IN THE COURT OF APPEAL, FIJI
[APPELLATE JURISDICTION]

Civil Appeal No. ABU 0081 of 2019
(HBC No. 0051 of 2016)

BETWEEN	:	**PAULA MALO RADRODRO**
		Appellant
AND	:	**FIJI TIMES LTD**
		1st Respondent
	:	**SUN FIJI NEWS LTD**
		2nd Respondent
	:	**ATTORNEY GENERAL OF FIJI**
		3rd Respondent
Coram	:	**Almeida Guneratne, JA**
Counsel	:	**Appellant (Mr. Paulo M Radrodro) in Person**
	:	**Mr. R. Singh for the 1st Respondent**
	:	**Mr. E. Narayan for the 2nd Respondent**
	:	**Ms. M. Faktaufon for the 3rd Respondent**
Date of Hearing	:	**15 June, 2020**
Date of Ruling	:	**27 July, 2020**

RULING

[1] When this matter was taken for hearing on 15 June, the Appellant appearing in person moved to tender written submissions and to have the matter decided on the said submissions and the submissions already filed on behalf of the 1st and 2nd Respondents. The Appellant sought the indulgence of Court to tender his submissions by 29 June although the matter was listed for hearing.

[2] Having taken into consideration the Appellant's financial status for which reason security for costs of appeal also had been waived as per order of Chandra, J.A. dated 22 November, 2019 and the Appellant also not being successful in obtaining legal aid, I granted the indulgence sought by the Appellant without objection by Counsel for the Respondents.

[3] As undertaken by him, the Appellant tendered his written submissions. On the basis of the Notice and Grounds of Appeal dated 30 September, 2019, the Affidavits filed and the written submissions tendered on behalf of the respective parties, I proceed to make my Ruling.

The Nature of the Dispute and the Decision of the High Court

[4] Before the High Court were two applications made by the 1st and 2nd Respondents under Order 18 Rule 18 of the High Court Rules (1988) to strike out the Appellant's application for Constitutional redress.

[5] The Appellant had alleged that his constitutional rights to freedom of speech, expression and publication were breached when the 1st and 2nd Respondents (two local newspapers) refused to publish an advertisement that he had paid for.

[6] The Appellant had been in the process of patenting "a medical discovery" in respect of which The Fiji Intellectual Property Office (FIPO) had advised him to proceed with an advertisement in a local daily (newspaper) and gazette. That "discovery" he claimed as one curing cancer by blood transfusion.

[7] That had been in consequence of "the office of the Administrator General" (OAG) forwarding the Appellant's patent application to IP Australia ("IPA") being the office that administers patents in Australia which had conducted a search and based on the results of that search had concluded that the Appellant's "discovery" was a novelty and, as such, was "patentable".

[8] Encouraged by those responses on the part of the "OAG", the "IPA" and "FIPO" the Appellant had gone to "The Fiji Times" (the 1st Respondent) where he had completed the "standard classified Advertisement Order form" and paid the requisite fee of $29.20c.

[9] The 1st Respondent, having accepted the said advertisement fee had some misgivings in proceeding with the Advertisement and apparently after seeking legal advice informed the Appellant that his advertisement would not be published.

[10] Subsequently, the Appellant had gone to the 2nd Respondent ("Sun Fiji") to have his advertisement published. The 2nd Respondent declined to publish it having requested for further documentation to verify the veracity of the Appellant's proposed advertisement (which the Appellant had not provided) and the 2nd Respondent also refused to publish the Appellant's advertisement and had informed the Appellant to collect the fee he had paid for processing his advertisement.

[11] Thereafter, the Appellant filed an application for constitutional redress pursuant to the constitutional provisions as perceived by him read with the procedural provisions in Rule 110 of the High Court Rules of 1988.

[12] The said Constitutional provisions I reproduce as follows:

"Freedom of speech, expression and publication

17.—(1) Every person has the right to freedom of speech, expression, thought, opinion and publication, which includes—

a. freedom to seek, receive and impart information, knowledge and ideas;
b. freedom of the press, including print, electronic and other media;
c. freedom of imagination and creativity; and
d. academic freedom and freedom of scientific research.

