

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CONSTITUTIONAL REDRESS JURISDICTION

Miscellaneous No. HBM 13 of 2017

BETWEEN : QUEENIE KIMBERLY of Lot 45 VM Pillay Rd, Lautoka
APPLICANT

AND : ATTORNEY GENERAL OF FIJI
RESPONDENT

Counsel : Applicant in Person (Assisted by her Father Paula Malo Radrodro)

Ms. M. Faktaufon for the Respondent

Date of Hearing : 27th June, 2017

Date of Ruling : 11th July, 2017

Ruling by : Hon. Mr. Justice Mohamed Mackie

RULING OF THE COURT

[1] By way of Notice of Motion dated 18th of April 2017, filed together with an Affidavit, the Applicant, namely, **Queenie Kimberly**, appearing through her Father, Paula **MaloRodrodro** applies for Constitutional Redress on the ground that her Constitutional rights under Bill of Rights chapter 2 sections 11 were breached.

[2] She states that on her admission to the **Lautoka Hospital** by her father on 5th December 2016 and thereafter being transferred to **Saint Giles Hospital** in Suva on

6th December 2016, on account of certain health related complication, as averred in paragraph 3 of her Affidavit, she was detained, physically assaulted, striped off of her cloths and locked in to a small room by the staff at Saint Giles Hospital.

- [3] However, she admits that she was discharged from the Suva Hospital on 26th December 2016.
- [4] She states that she has suffered in the hands of Medical staff at the Hospital and as a result it would be Rightful for her to say that her rights under the Constitution of Fiji were breached. She sought the discretion of this Court for relief. (No specific relief prayed for in the notice of Motion.
- [5] The learned Counsel, who appeared for the Respondent Attorney General on 12th May 2017, filed an Affidavit dated 10th May 2017 deposed by Dr. Nirwan Karan , the Acting National Advisor Mental Health, of Ministry of Health & Medical Services together with some documents with regard to the admission, treatment and discharge of the Applicant. Learned Counsel raised a preliminary objection that the Application cannot be admitted or entertained since 60 days have lapsed from the date when the matter in issue alleged to have first occurred.
- [6] Accordingly, an Affidavit dated 29th May 2017 deposed by plaintiff's father Paula Malo Radrodro, in response to the contents in the Affidavit filed by the Respondent, was filed on 29th May 2017 and the matter was subsequently fixed for hearing.

Alleged Reason for the Delay:-

- [7] At the hearing the Applicant's Father filed his written submission stating, among other things, that the reason for the delay was due to the Applicant's mental condition at the particular moment.
- [8] Applicant's Father in his oral submissions, among other things, stated that the Applicant, during the time in question, was mentally ill and he was waiting for outcome of the Habeas Corpus Application that he had filed on behalf of his Daughter for him to file this Application.

- [09] He in his further oral submissions stated that the said Application was dismissed due to same not being filed by the Applicant herself and attempted to show that the alleged Mental status and detention prevented this Application being filed in time.

Response by Respondent's Counsel

- [10] The learned counsel for the Respondent in her reply oral submissions has drawn the attention of the court to the following facts.
- (A) That the Applicant was admitted to Lautoka Hospital on the 5th December 2016, and thereafter on 6th December, 2016, was transferred to Saint Giles Hospital in Suva and was finally discharged on **26th of December 2016** after treatment.
- (B) The Habeas Corpus Application bearing No:- HBM-37/2016 was dismissed on 20th January 2017 on the Court being informed that the Applicant was discharged from the Hospital on **26th December 2016**, which fact is substantiated by the copy of the order filed along with Applicant's written submissions.
- (C) This Application has been filed by the Applicant, on **18th April 2017**, after 4 months and 3 weeks from the date of admission to Hospital in Lautoka on 5th December 2016. (The date of alleged detention)
- (D) Even if the time period is counted from **26th December 2016**, being the date of discharge, the Applicant is still out of time by 3 months and 22 days by 18th April 2017 which is the date of filing of this Application.
- (E) If the reason for the delay was the alleged detention of the Applicant by the Suva Hospital authorities, the Applicant's father could, very well have, filed this Application on behalf of the Applicant, as in the case of the said Habeas Corpus Application, since the relevant section 44-(1) of the Constitution makes provision for another person to file Application in case of a person in question is detained.

- (F) Applicant's Father has not exercised this right in respect of the Applicant, within the time period stipulated and also has not adduced any exceptional circumstances that led to the delay.

Analysis

- [11] The admission to the Hospital (Alleged detention) was on 5th Decembe, 2016.
- [12] The Application in hand was filed in this Court on the 18th of April 2017.
- [13] Section 3(2) of the High Court (Constitutional Redress) Rules 2015 states as follows:
- “(2) An application under paragraph (1) (an application for redress) 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 is just to hear the application outside that period.”*
- [14] Applicant was admitted to Hospital in Lautoka on **5th December 2016** and transferred to Saint Giles Hospital in Suva on 6th December 2016 and thereafter was discharged, after treatment, on **26th December 2016**. This Application has been made on **18th April 2017**. Instead it should have been made before the expiry of 60 days from 5th of December 2016. i.e on or before 5th February, 2017.
- [15] Even if the time period is calculated from the date of discharge of the Applicant from the Suva Hospital, i.e., on **26th of December 2016**, this Application could have been filed within 60 days from that date, i.e on or before 26th of February, 2017. (This applies if the Application was to be filed by her only- Her Father could have filed in time)
- [16] The original Affidavit of the Applicant or the Affidavit filed by her Father in response to the Affidavit filed on behalf of the Respondent, do not show any reason for the delay.
- [17] Applicant has not adduced any exceptional circumstances to persuade this Court to accept her Application which is clearly out of time.

- [18] Although, the Applicant's father was given opportunity to reply the Respondent counsel's oral submissions he , except for making submission on the merits of the Application, has not satisfied the Court with any acceptable reason to excuse the Applicant for her obvious delay.
- [19] This Court has no alternative but to accept the objection raised by the learned Counsel for the Respondent.
- [20] Accordingly, the objection of the Learned Counsel for Respondent is upheld and as a result the Application stands dismissed.
- [21] Considering the circumstances no cost is ordered.



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A.M.Mohammed Mackie

Judge

At Lautoka
11th July, 2017