

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBJ 08 of 2019

IN THE MATTER of an application by **NACANI TIMO** a serving prisoner
presently detained at the Maximum Corrections Centre in
Naboro Corrections Centre.

BETWEEN

NACANI TIMO

APPLICANT

AND

THE COMMISSIONER OF PRISONS

FIRST RESPONDENT

AND

THE ATTORNEY GENERAL

SECOND RESPONDENT

Counsel : Applicant in person
Ms. S. Chand for the Respondents

Date of Hearing : 23rd January 2020

Date of Judgment : 18th February 2020

RULING

[1] This is an application for leave to file an application for judicial review pursuant to Order 53 rule 3(1) of the High Court Rules 1988.

[2] The declarations the applicant is seeking to obtain from court in the application for judicial review, if leave is granted, are as follows:

- 1) That the current Commissioner's practice be amended.
- 2) That the interpretation of section 27(2) of the Prisons and Corrections Act 2006 is the appropriate provision to deal specifically with imprisonment term exceeding one month and not on parole terms.
- 3) That there is no provision or explanation directly deals with how a one third remission is applicable to any Non Parole in the Corrections Act 2006.
- 4) That the Corrections Act be amended and that stipulated provision to deal specifically with calculation of Non Parole terms be specified within the Act.
- 5) That the Commissions practice is incorrect and misinterpreted.

[3] The application of the applicant is based on the following grounds:

- 1) Section 27(2) of the Correction Act 2006 is not applied to any Non Parole imprisonment term.
- 2) The Commissioner's Practice is an injustice practice denying the Applicant's liberty.

- 3) The Commissioner's Practice directly overrule the Judge's sentence causing the applicant to serve more prison terms as ordered.
- 4) The Correction Act 2006 needs Amendment by the legislature since the sentencing and Penalties Decree 2009 was implemented later. The Act has no control to cater the implementation of the SPD decree. No specified provision in the current Correction Act 2006, giving direction with how the application of section 27(2) of the Act is applied to a non-parole / parole term. Section 27 of the Act is silent

[4] The respondents on 07th August, 2019 filed summons to have the matter struck out and the court heard both the application of the applicant and the application to strike out together.

[5] At the commencement of the hearing the respondent objected to the application on the grounds that the applicant has not set out grounds and there is no affidavit filed in support of the application.

[6] I will first deal with the above preliminary objections raised by the respondents.

[7] This application seeking leave to file an application for judicial review was filed pursuant to Order 53 rule 3(2) of the High Court Rules 1988 which provides;

An application for leave must be made *ex parte* and must be supported-

- (a) by a statement, setting out the name and description of the applicant, the name and address of his barrister and solicitor (if any), the relief sought and the grounds on which it is sought, and
- (b) by affidavit, to be filed before the application is made, verifying the facts relied on.

[8] As submitted by the respondents there is no affidavit filed by the applicant in support of his application which is a requirement under Order 53 rule 3(2)(b) of the High Court Rules 1988. The application is therefore, contrary to Order 53 rule 3(2)(b) of the High Court Rules 1988 and is liable to be struck out.

[9] Order 18 rule 18(1) of the High Court Rules 1988 provides:

The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

- (1) it discloses no reasonable cause of action or defence, as the case may be; or
- (2) it is scandalous, frivolous or vexatious; or
- (3) it may prejudice, embarrass or delay the fair trial of the action; or
- (4) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

[10] Section 46(1) of the Constitution provides that the authority and power to make laws for the State is vested in Parliament consisting of the members of Parliament and the President, and is exercised through the enactment of Bills passed by Parliament and assented to by the President.

[11] The court has no power to enact laws or to direct the Parliament to enact laws. The reliefs sought by the applicant, if granted, would in effect be amendments to the relevant legislations.

[12] Section 27 of the Corrections Service Act 2006 was amended by including a new subsection. Subsection 3 of section 27 reads thus:

Notwithstanding subsection (2), where the sentence of a prisoner includes a non-parole period fixed by a court in accordance with section 18 of the Sentencing and Penalties Act 2009, for the purposes of the initial classification, the date of release for the prisoner shall be determined on the basis of a remission of one-third of the sentence not taking into account the non-parole period.

[13] This amendment came to effect of the 22nd November, 2019 and these proceedings were instituted in August 2019. The court only can make a finding on the issues that were there at the time of the institution of the proceedings. Whether the provisions of the Corrections Service Act 2006 before the amendment was correct or not is a matter for the legislature and as I have stated

above the court has no power interfere with the legislative power of the parliament. If the first respondent has acted contrary to the provision of the Corrections Service Act 2006, then this court has the power to go into the matter and make a suitable finding. In this matter there is no such allegation against the first respondent.

[14] For the above reasons the court holds that the applicant has not disclosed sufficient grounds to grant leave to file an application for judicial review and the matter must therefore, be struck out.

ORDERS

1. The applicant's application is struck out.
2. There will be no order for costs.



18th February, 2020

Lyone Seneviratne

JUDGE