

**IN THE MAGISTRATES COURT OF FIJI**  
**CENTRAL DIVISION AT SUVA**

**Cr. Action No. 1732 of 2002**

**BETWEEN:**                      **THE STATE**

**AND:**                                **Manasa Baledrokadroka & Others**

**SUBMISSIONS BY THE PROCEEDINGS COMMISSIONER OF THE**  
**FIJI HUMAN RIGHTS COMMISSION**

**1.0    Introduction**

Your Worship,

Your Worship invited the Fiji Human Rights Commission to be present at this hearing and inform the court as to the Mediation Process.

Your Worship, the Commission makes written submissions on the issue. In brief the facts and Commission's role in this matter can be summarised as follows:

**1.0**    On 19<sup>th</sup> June 2002 the Fiji Human Rights Commission Complaints Section received a complaint from Sulivenusi Waqa and Callistus Naiqama, students of Marist Brothers High School who were assaulted by some prefects of the School.

- 2.0** The assault took place in the prefect's room in the school compound.
- 3.0** Six or seven prefects were involved in the assault.
- 4.0** As the complainants were being assaulted, the prefects allegedly referred to them as 'poofers', stating they did not want 'poofers' in their school as they brought disgrace to the school.
- 5.0** The assault took place for over 30 minutes in the prefect's room.
- 6.0** After the assault the prefects took the complainants to the Principal and told him that the complainants had been caught performing oral sex in the toilets.
- 7.0** The principal ordered the boys to pack their bags and leave the school
- 8.0** The complainants went to the CWM Hospital where the doctor asked them whether they wished to lodge a complaint with the police.
- 9.0** A medical report was given by the doctor and the complainants lodged a complaint with the police at Flagstaff
- 10.0** One of the parents complained to the principal, and some of the prefects were suspended for a time.
- 11.0** The complainant Suli was too frightened to attend school after this incident and did not go for two weeks.
- 12.0** When he returned to school, on June 24<sup>th</sup> the Vice Principal suspended him for two weeks for plucking his eyebrows.
- 13.0** The complainant Suli that day (24<sup>th</sup> June) lodged a complaint with the Human Rights Commission
- 14.0** On June 25<sup>th</sup> the Commission wrote to the principal of Marist requesting that Suli be allowed to sit his exams despite the disciplinary action taken against him.
- 15.0** On June 27<sup>th</sup> Lionel Philip Rogers, also of Marist lodged a similar complaint with the Commission, alleging discrimination and harassment of gay boys at the school by prefects and senior students, in his case leading to broken ribs in 2001.

- 16.0** He also reported that on June 18<sup>th</sup> 2002, the principal had announced that there was no place for ‘homosexuals’ at Marist Brothers High School
- 17.0** In a letter dated 25<sup>th</sup> June the principal wrote to Suli’s parents acknowledging that the senior students were misguided over their actions in relation to the complainant. He had suspended the students involved and reported the matter to the Ministry of Education. He asked the parents to forgive the culprits and withdraw the complaint. He also alleged that investigations had revealed that Suli had been singled out in terms of the assault because he had been earlier caught in a sexual act at school. The principal also stated that Suli had been admitted to the school only under ‘special circumstances’. He also said that he had received calls from parents of other students asking him to ‘rid the school of all ‘feminine’ students but he would not heed this as these students needed his assistance just like ‘normal’ students.
- 18.0** On June 27 Jennifer Estella Morris, Callistus Naiqama’s guardian also lodged a similar complaint, stating that after his abuse by prefects and continuing harassment, he had no choice but to leave Marist Brothers High School and pursue his education elsewhere.
- 19.0** After preliminary investigations by the Commission complaints staff, it was decided that if the allegations were correct that the rights of the complaints under the Child Rights Convention, the 1997 Constitution, and the Human Rights Commission Act 1999 had been violated.
- 20.0** On 2 July 2002 the Commission called a meeting with the Principal of Marist, Mr Susau Managrieve, to request that he investigate the complaint lodged by the students and respond to the Commission on the allegations, reporting that students’ rights were protected in the Constitution and international human rights law. The Principal undertook to report to the Commission with a report on July 12<sup>th</sup>

