IN THE HIGH COURT OF FIJI
AT SUVA
[CIVIL JURISDICTION]

Civil Case No. HBJ 01 of 2018

BETWEEN : **FILIMONI VETAU**

APPLICANT

AND :
1. **THE ATTORNEY GENERAL'S OFFICE**
2. **THE SOLICITOR GENERAL'S OFFICE**
3. **THE DIRECTOR OF PUBLIC PROSECUTIONS**
4. **THE COMMISSIONER OF POLICE**
5. **THE COMMISSIONER OF CORRECTION**

RESPONDENTS

Counsel : **Applicant in person**
Mr J Pickering for 1st, 2nd, 4th, & 5th Respondents
Mr S Vodokisolomone for 3rd Respondent

Date of Hearing : **6 August 2018**
Date of Judgement : **20 September 2018**

JUDGMENT

[1] The applicant is a serving prisoner. He seeks redress for alleged breach of his constitutional rights pursuant to section 44 of the Constitution.

[2] The applicant and two others were jointly charged with one count each of murder, robbery with violence and unlawful use of a motor vehicle in the High Court at Labasa (Criminal Case No. HAC 055 of 2007). He pleaded guilty to robbery with violence and unlawful use of a motor vehicle before the commencement of the trial. On 2 May 2008, he was convicted of murder after trial. On 16 May 2008, he was sentenced to life imprisonment with a minimum term of 18 years to serve, concurrent with the terms of imprisonment imposed for robbery with violence and unlawful use of a motor vehicle.

[3] The facts have been succinctly summarised in the Court of Appeal judgment (*Vetau v State* [2014] FJCA 64; AAU0066.2008 (29 May 2014) at [2]):

> "The facts of the case were that on the 7th July 2007, the three accused had been drinking in the afternoon in Labasa and decided in the evening to go to a shop in Vulovi to buy more beer. The shop was closed and, being in taxi, they decided to steal money from the driver but fortunately for him a Police patrol car arrived at the scene. They paid the fare and got out of the taxi and started walking. It was decided to take another taxi and rob the driver. They stopped a taxi, got in and directed the driver towards the hospital. On the journey there, they told the taxi driver to stop; they got out and the Appellant (the first accused at trial) went to the driver's door, opened it and pulled the driver out. He pushed him against the car and demanded $25. They put the driver lying down in the back seat and with the second accused driving the taxi, they drove to Bocalevu, a remote area. The appellant took the driver's mobile phone from him. When the vehicle was stopped the Appellant pulled the driver out of the car dragging him some metres away from the car. He took the driver's shirt off and tied it around his mouth, knotting it at the back. The appellant then punched him 6 times in the face, punches which produced blood. The Appellant took a sack from the taxi and put it over the driver's head with the assistance of the third accused and the driver's hands were tied so he couldn't remove the sack or shirt and then the Appellant pushed him, so tied, into the river. The Appellant said he heard the splashing in the river – they then got back into the taxi and drove to Labasa town."

[4] Following an unsuccessful appeal against his conviction for murder in the Court of Appeal, the applicant appealed to the Supreme Court. On 21 April 2016, the Supreme Court in a written judgment refused to grant the applicant special leave to appeal and affirmed the Court of Appeal judgment dismissing the applicant's appeal against conviction for murder (*Vetau v State* [2016] FJSC 9; CAV008.2015 (21 April 2016)). The applicant then applied for review of the Supreme Court's judgment refusing him special leave to appeal. On 19 August 2016, the Supreme Court refused the application for review (Petition for Special Leave Seeking Review No. CAV 0008/2015).

[5] After exhausting all his avenues of appeal, the applicant filed this application for constitutional redress on 19 February 2018. On 28 August 2018, he filed a written reply to the respondents' response to his application for redress.

[6] In his owns words, the applicant has advanced the following grounds for redress:

(i) Discrimination

(ii) Unfair proceeding

(iii) Il-treatment (in state custody)

[7] It is the applicant's contention that he was brutally assaulted by the police following his arrest on 8 July 2007. He submits that he raised police brutality before the High Court, the Court of Appeal and the Supreme Court but no action had been taken. He further submits that he was kept in police custody for more than 48 hours without prior approval from the court. Finally, he submits that his trial was unfair as the trial judge gave no direction on joint enterprise or manslaughter.

[8] Section 44 of the Constitution allows a person to seek redress from the High Court for any contravention or likely contravention of the Bill of Rights. The right to seek redress under section 44 is without prejudice to any other action with respect to the matter that person may have. The redress jurisdiction is broad – the court may make such orders and give such directions as it considers appropriate. However, the court may not grant relief if it considers that an adequate alternative remedy is available to the aggrieved applicant.