Section 17(3) recognizes that these freedoms can be restricted in order to pursue legitimate objectives such as public health and public safety[1] or in the interest of making provisions for the enforcement of media standards and providing for the regulation, registration and conduct of media organizations[2].

Section 32(1)(2)(3) provides:

Right to economic participation

32.— (1) Every person has the right to full and free participation in the economic life of the State, which includes the right to choose their own work, trade, occupation, profession or other means of livelihood.

(2) The State must take reasonable measures within its available resources to achieve the progressive realization of the rights recognized in subsection (1).

(3) To the extent that it is necessary, a law may limit, or may authorize the limitation of, the rights set out in subsection (1)".

The Judgment of the High Court

[13] The judgment of the High Court dated 25 July, 2019 in striking out the Appellant's application for constitutional redress together with His Lordship's reasons therefor I recap as follows.

[14] At the outset of his Judgment, the learned Judge made the observation that:

> *"19. The media services provided by Fiji Sun and Fiji Times are regulated under the Media Industry and Development Act 2010 (**"MIDA"**). It is common ground that MIDA imposes upon them a duty to see that all their paid advertisements are accurate. It is also common ground that this duty entails a responsibility to ensure that no advertisement contains material which, either directly or by implication, has potential to deceive or mislead people about any product or service".*

[15] Having observed so, the learned Judge summarized the 'Fiji Sun Case' and 'Fiji Times case' thus:

> ***"Fiji Sun's Case***
>
> *20. Fiji Sun argues that if it were to publish Radrodro's advertisement without first verifying its accuracy, it would be compromising the MIDA ethical and moral standards. Such advertisements, if not checked, can be mobilized as a tool to exploit the public.*

21. Fiji Sun also argues that it only refused to publish Radrodro's advertisement because Radrodro had not complied with its request to furnish it with further information.

*22. There is an alternative remedy available to Radrodro under section 53 of MIDA. This section entitles him to lodge a complaint against the two newspapers to the Media Industry Development Authority (**"Authority"**). His failure to do so renders his constitutional redress application an abuse of process.*

Fiji Times' Case

23. Fiji Times' case is based on the following arguments:

(i) Section 18(2) of MIDA makes provision for a General Code of Practice for Advertisements ("GCPA") in Schedule 2 of MIDA, for all media organizations.

(ii) Clauses 2 and 3 of Schedule 2 are relevant.

(iii) Clause 2 stipulates that advertisements must comply with any written laws of Fiji and must be rejected if they do not. Radrodro's advertisement failed to comply with the Patents Act 1879 and the Patents (Forms) Regulations 1971.

(iv) Clause 3 stipulates that the media is responsible for ensuring that advertisements comply with the spirit as well as the letter of this GCPA and any written laws of Fiji and must be rejected if they do not do so.

(v) Radrodro's Constitutional Redress application is an abuse of process because he had an alternative remedy to sue the Fiji Times for breach of contract".

[16] Thereafter, the learned Judge opined as follows:-

"24. MIDA is designed to ensure responsible behavior and public accountability by media service providers. Section 21 provides that all media organizations must conduct their activities in accordance with MIDA and any regulations made under it and in accordance with the media codes. Section 22(a) provides that the content of any media service must not include material which is against public interest or order. Section 18(2) provides that the GCPA in Schedule 2 will govern the general advertising practice for all media organizations".

[17] Consequently, the learned Judge having studied the several clauses of the GCPA held in the following terms:

> *"26. I agree that Fiji Sun and Fiji Times have a duty to ensure that their paid advertisements are accurate and not contain material which are likely to deceive or mislead people about any product or service. That duty, I find, is imposed by section 21 as well as clauses 1, 2, 3 and in particular, clause 5 of GCPA.*
> *27. In addition to all the above, section 22(a) imposes a more robust duty to ensure that the content of any "media service" does not include material which is against the public interest or order.*
> *28. Section 2 defines "media service" to include:*
> *...a service which is supplied in any manner by a media organization including print and broadcast media"*
> *29. Clearly, the publication of a print advertisement is a "media service". Hence, Section 22(a) would appear to impose a public interest ethic. It requires a media organization to apply some public interest screening assessment before accepting an advertisement for publication. Obviously, this is to ensure the content of the advertisement does not compromise any public interest or order.*
> *30. In **O'Sullivan v Farrer** HCA 61; [1989] HCA 61; (1989) 168 CLR 210 (7 December 1989, the High Court of Australia defined public interest thus:*
>
> *"the expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable ... given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view'".*

