuant to Orders 54 and 29 of the High Court Rules 1988 and the Constitution of the Republic of Fiji. They seek the following Orders:
 - (i) that a Writ of *Habeas Corpus* be issued against the Director of Immigration Fiji and/or the Commissioner of the Fiji Police and/or other person (s) having custody of **Hong Liu**.
 - (ii) further, the Court makes other orders under Order 54 Rule 2 of the High Court Rules 1988; and

- (iii) an interim injunction to restrain the Director of Immigration and/or the Commissioner of Police and/or Airports Fiji Limited and/or the Civil Aviation Authority of Fiji and/or Air Pacific Fiji Limited trading as Fiji Airways and/or Air Terminal Services Fiji Limited from removing HONG LIU from Fiji by aircraft, vessel, ship and/or by any means whatsoever until further Order of the Court and/or until the return of the Writ of *Habeas Corpus Ad Subjiciendum*.
 - (iv) costs to be paid jointly or severally by the defendants.
 - (v) such further orders as the Court deems just, equitable, expedient and necessary.
2. The Motion is supported by an affidavit of Ms. Ateca Duabaubau (“Ateca”) sworn on 04 April 2025. Ateca is a legal executive in the law firm of Vosarogo Lawyers. She deposes the affidavit based on information received from the friends and relatives of the detainee (“Liu”) “*who wish to know of her whereabouts and her health and welfare*”.
 3. Under Order 54 Rule, anyone who is one way or another, related to or linked to the detainee may file a writ of *habeas corpus* on behalf of the detainee. This suggests that the legal traditional doctrine of *locus standi* is dispensed with when it comes to such applications. The law is not blind to the fact that a person who is detained will not be in a position to file a writ in Court. To insist on a strict application of the *locus standi* principle undermines and compromises this fundamental human right.
 4. Order 54 Rule 1 (2) allows an application to be made *ex-parte* because of the usual urgency involved. The *ex-parte* application may be made to a Judge in court or to a Judge out of court.
 5. If the *ex-parte* application is made in court, the Court may adjourn the application so that notice of it may be given (O. 54 R.2(1)(b)).

SUPPORTING AFFIDAVIT

6. Ateca deposes that Liu is “*unable to depose the affidavit because of what [Ateca] considers to be her unlawful arrest and detainment*”. Below I set out the pertinent facts which Ateca asserts in her affidavit:
 - (i) Liu has a Vanuatu Passport (Passport No. RV0168396). Vosarogo Lawyers did receive a copy of her passport documents from Liu’s friends on 03 April 2025 at about 5.00 p.m.
 - (ii) Ateca believes that Liu travelled to Fiji on her Vanuatu passport. The document was issued on 28 June 2022. It expires on 27 June 2032. Clearly, it was valid at the time of her travel. The date of her travel to Fiji however is not known to Ateca because no one from her firm has been allowed to visit Liu.
 - (iii) attempts by Vosarogo Lawyers to visit Liu have been blocked by Immigration officials who maintain that no lawyer is allowed to see her.
 - (iv) Ateca assumes that Liu’s passport has been confiscated by Immigration officials.
 - (v) as a citizen of Vanuatu, and a holder of a valid Vanuatu passport, Liu is entitled to enter Fiji visa-free.

- (vi) Liu also held a Chinese passport which was issued on 16 April 2014 for ten years. This passport was to expire on 15 April 2024. Ateca believes that China does not recognize dual citizenship. This means that Liu would have lost her Chinese citizenship upon her acquiring Vanuatu citizenship in 2022. In any event, the now long-expired Chinese passport can no longer be used for travel.
 - (vii) no immigration or other government official has provided to Liu any information as to why they are detaining her. She does not understand much English and has no knowledge why she is being detained in a foreign country.
 - (viii) it was through Liu's son's inquiries into the whereabouts of Liu that he decided to engage Vosarogo Lawyers.
 - (ix) a letter dated 03 April 2025 by a Mr. Etonia Moce, a Solicitor in the firm of Vosarogo Lawyers' to the Director of Immigration, remains unanswered.
 - (x) Liu has not committed any criminal offence, let alone, is she facing a charge or has been convicted of any criminal offence in Fiji or elsewhere in the world.
7. I also gather from Ateca's affidavit that Liu resided at Naisoso with her husband, Mr. Tang Ying ("**Tang**"), at one point in time. Apparently, she did lodge an application for a Residence Permit with the Director of Immigration.

