

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL ACTION NO. HBM 15 OF 2000.**

**IN THE MATTER** of Eroni Delai

**AND IN THE MATTER** of an  
Application for an Order for a Writ  
of Habeas Corpus Ad Subjiciendum  
under section 23 of the Constitution  
of the Republic of the Fiji Islands

**BETWEEN:**

**ERONI DELAI**

Appellant/Applicant

And

**STATE**

Respondent

*Mr. W. Clarke. (for the Legal Aid Commission) for the Applicant*

*Mr. S. Kumar (Attorney General's Chambers) for the Respondent*

*Dr S. Shameem and Ms. V. Qionibaravi (for the Fiji Human Rights Commission).*

**SUBMISSIONS**

- (1) These Submissions are made pursuant to Section 37 (2) of the Fiji Human Rights Commission Act (No. 10 of 1999).
- (2) In this matter, with the Court's leave, the Proceedings Commissioner of the Fiji Human Rights Commission is represented by legal practitioners Dr. Shaista Shameem and Ms. Vuki Qionibaravi, appearing as amicus curiae.
- (3) The Fiji Human Rights Commission has received a complaint on behalf of the applicant and eight other fine defaulters currently serving terms of potentially between 6 months to 12 years at Suva Prison. The complaints were lodged on the 28<sup>th</sup> of February 2000 pursuant to section 23 of the Constitution of the Republic of the Fiji Islands.
- (4) Section 23 (1) (c) the Constitution states:

**A person must not be deprived of personal liberty except for the purpose of executing the order of a court made to secure the fulfilment of an obligation imposed on the person by law.**

- (5) Section 23 (2) of the Constitution provides that:

**Paragraph (1) (c) does not permit a court to make an order depriving a person of personal liberty on the ground of failure to pay maintenance or a debt, fine or tax unless the court considers that the person has wilfully refused to pay despite having the means to do so.**

- (6) The Applicant was admitted to Korovou Prison on the 4th of October 1999 for failing to pay traffic fines emanating from a series of traffic offences such as using a private motor vehicle as a taxi and incorrect stopping.
- (7) The sum total owed by the Applicant is over \$5000. Some fines may still be outstanding.
- (8) The applicant has already served six months in prison with respect to two of the 95 committal warrants.
- (9) If the applicant fails to pay his fine in total, his expected date of release from prison will be 24th March 2012. With remission, his earliest possible date of release is 25<sup>th</sup> January 2008.
- (10) There is no evidence that the court, pursuant to section 23 of the Constitution, inquired as to the means of the applicant to pay the fine.
- (11) The processing of committal warrants in the Applicant's case and in the case of seven others similarly incarcerated in Suva Prison illustrates the loopholes in current practice in relation to traffic offences. The practice has been that the police usually execute a number of committal warrants at once. It appears that in this case, 22 committal warrants were served on the Applicant simultaneously. The applicant may not have been given an opportunity to make suitable arrangements for payment.
- 12) The Fiji Human Rights Commission began making inquiries pursuant to section (a) of the Human Rights Commission Act soon after receiving the complaint on behalf of the applicant and the other imprisoned traffic offenders.
- (13) The Commission convened a conference with the Commissioner of Police, the Commissioner of Prisons and the Chief Magistrate to inquire into the matter.
- (14) At the first meeting on Thursday 9th March, it was decided that alternative and non-custodial sentences for traffic offenders who could not pay their fines would be explored by the Magistrates' Court in imposing sentences.
- (15) The Court would also establish in each case whether the offender was refusing to pay the traffic fine before issuing committal warrants.
- (16) The meeting also decided that such offenders could be employed pursuant to section 42 (1) of the Penal Code and the decision of Justice John Lyons in Lautoka City Council v Satish Chand (Civil Appeal No. Misc. 00028 of 1998) at

page 4 of the judgment where Judge Lyons stated that 'the powers (were) there to allow payment by installment, non-custodial alternatives or extending the time to pay. It is only the instance of the offender who, in the learned magistrate's view wilfully refuses to pay despite having the capacity to do so, that gaol is ordered'.

- (17) The task of the Fiji Human Rights Commission, with respect to the offenders already in prison, was to explore programmes of work with community groups whereby these offenders could be employed under alternative work schemes.
- (18) The Commission wrote to 22 community organisations, seeking assistance in this regard. It has received four responses to date for programmes of supervised work for the traffic offenders. Each organisation has indicated that it would be willing to engage two offenders each and have also offered to supervise the offenders employed under the proposed scheme of work.
- (19) The Applicant's habeas corpus application was brought before the Court while the Human Rights Commission's inquiry into the matter was still proceeding.
- (20) Subsequently, the Commission held a further meeting with the Commissioner of Prisons, the Commissioner of Police and the Chief Magistrate advising that as a result of this new development the Commission would ask the Court's leave to appear as amicus curiae.
- (21) Any further progress with the Commission's inquiries and subsequent comments will now depend upon the Court's decision in this habeas corpus application.
- (22) Pursuant to section 34(6) (b), (c) and (d) of the Human Rights Commission Act, the Fiji Human Rights Commission recommends to the Court that this would be an ideal opportunity for the Court to clarify the following issues:
  - (i) The method by which the Court section 23 (2) of the Constitution ought to be interpreted. The meaning of 'wilful refusal to pay' must be established.
  - (ii) An elaboration of the Lautoka High Court's decision on non-custodial sentences with respect to offences relating to non-payment of fines.
  - (iii) An indication of the types of fines to which the alternative sentencing programme, involving community work or periodic detention if established, should apply.
  - (iv) Suggested changes to police practice in the execution of committal warrants.
  - (v) Any direction regarding the traffic offenders currently serving long terms in prison.

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Dr. Shaista. Shameem .  
DIRECTOR, HUMAN RIGHTS COMMISSION

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Date: 2000