

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Judicial Review No HBJ 02 of 2023

IN THE MATTER of an Application by Vaione Tegu For Judicial Review on the Constitutional Questions on Bill 29 of 2019

and

IN THE MATTER of Order 53, Rule 1(2)(a)-(c) and 3(2)(a), (b) of the High Court Rules 1988 and section 14(2)(d) and 45(4)(a) and 26 of the 2013 Constitution.

BETWEEN : **VAIONE TEGU**
APPLICANT

AND : **FIJI CORRECTIONAL SERVICES**
1st RESPONDENT

AND : **SOLICITOR-GENERAL**
2nd RESPONDENT

BEFORE : **Banuve, J**

Counsel : Applicant in person
AG's Chambers for the Respondents

Date of Hearing : 18th April, 2024

Date of Judgment : 09th May, 2024

JUDGMENT

A. Introduction

1. This court will not under the pretext of a judicial review application act as another “*court of appeal*”, when all avenues of appeals against conviction and sentence, in this jurisdiction, have been exhausted in a particular matter, nor will the court interfere with the exercise of any power or discretion which has been conferred on another body, unless it has been exercised in a way which is not within the body’s jurisdiction.¹
2. In judicial review proceedings it is axiomatic that a reviewable decision must subsist.
3. The restrictive nature of the remedy of judicial review is emphasized by the requirement that leave to apply for judicial review has to first, be obtained, pursuant to Order 53, r.3 of the *High Court Rules* 1988 ;²
 - (a) To eliminate frivolous, vexatious or hopeless applications for judicial review without the need for a substantive *inter partes* judicial review hearing; and
 - (b) To ensure that an applicant is allowed to proceed to a substantive hearing if the court is satisfied that there is a case fit for further investigation at a full *inter partes* hearing
4. It is difficult to envisage a case more inappropriate for the exercise of the Court’s supervisory jurisdiction, than the one pursued by the Applicant.

¹ Paragraph 53/14/19 – **The Supreme Court Practice 1999**, Volume 1,

² Paragraph 53/14/21-Sufficient interest is a mixed question of law and fact and the degree and the relationship between the applicant and the matter to which the application relates-(*R v Inland Revenue Commissioners, ex.p. National Federation of Self Employed and Small Businesses td* [1982] A.C. 617; [1981] 2 All.E.R 93, H.L per Lord Roskill.)

B. The Applicant.

5. The Applicant, filed a Notice of Motion seeking leave to apply for Judicial Review, on 7th November 2022, whilst serving a life imprisonment sentence at Naboro Minimum Correctional Centre in which the relief sought were;

(a) *That the **Corrections Services Amendment Act-No 29 of 2019** does apply to the Applicant.*

(b) *The Applicant seeks the judicial interpretation and definition of section 27(3),(4) and (5) as amended by the **Corrections Services Amendment Act-No 29 of 2019**.*

(c) *That the Applicant relies on section 26(1) of the **2013 Constitution** of the Republic of Fiji*

(i) On 9th November 2010, the Applicant in Criminal Case No HAC 26 of 2006, had been sentenced to life imprisonment after being found guilty on a charge of murder, for which a non-parole period of 11 years was to be served, pursuant to section 18 of the *Sentencing and Penalties Decree 2009*.

(ii) The Applicant filed an appeal in Criminal Appeal No AAU 0094 of 2020, against conviction on the grounds of misdirection by the Trial Judge, which was dismissed by the Court of Appeal, on 26th February 2016.

(iii) The Applicant then sought leave to appeal in Criminal Appeal No CAV 0008 of 2016 against conviction³. The Supreme Court refused to grant special leave to appeal on 26th August 2016, on the basis that none of the grounds of appeal raised met the threshold for special leave to be granted.

(iv) The Applicant submitted an Application for Presidential Pardon to the Prerogative of Mercy Commission under section 119 of the Constitution

³ One additional ground of appeal (substantial prejudice) not considered by the Supreme Court and deemed as having no merit.

through the Office of the Commissioner of Corrections, after the Applicant served out the non-parole period of 11 years of his sentence. ⁴

- (v) The Appellant was granted a pardon on the recommendation of the Mercy Commission and released from Prison, prior to the hearing of the Application for Leave for Judicial Review on 18th of April 2024.

C. Should Leave for Judicial Review be granted?

- 6. There are 2 grounds advanced to justify review;

- (i) To Review the Sentencing Judge's Decision on eligibility for parole..

The Applicant contends that the determination by the Trial Judge that a period of 11 years be served without parole being considered , without a Parole Board being in place is "*incomplete* "and he seeks that the Court in this Application for Judicial Review freshly determine, the issue of parole according to law.

- (ii) To Review the Executive Decision to amend Bill No 29 of 2019.

The Applicant contends that he has exhausted all avenues for the review of his status and that he has served the full non parole term of 11 years determined by the Trial Judge on 9th November 2010

- 7. Leave for Judicial Review will not be granted unless the Court considers that the Applicant has a sufficient interest in the matters to which the application relates. This is a mixed question of fact and law; a question of fact and degree and the relationship between the applicant and the matter to which the application relates having regard to all the circumstances of the case.⁵

⁴ Paragraph 6 of the Affidavit in Opposition filed on 8th August 2023.

⁵ Op cit; Lord Roskill in *IRC v Inland Revenue Commissioner* [1982] AC 617

D. Finding

8. The Court notes that the Applicant, whilst an inmate at the time, was reasonably versed with the appellate process and would have understood that there were no further avenues available to him to appeal his conviction for murder. This did not deter the Applicant, who then lodged a petition for Presidential Pardon to the Prerogative of Mercy Commission and initiated this Claim for Judicial Review.
9. The application for judicial review was riddled with defects, the most obvious being that “no decision” had been made that could possibly be the subject of judicial review, including;
 - (i) The Applicant has not established a “sufficient interest” in the issues he raises and/or how they affected him, to warrant the grant of leave for judicial review. For example, he had served the non-parole portion of an indeterminate sentence, at the time he initiated the Claim for Judicial Review, so no purpose would be served for granting leave to seek a review of this aspect of his sentence.
 - (ii) The Applicant has exhausted all avenues of appeal of his conviction and not succeeded, so this Claim for Judicial Review, is an attempt to improperly re-open an “appeal” against sentence.
 - (iii) An alternative remedy to seek early release was available to the Applicant, which was to seek a pardon from the President, on the recommendation of the Mercy Commission. The Applicant sought and was granted a pardon, and at the time of hearing, the Applicant had been discharged from prison, and employed with a shipping company.

E. Conclusion

10. The Applicant has neither established sufficient interest nor an arguable case to warrant the grant of leave for judicial review. The maintenance of the

Application for Judicial Review served no valid purpose and constitutes an abuse of process.

The Court orders;

- 1. Leave to Apply for Judicial Review is refused, summarily.**
- 2. Costs to the Respondents.**



Savenaca Banuve
Savenaca Banuve
Judge

**At Suva,
09th May 2024.**