

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

Civil Action No. HBM 08 of 2015

**BETWEEN** : **PITA DRUA** of Lovu, Lautoka.

**PLAINTIFF**

**AND** : **THE COMMISSIONER OF POLICE**

**FIRST DEFENDANT**

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

**SECOND DEFENDANT**

**AND** : **THE DIRECTOR OF PUBLIC PROSECUTIONS**

**THIRD DEFENDANT**

## **R U L I N G**

### **BACKGROUND**

1. The issue has arisen as to whether or not a person who, allegedly, suffered personal injuries after being run over by a motor vehicle, and who has instructed a solicitor to institute civil proceedings against the driver and the owner of the vehicle, but which solicitor has yet to institute legal proceedings, and where criminal proceedings related to the said incident are pending in the Magistrates Court against the driver, is entitled to various police documents in the relevant police docket.
2. On 09 September 2013, Lemeki Drua, a minor, allegedly, sustained personal injuries after being run over by motor vehicle registration number LM164 which was driven by one Isikeli Navia. This incident happened in Lautoka along Vitogo Parade. More than a year later, on 16 October 2014, Lemeki's father (Pita Drua) instructed Messrs Chaudhary & Associates to claim compensation and damages for the injuries sustained by his son.
3. Meanwhile, there is a traffic-offence charge against Isikeli Navia relating to the said incident which is pending in the Magistrates Court.

4. Messrs Chaudhary & Associates are preparing to file a claim in the High Court. They have written numerous letters to the Fiji Police Force (“FPF”) to seek copies of all statements, interview notes, medical reports, sketch plans together with a standard police investigation document called the Abstract of Particulars of the Accident. The FPF has responded with a letter containing basic information about the accident but is not prepared to give most of the documents that Messrs Chaudhary & Associates are interested in.
5. Messrs Chaudhary & Associates then wrote to the Director Traffic Control in December 2014.
  1. We are writing to you on a matter which is of great concern to us and we are sure to other Solicitors also. It concerns the release of the Abstract of Particulars of accidents and copies of police statements, interview notes and sketch plans of accidents to us upon payment of the appropriate fees. Our firm acts for many clients who are victims of roads accidents. Since time immemorial upon payment of the appropriate fees the police provided us with the Abstract of Particulars of the Accident, police statements and interview notes and the sketch plan of the accident. We have now been suddenly told that we will be supplied with the Abstract only which gives the basic facts like the name (s) of the driver (s), the location etc. We will not be supplied with copies of statements, interview notes and sketch plans.
  2. In relation to an accident where our client Lemeki Drua was seriously injured we were advised by Ms Salochna of the Western Police Headquarters that she had been instructed by the Director of Traffic Control not to release copies of statements, interview notes and sketch plan to us as Solicitors for the accident victim. We then wrote to the Director of Traffic Control on 4<sup>th</sup> December 2014 and a copy of our letter dated 4<sup>th</sup> December 2014 is enclosed. We respectfully refer to its contents. We received a reply dated 9<sup>th</sup> December 2014 from the Deputy Director Traffic and Transport. A copy of this letter is also enclosed.
  3. The Deputy Director refers to Section 14 of the REPUBLIC OF FIJI CONSTITUTION and Section 194 (h) of the **CRIMES DECREE 2009** as the reasons for not releasing copies of the statements, interview notes and sketch plan to us. With respect we cannot find anything in the above Sections quoted by the Deputy which prohibits the Police from releasing the said documents us. Neither of the Sections quoted by the Deputy are applicable and with respect we fail to understand how and why the Deputy has reached the conclusion upon reading of the above Sections. We do not even feel the need to elaborate any further on this.
  4. As stated above from time immemorial the police have released copies of statements, interview notes and sketch plan to us upon payment of the appropriate fees. We request for the copies of the above on behalf of victims who are injured in the accident. They are have a right to see the above documents. They are directly affected. They need to prepare their case for compensation properly and hence they need to know how the accident happened and what various witnesses are saying and the sketch plan of the accident. When compensation cases are heard by the courts sketch plans and statements are used to assist the Court. Indeed in our experience quite often Judges

ask if there are sketch plans drawn by police. The writer has been in practice since 1981. With respect the decision by the Deputy Director Traffic to withhold vital information from a victim or victims of an accident does not make sense. The victim is not a busy body. He/she is directly affected. His/her Solicitor needs the information for legal purposes. In fact the 2013 Constitution allows and promotes access to information and we refer to Section 25 (1) (a) (b) which reads as follows:-

25. – (1) Every person has the right of access to –

(a) information held by any public office; and

(b) information held by another person and required for the exercise or protection of any legal right.