[18] Having done an extensive study of the issue before him, the learned Judge posed a question for him to answer which I found to be touching the core of that issue for which reason I reproduce the same thus:

> **"CAN THIS COURT THEN OVERIDE AN EXERCISE OF EDITORIAL DISCRETION ON THE PART OF A PRIVATE MEDIA ORGANIZATION NOT TO PUBLISH AN ADVERTISEMENT BASED ON A PERCEIVED PUBLIC INTEREST?"**

[19] Having formulated that question, before reaching his conclusion, the reasoning he adopted I reproduce verbatim as follows:-

31. The starting point is that a private media organization such as Fiji Times or Fiji Sun retains an editorial prerogative not to publish an advertisement. It is fair to say that this is the other aspect of the freedom of the press under section 17(1)(b) of the 2013 Constitution.

32. However, to the extent that the Bill of Rights provisions in the 2013 Constitution binds also a natural or a legal person (see section 6(3) of the Constitution) and not just the state, the editorial prerogative of a private media organization is not an unfettered one.

33. In that regard, and in the context of the narrow issues in this case, a refusal by any newspaper to publish an advertisement, if it amounts to a compromise of any right protected under the 2013 Bill of Rights, will expose that decision to a constitutional redress action. Having said that, of course any newspaper may yet justify such a decision on any relevant public interest ground as MIDA and the 2013 Constitution would entitle it to, subject to a proportionality test.

34. The questions which then arise are:

(i) whether or not a right or freedom protected under the Bill of Rights has indeed been breached by any refusal to publish an advertisement, and

(ii) even if so, whether the refusal to publish is justifiable in the public interest.

Whether Or Not A Right Or Freedom Protected Under The Bill of Rights Was Breached?

35. As to the first question, it is worth remembering that Radrodro had been trying to patent an alleged discovery or invention of his. This discovery is in the field of medicine. He had lodged the necessary application with FIPO. A decision about the novelty, and the patentability of his purported discovery was made following advice from FIPO's Australian counterpart (IPA). Pursuant to that advice, FIPO then wrote to Radrodro:

You can now proceed with the advertisements and advertise twice in the Gazette and twice in any local Newspaper

36. Armed with that letter, Radrodro then approached the two newspapers to publish his advertisement.

37. The said letter was produced at the Fiji Times. However, they acted on legal advice and concluded that the advertisement still did not comply with GCPA. The letter was not produced to the Fiji Sun. They then requested for further verification which was not produced, and then decided not to publish the advertisement.

38. Although the relevant applicable provision in the local patent law or regulation was not cited to me by counsel, it is easy to say that the advertisement is a crucial requirement, as it is in every similar patent-registration regime the world over.

39. The fact that both newspapers had refused, separately, to publish the advertisement precludes Radrodro from compliance with the due process. Prima facie,

that is a hindrance to his right to patent his discovery which right, is potentially an economic and a proprietary right when and in the event a patent is registered.

Whether The Refusal To Publish Is Justifiable In The Public Interest?

40. Ms Faktaufon of the Attorney-General's Office questions the two newspapers' exercise of editorial discretion in not publishing the advertisement. She submits that Fiji Times had failed to disclose the source of the legal advice it received which led to its decision to refuse publication. She cites ***Citizens Constitutional Forum v President of the Fiji Islands*** *[2001] 2 FLR 127 and* ***Savings Bank v Casco B.V*** *(1984) 1 WLR 271.*

41. Ms. Faktaufon also submits that had Fiji Times sought advice from FIPO, "this matter would not have likely come before this honourable court".

42. Ms. Faktaufon appears to argue that FIPO would have verified its position on Radrodro's application, and the newspapers would have had to proceed anyway with publication of the advertisement.