- 21.0** On July 4<sup>th</sup> the complainant Suli appeared again in the Commission with a signed Declaration which stated that he was satisfied with the arrangements and pledges given by the School that his right to be happy and safe in school would be safeguarded, that he was satisfied with the arrangements put in place to prevent any form of discrimination and accepted the senior students' apology, and that he agreed that he '**must NOT do anything to provoke other students or give them cause to harass me in any way**'. The declaration also said that he agreed to withdraw all complaints submitted to the Fiji Human Rights Commission and the Fiji Police, effective 'today 5<sup>th</sup> July 2002' and further added that he requested the Fiji Human Rights Commission and the Fiji Police to disregard his complaints and to cease all proceedings in regard to his complaints. The declaration was signed by both the complainant Suli and the principal and dated 4<sup>th</sup> July 2002.
- 22.0** The complainant Suli told the Commission that he did not wish to withdraw the complaint with the Commission, and that the principal had threatened him with suspension if he did not sign the declaration which the principal had typed. He also stated that there had been no apology from the principal or the students who had assaulted him.
- 23.0** A similar statement was made by Callistus Naiqama who had similarly signed a Declaration with the principal.
- 24.0** The Commission once again wrote to the principal on 12<sup>th</sup> July 2002, pointing out that the complainants had complained that they had been pressured by him to sign a Declaration withdrawing their complaint and pointing out that the students did not wish to withdraw and it was highly improper that the complainants were being intimidated in this way, citing section 22 of the Human Rights Commission Act 1999 on intimidation and victimisation of complainants by respondents. The Commission sought the principal's comments on this latest development.

- 25.0** In reply, dated 12<sup>th</sup> July, (received by the Commission on July 15<sup>th</sup>) the Principal sought to clarify the issue, which letter the Commission presented to the complainants for their comments
- 26.0** In another letter to the Commission, dated the same day but not received by the Commission until 26<sup>th</sup> July, the Principal requested the Commission to facilitate a conciliation.
- 27.0** On July 18<sup>th</sup> Philip Lionel Rogers, one of the complainants, wrote to the Commission, and stated that he and his parents had accepted the principal's apology but that when he returned to school on 18<sup>th</sup> July he was called into the Vice Principal's Office and harassed about his hair, he was told to change his hairstyle. Then he was asked why he was wearing a yellow jumper. The Vice Principal told him to go home and change his hair style and clothes. As a result of this Lionel missed sitting his exams. A day or so later he was sworn at by a prefect, James Kean. Lionel urged the Commission to do something as this was affecting his schooling and future.
- 28.0** On July 19<sup>th</sup> both Lionel and Suli called into the Commission, quite distraught at having missed so much school.
- 29.0** I requested a meeting with their parents and guardians, to be held on 22 July 2002. This was postponed because not everyone could attend the meeting.
- 30.0** On July 22, Jennifer Morris wrote to the Commission requesting the Commission to deal with the matter, as she did not wish Callistus to withdraw his complaint.
- 31.0** On July 23<sup>rd</sup> similar letter was received by Suli Waqa's father, Mr Domo Waqa who also requested the Commission and police to continue with the investigations.
- 32.0** On July 24<sup>th</sup> the complainant Lionel Rogers complained that he had been again sworn at by two senior boys and also that a group of boys had

thrown stones and mud at him. The Vice Principal had watched this happening but did not do anything to stop it. They complained to the Principal and he ignored them but also told them that for their own good they should find another school. He sent them to the Ministry of Education, asking the Vice Principal to drop them there.

