

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBM 39 of 2018

BETWEEN : FEROZ KUMAR

APPLICANT

AND: COMMISSIONER OF PRISON

FIRST DEFENDANT

AND: ATTORNEY GENERAL'S OFFICE

SECOND DEFENDANT

Appearances: Ms Singh for the Applicant
Ms J. Mainavolau for the Defendants
Hearing: 19.04.19
Date of Ruling: 23.07.19

RULING

1. Feroz Kumar is serving a sentence in prison.
2. He has a medical condition which is causing him a lot of pain. Medical Reports have been written and filed which set out in detail what exactly it is he is suffering.
3. The medical procedure to correct this condition can be treated by Dr. Kaloucava of the MIOT.
4. Mr. Kumar cannot pay for the corrective procedure.

5. His mother is a Social Welfare beneficiary. She too cannot afford to pay for the treatment.
6. The question has arisen as to whether or not this Court can direct the Government to meet the costs of the procedure.
7. The Legal Aid Commission has filed a very comprehensive submission citing the following:
 - (i) Section 6(3) of the Constitution – Constitutional Redress provisions
 - (ii) Section 38 of the Constitution – the right to health
 - (iii) Section 31 – Corrective Services Act 2006
 - (iv) Article 6 of the International Covenant and Political Rights
 - (v) Article 25 of the UN Standard Minimum Rules for the Treatment of Prisoners
8. Can this court compel the State to meet the costs of procedure? Is the right to medical treatment a justiciable right? Are socio-economic rights justiciable in Fiji?
9. The answer to this question depends on whether or not the state owes a duty to Feroz Kumar to pay for the medical costs.
10. The Legal Aid Commission submits that, given that Feroz Kumar clearly cannot afford to pay for the medical bill, and given the fact of his incarceration, the responsibility falls on the state to pay for the bills.
11. The Attorney-General's Office submits that, under article 38(1) of the Constitution, the State's obligation is subject to its available resources.
12. I observe that the Ministry of Health has, in the past, given some indication that it may be able to meet part of the costs of a medical evacuation to India. At the time, it was believed the Feroz Kumar's condition was not treatable in Fiji.
13. Now that the condition is treatable in Fiji, it is unclear whether or not the Ministry will still pay.
14. I have taken into account the A-G's office submissions that no decision on this situation simply because Mr. Kumar has not applied to the Ministry of Health or to the Prisons Authorities for help in meeting the costs.
15. In the circumstances, I am of the view that the best thing to do is to take a short adjournment on this matter to enable the State time to consider Mr. Kumar's plea.

ORDERS

- (i) The Legal Aid Commission is to assist Feroz Kumar write a letter to the Ministry of Health and to the Corrections Service to seek assistance for the payment of medical fee.
- (ii) This is to be done in seven days.
- (iii) Case adjourned to Friday 02 August to see if a decision is made.



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Anare Tuilevuka

JUDGE

23rd July 2019.