6. We should be pleased if you could look into this matter urgently. We believe the Police should revert to its original position as has always been the case so far – that is, to release not only the Abstract of Particulars of the accident but all other relevant documents to the victims of an accident and/or their Solicitors.

6. In his reply dated 09 December 2014, the Director Traffic Control wrote as follows:

1. I refer to your letter dated 4<sup>th</sup> December, 2014 regarding the above issue.
2. Please be advised that full disclosures are not given to third parties apart from accused persons after they are being charged. This guideline is stipulated in Section 14 of the Republic of Fiji Constitution which reads the following:

*“Police duty to comply with the above in respect of those who are arrested and charged. There are no other provisions for those that are not directly affected by our investigations. Our obligations is only to the Accused or suspects that are arrested and charged. We may have done it before on consent basis but there are serious breaches like confidentiality of information”, also the fact that the accused is yet to be dealt with whether convicted/acquitted by the court of law. There is also a possibility of Defamation claims by the other parties who do not consent in our disclosing their statements.*

3. The only document the Police can release is the Police Reports of the relevant cases whereby a fee is appropriate which is mentioned in your letter unless the Court of Law dictates otherwise in providing such other relevant materials or upon advise of the DPP.
4. The above will be a breach of Law as disseminating of information whilst the matter is still before the Court which is stated in Section 194(h) of the Crimes Decree 2009 which reads:

A person commits a summary offence against this section if he or she –

(h) while a judicial proceeding is pending, make use of any speech or writing wilfully and maliciously misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken.

5. The above legislative contents are self-explanatory in terms of providing information and to which parties. I therefore anticipate your response in relation to the parties concerned but the Law Dictates otherwise.

## APPLICATION

7. Unable to get the FPF to release the documents, Chaudhary & Associates then filed a Notice of Motion for Constitutional Redress seeking the following Orders:
  - (i) That the police do release to Messrs Chaudhary and Associates copies of all statements, interview notes, medical reports, sketch plan together with the Abstract of Particulars of the Accident, involving vehicle number LM164 on 9<sup>th</sup> day of September 2013 at Vitogo Parade, Lautoka in which Lemeki Drua was injured.
  - (ii) A declaration that Solicitors acting on behalf of victims of accidents are entitled to copies of statements, interview notes, sketch plans, medical reports from the Police.
8. The Motion is supported by an affidavit of Pita Drua sworn in April 2015. Drua deposes to all that I have set out hereinabove.

## OPPOSITION

9. An affidavit of Mitieli Divuana, Acting Assistant Superintendent, sworn on 19 May 2015 is filed in opposition of the Motion. Divuana confirms by his affidavit that Isikeli Navia is facing a charge of Dangerous Driving Occasioning Grievous Bodily Harm which is pending at the Magistrates Court in Lautoka. He deposes that the FPF relies on the Force Standing Orders 2012' (**'FSO 2012'**) which provides the standard rules, procedures, policies and directives for the day to day business of the FPF. Divuana argues that Standing Order No. 24 authorises only the issuance of an '*Abstract of Particulars of a Road Accident*' subject to conditions. He draws particular attention to condition C in Standing Order 24 which provides as follows:
  10. That specifically, under condition C in FSO 2012 Number 24 states that abstracts in connection with road accidents in which police proceedings are contemplated will not be supplied until proceedings (including appeals if any) have been concluded.
  11. That the Plaintiff paid the requisite fees and was provided the date and time of the accident, place of accident, particulars of persons involved (injured or killed), particulars of property damaged by the accident, insurance, weather and road accidents as per Schedule 1 of FSO 2012 Number 24. Find annexure marked 'MD5' Schedule 1 of Force Standing Orders No. 24.
  12. That in compliance with the FSO 2012, Accident Report dated 18 November 2014, Request for Police Investigation Extracts for Lemeki Drua dated 9 December 2014 and Abstract of Accidents, Statements to Police and Interview Notes and Sketch Plans dated 31 March 2015 were issued to Plaintiff Counsel. Find annexures marked 'MD6', 'MD7' and 'MD8' the aforementioned correspondences.