- 33.0** Lionel Rogers was willing to find another school but the complainant Suli preferred to stay at Marist.
- 34.0** On July 26<sup>th</sup> the mother of Lionel Rogers wrote to the Commission requesting that the Commission pursue the investigation as her son was being subjected to injustice and she was worried that he could develop mental and emotional problems associated with his treatment at the School.
- 35.0** The school also on 26<sup>th</sup> July wrote a letter to Mr Waqa, Suli's father, to request a traditional Fijian ceremony, to be facilitated by the Commission
- 36.0** The Commission then facilitated a meeting between the complainants and the Ministry of Education to see if the boys could be placed in another school, given the suggestion by the Principal that they should find another school.
- 37.0** On August 1, after a meeting with the parents and complainants where the parents refused the opportunity to reconcile with the school the Commission wrote to the Principal advising that after a meeting with complainants and their parents in the Commission, the parents had decided to withdraw their children from the school and were satisfied that the law was taking its course in the matter.
- 38.0** On August 2<sup>nd</sup>, after being advised that the complainants would need their school records for placement in another school the Commission wrote to the Principal requesting that these be released.
- 39.0** On 4<sup>th</sup> August 2002 the Commission received information that 5 students from Marist had been charged with assault and that the court had been

told by defence counsel that the Commission was handling the conciliation process.

- 40.0** By 7<sup>th</sup> August, the Ministry of Education had still not located other schools for the complainants
- 41.0** On August 21<sup>st</sup>, Suli again wrote to the Commission requesting that he return to Marist and reconcile on certain conditions, namely that he should be compensated to the amount of \$600 and his safety assured.
- 42.0** The Commission again wrote to the Ministry of Education, requesting information on whether any other schools had been identified for the complainants to attend
- 43.0** On August 26 Suli again visited the Commission and had decided, after having further discussion with his father that he did not wish to return to Marist or reconcile. The family wanted a court outcome. Suli also agreed to attend Rishikul High School.
- 44.0** On September 4<sup>th</sup>, the Commission again wrote to the Principal of Marist to request that Lionel's books and papers be returned as, despite this undertaking, the school had not returned all the papers. This letter was written to the school after the Principal told the Commission on the phone that he was too busy to release the papers and would do so when he was free.
- 45.0** On 17<sup>th</sup> September, the Commission again wrote to the school to release the reports and other matters from the school and said that failure to do this was breaching the students' right to education as per section 39 of the Constitution. Without the papers the complainants could not be admitted to other schools. The Commission also warned the principal that the letter was intended to serve as a letter before action pursuant to section 35 (2) of the Human Rights Commission Act 1999 if he did not release the papers. This letter was sent to the Principal after the

Education Ministry informed the Commission that their requests to the Principal for the papers and records had fallen on deaf ears.

- 46.0** The letter from the Commission had effect, because our file note states that we received information from the complainants that the documents and reports were delivered to the residence of Suli and Lionel.
- 47.0** The latest information we have is that Suli has not yet found a school since his papers did not arrive in time. Lionel is at a school in Bua.
- 48.0** On November 7<sup>th</sup>, the Principal wrote to the Commission, complaining about the way it had handled the complaint.

In the Commission's view, the Marist Brothers High School did not do all it could have done to resolve the issue. The moment the matter was reported to the Police the school began to try to deal with the issue in an inappropriate way. It seems the Vice Principal began to harass the complainants, supported by the Principal. The complainants came to the Commission after the harassment started, subsequent to the complaints being lodged with the police. The Principal is alleged to have intimidated the complainants into signing a Declaration which, among other things, promises not to 'provoke' students into harassing the complainants. Further to that, any desire of the complainants to reconcile was hampered by the school's Vice Principal's continuing harassment of the complainants, the Principal's refusal to produce the records of the students- leading to one of them not being able to attend school, and then seeking to hamper the Commission in the exercise of its constitutional duty.

It is the Commission's view that any reconciliation can only be attempted in an atmosphere of concern and equality, not the way the school has gone about it. The school owes a duty of care to the students, and should have handled the matter better than it did. It also appears that sexual harassment is taking place at