43. Referring to the advice that Fiji Times received, Ms Faktaufon further submits that:

This advice had to have verified that the Applicant's patent application was ***in fact*** *misleading and* ***not presumed*** *to be misleading.*

44. I think the issues are deeper than that. We are dealing with two newspapers' exercise of editorial discretion, based on a public interest ethic, which the law requires of them, and which led them to refuse to render a media service to a citizen, and which refusal the two newspapers justify on a perceived public interest.

45. In other words, I am not inclined to believe that the two newspapers acted arbitrarily at all, a conclusion which I think Ms. Faktaufon urges me to reach.

46. As I have said, clause 1 of the GCPA lays down that advertising must be legal, decent, honest and truthful. Under clause 2, a media organization must reject any advertisement which does not comply with any written laws of Fiji, while section 22(a) requires them to screen using a public interest lens, before publication.

47. Clause 5, which is particularly noteworthy, simply states that an advertisement must not contain material likely to deceive or mislead people about any product or service.

48. Whether a material is "likely to deceive or mislead" entails a discretionary judgment on the part of any media organization (see ***O'Sullivan v Farrer*** *(supra)).*

49. From where I sit, had the newspapers sought verification from FIPO, all FIPO would have been able to offer, was:

"yes, we wrote that letter for Radradro to advertise, and yes, IPA has verified that his invention is a novelty and is patentable"

50. Even so, the two newspapers would be justified in seeking a second opinion.

51. *Also, in my view, as a matter of fact, unless FIPO had done a background check to verify the authenticity of Radrodro's purported invention, which, I gather (but for which I make no comment) was not necessary in their set procedure, FIPO was hardly in a position to be of help to the two newspapers in terms of clarification on whether or not the advertisement would be misleading.*

52. *Having said all that, in any event, legal advice privilege would preclude the newspapers from disclosing their source in these proceedings. Different of course, if the matter at hand involved information about certain alleged material facts from an undisclosed source, the veracity of which goes to the heart of the case".*

[20] In the result, the learned Judge struck out the Appellant's application for Constitutional redress and awarded costs to the Respondents summarily in sums of $500.00 each.

Determination

[21] There are two principal matters that required my consideration and determination. The first is the impugned Judgment of the High Court upholding the two striking out applications of the 1st and 2nd Respondents that put in issue the Appellant's cause based on his alleged constitutional grievance. The second is the learned Judge's award for costs.

The Appellant's cause based on an alleged Constitutional grievance

[22] I shall begin by making some general reflections.

General Reflections

[23] A free press is essential to any democratic society. That could leave room for the argument that sometimes it may well post (publish) information that could have the effect of misleading the citizenry.

[24] No doubt, freedom of speech and expression means the right to express one's own convictions and opinions freely by word of mouth, writing, printing pictures or any other mode (such as in the instant case, to publish a patent).

[25] Liberty of circulation then would be essential to that freedom as being the liberty of publication in as much as, without circulation "publication" would be of no value.

[26] In the backdrop of the said brief general reflections, I proceed to consider the submissions made by the parties.

The Appellant's Submissions

[27] To be fair by the Appellant, who had no legal representation, I shall reproduce verbatim the submissions contained in his written submissions dated 29 June, 2020.

"SUBSTANTIAL MATTERS

A. *The Fiji Intellectual property had given me a letter to gazette and publish my patent for cancer treatment called trans-med. (Letter annexed and marked "D".)*
B. *The 1st and 2nd respondents rejected it saying they needed verification after I paid them a sum of money for publication.*
C. *The respondents should have approached FIPO because of their seeking verification but they took it on me who is not the authority of the making of the letter.*
D. *The finer parts of my invention can only be given for news which is not paid and not an advertisement.*
E. *By not publishing my patent the respondent had breached my rights to freedom of speech, expression and publication and economic participation which Mr. Tuilevuka rejected.*
F. *Publishing is a statutory process under the patent act Section 14, to obtain the letter patent and Mr. Tuilevuka has rejected this and has erred in law and in fact:-*

"Procedure where no opposition is made to application

14. Within two months of the issue of the certificate of the Attorney-General or, where the Attorney- General has refused to issue such certificate, from the date of issue of the same by the Administrator-General as provided in section 13, the applicant for letters patent shall give notice in the prescribed form twice in the Gazette and twice in one other newspaper published in Fiji and, if no notice of opposition to the application for letters patent be sent to the Administrator-General within three months of the date of publication of the last of such notices, the Administrator-General shall report such fact to the Attorney-General and Attorney-General shall, within three months from the date of such report, cause letters patent to be issued with such reservations, provisos and conditions as may be deemed fit". (Amended by 30 of 1959, s. 9 and 26 of 1967, s. 6 and Order 7th October, 1970).

