

In the High Court of Fiji at Suva
Civil Jurisdiction
Civil Action No. HBM No.66 of 2016

Between
Sainivalati Tokalau
Applicant

And

Suva Bowling Club,
a club established under the Charitable Organisation Act
Respondent

COUNSEL: Mr S.Valenitabua for the applicant
Mr P. Kumar for the respondent
Ms S.Ali as amicus curiae

Date of hearing : 3rd July, 2017

Date of Judgment: 28th July, 2017

Judgment

1. The applicant, a trustee of the respondent club,(club) was suspended from the club for a period of six months from 2nd May,2016, until 1st November, 2016, for admittedly, assaulting another member at the clubhouse on 15 April,2016. By motion filed on 1 July,2016, the applicant seeks the following redress pursuant to Article 44 of the Constitution of Fiji:
 - (a) a declaration that his suspension contravenes Articles 15 and 16 of the Constitution of Fiji, is invalid and of no effect.
 - (b) a declaration that rule 20.5 of the constitution of the club by limiting a member's right of redress or appeal to Court or an independent and impartial tribunal contravenes Article 15(2), is invalid and of no effect;
 - (c) an order directing the club to take necessary or appropriate remedial action,(including a public apology) to restore his rights under Article 2 of the Constitution.
2. The applicant, in his affidavit in support states he reported to the Secretary of the club that he assaulted Mr Aisea Taoka on 15th April,2016, and immediately handed in his resignation as trustee. Mr Diwan Chand, the Secretary of the club informed him that Mr Taoka had made a formal complaint. He was also informed that the full committee of the club collectively agreed to suspend him from the club; the decision of the committee is final and not subject to appeal under rule 20.4 of the constitution of the club and having accepted membership of the respondent, he has no right of legal action or remedy in respect of his suspension or expulsion under rule 20.5.

3. Diwan Chand, the Secretary of the club in his affidavit in response filed on 2nd September, 2016, states that consequent to the complaint by Mr Taoka on the “*ungentlemanly conduct*” of the applicant at the bar on 15th April, 2016, the Chairman of the Disciplinary Committee considered the case serious and sensitive, as it involved two trustees and decided that the matter be deliberated at a full committee meeting. The committee considered physical assault as a very serious offence that would warrant immediate expulsion for 2 years. In view of the applicant’s active participation in activities of the club, it was agreed to give him six months suspension and six months of good behaviour. The applicant was informed that the decision of the committee was final and not subject to appeal. The committee decided to suspend the applicant on his admission of guilt in his letter of 18th April, 2016. He also indicated that he will accept whatever actions the committee felt deemed necessary. The affidavit concludes that the respondent is a members club. Members have every right to challenge the severity of sanctions set out in rules 20.1, 20.2 and 20.3 of the Club’s constitution.

4. On 3rd August, 2016, the matter had been fixed for hearing on 6th October, 2016. On that day, the case had been adjourned as counsel for the parties had submitted that the matter would be resolved.

The hearing

5. The case came up before me for hearing on 3rd July, 2017.

6. Mr Valenitabua submitted that the applicant applies for constitutional redress pursuant to Article 44 of the Constitution of Fiji, as he has been denied a fair trial before a court of law. His case should have been heard before an impartial tribunal. Rules 20.4 and 20.5 of the constitution of the club, are inconsistent with Article 15(2) of the Constitution of Fiji and should be struck down, as it provides there is no right of appeal from a decision of the committee to a court of law. The decision to suspend him from the club is illegal. Mr Valenitabua said that he abandons the plaintiff’s claim for damages.

7. Mr Kumar submitted that the applicant is not entitled to constitutional redress. The respondent is a private club. The court has no power to determine issues in relation to a private entity. Mr Kumar submitted that he would provide authorities in his written submissions. He further submitted that the applicant was informed of the charge. The disciplinary committee convened and a decision was made to suspend him, in view of his admission. The decision is binding on the applicant, as he was a member of the club.
8. Ms Ali, appearing as amicus curiae submitted that the rules of the club prevent a decision of the committee from being challenged in a court of law and are in breach of a person's fundamental rights and freedom in regard to access to justice. The ouster clauses are unconstitutional.

The determination

9. The applicant seeks declarations that his suspension from the club from 2nd May, 2016, to 1st November, 2016, contravenes Articles 15 and 16 of the Constitution and Rule 20.5 of the constitution of the club limiting a member's right of redress or appeal to Court or an independent and impartial tribunal contravenes Article 15(2).
10. The respondent, in its written submissions takes up the preliminary objection that the application for constitutional redress is out of time, the High Court (Constitutional Redress) Rules, 2005.
11. Rule 3(2) stipulates that an application “***must not be admitted or entertained after 60 days from the date when the matter at issue first arose unless a Judge find there are exceptional circumstances and that it is just to hear the application outside of that period***”. (emphasis added)
12. The rule is stated in mandatory terms and requires the Court not to entertain an application for constitutional redress after the stipulated period.

13. The assault took place on 15th April, 2016. The applicant's motion was filed on 1 July, 2016. The applicant has not pleaded any reason to grant him the indulgence to pursue this application out of time.

14. I do not find any "exceptional circumstances" to hear this application after the lapse of the mandatory 60 day period stipulated in the High Court (Constitutional Redress) Rules, 2005. I decline this application.

15. **Orders**

- (a) The application for constitutional redress is declined.
- (b) The applicant shall pay the respondent costs summarily assessed in a sum of \$ 1500.



A.L.B. Brito-Mutunayagam

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Judge

28th July, 2017