

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

Civil Action No. **HBC 355** of 2019

**BETWEEN:**           **SAINIVALATI TOKALAU** of 30 Nokonoko Road, Laucala Beach Estate,  
Nasinu, Head of Operations.

**PLAINTIFF**

**AND:**               **SUVA BOWLING CLUB** a club established under the Charitable  
Organization Act and located at the Clubhouse, Grahame Street, Suva, Fiji.

**DEFENDANT**

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

**COUNSEL:**       **Mr. Filipe V. for the Plaintiff**  
**Mr. Nand S. for the Defendant**

**DATE OF JUDGMENT:** 17<sup>th</sup> March, 2026

**JUDGMENT**

On the outset, it should be noted that the High Court heard the Substantive Pending Matter on 3<sup>rd</sup> July 2017 and delivered its Judgment on 28<sup>th</sup> July 2017. The application for Constitutional Redress was declined and the Applicant Sainivalati Tokalau was ordered to pay the Respondent, Suva Bowling Club costs summarily assessed in the sum of \$1,500.

### **Introduction**

1. The current file after determination of the Plaintiff's Appeal on 8<sup>th</sup> March 2019 was remitted to this Court to deal with the following issues:

- (1) **The first issue is 'whether the Court of Appeal Judgment establishes liability against the Defendant?**
- (2) **The second issue is 'whether the Plaintiff is entitled to the orders sought in the within Originating Summons?' i.e. 'whether the High Court has the Jurisdiction to determine the Plaintiff's application for Constitutional Redress pursuant to Section 44 of the Constitution, if so should the Court exercise its discretion to grant the orders sought by the Plaintiff herein?'**

#### **(i) First issue**

2. The Counsel for the Respondent, Suva Bowling Club conceded that the Appeal should be allowed which is an Appeal against a Judgment upholding a Preliminary objection that the application for Constitutional Redress was time barred.
3. Accordingly, a Judgment was delivered on 8<sup>th</sup> March 2019 and subsequently the orders sealed.
4. The Court of Appeals sealed orders dated 29<sup>th</sup> March 2019 read as follows:
  - (1) The appeal is allowed;
  - (2) The Registrar to release the Security for Costs paid by the Appellant; and
  - (3) Parties to bear their own costs.
5. Since the since the Court of Appeal only dealt with the Preliminary Objections upon which the High Court had dismissed the motion in terms of the first issue-

**It can be confirmed and said that the Court of Appeal did not establish Liability against the Defendant.**
6. On second issue of **'whether the High Court has the jurisdiction to hear and determine the Plaintiff's application for Constitutional Redress pursuant to Section 44 of the Constitution?'**

7. Article 44 (4) of the Constitution states:

*'That the High Court may exercise its discretion not to grant relief in relation to an application made under the section if it considers that an adequate alternative remedy is available to the person concerned.'*

8. The Plaintiff says that he had no alternative remedy when the Appeal Court doors were shut on him by the Defendant's Constitution. He had no choice but to apply for Constitutional Redress to the High Court of Fiji.

9. The Plaintiff claims and challenges the ouster clause barring him from appealing the Defendant's Decision. He also sought a Declaration that his suspension for six months from 2<sup>nd</sup> May 2016 after being charged for physical assault, breached the Defendant's Constitution and/or committed a criminal offence, when he assaulted another club member, contravened his rights under Section 15 and 16 of the Clubs Constitution.

10. Whatever, it may be, the High Court heard the Preliminary objections which was subsequently appealed to the Court of Appeal. At the Court of Appeal the Respondent, Suva Bowling Club conceded that the Appeal should be allowed **which is an appeal against a Judgment upholding our preliminary Objection that the application for Constitution Redress was time-barred.**

11. However, further issue on the substantive matter before this Court is to determine if Suva Bowling Club (Defendant) is a public body and whether the Plaintiff has standing and so, is there an arguable case?

12. In fact the Defendant, Suva Bowling Club is a Voluntary Club and Membership is in accordance with the rules as described in the Constitution of the club. The Club Constitution underlines the rights and utilities of each member.

13. Therefore, this Court has no jurisdiction to intervene in matters that is of private law. Judicial Redress is not an appropriate procedure in a case such as the current case which essentially is a private law matter.

14. Further, the duties performed by the Defendant, Suva Bowling Club is a private entity and not of a statutory body, hence Judicial Review fails.

15. In no way Suva Bowling Club is performing the duties of a public body and the relation it has with its members are agreed upon before joining of such clubs. This is even subscribed in the Constitution of the club at paragraph 20.5 as-

*'Any suspended or expelled member shall be by virtue of having accepted his membership of the club and the privileges appertaining thereto to deemed to*

have agreed that he had then and in the future no right of legal action or remedy against the club or any member thereof in respect of his suspension or expulsion.'

16. The Plaintiff upon joining the club had agreed to be bound by the terms of this organization. Hence, the Plaintiff's application for Constitutional Redress has no implication and has no burden on Public Law.
17. Under section 7(3) of the Constitution of Fiji, it provides that:  
*'a law that limits a Right or Freedom set out in this chapter is not invalid solely because the law Exceeds the limits imposed by this chapter if the law is reasonably capable of a more restricted interpretation that does not exceed those limits, and in that case, the law must be construed in accordance with the more restricted interpretation.'*
18. The Plaintiff herein had physically assaulted a member of the club and the club found this to be a serious offence. Under the rule 20.1 of the Club's Constitution, it provides that the committee is empowered to suspend a member immediately if the gravity or nature of the case so requires.
19. The Plaintiff has admitted wrongdoing through an email dated 18<sup>th</sup> April 2016 and the repercussion that would follow that the best alternative remedy in this case would be to amend these provisions of the **Club's Constitution which contravenes the Constitution of Fiji.**

### **In Conclusion**

20. The powers sourced from the statute will be subject to Public Law Constraints enforceable by way of Judicial Review whereas Private Law matters are limited.
21. The Law on Judicial Redress is only applicable to areas or organization which perform statutory duties.
22. Therefore, the Declaration sought by the Plaintiff is bound to fail in its entirety since it has no legal standing.

### **Costs**

23. The Plaintiff to pay the Defendant a sum of \$650 as summarily assessed costs within 14 days timeframe.

24. The Court of Appeal did not establish any liability in its Judgment delivered on 8<sup>th</sup> March 2019.
25. The Court of Appeal had only dealt with the Preliminary Issues that the application for Constitutional Redress was time barred.
26. Therefore, the Plaintiff's application for Redress fails in its entirety.
27. The Plaintiff is not entitled to the orders as sought in its substantive application and the substantive application for Redress is dismissed in its entirety.
28. The Plaintiff to pay the Defendant a sum of \$650 as summarily assessed costs to the Defendant within 14 days timeframe.
29. File closed with orders intact.

Dated at **Suva** this 17<sup>th</sup> day of **March** , 2026.



  
VISHWA DATT SHARMA  
PUISNE JUDGE

CC: Valenitabua & Associates, Suva  
Nands Law, Suva