

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No: HBM126 of 2008

BETWEEN: **TIMOCI SILATOLU**

Applicant

AND: **THE STATE**

Respondent

Coram: **Hickie J**

Counsel: **Applicant in person**
Mr K. Singh for the Respondent

Date of Hearing: **24 November 2008**

Date of Ruling: **28 January 2009**

JUDGMENT

[1] This is an Application for Constitutional Redress pursuant to section 41 of the Constitution where the Petitioner, **TIMOCI SILATOLU**, complains that he "*was not treated with dignity and respect inherently possessed by my human self and as a prisoner of the state*" relating to a family day organised by him under the "yellow ribbon program" on 5 October 2008 which was allegedly cancelled on the day "*just as we were going to harvest dalo for prison lunch*".

- [2] The Petitioner in a letter dated 5 October 2008 sets out what happened in the family day being approved by the Commissioner of Prisons and then being cancelled by the Chief Officer including visitation by family members on that day.
- [3] In their written submissions filed on 17 November 2008, the Respondent has argued that the application should be struck out on the grounds:
- (a) It discloses no reasonable cause of action; and
 - (b) It is an abuse of the process of the Court.
- [4] In relation to the Application disclosing no reasonable cause of action, the Respondent has submitted *"that having a family day is not a right under the Constitution; it is a mere privilege which may be withdrawn at anytime"*. Therefore, the Respondent submits that *"there is no issue of law raised or any breach under the Constitution"* and to bring such an Application is an abuse of process. Accordingly, the Respondent concludes that the Application can be struck out pursuant to the *High Court Rules: Order 18 rule 18(1)(a) "No Reasonable Cause of Action"* and/or *Order 18(1)(d) "Abuse of the Process of the Court"*.
- [5] In addition, the Respondent has filed an Affidavit from **AUTA MOCEISUVA**, the Deputy Commissioner of Prisons, deposing to the fact that that the said family day to be held on 5 October 2008 was cancelled "due to security reasons" there being "not enough Prison Officers to manage the prisoners and family members" and at a similar family day prior to 5 October 2008 "due to lack of security a prisoner was found with his girlfriend alone".
- [6] Further, the Respondent has submitted that if the Court does not dismiss this Application, "it will be opening [the] possibility for other prisoners to apply for

Constitutional Redress where there dignity has been affected by a cancellation of a family day" and "thus, such cases need to be deterred". Counsel for the Respondent also submitted, however, that there would not be pursuing the costs of responding to this Application.

[7] Section 41 of the Constitution states:

"41.-(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) The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have.

*(3) The High Court has original jurisdiction:
(a) to hear and determine applications under subsection (1) ...*

and may make such orders and give such directions as it considers appropriate.

(4) The High Court may exercise its discretion not to grant relief in relation to an application or referral made to it under this section if it considers that an adequate alternative remedy is available to the person concerned ..."

[8] Whilst the Court appreciates the embarrassment for the Applicant in what occurred, this is not the forum to deal with that question particularly as the Applicant has an avenue through the visiting justice to the prisons as to the day to day management issues in the prison system. In addition, the Applicant may wish to lodge a formal complaint with the Fiji Human Rights Commission though the Court notes that Counsel for the Respondent has succinctly argued that the issue of a family day is not a right but a privilege granted within the prison system. A copy of this judgment will also be forwarded to the Commissioner for Prisons.

The Court orders as follows:

- 1. That the Application for Constitutional Redress is dismissed.**
- 2. There shall be no order as to costs.**

Thomas V Hickie

Judge

Solicitors:

Attorney-General's Chambers, Suva