G. *Any opposition should be taken up to the Administer General under the Patent Act Section 15 and the 1st and 2nd Respondents did not do so although they opposed or come by way of writing.*

"Where application is opposed. Holder of certificate may appeal

15. Any person desiring to oppose such application shall within three months of the date of the first notice of the application for letters patent provided for in section 14 give notice in writing of his opposition to such application and of the grounds thereof to the Administrator-General who shall, after hearing the parties to and against such application and such witnesses as he may deem necessary, decide the same and intimate his decision to the Attorney-General who shall within three months from the date of such intimation, if the same be favourable to the person holding a provisional certificate, direct the issue of letters patent to such person with such reservations, provisos and conditions as may be meet. In case the decision be adverse to the party holding the provisional certificate he may appeal against such decision to the Supreme Court which shall within three months from the date of such appeal either direct the issue of letters patent to the appellant subject to such reservations, provisos and conditions as it may deem fit or make such other order as may be meet". (Substituted by 7 of 1882, s. 3, and amended by 30 of 1959, s. 10 and Order 7th October, 1970.)

H. *Mr. Tuilevuka entertained and struck out the matter instead of dismissing it because he views that it was not in the proper court and the respondents were right of which he ruled that I pay costs of $1500.00 (sic) to the Respondents*

knowing that I had applied under Order 110 of the High Court Rules on pauperis on which he erred of and was being unfair.

I. *Mr. Tuilevuka shouldn't have granted relief to the respondents and in so doing was unfair under the Constitution Section 44 (4).*

> *"S44. (4) The High Court may exercise its discretion not to grant relief in relation to an application or referral made under this section if it considers that an adequate alternative remedy is available to the person concerned".*

J. *I will not be able to have my letter patent issued or other registered invention if my application does not proceed.*

I humbly seek that my application allowed to proceed"

The Submissions of the Respondents

[28] The first Respondent's submissions dated 15 June, 2020 having addressed on procedural aspects (Mainly on time-limits) which I do not wish to dwell on, if only for the reason that, notwithstanding all that, the decisive criterion is to see whether there is an issue which could be said to have "prospects of success" should leave be granted to appeal. To put the issue in another way whether the Appeal has 'merit', and when I say 'merit', I mean "merit in law in the context of the relevant constitutional provisions".

[29] In that regard, the 1st respondent has urged Section 44(4) of the Constitution read with Section 53 of MIDA in which context the case of Harrikson v AG of Trinidad and Tobago (1980) AC 265 has been cited, the point urged being that the Appellant had an alternative remedy which was upheld by the High Court (at paragraph 60 of its Ruling).

[30] I found the 2nd Respondent's submissions dated 12 June, 2020 concentrated for the most Part on procedural aspects. However, I did have regard to what I have recounted in paragraph [15] hereof.

My Assessment on the Overall Submissions

[31] I found difficulty in condoning the learned High Court Judge's thinking on the criterion of "availability of an alternative remedy" for the following reasons.

[32] (a) The Appellant's application for the alleged constitutional redress was made in pursuance of his statutory right to have invoked the jurisdiction of the High Court.

(b) That application was not based on "judicial review" bringing into reckoning the concept of "discretionary bars" such as *inter alia* the availability of "alternative remedies".

(c) The several provisions of the MIDA read as a whole do provide for a complaint to be made but in my view that would not have been an "effective or expeditious remedy" for the Appellant.

[33] Instead, to my mind, the issue demands a broader expression on a citizen's perceived right to have an advertisement published in newspapers on a patented exercise in a context of medical science connected as it were (as alleged by the Appellant) to freedom of economic education as well.

