

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

MISCELLANEOUS HBM No. 34 of 2019

In the matter of an application for Constitutional
Redress and or interpretation

AND

In the matter of an application under Section
44(1) of the Constitution of the Republic of Fiji

BETWEEN: **AIYAZ ALI** of Lautoka Corrections Centre, Lautoka.

APPLICANT

AND: **THE COMMISSIONER OF FIJI CORRECTIONS CENTRE**

FIRST RESPONDENT

AND: **THE ATTORNEY GENERAL OF FIJI**

SECOND RESPONDENT

BEFORE: **Hon. Mr Justice Vishwa Datt Sharma**

COUNSELS: Applicant Present **In Person**
 Ms. Chand S. with **Mr.Sharma B** for the 1st & 2nd Respondents.
 Mr. Vananalagi R. as Amicus

Date of Decision: 18th November, 2020 @ 9.30 am

DECISION

*[Constitutional Redress application filed by the Applicant
pursuant to Section 44(1) of the Constitution of the Republic of Fiji]*

INTRODUCTION

- [1] The **Applicant** through his Application for **Constitutional Redress** is seeking for the following relief:
- (i) A Declaration in any event that the corrections department has over exceeded the numbers of passengers ought to normally travel as per vehicle; and
 - (ii) Compensation for the injuries and suffering as a result of the escorting vehicle meeting an accident on its way from Lautoka Corrections Service to the Lautoka High Court.
- [2] The application for constitutional redress is made pursuant to **section 44(1) of the Constitution of the Republic of Fiji**, wherein he is alleging that his right to life and right to freedom from cruel and degrading treatment was violated pursuant to **sections 8 and 11 (1)(2) of the Constitution of the Republic of Fiji** respectively.
- [3] The Applicant claims that on 02nd July 2019 whilst being escorted to the Lautoka High Court from the Lautoka Prison, he was handcuffed and put in a vehicle that exceeded its passenger capacity.
- [4] He also claims that his right to life was breached when the escorting vehicle met with an accident on the way to the Lautoka High Court and he could not protect himself because he was handcuffed.
- [5] The Applicant further claims that his right to life and freedom from cruel and degrading treatment was also breached when he was handcuffed and put in a vehicle whose passenger capacity had exceeded.
- [6] The Respondents opposed the application and filed an Affidavit in Opposition.
- [7] A supplementary Affidavit each was also filed by both parties to this proceeding.
- [8] The Respondents furnished Court with its written submissions.

THE LAW

High Court (Constitutional Redress) Rules 2015:

- [9] **Order 3 of the High Court (Constitutional Redress) Rules 2015** in relation to instituting an application for constitutional redress states":

"(1) An application to the High Court for redress under **section 44(1) of the Constitution 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.*

- [10] Further, *Order 7 of the High Court (Constitutional Redress) Rules 2015* in relation to practice and procedure states -

"Except as otherwise provided in these Rules, the jurisdiction and powers conferred on the High Court in respect of applications made by any person in pursuance of wither section 33(1) or 4(5) of the Constitution of the Republic of Fiji are to be exercised in accordance with the practice and procedure, including any rules of Court, for the time being in force in relation to civil proceedings in High Court, with any variations the circumstances require."

Consideration of the Application

Whether the Applicant's Right to Life was breached?

- [11] The Applicant alleges that his right to life pursuant to *section 8 of the Constitution of the Republic of Fiji* was breached when he was handcuffed and put in the escorting vehicle and as a result, when the escorting vehicle met with an accident, he was not able to protect himself and hit his head on the grill bars in the escorting vehicle.
- [12] *Section 8 of the Constitution of the Republic of Fiji* states that:
- "Every person has the right to life, and a person must not be arbitrarily deprived of life"*
- [13] Right to life is an issue that arises when the applicant's life is at risk from the outset; that is, the Corrections Department knew and could foresee that there will be an accident and the Applicant will be injured, and yet they proceeded to escort the Applicant, putting his life at risk hence a violation of right to life.
- [14] Section 42(2) of the Fiji Corrections Act 2006 stipulates that handcuffs may be used as a precaution against escape during the transfer of a Prisoner, or upon the order of the officer in charge if other means of controlling a Prisoner have failed.
- [15] The wordings within the provisions of Section 42(3) of the Fiji Corrections Act 2006 gives the Prison authorities a discretion to use a handcuff as a precaution against escape during transfer. These guidelines are found in the Commissioner's Local Orders Order No. 10 gazetted on 16th May, 2011.
- [16] It is to note that the authorities are under obligation to do all that is reasonable to avoid a real and immediate risk to life of the prisoners of which the authorities are aware of if the authorities did not know nor could they have known, that there was a real and immediate risk to the Application's life, then there had been no violation to the right to life.
- [17] Hence, I do not find that the applicants Right to Life in one way or the other was breached in anyway and therefore this claim fails.

