

IN THE HIGH COURT OF FIJI
(WESTERN DIVISION) AT LAUTOKA
CIVIL JURISDICTION

CIVIL ACTION NO. HBJ 5 of 2023

IN THE MATTER of an Application by MOHAMMED SAHID KHAN currently serving at Maximum Corrections Centre [Hereinafter called the Applicant] for Judicial Review

BETWEEN : MOHAMMED ZAHID KHAN
APPLICANT

AND : THE COMMISSIONER OF FIJI CORRECTION SERVICES
RESPONDENT

BEFORE : Hon. Justice A.M. Mohamed Mackie.

APPEARANCES : Applicant absent
Mr. Mainavolau J., for the Respondent.

DATE OF JUDGMENT : 14th March, 2024

RULING

1. The Applicant hereof MOHAMMED ZAHID KHAN, while being in the Prison, on 30th August 2023 filed the Application in hand by way of his Notice of Motion supported by an Affidavit sworn by him on 23rd August 2023.
2. The relief that the Applicant seeks for the time being is :-
 - a. *For an order that the Applicant be granted leave for hearing on this application for judicial review.*
3. The substantial reliefs sought by the Applicant, if the leave to apply for judicial review is granted, are as follows.
 - a. *A declaration that since the judgment of the Supreme Court was delivered in Bogidrau for the commissioner to review his/her practice and yet he/she maintains the current practice till this date.*
 - b. *A declaration that the commissioner has failed to review the practice of calculating remission for non-parole sentence.*

- c. *A declaration that the Applicant has already served two-third of his sentence on 24th July, 2024 and he is eligible to release on completion of his non-parole period, that is on 24th November, 2023, this year.*

For any such further orders as the Honorable Court may deem fit to make in the circumstances.

4. Grounds on which the Applicant is seeking relief are as follows:-
- a) That the Supreme Court judgment is highest in the hierarchy and its judgments should be highly adhered and respected by all, no matter of whatever the status of any individuals, and the commissioner of corrections failed to comply with.
 - b) That if the judgments of the Supreme Court and the rulings of Fiji Court of Appeal were complied with, the Applicant should be released upon completion of his non-parole period that is 24th November, 2023.
 - c) That the Applicant has served more than two-third of his sentence and is eligible for release on completion of his non-parole according to the Supreme Court judgment on how to calculate remission for non-parole sentence.
 - d) That the Applicant has maintained an immaculate and unblemished record till date with an unquestionable behavior.
5. The Application for judicial review is made pursuant to Order 53, Rule 3(2) of the High Court Rules 1998.

BACKGROUND

6. The background facts are taken from the Applicant's Affidavit in support. The Applicant, on his Affidavit, deposes, among other things:
- a. That he was sentenced by the High Court of Lautoka for one count of rape contrary to section 207(1) & 2 (a) of the Crimes Act 2009 and on 25th November 2016 was sentenced for 10 years with a non-parole period of 7 years .
 - b. That his fixed parole period is affecting his serving term due to the Commissioner's current practice. The Commissioner's calculation of the remission of the Applicant's non-parole period is questionable.
 - c. That his non-parole period is later than his two third of his sentence that is 6 years and 8 months. Therefore, he is eligible to be released on completion of his non-parole period that is on 24th November 2023.

- d. That with the current practice of the Commissioner's calculation the Applicant has to serve 9 years if his behavior is good, which discourages his rehabilitation by serving double punishment of serving extra 2 years despite good behavior.
 - e. That he prays the Court to pronounce that the practice is illegal so that he is released on completion of his non-parole period of 7 years without having to serve two more years.
7. In order to grant leave to apply for judicial review, the court has to be satisfied that:
- (a) *There is an arguable case for review;*
 - (b) *The claimant has a 'sufficient interest'; and*
 - (c) *There has not been 'undue delay'.*
8. The Application being served, Hon. Attorney General, on behalf of the Respondent, having filed the acknowledgment of service on 4th October 2023, filed an Inter parte summons on 28th February 2024 seeking to strike out under Order 18 Rule (1) (a) of the High Court Rules 1988.
9. When the matter had come up on 23rd February 2024, the Applicant being released from prison, appeared in person and stated that he still wants to proceed with the matter. However, on the subsequent dates he failed to appear though he was aware of the next date on which the matter was to be mentioned. He had not provided his personal address for the notices to be communicated/ served.
10. However, I find that the written submissions he had filed on 25th October 2023 is sufficient to decide on the question of leave to apply for judicial review.
11. On perusal of the papers, I don't find any decision made by the Commissioner of Prison in this regard for the Applicant to call upon this Court to judicially review, with the leave being granted.
12. Since the Applicant has now been released from the prison and, by his absence in Court after 23rd February 2024, on which date he appeared personally, it appears that he does not have and/ or lost interest in this matter. However, the Court has found that there is no merit in his application for the leave to be considered to apply for judicial review.
13. In ***Silatolu v The State (HAM 163 of 2014)***: it was decided that it is not within the jurisdiction of the court to interfere with the Commissioner of Prison's role in determining when the convict is to be released, having served his minimum term.
14. The Application for leave fails.

Orders

1. The Application to strike out is allowed.
2. The Application for leave to apply for judicial review is declined.
3. I make no order as to costs




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 14th day of March, 2024.

SOLICITORS:

For the Respondent:

Office of the Attorney-General.

Applicant:

In person.