

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBJ 12 of 2020

IN THE MATTER of an application by Samuela Rogoivalu, serving prisoner having being detained at Medium Corrections Centre, Naboro [hereinafter called ‘the Applicant’] for Judicial Review

AND

IN THE MATTER of a decision of the Commissioner of Corrections made on the 1st of April 2020 [hereinafter called, “The Respondent”]

BETWEEN : **THE STATE**

AND : **FIJI CORRECTIONS SERVICE**

RESPONDENT

EX-PARTE : **SAMUELA ROGOIVALU**

APPLICANT

Counsel : **Applicant: In Person**
Respondent: Mr. Kant S

Date of Hearing : **20.4.2022**

Date of Judgment : **29.4.2022**

JUDGMENT

INTRODUCTION

1. Applicant who is an inmate, filed this application seeking judicial review of purported decision of Commissioner of Fiji Correction Services (Respondent) made on 1.4.2020. Respondent denied making any decision regarding Applicant as to his release from prison on that date. In fact Respondent had filed evidence to show that Applicant’s request to

release was forwarded to Mercy Commission 28.10.2020 and it was received on the following day. Before that His lordship Chief Justice had also indicated to Applicant that his term of imprisonment imposed by the court was Life Imprisonment and the expiry of minimum period of imprisonment, was in no way entitle for an automatic release. Applicant had filed this application seeking judicial review on 24.11.2020. There is no provision in law for Respondent to recommend Applicant to Mercy Commission for release in terms of Section 119(4) of Constituting of the Republic of Fiji.

FACTS

2. The Applicant was sentenced on 5.5.2005 in the High Court of Fiji to a term of Life Imprisonment for the offence of **murder** and was ordered to serve a minimum term of imprisonment of 12 years. On the same date, the applicant was also sentenced to a term of four years for the offence of robbery with violence, to be concurrently served with the sentence for the first offence of murder.
3. So at the moment Applicant is serving Life Imprisonment and had served the minimum term of imprisonment in the sentence.
4. Applicant state that the Respondent on 1.4.2020 made a decision of declining to recommend the Applicant to the Minister responsible for his release from prison.
5. There is no evidence of such decision or legal provision that allows Respondent to recommend inmates to Minister, when they are serving Life Imprisonment.
6. The Applicant, through the judicial review proceeding seeks the following orders:
 - a. An order of certiorari to remove the said decision of the Commissioner of Corrections made on the 1.4.2020, and that Respondent, to recommend him, to the Minister responsible for my release;
 - b. An order that the Commissioner recommend Applicant to the Minister;
 - c. A declaration (in any event) that the Commissioner has acted unfairly and abused his discretion under the Constitution and or exceeded his jurisdiction;

ANALYSIS

7. Plaintiff had filed another originating motion on 15.2.2022, within this application seeking judicial review and this cannot be done in terms of Order 53 of High Court Rules and the said originating motion also seeks orders similar to judicial review application.
8. This was not struck off *in limine*, due to the fact that Applicant is an inmate who is

appearing *In person*.

9. Having gone through his submissions this purported notice of originating motion is struck out as it not only procedurally wrong and lacked merits.
10. In the originating motion Applicant had relied on Section 48 and 49 of Corrections Services Act 2006.
11. Section 49 of Correction Services Act 2006 deals with Parole Board and Applicant had not named it as a Respondent or not sought to revise any orders or decisions of Parole Board.
12. Section 48 of Corrections Services Act 2006 states,

“48. (1) Every officer in charge shall be responsible for ensuring that a prisoner is discharged:

- (a) at the **end of their effective sentence**;
- (b) in accordance with the order of any court;
- (c) into the custody of any person having lawful authority over the prisoner in accordance with a law applying in Fiji; and
- (d) in accordance with **any decision made** by a competent authority authorising a prisoners release on **parole**.

(2) In the event of any doubt arising as to actual date upon which discharge is due, or the lawful authority of any person into whose custody a prisoner is to be released, the officer in charge shall refer the matter for determination by the Commissioner.