Whether the Right to Freedom from Cruel and Degrading Treatment was breached?

- [18] The Applicant also alleges that his right to be free from cruel and degrading treatment pursuant to *section 11 (1)(2) of the Constitution of the Republic of Fiji* was breached because the passenger

capacity of the escorting vehicle had exceeded and that he was handcuffed while being escorted to the Lautoka High Court.

- [19] Section 11 (1) provides that **"Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment."**

Section 11 (2) provides **"Every person has the right to security of the person, which includes the right to be free from any form of violence from any source, at home, school, work or in any other place"**

- [20] However, Section 2 (3) [Use of instruments of restraint] of the Fiji Corrections Services Act 2006 states:

"Handcuffs may be used as a precaution against escape during the transfer of a prisoner, or upon the order of the officer in charge if other means of controlling a prisoner have failed."

- [21] Section 42(3) of the Fiji Corrections Services Act 2006 gives the Respondents the discretion to use a handcuff as a precaution against escape during transfer.

- [22] I have read Sections 11(1) and (2) of the 2013 Constitution together with Sections 2(3) and 42(3) of the Fiji Corrections Services Act 2006 rather than in isolation in order to arrive at a just and fair decision.

- [23] The Principles espoused within the provisions of Section 11 (1) and (2) hereinabove are the foundation upon which the relevant provisions of the Fiji Corrections Act 2006, which prohibit and limit the use and the manner in which the instruments restraint may be applied to a Prisoner , are based.

- [24] It is clear and evident from the above provisions of the Law that the use of handcuffs whilst transporting prisoners cannot be considered to be cruel and degrading treatment under the Constitution of the Republic of Fiji, since the use of handcuffs is merely a precaution against escape during the transfer of a prisoner as outline in the matter **Dutt v State [2019] FJHC 373; HBC 29.2018 (29 April 2019)** refers.

- [25] In the current case, I find that it was necessary to sufficiently use the handcuffs on the Applicant whilst being transferred from Lautoka Prison to the High Court Lautoka.

- [26] I do not find any breach of Right to Freedom from Cruel and Degrading Treatment as alleged by the Applicant.

Whether escorting vehicle was carrying excess passengers?

- [27] The Respondents Affidavit in Opposition deposed at paragraphs 4 (e) and (f) states that:

"(e) on 2 July 2019 a total of 10 persons were travelling in the escorting specialised vehicle - 8 (including the Applicant) were seated in the back of the escorting vehicle while 2 were seated in the front of the vehicle same;

(f) and that at no time the vehicle's capacity limit exceeded."

[28] The Applicant has failed to provide any evidence to support his allegation that the escorting vehicle on the day of the accident had exceeded its passenger capacity.

[29] Thus, this allegation fails accordingly.

The Court has discretionary powers to refuse relief in terms of section 44(4) of the 2013 constitution if adequate Alternative Remedies are available

[30] Section 44(4) of the Constitution of the Republic of Fiji states:

*"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." (Emphasis mine).*

[31] The Constitution of the Republic of Fiji authorises this Honourable Court to exercise its discretion not to grant relief in relation to an application for constitutional redress if it considers that an adequate alternative remedy is available to the Applicant.

[32] In the current application, the applicant has failed to exhaust at least two (2) of the alternative remedies that were available to him;:

- (i) civil suit or Writ for compensation; and/or
- (ii) submit a claim for accident compensation through the Accident Compensation Commission of Fiji.

[33] Failure to exhaust and/or resort to the Adequate Alternative Remedies, the Application for Constitutional Redress fails and is accordingly refused.

Reference is made to the case of **Kean v Attorney-General's Office [2020] FJHC 399; HBM12.2018 (8 June 2020)**, the Court referred to the case of **Abhay Kumar Singh v Director of Public Prosecution and Anor (2004) FLR 297** and at page 4, Paragraph 6 stated:

"The privy council has constantly laid down that where an adequate alternative remedy is available then constitutional redress will be refused. It has regarded an application for constitutional relief in these circumstances as an abuse of process and as being subversive of the Rules of Law which the constitution is designed to uphold and protect."

In Conclusion

[34] The applicants rights under the 2013 Constitution of the Republic of Fiji was not breached in any way and the prison officers acted in conformity with the Corrections Services Act 2006 accordingly.

[35] The Application for Constitutional Redress is accordingly dismissed.

[36] There will no order as to costs bearing in mind that the Applicant is serving a term of imprisonment.

ORDERS

- (i) None of the Constitutional Rights as alleged by the Applicant were breached.
- (ii) The Application for Constitutional Redress is refused and accordingly Dismissed.
- (iii) I make no order as to costs.

DATED AT SUVA THIS 18th DAY OF November, 2020



VISHWA DATT SHARMA
JUDGE
SUVA

cc: Aiyaz Ali (Applicant)
Attorney General's Chambers, Suvavou House, Suva