13. That any additional documents in connection with road accidents in which police proceedings are contemplated or pending cannot be supplied until such proceedings (including appeals if any) have been concluded.
14. That in regards to the Plaintiff's request, the relevant particulars have been submitted and that any further request for documents can only be complied with once Criminal Case No. 377 of 2014 has been concluded.
15. Wherefore the Respondents respectfully submit that this application be struck out with costs, with such other orders as this Honourable Court may deem just and fair in the circumstances of this case.

10. Divuana then deposes that FPF has complied with Standing Order No. 24 as follows:

12. That in compliance with the FSO 2012, Accident Report dated 18 November 2014, Request for Police Investigation Extracts for Lemeki Drua dated 9 December 2014 and Abstract of Accidents, Statements to Police and Interview Notes and Sketch Plans dated 31 March 2015 were issued to Plaintiff Counsel. Find annexures marked 'MD6', 'MD7' and 'MD8' the aforementioned correspondences.

11. He then deposes that anything further to the above requested by Messers Chaudhary & Associates can only be supplied after the conclusion of the pending criminal case against

13. That any additional documents in connection with road accidents in which police proceedings are contemplated or pending, cannot be supplied until such proceedings (including appeals if any) have been concluded.
14. That in regards to the Plaintiff's request, the relevant particulars have been submitted and that any further request for document can only be complied with once Criminal Case No. 377 of 2014 has been concluded.
15. Wherefore the Respondent respectfully submit that this application be struck out with costs, with such other orders as this Honourable Court may deem just and fair in the circumstances of this case.

### **DIRECTOR OF PUBLIC PROSECUTIONS**

12. On 08 July 2015, the Office of the Attorney-General filed a Summons for Joinder seeking an Order that the Director of Public Prosecutions be joined as a party pursuant to Order 15 Rule 4(2) of the High Court Rules 1988.
13. I granted Order in Terms of that application on 09 June 2015 and on 23 June 2015, an affidavit of Shelyn Kiran, Senior Legal Officer in the Office of the DPP

sworn on the same day was filed in opposition to the Notice of Motion For Constitutional Redress.

14. Kiran deposes that neither Chaudhary & Associates nor Lemeki Drua has a right to obtain evidence collated by the FPF pursuant to a criminal investigation. He opines in his affidavit that the proper course for them is to subpoena the investigating officer to give evidence in any related civil proceedings.
15. Kiran further deposes of the policy reasons why the FPF adopts such an approach:

8. That I further state the following:
  - (a) Releasing documents pertaining to a criminal investigation to parties of the corresponding civil action would result in those documents becoming accessible to the victim and other potential prosecution witnesses prior to their giving evidence in the relevant criminal case; and
  - (b) 3<sup>rd</sup> Respondent does not allow the prosecution witnesses of a criminal trial to retain statements recorded by the Police and/or any other document prepared or obtained by the Police during the relevant criminal investigation; and
  - (c) Therefore, potential witnesses of a criminal case or any other person apart from an Accused in the relevant criminal case do not have a right to obtain statements recorded by the Police and/or any other document prepared or obtained by the Police pertaining to the relevant criminal investigations, and
  - (d) Therefore, the Applicant and/or Lemeki Drua do not have the right to obtain any other document or information save for those already issued by the Fiji Police Force pertaining to the relevant accident.

## **ANALYSIS**

16. There are two competing interests involved. Drua's interest lies in obtaining all the information he can get before he files his civil suit. The documents in question are, of course, crucial to his claim. In terms of the current application, his case would be premised on the right of access to information which Fiji's constitution guarantees.
17. The FPF's concern lies in making sure that the integrity of the criminal proceedings in the Magistrates Court is not compromised.
18. Its case would be premised on an argument that to disclose the documents would compromise the fair trial of the related criminal proceedings in the Magistrates Court.

19. A person has a right of access to information held by any public office. Section 25 of the 2013 Constitution provides as follows:

the right of access to—

(a) information held by any public office; and

20. To that right of access to information, corresponds an obligation on the part of the state to provide for access by law. Hence, the Fiji Constitution would provide in section 150 as follows:

Part B—FREEDOM OF INFORMATION

*Freedom of information*

150. A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.

21. However, by section 25(3), the constitution recognises that the right of access to information is not absolute and envisages that there are certain situations when the law may, justifiably, place a limit on that right:

(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.

