

IN THE HIGH COURT OF FIJI AT SUVA

In the matter of an application for constitutional redress

[CIVIL JURISDICTION]

LIVAI KAIVITI

Applicant

CASE NO: HBM 48 of 2020

V

THE DEPUTY REGISTRAR

1st Respondent

THE HIGH COURT MASTER

2nd Respondent

THE ATTORNEY GENERAL OF FIJI

3rd Respondent

Decided on: 27 March 2020

ORDER
(Made in Chambers)

1. At the outset, I note that there is no proper application for constitutional redress before this court as the documents filed do not comply with Rule 3(1) of the High Court (Constitutional Redress) Rules 2015. The said Rule provides thus;

[HC 11,130] Application for Redress

- 3 (1) *An application to the High Court for redress under section 44(1) of the Constitutional of the Republic of Fiji may be made by a motion supported by affidavit-*
 - (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.

2. There is no supporting affidavit filed in this case. The form which the applicant had filled which bears the reference 'Form HCCR 1' cannot be considered as an affidavit and Rule 3(1) above does not allow the requirement of filing a supporting affidavit to be dispensed with, in instances where an application is filed without the assistance of a lawyer.
3. Further, according to the facts stated in the documents filed, the relief sought in this case relates to a matter before the High Court at Lautoka. Therefore, this application should have been filed before the Lautoka High Court.
4. I note that the documents filed in this case do not disclose sufficient material to determine whether this purported application was filed within 60 days from the date when the matter at issue first arose. In answer to the question '[w]hat was the date of the event, or action taken against you, which you say was against your rights under the Constitution?' the applicant had stated 'on 5th of November 2019'. But there is no mention as to what took place on 05/11/19 or what the alleged breach was.
5. Given the provisions of Rule 3(2) of the High Court (Constitutional Redress) Rules 2015 alluded to above, it is imperative for an applicant applying for constitutional redress to demonstrate that the application is filed within 60 days from of the date when the matter at issue first arose.

6. If an application for constitutional redress does not clearly indicate why the applicant considers his constitutional rights has been or likely to be breached and does not show that the application is filed within 60 days from the date that breach first took place, such application cannot be admitted and maintained.
7. Moreover, the relief sought by the applicant in this case is for an order to have his appeal filed before the High Court at Lautoka be heard within a reasonable time. In my view, firstly, this relief sought cannot be granted by another High Court even when exercising the jurisdiction to grant constitutional redress under section 44(3) of the Constitution of the Republic of Fiji 2013. Secondly, the said relief sought does not fall within the purview of constitutional redress. Thirdly, the applicant could have simply brought it to the attention of the relevant court before which the appeal in question is listed, that he wants the matter to be expedited.
8. Given that the documents pertaining to this application do not establish the fact that this application was filed within 60 days from the date when the matter at issue first arose and having noted that the relief sought does not come within the purview of constitutional redress, I have decided that this matter should not be admitted or entertained by virtue of the provisions of Rule 3(2) of the High Court (Constitutional Redress) Rules 2015.
9. This matter is dismissed accordingly.
10. The Registrar shall take steps to serve a copy of this order on the relevant parties.



A handwritten signature in blue ink, appearing to read "Vinsent S. Perera".

Vinsent S. Perera

JUDGE