(3) Where a matter has been referred to the Commissioner under subsection (2), and the Commissioner is unable to ascertain the effect of any law applying in that context, the Commissioner may refer the matter for determination by the Attorney General.” (emphasis added)

13. Interpretation provision of Corrections Services Act 2006 defines “effective sentence “ exclusively as :

‘Means the term of imprisonment that a prisoner is to serve, after taking into account remission as provided by section 28’

14. Section 28 of Corrections Services Act 2006 states;

“28. (1) The remission of sentence that is applied at the initial classification shall thereafter be dependent on the good behaviour of the prisoner, and it may be forfeited and then restored, in accordance with Commissioners Orders.

(2) The Minister may grant further remission upon the recommendation of the Commissioner given in accordance with any criteria prescribed by Regulations or the Commissioners Orders.

(3) Procedures for appeal against a decision to forfeit any entitlement to remission may be prescribed by Regulations or Commissioners Orders.”

15. Section 27 of Corrections Service Act applies to initial classification of sentence and remission of one third of sentence cannot be applied to Life Sentence.

16. Accordingly, in my mind provisions contained in Section 28 of Correction Services Act 2006, that grant powers to Commissioner has no application to an inmate who is serving a life sentence.

17. There was no decision taken by Respondent on 1.4.2020 in relation to Section 28 read with Section 48 of Corrections Service Act 2006. So this Application is struck off in *limine*.

18. Even if I am wrong on the above I have considered the allegations on purported decision of Respondent on 1.4.2020.

19. The Applicant has specified the following grounds in his Application:

a. That the Commissioner of Corrections has exceeded his jurisdiction of giving a directive to the applicant refusing to recommend or release the applicant as per the committal warrant;

b. That the Commissioner has breached the rules of natural justice in not following the committal warrant and not giving the opportunity to the applicant to be heard before giving his advice;

c. That the Commissioner abused his discretion under the Corrections Act and the Constitution in that:

i. He did not take into consideration relevant matters as I have served 15 years some 3 years exceeded the term recommended by the trial judges; and

ii. He acted wrongly or in bad faith and or unnecessarily.

20. Applicant had complained regarding High Court Criminal Registry. This complaint is not before me, but His Lordship Chief Justice had communicated to Applicant regarding his release or sentence in following terms

“Please note when Judicial Officers pass sentence for life imprisonment they set a minimum period to be served before the Correction Service/Mercy Commission can consider any application to release an inmate.

You are not automatically entitled to be released upon expiry of the minimum term set by the Courts.

Whether to release you or any other inmate after expiry of minimum term fixed by the Court is entirely up to Fiji Corrections and Mercy Commission.”

21. The above letter of His Lordship had explained the legal provision.

22. Applicant’s request for Mercy Commission dated 13.10.2020 was submitted to the Secretary of Mercy Commission by Assistant Superintendent of Correction and it was received on 29.11.2020.

23. There is no evidence of decision by that, and it was not made a party to this action as Applicant was seeking to revise the purported decision of Respondent made on 1.4.2020.

24. Section 119(3) of Constitution of the Republic of Fiji states,

“(3) On the petition of any convicted person, the Commission may recommend that the President exercise a power of mercy by—

- (a) granting a free or conditional pardon to a person convicted of an offence;
- (b) postponing the carrying out of a punishment, either for a specific or indeterminate period; or
- (c) remitting all or a part of a punishment.”

25. So Applicant’s remedy is to petition Mercy Commission, and not with Respondent as he is serving a Life Imprisonment.

26. There was no evidence that Respondent had used powers to recommend or refuse any person who is serving life sentence.

27. The considerations for Mercy Commission are found in Section 119(4) of Constitution of the Republic of Fiji and it states;

“(4) The Commission may dismiss a petition that it reasonably considers to be frivolous, vexatious or entirely without merit, but otherwise—

(a) must consider a **report on the case prepared** by—

(i) the **Judge who presided** at the trial; or

(ii) the **Chief Justice, if a report cannot be obtained from the presiding Judge;**

(b) must consider any other **information derived from the record** of the case or elsewhere that is available to the Commission; and

(c) may consider the views of the **victims of the offence.**” (emphasis added)

28. From the above provision it is clear that there was no report or recommendation of Respondent for Mercy Commission for its determination of Applicant’s Petition.

29. So this application seeking leave for judicial review is refused.

FINAL ORDERS

- a. The Application seeking judicial review is refused.
- b. No cost awarded.

Dated at Suva this 29th day of April, 2022.



.....
Deepthi Amaratunga
Justice Deepthi Amaratunga
High Court, Suva