22. In refusing to disclose the documents, the Officers of the Fiji Police Force all rely on the Force Standing Orders 2012 (FSO 2012) which make provision for the standard rules, procedures, policies and directives for the day to day business of police work. FSO 2012 came into force in January 2013. The then Commissioner of Police, Brigadier General Ioane Naivalurua, explained the FSO 2012 as follows:

This Order may be cited as Force standing Order 2012 (FSO 2012).

The FSO 2012 repeals and withdraws the 1990 edition of the FSO and all other orders that have been published prior to the commencement date of the Force Standing Order 2012.

All members of the Fiji Police Force must become familiar with the content of the FSO 2012.

All members of the Fiji Police Force must adhere to rules, procedures, policies and standards set out by the FSO 2012 for day to day policing.

The content of FSO 2012 shall be reviewed on every three (3) years basis to construe with changing laws, legislations, orders, by laws, policies, directives and so forth. However, the Commissioner of Police shall at any time sanction review of the contents or any part of FSO 2012 as he/she may think necessary.

The Commanding Officer of Police Formations and Divisions will ensure that any amendment to FSO 2012 is properly disseminated and translated to officers under his/her command. They will periodically inspect the copies on issue to officer under

their command and will demand written explanation for any loss, damage or failure to update orders.

The copies of FSO remain the property of the Fiji Police Force and information contained therein is restricted.

The FSO 2012 is operational and effective from the date endorsed hereunder by the office of the Commissioner of Police.

23. FSO 2012 No. 24 Condition C provides:

ABSTRACT OF PARTICULARS OF A ROAD ACCIDENT

1. It is permissible for the police to issue an official "Abstract of Particulars" of a road accident to the parties directly involved and/or to their properly authorised representatives or insurance companies Abstract will be issued subject to the following conditions:-
  - (a) that a fee of \$10 shall accompany each application for an abstract (which fee is not returnable in the event of a negative of police search);
  - (b) that abstract can only be given if particulars have already been reported to the police. In no circumstances will any special or additional enquires whatsoever be permitted to provide an Abstract particulars.
  - (c) abstract in connection with road accidents in which police proceedings are contemplated will not be supplied until proceeding (including appeals if any) have been concluded. Similarly where in connection with a road accident an inquest is to be held, no abstract will be provided until the inquest is completed;
  - (d) the police will not accept responsibility for the accuracy of names and addresses which may have been tendered by the parties directly involved and/or by witnesses.
  - (e) no verbal applications will be accepted it will be necessary for written applications to be made accompanied by the fee of \$10;
  - (f) under no circumstances will Abstracts of Particulars of road accidents be supplied to legal representatives or insurance companies unless a proper certificate of authority is produced from the parties directly involved;
  - (g) all applications must be dealt with at the Police Stations nearest the site of any alleged road accident since it is on the records of that station that details will appear if, in fact, a road accident has occurred such and may be alleged by the applicant.
  - (h) when an application is received accompanied with the requisite fee of \$10 a Revenue Receipt is issued immediately and either;
  - (i) if a delay envisaged in the preparation of the Abstract of Particulars, the Revenue Receipt is forwarded to the applicant under cover of a letter explaining the reason for delay or;
  - (j) if on the other hand the relevant Abstract Form can be prepared, Revenue Receipt is issued and together with the Abstract Form, forwarded the documents under cover of letter shown at Schedule II.
2. The Form of Abstract will be supplied to Stations printed form as shown in Schedule I to this order. In NO CIRCUMSTANCES will any details be given which do not



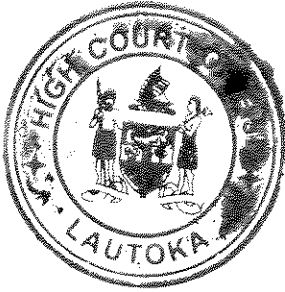
properly follow under the headings as given which do not properly follow under the taken to ensure that the official printed form but care will be taken to ensure that the form is fully and accurately completed. At Schedule II is the police reply form that will be sent to every applicant who does not forward the requisite fee.

3. Fees received will be paid by Station Officers to "Miscellaneous" Revenue Head and Revenue Receipt will be issued in each case.

### **CONCLUSION**

24. I accept the submissions of the Office of the Director of Public Prosecutions.

Accordingly, I dismiss the application. Costs to the defendants which I summarily assess at \$400-00 (four hundred dollars).



A handwritten signature in black ink, appearing to be "Anare Tuilevuka", written over a horizontal dotted line.

Anare Tuilevuka  
**JUDGE**  
29 June 2017.