

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

**HBM 16 of 2014**

**BETWEEN:**            **AIYAZ ALI** of Natabua Remand Centre.

**APPLICANT**

**AND:**                 **STATE**

**RESPONDENT**

Appearances:            Applicant in Person  
                              Mrs. Lee for the Respondent  
Date of Hearing:         25 August 2014  
Date of Ruling:         25 July 2022

**R U L I N G**

**BACKGROUND**

1. Section 44 (1) of the 2013 Constitution provides that a detained person or any other person on behalf of the detainee, may apply to the High Court for Redress, if he or she considers that any of the Bill of Rights provisions under the Constitution has been contravened in relation to the detainee:

Enforcement 44 (1)— (1) If a person considers that any of the provisions of this Chapter has been or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if another person considers that there has been, or is likely to be, a contravention in relation to the detained person), then that person (or the other person) **may apply to the High Court for redress.**

2. Section 44 (3) gives this Court a discretion not to grant relief if the Court considers that an adequate alternative remedy is available.

(4) 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.

3. I would like to reproduce here in full, by way of introduction, the wise words of the Honorable Mr. Justice Jiten Singh in **In re Application by Aivaz Ali** [2005] FJHC 255; HBM0079.2004 (29 August 2005).

Recently the High Court has received a deluge of applications for Constitutional redress from convicted prisoners serving sentences of imprisonment. Generally the application is in the form of a letter with sections of the Bill of Rights provisions from the Constitution copied verbatim. These letters are addressed to the Chief Registrar who then directs them to the Civil Registry. The application before me was similar in nature. I heard the matter and dismissed it verbally explaining my reasons to the applicant with written judgment to follow.

The application was made to look like a Constitutional redress issue. The applicant had two complaints: first, a loss of pair of Nike shoes and a T-shirt worth \$180.00 which were kept in the custody of the reception officer, secondly complaint of brutal assault on 1st October 2004. As far as the first matter was concerned that has been sorted out as the relevant officer was negligent and he was made to pay for the missing items. That is disclosed in the affidavit of AISEA TAOKA. This is no longer an issue now.

As far as the assault is concerned, Aisea Taoka in his affidavit deposes that an officer Talau Vakacegu back-slapped the applicant who suffered a bleeding nose. The medical certificate was attached showing fracture of nasal bone.

The applicant wants to have the relevant officer charged for assault even though he has been disciplined internally by the Prison Department and seeks damages for injuries suffered.

An isolated incident of assault is an offence under the Penal Code and may also be subject of damages in tort. To elevate these under the evocative banner of abuse of human rights is to really abuse of process. 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. Section 41 of the Constitution is not an Alladin's cave which contains all the remedies for all the ills and the Redress Rules the magical words "open sesame" which are keys to those remedies.

Section 41(4) of the Constitution endorses my above remarks and provides that the court may refuse to grant relief if "adequate alternative remedy" is available to the person concerned. In the present case the applicant has following alternative remedies available to him.

- (a) complain to police about assault
- (b) File writ in Magistrate Court for damages for his injuries which are minor.
- (c) Additionally there are the provisions of the Prisons Act Cap 86.

Section 44 of the Prisons Act requires weekly visits to prison by resident Magistrates. Under Regulation 157 of the Prison Regulations the Magistrates are amongst other things required to hear and inquire into complaints by prisoners and ensure that any abuses which come to their knowledge are brought to notice of the Controller. Regulation 158 contains powers of visiting justices. These empower a visiting justice to visit every cell, inspect and test the quality of food, inquire into complaint or request by a prisoner and even inquire into the state of prison buildings and report to Controller if there is need for repairs. The applicant could have complained to the visiting justice or written to the Chief Magistrate instead of seeking constitutional redress.

Statutory remedies exist to address the type of complaints raised by prisoners in their letters recently. They should use these remedies instead of clogging the High Court civil list with their applications.

It is for these reasons the application is dismissed and relief refused.