[34] In that regard the following decisive factor weighed with me, in addition to what I have articulated earlier in paragraphs [23] to [25] hereof. In that regard, I took note of what I re-capped at paragraph [15] above.

[35] That is, a citizen's perceived right to advertise as against a Newspaper's right to refuse it.

[36] It is also to be borne in mind that, the 1st and 2nd Respondents are two independent newspaper companies and are not statutory (governmental) functionaries. Thus, they are not caught within the concept of "Public trust" as understood in the realm of Public Law.

[37] On the other hand, a Newspaper has both an accountability and ethical responsibility to both an advertiser as well as a recipient of an advertisement.

[38] These are the considerations that had apparently weighed with the Respondents when they refused to publish the advertisement in question.

[39] It follows then that there being no statutory duty to publish the Appellant's advertisement, there could not have arisen a corresponding right investing the Appellant a right to have his advertisement published.

[40] In my view, that put the lid on the matter which attracted concepts such as "media prerogative" or "privilege", or "discretion" which the learned Judge correctly addressed on.

[41] No doubt, the Appellant would have entertained an expectation to have his advertisement published having paid the initial fee as well to process his advertisement.

[42] But, it could not have been regarded as "a legitimate expectation" as known to the law.

[43] I say that for the reasons that, the initial dealings between the parties cannot be said to have created binding legal relations.

<u>The Nature of Legal Relations created on the 1st and 2nd Respondents accepting the proposed advertisement initially</u>

[44] Did that create an intention to enter into binding legal relations? I think not, for the following reasons:

(ii) At the time the proposed advertisement was forwarded to be processed, the intention to enter into a binding legal relation at the highest was only a notional one, in as much, as, at that point of time the Respondents would and could not have been in a position to give their minds to the possibility that their acts will be productive of a legal relationship. That is evident by the fact that the Respondents acts as recounted above, that is, holding in abeyance the publication of the advertisements.

(iii) Consequently, it would follow that, there was no evidence to establish that, there was an intention on the part of the Respondents to create a legal obligation to publish the advertisements.

[45] For the aforesaid reasons, I am of the view, leave alone a case based on constitutional grievance against two private newspapers, the Appellant could not have sustained a civil cause of action based on Contract either.

[46] At this point, I wish to acknowledge the fact that, the propositions I have enunciated are based on a relative assessment I felt obliged to make on the works of Pollock (contracts, 13th Ed.), Cheshire & Fifoot (6th Ed.) and Weeramanty (Contracts, Stanford Lake Publication, reprint, 2012).

That Miltonian plea for freedom of Expression

[47] Before concluding I recalled to mind that impassioned plea for freedom of expression even in regard to a toleration of falsehood wherein John Milton said:

"Give me the liberty to know, and to argue freely accordingly to conscience".

[48] The Appellant's grievance smacks of a similar lament but I found no basis to regard that grievance as a "Constitutional grievance" for the reasons I have adduced above.

[49] Indeed, the 1st and 2nd Respondents were not heard to say that the Appellant's purported discovery was "a falsehood", while saying that they had misgivings as to "its accuracy", for which reason they had refused to carry the Appellant's advertisement.

What then could be said to have weighed with the 1st and 2nd Respondents in refusing to publish the Appellant's Advertisement?

[50] It could not have been said that, the Appellant's advertisement was offensive to an average citizen having no redeeming scientific value for it was in relation to "an alleged discovery for cancer cure".

Re: the Foundation of Economic Education – Responsibility vs. Freedom of the Press

[51] It is on those considerations the Respondents had to make a value Judgment and balance the competing interests, stressing the positive and eliminating the negative.

Public Interest Considerations

[52] And what are those competing interests? They can be found within the framework of the concept of "Public Interest".

[53] There is the Appellant's grievance that, in the public interest, the refusal to publish his advertisement will result in his 'patent' being lost for public consideration. On the other hand, the Respondents (being two private newspapers) argument is that the advertisement could mislead the Public and therefore it was not in the "public interest" to publish the same.

[54] On the basis of the aforesaid reasons, I lay down the following propositions:

(i) A citizen's expectation to publish a medical patent did not give the Appellant a right to make use of the Respondents printing presses and distribution systems without their consent.

