

IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL CASE NO. HBM 070 OF 2021

IN THE MATTER of an application for Constitutional Redress and interpretation made pursuant to the High Court (Constitutional Redress) Rules 2015

BETWEEN : **JOHN SAMISONI**
Applicant

AND : **CORPORATE MANAGEMENT SERVICES PTE LIMITED**
trading as THE HOT BREAD KITCHEN
First Respondent

**MINISTER FOR EMPLOYMENT, PRODUCTIVITY &
INDUSTRIAL RELATIONS**
Second Respondent

MINISTER FOR HEALTH
Third Respondent

ATTORNEY-GENERAL OF FIJI
Fourth Respondent

Counsel : **Mr V Filipe for the Applicant**
Mr G Leung for the 1st Respondent
Ms M Faktaufon for the 2nd, 3rd and 4th Respondents

Hearing : **22 March 2024**

Judgment : **29 July 2024**

JUDGMENT

- [1] Mr. John Samisoni lost his employment in August 2021 because he refused to take the COVID-19 vaccination. His employer, the First Respondent, terminated his employment in accordance with s 52F of the Health and Safety at Work (General Workplace Conditions) (Amendment) Regulations 2021 (“the 2021 Regulations”).
- [2] Mr. Samisoni filed these proceedings on the basis that he claims that the 2021 Regulations are ultra-virus and invalid. The Second, Third, and Fourth Respondents have sought to strike out the proceeding.
- [3] Whilst a number of procedural issues have been raised by the parties in this case, the narrow substantive issue, which is determinative of the proceeding, is whether the 2021 Regulations are lawful.

Background

- [4] Mr. Samisoni was, at the material time, a shareholder and the Managing Director of the First Respondent. The 2021 Regulations came into force on 8 July 2021 and jeopardized his ongoing employment with the First Respondent. The 2021 Regulations provided that no worker or employer was permitted to enter the workplace unless COVID-19 vaccinated. A worker (and employer) was required to obtain the first dose of the vaccination by 15 August 2021 and the second dose by 1 November 2021. A worker was not permitted to be in the workplace after 1 August 2021 unless vaccinated.
- [5] Mr. Samisoni did not enter the workplace after 1 August 2021 in compliance with the 2021 Regulations. He informed his employer that he did not intend to be vaccinated. According to Mr Samisoni’s affidavit dated 13 October 2021, he had undertaken his own research and had concerns regarding the vaccine. The First Respondent wrote to Mr. Samisoni on 13 August 2021, noting that the 2021 Regulations mandated the requirement to be vaccinated in order to enter the workplace, and that Mr. Samisoni had taken “*the decision not to be vaccinated*”.¹ In the same letter, the First Respondent informed Mr

¹ Annexure D of Applicant’s Affidavit in Support dated 13 October 2021.

Samisoni that it had met to consider the matter and, in line with s 52F, had decided to terminate his employment effective from 15 August 2021.

[6] On 13 October 2021, Mr. Samisoni filed a Motion for Constitutional Redress under s 44(1) of the Constitution. He sought the following six declarations and orders:

1. *A DECLARATION that Regulations 52C and 52D respectively of the Health and Safety Work (General Workplace Conditions) (Amendment) Regulations 2021 per Legal Notice No. 53 of 2021 published in the Government of Fiji Gazette Supplement dated 8th July, 2021 [“the Vaccine Regulations”] contravenes the rights under Chapter 2 – Bill of Rights, of the Constitution of the Republic of Fiji 2013 [“the Constitution”] in relation to him as follows: -*
 - (a) *section 11 (3) of the Constitution relating to the freedom from cruel and degrading treatment on the ground that the dismissal of the Applicant from his employment with the 1st Respondent, contravenes the Applicant’s right to freedom from scientific or medical treatment or procedures without the Applicant’s informed consent; and*
 - (b) *section 26 (3) (a) of the Constitution relating to the right to equality and freedom from discrimination. The breach is on the basis that the dismissal of the Applicant from his employment with the 1st Respondent due to his refusal to comply with Regulations 52C and 52D respectively, published on the authority of the 2nd Respondent, contravenes the Applicant’s right not to be unfairly discriminated against based on his health status; specifically his vaccination status*
2. *A DECLARATION that the Vaccine Regulations severally and or collectively and/or in its entirety subject to section 50(1) and (2) of the Constitution, is a law that is inconsistent with the Constitution and invalid to the extent of the inconsistency pursuant to section 2 of the Constitution on the grounds that he 2nd Respondent made the Vaccine Regulations:-*
 - (a) *without any authority by the Constitution or a written law contrary to the requirement in section 50 (1) of the Constitution;*
 - (b) *by failing to, so far as practicable, provide reasonable opportunity for public participation in the development and review of the law before it is made contrary to section 50(2) of the Constitution; and*
 - (c) *by usurping the Constitutional authority vested in the Permanent Secretary for his ministry pursuant to section 127 (8) (a) to € of the Constitution.*
3. *AN ORDER that the Vaccine Regulations are invalid to the extent of the above inconsistencies and if of no legal effect due to the above contraventions.*