4. The above words apply equally to accused persons who are detained on remand as they do convicted prisoners.
5. Before me is an application by one Aiyaz Ali who is a remandee. Ali filed an application for Constitutional Redress on 03 April 2014. Just as Singh J had noted in **In re Application by Aiyaz Ali** (supra) the application before me is in the form of a letter with sections of the Bill of Rights in the 2013 Constitution copied verbatim.
6. I am not inclined to reproduce the letter in full in this Judgment. However, I do summarize below the various grievances raised by Ali in his letter.
7. In his 03 April 2014 letter, Ali raised issues on the following:
  - (a) his right to visitation being breached.
  - (b) the alleged inhumane conditions in which he is being kept on remand.
  - (c) his right to engage counsel
8. However, later in the course of the proceedings, Ali would raise additional allegations about how little the food rations are and also the strip searches which he was subjected to as well as allegations about his bed being ridden with bugs as well as a shortage of towels and blankets.
9. The State did file an affidavit of Jone Biu sworn on 25 August 2014 in opposition to Ali's affidavit. Biu was the Officer in Charge of the Lautoka Corrections Centre at the time.

### **VISITATION RIGHTS**

10. Ali complains that the prison officials in Lautoka have stopped letting in visitors for him. He says that there is a tendency for the officials to not allow visitations for remandees who complain to higher authorities. Only those who do not complain are allowed visitors. Ali alleges that the officials would justify withholding visitations on the pretext that the remandee in question has been found to have received contrabands from visitors. He deposes as follows:
  - 2.1 The Applicant submits that the cessation of the Applicant's visitation rights on the basis of a prison offence is unlawful.
  - 2.2 That the Correction Service Act 2006, Correction Service Regulation 2011 and the Commissioners Local Orders are silent and do not provide provisions for the punishment of unconvicted criminal prisoners.
  - 2.3 That alternatively, cessation of the Applicants visitation rights on the basis of a prison offence is unlawful because the Applicant, prior to being punished was not given due process, therefore contravening his right to access to tribunal under section 15 (1) of the Fiji 2013 Constitution.
  - 2.4 In that any allegations of violation of standard rules and procedures by any prisoner should subject that prisoner to provisions under Part 8: Disciplinary Prisoners under Prisons and Corrections Act 2006.

- 2.5 That the Applicant was denied natural Justice by the imposition of cessation of visitation as punishment for prison offence prior to a charge and hearing before a competent tribunal.
- 2.6 The Applicant further submits that the unlawful imposition of punishment in the cessation of visitation rights further infringes the Applicants inherent right to prepare his defence adequately.
- 2.7 In that visitation by his next of kin is for the purpose of discussing suitable options to engage a counsel and the logistics of seeking such counsel be facilitated by visitation.
- 2.8 That such failure to adequately prepare a defence is an infringement of section 14 (2) (c) (d) of the Constitutional Bill of Rights provisions.
- 2.9 Accordingly, the Applicant seeks a declaration by this honorable Court that:
  - (i). Cessation of visitation rights as a punishment for prison offence is unlawful.
  - (ii). Cessation of visitation rights contravenes the Applicants inherent right as provided under section 13 (1) (k) of the Bill of Rights provisions under the Fiji 2013 Constitution.

11. Biu deposes in his affidavit that Ali was temporarily deprived of any visitation after he was caught with contraband. He was penalized accordingly by having his visitation suspended temporarily.

12. The temporary suspension of visitation rights applied to his friends and family only. It did not affect any visitation from his legal counsel.

13. Biu further deposes that any prisoner who violates standard rules and procedures of the institution including being found with a prohibited article commits a prison offence and is liable to punishment under the Corrections Service Act 2006.

14. Biu deposes as follows at paragraph e:

..contrabands of all sorts are a ..threat to security ...[They] subdue our effort to ensure that discipline, good order, and safety and security of other inmates, staff and the community at large is maintained at all times. Contrabands such as mobile phones have even led to major robberies have been arranged from Prisons by use of the same.

### **ACCESS TO TELEPHONE**

15. Ali is aggrieved that he has been denied use of the telephone. He submits:

- 3.1 ... that for the past 6 months, the Lautoka Correction Centre landline was out of order, therefore prohibiting communications to his spouse/next of kin.
- 3.2 ...such lack of communication directly violates section 13 (1) (k) of the Fiji 2013 Constitution.
- 3.3 .....it further infringes his right to communicate with his spouse / next of kin about the adequate preparation of his defence, therefore violating section 14 (2) (c) (d) of the Fiji 2013 Constitution.
- 3.4 Accordingly, he seeks a declaration and/or order of finding that the lack of telephone landline by the Lautoka Correction Centre contravenes his rights to:
  - (i). communicate with his next of kin/spouse.
  - (ii). adequately prepare his defence.

16. It appears that Ali was denied the use of the telephone after he was found with a mobile phone which is a prohibited contraband. During the hearing (which was conducted viva voce), Ali admitted that he was allowed three phone calls from the Supervisor's landline.