NOTICE TO ASSIST TRAVEL

8. Annexed and marked HL 5 to Ateca's affidavit is a Notice to Facilitate Travel dated 20 June 2024. The Notice is signed by one Mr. Eseroma Baleisuva for the Director of Immigration. It refers to Tang and Liu and states:
- "The above-mentioned residence permit applications are currently under process and awaiting decision. In the meantime, all authorities are requested to facilitate their travel without hindrance"*
9. The Notice identifies Tang and Liu's nationality as "VUT". I assume that is a reference to Vanuatu. Notably, appearing on a fine print at the bottom of the Notice are the following words:
- "This authority is valid for one way and to be surrendered upon departure"*
10. Ateca deposes to paragraph 21 that Liu suspects that the Immigration Department and the Fiji Police Force may be considering deporting Liu to China:
- "...for unknown charges of which, I believe, she is unaware of its content"*

PROCEDURAL HISTORY

11. The Notice of Motion was first placed before the Learned Justice Azhar. On 04 April 2025, Azhar J refused to grant the injunction. He then directed that the Motion for the Writ of *Habeas Corpus* to be returnable on 15 April 2025.
12. On 15 April 2025, Azhar J directed that the application be redated to 24 April 2025 on account of the fact that no document had been served. The file record is not clear as to

whether or not the matter was called on 24 April 2024. I note that there is an attendance sheet in the file for the same date. However, there is nothing is written on the said record.

13. I am aware that Judge Azhar has been away in Sri Lanka over the last two weeks on account of an urgent family matter.
14. The Registry however could have placed this matter before any of the other Judges, including me, in light of the urgency involved. It appears that the Registry then informed Vosarogo Lawyers that the matter would be called before Azhar J on 26 May 2025. This prompted Vosarogo Lawyers to write a letter dated 28 April 2025 to seek that the matter be dealt with urgently. I have only been able to deal with the matter yesterday as I was away on a week-long Judges and Magistrates Conference last week.

RIGHT TO CHALLENGE LAWFULNESS OF DETENTION

15. The law presumes that everyone has a right to liberty. The onus is therefore on anyone who has acted in abridgement of a person's liberty to explain the basis of his or her actions. As D Clark and G McCoy *Habeas Corpus: Australia, New Zealand and the South Pacific* (The Federation Press, Sydney, 2000) 16 said, the law behind *habeas corpus* is pretty much premised on that presumption. The Courts are, therefore, required to give priority to any application for *habeas corpus* (see Judge Henderson of the Alberta Court of Appeal said in **Wilcox v Alberta**, 2020 ABCA 104 (CanLII)).
16. The *habeas corpus* proceedings is not meant to determine the guilt or otherwise of a detainee.
17. Section 13(1)(i) of the Constitution gives a detained person a right "to challenge the lawfulness of the detention before a court and, if the detention is unlawful, to be released".
18. A detention may be lawful and comply with statute. However, if one is to challenge the necessity or proportionality of that detention, the *habeas corpus* proceedings may be ill-suited. There is a view that the necessity and proportionality of a detention which is prima facie valid and lawful, are best dealt with under Order 53 or vide the Constitutional Redress Rules.
19. Section 9 of the Constitution declares in general terms that every person must not be deprived of personal liberty. This provision then sets out nine (9) exceptions. Section 9 (i) provides that a person may be deprived of personal liberty:

"for the purpose of preventing the unlawful entry of the person into Fiji or of effecting the expulsion, extradition or other lawful removal of the person from Fiji".

ORDERS

20. Mindful of the procedural history of this matter, I direct that the Notice of Motion be redated to **26 May 2025** before me at 10. 30 a.m. in Lautoka (Tagimoucia court)

21. Mindful of the requirement under Order 54 Rule 2 (2) of the High Court Rules, I direct that the Notice of Motion be served against the alleged detaining authorities who are named as defendants at least eight clear days before 26 May 2025.
22. On the 26 May 2025, I will timetable the filing of affidavits in opposition and reply – if need be.



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Anare Tuilevuka
JUDGE

07 May 2025