(ii) There is nothing in the Fijian Constitution (whether in Section 17 or any other provision thereof) or in a statute that allows a citizen a right to compel a private newspaper to publish advertisements without editorial control merely because such advertisements are not legally obscene or unlawful".

(iii) I could not find anything to the contrary to hold otherwise where in the clauses of "the GCPA" or "the MIDA".

[55] In laying down those propositions, for the judicial jurisprudence of Fiji (subject to what the full court or the Supreme Court may hold in the future) I acknowledge here that I derived inspiration from two American decisions (viz: Chicago Joint Bd.etal v Chicago Tribune Co. 435f.2d 470 (7th Cir.1970) and Associates & Aldrich Co. v Times Mirror Co. 440 8.2d 133 (9th Cir.1971).

[56] To elaborate briefly on what I have articulated above, the Appellant could not have sustained an action in contract. The 1st and 2nd Respondent being two private companies could not have been subjected to an application for judicial review either whether for certiorari to quash the refusal to publish or for mandamus to compel publication.

[57] There being no enforceable right in the Appellant and a co-relative duty visiting the 1st and 2nd Respondents (vide: Hofeld's analysis of co-relatives in Jurisprudence), those remedies could not have been pursued by the Appellant.

[58] These are the reasons for which I was not inclined to hinge my Ruling on 'the availability of alternative remedies' notwithstanding the provisions of Section 44(4) of the Constitution read with the antecedent provision thereof in Section 44(3) and the provisions in the 'MIDA'.

[59] As the position taken by the 1st and 2nd Respondents in the High Court reveals (vide: paragraph [15] above], although the defence of "availability of alternative remedies" had been urged, the said submissions also addressed on the broader issue as to their liability

or otherwise to be sued in an application for constitutional Redress, which is the issue that I took cognizance of in giving my Ruling.

The Appellant's complaint on the Award of Costs

[60] The learned High Court Judge made that award, no doubt, applying the principle that costs follow the event. Although the Appellant claims that he made his application in pursuance of Order 110 (Rule 1) of the High Court Act, as submitted by the 1st Respondent in paragraphs 50 and 51 of its written submissions the High Court was not provided with material to dispense with an order for costs. Accordingly, despite the maters I have noted in paragraphs [5] to [11] of this Ruling, I was unable to see any non-direction on the part of the learned Judge on that aspect for which reason I saw no basis to interfere with the same.

Conclusion on the Substantive Issues

[61] For the aforesaid reasons, I am not inclined to grant leave to appeal.

[62] In sum, I conclude in my determination in refusing leave to appeal that a citizen who is expectant in advertising a medical patent in a private newspaper cannot claim an enforceable right against such a newspaper which refuses to publish the same on the basis of a constitutional grievance and therefore seeking constitutional redress within the terms and meaning of the provisions of Section 17 of the Constitution of Fiji.

In re: Costs in the present application before me

[63] I was compelled to address that issue as well on account of the fact that the 1st and 2nd Respondents, in their respective affidavits and written submissions have moved for the same, on that principle "Costs follow the event".

[64] On that, I noted an order made by Chandra, J.A. wherein, he being satisfied as to the Appellant's financial condition had directed the Chief Registrar to waive security for costs for the Appeal (Vide: His Lordship's Order dated 22 November, 2019 which is of Record).

A Court shall not Act in vain

[65] Indeed, it would be irony if I were to order costs on the principle "costs follows the event". In that regard I act on the principle that "a Court shall not act in vain" in making an empty order for recovery of costs in this application. The Appellant is still languishing in prison, legal aid having been declined to him and who appeared in person in this matter.

[66] Accordingly, I make no order for costs in this Application.

[67] Apart from that, the 1st and 2nd Respondents shall refund the moneys the Appellant has paid in respect of the advertisements in question.

Orders of Court:

1. The Appellant's application for leave to appeal the Judgment of the High Court is refused and accordingly dismissed.
2. There shall be no Order for Costs in this appeal/application.
3. The 1st and 2nd Respondents shall refund the moneys the Appellant has paid in respect of the advertisements in question.

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Almeida Guneratne

JUSTICE OF APPEAL