### **EXERCISE**

17. According to Ali, he is only allowed twenty (20) minutes per week to do exercises. Otherwise, he is on a twenty-four hour lockdown in the holding cell on other days. He seeks a declaration that irregular exercise for one day per week is a contravention of Constitutional provisions as per section 13 (i) (j) of the Fiji 2013 Constitution.
18. The holding cell is designed to hold one person only. Currently however, there are three (3) persons in the one single holding cell.
19. This also infringes his rights under section 13(i)(j) of the 2013 Constitution.
20. Ali further submits that he was never provided with beddings, save for an old, bug-infested mattress and that he has had to bring his own beddings and towel because the Lautoka Correction Centre could not provide these facilities. He also seeks a declaration that his right under section 13 (i) (j) of the Constitution of Fiji 2013 has been violated in this regard.
21. Biu deposes in his affidavit that Ali used to be accommodated with two other prisoners until he requested to have his own cell which was provided to him when one became available.
22. Biu further deposes that Ali is allowed to exercise and take part in recreational activities on Mondays, Wednesdays and Fridays for a maximum of 1 hour on each of these days.
23. Biu also deposes that all prisoners have a supply of two beddings each, a towel each, cups, spoons, toiletries etc. Personal items such as socks, warm clothing, and beddings are permitted.

### **UNDER-FEEDING**

24. Ali had also complained about the food rations provided to prisoners were inadequate and that this was a direct contravention of section 13 (i) (j) of the Fiji 2013 Constitution.
25. He also alleges that the Lautoka Corrections Centre would withhold food rations from prisoners as a form of punishment for a prison offence is obligated by law under the section 38 (c) of the Prison and Corrections Act 2006 not to withdraw basic food rations as a form of punishment for prison offence. This is a direct contravention of section 13 (i) (j) of the Fiji 2013 Constitution.

26. Biu refutes these allegations in his affidavit. He sets out in paragraph 7 subparagraphs (a) to (h) the food rations which are given to each prisoner for all three meals. He adds that the Prisons Department even allows family and friends to bring in extra food on special occasions.
27. He asserts that no other inmate has complained of the food rations – now has any visiting Medical Officer noted any case of malnutrition.

### **UNLAWFUL SEARCHES**

28. Ali submits that mirror searches at Lautoka Correction Centre is a violation of his Constitutional rights to freedom from inhumane and degrading treatment under section 11 (1) of the 2013 Fiji Constitution. He is often subjected to a strip search. This entails him having to stand naked in front of two officers and made to squat on a 3ft by 2ft mirror and with the searching officer shining a torch onto his anus. As he squats down, he is at the same time, “forced” to cough three times.
29. Ali submits that this degrading method of search is not provided for under the Fiji Prison and Correction Service Act 2006 or Commissioners Local Order.
30. He submits that while section 14 (3) of the Criminal Procedure Decree 2009 provides for a right on the part of the prison officers to search an arrested /detained person, this does not include the right to examine the arrested/detained intimate’s private parts.
31. Ali sees a declaration that the manner of search, by the use of mirrors is cruel, degrading, inhumane and is a direct violation of section 11 (1) of the Fiji 2013 Constitution.
32. Biu replies as follows at paragraph 9 of his affidavit:

..the provisions for search are stipulated in the Commissioners Local Order No. 6 that all search methods either by rub down or strip search must be conducted expeditiously, preserving the dignity of persons being searched as much as possible. The use of mirror ..is to ensure efficiency and effectiveness ...If searches are not conducted then contrabands would not be found.

### **COMMENTS**

33. It emerged in the State counsel’s cross-examination of Ali – and also from the Visiting Justice Record Book which is kept at Natabua Prison, that at no time whatsoever did Ali ever request to meet with any Magistrate who was on circuit in the Visiting Justice program.
34. As noted above, Section 44 (3) gives this Court a discretion not to grant relief if the Court considers that an adequate alternative remedy if available.
35. As Singh J had noted above,

Statutory remedies exist to address the type of complaints raised by prisoners in their letters recently. They should use these remedies ....

36. The Visiting Justice Program is designed to address complaints such as the one which Ali raises. He, as well as other inmates, should be encouraged to utilize this remedy if ever they have a grievance about visitation issues, food rations, telephone issues and so on so forth.

### CONCLUSION

37. In the final, I dismiss the application for Constitutional Redress.



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Anare Tuilevuka  
**JUDGE**  
Lautoka

**25 July 2022**