

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CIVIL APPEAL NO. ABU 78 of 2022**  
**[High Court Case No. HBJ 12 of 2020]**

**BETWEEN** : **SAMUELA ROGOIVALU** *Appellant*

**AND** : **MERCY COMMISSION**  
**PAROLE BOARD** *Respondents*

**Coram** : **Prematilaka, RJA**

**Counsel** : **Appellant absent and unrepresented**  
: **Ms. S. Narayan for the Respondents**

**Date of Mention** : **29 October 2024**

**Date of Ruling** : **06 December 2024**

**RULING IN CHAMBERS**

[1] The impugned High Court judgment contains the following background to the appellant’s application for judicial review which was refused by the learned High Court judge on 29 April 2022.

***“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;”*

[2] In the meantime, the appellant had been released from prison in December 2023. The Correction Service does not have any information of the appellant’s phone contacts. He is supposed to be a resident of Nagelewai, Nabubu, Naitasiri.

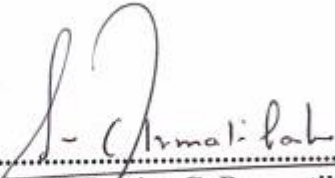
[3] This appeal had come up before the then President of the Court of Appeal on 28 August 2024 and the appellant had been absent and unrepresented. When the matter came up before me on 29 October 2024, the appellant was again absent and unrepresented.

[4] It appears to me that the appellant is not prosecuting his appeal with due diligence.

**Orders of court**

- [1] *Appellant's application is dismissed in terms of section 20(1)(g) of the Court of Appeal Act.*
- [2] *No cost.*



  
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**Hon. Mr. Justice C. Prematilaka**  
**RESIDENT JUSTICE OF APPEAL**