4. *AN ORDER that the termination letter issued by the 1st Respondent to the Applicant dated 13th August, 2021 is null, void and of no effect, on the basis that the Vaccine Regulations and their effect severally and/or collectively, are invalid.*
5. *AN ORDER for interim or preliminary injunction against the Respondent by themselves their servants and/or agents severally and/or collectively enjoining them from continuing to terminate the employment of the workers purportedly pursuant to the Vaccination Regulations until the determination of this Motion filed by the Applicant in the within action or otherwise as ordered by this Honourable Court.*
6. *AN ORDER for interim or preliminary injunction against the Respondent by themselves their servants and/or agents severally and/or collectively enjoining them from continuing to authorize the use of the so-called "AstraZeneca COVID-19 Vaccine", the "Moderna COVID-19 Vaccine" and the "Pfizer COVID-19 Vaccine" or any other vaccine for that matter until the determination of the Originating Summons filed by the Plaintiff in the within action or otherwise as ordered by this Honourable Court.*

[7] The First Respondent filed an affidavit in opposition on 1 December 2021. On 30 December 2021, the Second, Third and Fourth Respondents filed a Summons to strike out the Applicant's Motion.

[8] The hearing of the respondent's summons was conducted before the previous Chief Justice, Kamal J, on 8 February 2022. A decision was to be issued on notice. Sadly, Kamal J passed away before issuing a decision.

[9] I convened a fresh hearing on 22 March 2024.

Issues for determination

[10] The 2021 Regulations were repealed in March 2023. Mr Samisoni accepts that Orders 5 and 6 of his Motion are, therefore, no longer required.

[11] The first and second declarations sought by Mr Samisoni are fundamental to his entire Motion. Mr Samisoni contends:

- i. That the 2021 Regulations infringe on his constitutional rights under s 11(3) and s 26(3)(a) of the Constitution: being his right to freedom from medical treatment and his right from being unfairly discriminated against on the ground of his health status.
- ii. That the 2021 Regulations do not comply with s 50(1) & (2) of the Constitution in that they are not authorized by any written law or there was no reasonable opportunity for public consultation provided before the 2021 Regulations came into operation.

[12] The Second, Third and Fourth Respondents argue, correctly in my view, that an action for constitutional redress under s 44(1) is only available for a contravention of a provision under Chapter 2 of the Constitution. Section 50 is found under Chapter 3.

[13] The Second, Third and Fourth Respondents also raise the following issues:

- i. Mr Samisoni's Motion was not filed within the requisite 60 days from the date when the matter at issue first arose.²
- ii. Mr Samisoni's Motion cannot succeed because he has an adequate alternative remedy by way of an employment grievance under the Employment Relations Act 2007.³

[14] Mr Samisoni, on the other hand, argues that the respondent's Summons to strike out his Motion under O.18 of the High Court Rules 1988 is defective.

Decision

[15] There was common ground between the parties that if this Court determines that the 2021 Regulations are lawful, then Mr Samisoni's Motion cannot succeed. I considered the legality of the 2021 Regulations recently in *Fijian Teachers Association v State* [2024] FJHC 431 (15 July 2024). I determined that the 2021 Regulations were lawful. Whilst I

² Rule 3(2) of the High Court (Constitutional Redress) Rules 2015.

³ See s 44(4) of the Constitution.

accepted that the two constitutional rights identified by the Fijian Teachers Association had been limited by the 2021 Regulations (being the same two restrictions identified by Mr Samisoni here). I nevertheless determined that the 2021 Regulations were properly enacted by the Minister under s 62 of the Health and Safety at Work Act 1996. Further, I was satisfied that the 2021 Regulations were both justified and proportionate.

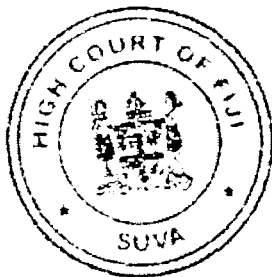
[16] For the reasons provided in *Fijian Teachers Association v State*, Mr Samisoni's Motion in the present proceeding cannot succeed.

[17] In light of this, the other issues raised by the parties do not require determination.

Orders

[18] I make the following orders:

- i. The Applicant's Motion is struck out.
- ii. I am satisfied that the present case raises an important constitutional issue and, therefore, there will be no order as to costs.



A handwritten signature in black ink, appearing to read "D. K. L. Tuiqereqere". The signature is written in a cursive style and is positioned above a horizontal dotted line.

D. K. L. Tuiqereqere
JUDGE

Solicitors:

Valenitabua & Associates for Applicant

Toganivalu Legal for 1st Respondent

Attorney-General's Chambers for 2nd, 3rd & 4th Respondents