

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CIVIL JURISDICTION]**

**CIVIL MISC NO. HBM 143 OF 2021**

**BETWEEN** : ILAISA SOUSOU CAVA  
**Applicant**

**AND** : THE ATTORNEY GENERAL OF FIJI  
**First Respondent**

THE DIRECTOR OF PUBLIC PROSECUTIONS

**Second Respondent**

THE HUMAN RIGHTS & ANTI DISCRIMINATION  
COMMISSION

**(Amicus Curiae)**

**Counsel** : Applicant in Person  
Ms S Pratap for the Office of Attorney General  
Ms M Konrote for the Director of Public Prosecutions  
Mr R Vananalagi for Fiji Human Rights Commission

**Date of Hearing** : 1 July 2022  
**Date of Decision** : 1 July 2022

**DECISION**

[1] On 26 November 2007, the High Court sentenced the applicant and his accomplice to life imprisonment with a minimum term of 16 years to serve for the offence of murder. In her sentencing remarks, the learned judge described the case a dreadful crime where a young taxi driver was asked to drive to a remote location,

assaulted, strangled with a rope and then hung by the neck at a bridge (*State v Nute* - Sentence [2008] FJHC 327; HAC139S.2007S (26 November 2008)).

- [2] Subsequently, the Court of Appeal affirmed the applicant's conviction and sentence (*Nute v State* [2013] FJCA 134; AAU0110.2008; 0019.2009 (6 December 2013)).
- [3] On 11 November 2021, the applicant filed an application for constitutional redress seeking an interpretation of the Constitutional provisions relating to release of prisoners serving minimum term for murder.
- [4] Since the applicant is in person, I heard him. He has confirmed to the court that he has not yet served his minimum term of 16 years that was imposed by the court on 26 November 2007.
- [4] The constitutional provisions on executive release or pardon are clear. The applicant may only be considered for a release once he had served the minimum term fixed by the court. In the case of the applicant, he may be considered for a release after he had served 16 years. But even after serving the fixed minimum term, it is not necessary that the applicant will be released.
- [5] In *Khan v State* [2009] FJSC 6; CAV0019.2008S (12 February 2009) the Supreme Court observed that:
- The petitioner's release from prison, should that occur, will depend substantially on his behaviour in prison, how his personality and character develop while he is incarcerated and to what degree he is rehabilitated. These matters will be considered when a better informed decision can be made as whether it would be in the interests of society and in his interests to be released into the community. [para 21].
- [6] In *Tapoge v State* [2017] FJCA 140; AAU121.2013 (30 November 2017) the Court of Appeal observed that:

The minimum term is not an additional sentence. The sentence is life imprisonment. The minimum term is fixed to make the offender remain in prison before any possibility for a pardon can be considered by the President on the recommendation of the Mercy Commission under section 119 of the Constitution. In other words, the offender must serve the minimum term and cannot be pardoned or released before the expiration of the minimum term. The minimum term affects the eligibility timeframe for the possibility of a pardon or release. The minimum term by no means guarantees a pardon or a release. An offender may not be pardoned or released and may spend life in prison even after the completion of the minimum term. [para 49].

- [7] Based on these authorities, it is clear that the applicant's sentence is life imprisonment and that he may only be considered for a release once he had served a minimum term of 16 years. His application for constitutional redress is therefore misconceived.
- [8] The application is dismissed.



.....  
Hon. Mr Justice Daniel Goundar

**Solicitors:**

**Office of the Attorney General for the 1<sup>st</sup> Respondent**

**Office of the Director of Public Prosecutions for the 2<sup>nd</sup> Respondent**

**R Vananalagi & Associates for Human Rights & Anti-Discrimination Commission**

**Applicant in Person**