

GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

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[LEGAL NOTICE NO. 41]

CONSTITUTION OF THE REPUBLIC OF FIJI

(Section 44(10))

High Court (Constitutional Redress) Rules 2015

IN exercise of the powers conferred on me by section 44(10) of the Constitution of the Republic of Fiji and section 25 of the High Court Act (Cap. 13), I hereby make these Rules—

Short title and commencement

1.—(1) These Rules may be cited as the High Court (Constitutional Redress) Rules 2015.

(2) These Rules shall come into force on the date of their publication in the *Gazette*.

Exercise of jurisdiction

2. The jurisdiction and powers conferred on the High Court by section 44(3) of the Constitution shall be exercisable by a single Judge.

Application for redress

3.—(1) An application to the High Court for redress under section 44(1) of the Constitution may be made by a motion supported by affidavit—

- (a) claiming a declaration;
- (b) praying for an injunction;
- (c) claiming or praying for such other order as may be appropriate.

(2) An application under paragraph (1) must not be admitted or entertained after 60 days from the date when the matter at issue first arose unless a Judge finds there are exceptional circumstances and that it is just to hear the application outside of that period.

Notification of motion

4.—(1) Subject to paragraph (2), a motion under rule 3(1) shall not be made without at least 3 clear days' previous notice to the parties affected by it, unless the High Court gives leave to the contrary.

(2) A Judge, if satisfied that the delay involved in giving notice as required by paragraph (1) would or might entail irreparable or serious mischief, may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as he or she thinks just, but any party affected by such order may apply to the High Court within 7 days of the making of the order to set it aside.

(3) A notice of motion under rule 3(1) must state—

- (a) concisely the nature of the claim; and
- (b) the relief or remedy required.

Service on Attorney-General

5. If an application is made to the High Court for redress under section 44(1) of the Constitution in accordance with rule 3 and irrespective of whether the Attorney-General is to be a party to the proceedings, the applicant or plaintiff must serve a copy of the motion and affidavit in support on the Attorney-General.

Reference by way of case stated

6.—(1) A question referred to the High Court pursuant to section 44(5) of the Constitution by a person presiding in any subordinate court must be by way of case stated.

(2) The case shall be stated within 14 days of the decision of the person presiding in the subordinate court to refer the question.

(3) The case must—

- (a) set out the facts which have been proved or admitted and the question which is referred to the High Court for its decision;
- (b) be signed by the person referring the question;
- (c) be transmitted, by the person referring the question, to the Chief Registrar.

(4) The person referring a question under paragraph (1) must cause copies of the case to be served upon—

- (a) the party, if any, at whose request the case was stated;
- (b) any other parties to the proceedings affected by the question;
- (c) the Attorney-General in all matters; and
- (d) in the case of a criminal matter, the Director of Public Prosecutions.

(5) Upon receipt of a case transmitted pursuant to paragraph (3), the Chief Registrar must set down the case for hearing and notify—

- (a) the party, if any, at whose request the case was stated;
- (b) any other parties to the proceedings affected by the question;
- (c) the Attorney-General in all matters; and
- (d) in the case of a criminal matter, the Director of Public Prosecutions.

(6) The High Court hearing a case referred to it under this rule may—

- (a) amend the case or order it to be returned to the court by which it was stated for amendment; and
- (b) draw inferences of fact from the facts stated in the case.

(7) The Attorney-General and, in the case of a criminal matter, in addition the Director of Public Prosecutions, is entitled to appear and be heard in proceedings for the determination of a question referred to the High Court pursuant to section 44(5) of the Constitution.

(8) The Chief Registrar must notify the court by which the question was referred of the decision of the High Court upon the question.

Practice and procedure

7. Except as otherwise provided in these Rules, the jurisdiction and powers conferred on the High Court in respect of applications made by any person in pursuance of either section 44(1) or 44(5) of the Constitution are to be exercised in accordance with the practice and procedure, including any rules of Court, for the time being in force in relation to civil proceedings in the High Court, with any variations the circumstances require.

Existing Rules revoked

8.—(1) The High Court (Constitutional Redress) Rules 1998 is hereby revoked.

(2) Any application for redress made under the High Court (Constitutional Redress) Rules 1998 continues as if these Rules had not been made.

Made this 5th day of March 2015.

A. H. C. T. GATES
Chief Justice