[9] The practice and procedure for filing a constitutional redress are governed by the High Court (Constitutional Redress) Rules 2015. The Rules were made by the Chief Justice pursuant to the powers conferred to him by section 44 (10) of the Constitution. Rule 3 states:

> (1) An application to the High Court for redress under section 44(1) of the Constitution may be made by a motion supported by affidavit-
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> (a) claiming a declaration;
>
> (b) praying for an injunction;

> (c) claiming or praying for such other order as may be appropriate.
>
> (2) An application under paragraph (1) 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 of that period.

[10] Since the applicant has made the application in person he has not clearly articulated the relief he is seeking. It seems he is seeking to have his conviction for murder expunged on the grounds that his police detention was unlawful and that his caution statement should not have been admitted into evidence due to police brutality.

[11] The applicant's alleged constitutional grievances arose when he was arrested on 8 July 2007. He was represented by counsel in the High Court. He did not challenge the admissibility of his caution statement on the ground of unlawful detention or police brutality. His caution statement was led in evidence without objection from him. He gave sworn evidence at the trial. He did not allege that his detention was unlawful and that his caution statement was extracted using force. He only made these unsubstantiated claims on appeal before the Court of Appeal and the Supreme Court. Both courts quite correctly concluded that the applicant was barred from raising these claims for the first time on appeal when he did not raise them before the trial court.

[12] The alleged claims are now eleven years old. It is only after the applicant had exhausted all his appeal avenues that he filed this collateral attack on his conviction for murder using the constitutional redress procedure. The application in my judgment is frivolous, vexatious and an abuse of the court process. As Singh J said in *Aiyaz Ali v State* Civil Action No. HMB 79 of 2004 (29th August 2005) at p2:

> "The Redress Rules do not provide a parallel process where other remedies are available. To use the constitutional redress process as a substitute for normal procedures is to devalue the utility of this constitutional remedy. The applications under the Redress Rules are not a short cut or a system to by-pass existing mechanisms in law".

[13] Similarly, in *Maharaj v A-G of Trinidad and Tobago* (No.2) [1979] AC 385, the Privy Council said at p 399:

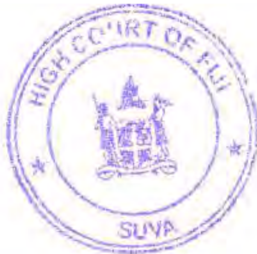
> ".....no human right or fundamental freedom recognized by Chapter 1 of the Constitution is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court".

[14] In a subsequent decision involving a similar redress procedure under the Constitution of Trinidad and Tobago, the Privy Council in *Patrick Chokolingo v The Attorney General of Trinidad and Tobago* Privy Council Appeal No. 20 of 1979 held that the constitutional redress was an inappropriate avenue to challenge an error of substantive law following a conviction of an offence. The Privy Council said at p 4:

> "Acceptance of the appellant's argument would have the consequence that in every criminal case, in which a person who had been convicted alleged that the judge had made any error of substantive law as to the necessary characteristics of the offence, there would be parallel remedies available to him: one by appeal to the Court of Appeal, the other by originating application under section 6(1) of the Constitution to the High Court with further rights of appeal to Court of Appeal and to the Judicial Committee. These parallel remedies would be also cumulative since the right to apply for redress under section 6(1) is stated to be "without prejudice to any other action with respect to the same matter which is lawfully available". The convicted person having exercised unsuccessfully his right of appeal to a higher court, the Court of Appeal, he could nevertheless launch a collateral attack (it may be years later) upon a judgment that the Court of Appeal had upheld, by making an application for redress under section 6(1) to a court of co-ordinate jurisdiction, the High Court. To give to Chapter 1 of the Constitution an interpretation which would lead to this result would, in their Lordships' view, be quite irrational and subversive of the rule of law which it is a declared purpose of the Constitution to enshrine".

[15] In the present case, the applicant had adequate alternative remedy to challenge his conviction for murder by way of an appeal. He utilised that remedy but was unsuccessful. For him to now utilise the constitutional redress procedure to challenge his conviction for murder on the basis that the trial judge had made error of fact on substantive law is an abuse of the Court process.

[16] The application is dismissed.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Attorney General's Chambers for 1st, 2nd, 4th & 5th Respondents

Office of the Director of Public Prosecutions for 3rd Respondent