

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

**CIVIL ACTION NO. HBM 28 of 2017**

**BETWEEN** : **DESHWAR KISHORE DUTT**

***Applicant***

**AND** : 1. **COMMISSIONER OF FIJI POLICE FORCE**  
2. **DIRECTOR OF PUBLIC PROSECUTIONS**  
3. **ATTORNEY GENERAL OF FIJI**

***Respondents***

**Counsel** : Applicant in Person  
Mr J Mainavolau for the Respondents

**Date of Hearing** : 18 December 2017 & 14 February 2018  
**Date of Decision** : 14 February 2018

**DECISION**

[1] This is a timely application for constitutional redress pursuant to section 44 of the Constitution and the High Court (Constitutional Redress) Rules 2015. After the application was listed for hearing on 18 December 2017, and the applicant was given notice of the hearing date, he escaped from lawful custody and did not turn up in court for the hearing. The hearing was conducted in absentia. However, before a decision was made on the application, the applicant was apprehended and remanded in custody. The case was listed for a re-hearing on 14 February 2018 and the applicant was accorded an opportunity to be heard. The applicant was heard. Both written and oral submissions of the parties were considered.

- [2] The grounds for seeking constitutional redress are set out in the applicant's affidavit filed in support of the application. The applicant states that after he was arrested by police on 24 May 2017, he was detained in custody without charge for nine days in contravention of section 13 (l) (f) of the Constitution. On 2 June 2017, the applicant was charged with aggravated robbery contrary to section 311 (1) (a) (b) of the Crimes Act 2009. The applicant further states that the police officers assaulted him during the caution interview and that he was made to live in oppressive cell conditions during his detention. He submits that the use of force by police and the oppressive cell conditions contravened section 11 (1) of the Constitution. The applicant submits that incriminating evidence was obtained during his prolonged detention, which he seeks to exclude on the ground that the evidence was unlawfully obtained in contravention of his constitutional rights.
- [3] The State seeks to strike out the application pursuant to Rule 7 of the High Court (Constitutional Redress) Rules 2015 on the grounds that it discloses no reasonable cause of action, that it is an abuse of process and that alternative remedies exist, which have not been exhausted by the applicant. Section 44 (4) of the Constitution states that the High Court has discretion not to grant relief if it considers that an adequate alternative remedy is available to the applicant.
- [4] It is well recognised that while an accused has a right to seek redress for alleged breaches of his or her constitutional rights in criminal proceedings, an application for constitutional redress is not a suitable vehicle for the resolution of disputed questions of fact ahead of a criminal trial (*Abhay Kumar Singh v The Director of Public Prosecutions & The Attorney General* unreported Cr App No AAU0037 of 2003S; 16 July 2004). In *Singh's* case, the Court of Appeal agreed with the High Court that an application for constitutional redress on questions of disputed facts ahead of a scheduled criminal trial will fragment the criminal process and will delay it. Later cases on constitutional redress followed *Singh* (*Nata* Civil Action No HBM 35 of 2005, 4 May 2006; *Ligavai v DPP* HBM No 28 of 2014, 28 April 2015; *Silatolu v State* Misc. Case No HAM163 of 2014, 23 June 2015).

- [5] More recently, in a criminal case of *State v Lal & Ors* unreported Case No HAR001 of 2015; 2 June 2015, Madigan J said at [10]:

...where reliance is placed on the breach of a constitutional right precedence must be given to whatever “parallel and collateral remedies” are available with respect to the same matter.

- [6] In the present case, the applicant makes two main claims. His first claim is that his constitutional right to be brought before a court within 48 hours, or as soon as possible thereafter was contravened when the police detained him for nine days without a charge after his arrest. Section 13 (1) of the Constitution prohibits police detention for more than 48 hours after arrest without being brought before a court. The only exception is that if production in court within 48 hours is not reasonably possible, the person arrested should be produced in court as soon as possible thereafter.

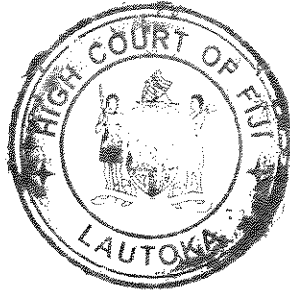
- [7] The applicant’s second claim is that the cell he was detained at the police station was filthy, his beddings were old and dirty, he was not provided with warm clothes during the cold nights and he was served cold meals. He also claims that he was assaulted by the investigating officer during interrogation. The applicant submits that his treatment in police custody contravened his right not to be subjected to cruel and inhumane treatment under section 11(1) of the Constitution.

- [8] The redress that the applicant seeks is either an exclusion of the evidence obtained as a result of the alleged breach of the Constitution or a dismissal of his criminal charge. In my judgment, the relief sought by the applicant is misconceived. The applicant is facing a serious criminal charge. The trial is pending in the Magistrates’ Court. The facts and the circumstances surrounding the applicant’s arrest and detention are disputed facts. The correct forum to challenge the exclusion of evidence on the ground of an alleged breach of the Constitution is the trial court (in this case before the trial magistrate). Adequate alternative remedies are available to the applicant.

[9] For these reasons the application for constitutional redress fails.

**Order of the Court:**

The application for constitutional redress is dismissed.



A handwritten signature in black ink, appearing to read "Daniel Goundar".

.....  
**Hon. Mr Justice Daniel Goundar**

**Solicitors**

Applicant in Person

Office of the Attorney General for the Respondents