

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: HC-MD-CIV-MOT-GEN-2019/00181

In the matter between:

GEOFFREY KUPUZO MWILIMA

APPLICANT

and

**THE MEDICAL OFFICER WINDHOEK CORRECTIONAL
FACILITY**

1ST RESPONDENT

**THE COMMISSIONER GENERAL OF CORRECTIONAL
SERVICES**

2ND RESPONDENT

THE MINISTER OF SAFETY AND SECURITY

3RD RESPONDENT

**THE OFFICER IN CHARGE WINDHOEK CORRECTIONAL
FACILITY**

4TH RESPONDENT

Neutral Citation: *Mwilima vs The Medical Officer Windhoek Correctional Facility & Others* (HC-MD-CIV-MOT-GEN-2019/00181 [2021] NAHCMD 233 (17 May 2021))

CORAM: MILLER AJ
Heard: 18 March 2021
Delivered: 17 May 2021

ORDER

- (a) The application is dismissed.
 - (b) There will be no order as to costs.
 - (c) The matter is finalised and removed from the roll.
-

Judgment

MILLER AJ:

[1] The applicant is a convicted prisoner and is currently serving a lengthy period of imprisonment.

[2] On the papers before me it is not in dispute that the applicant has suffered from medical complications including diabetes, kidney dysfunction and hypertension. Some of these ailments date back to the time prior to his arrest during August 1999.

[3] It will be fair to say that because of his medical conditions he is currently frail and in need of constant medical attention.

[4] The medical practitioners, who at various stages diagnosed and prescribed treatment for his condition were not always in agreement, especially on the issue of whether or not the applicant is eligible to be released on parole due to his medical condition.

[5] The pursuit on the part of the applicant to be released on medical grounds has a long history dating back to October 2016, on which occasion the applicant addressed a letter to the second respondent requesting in that letter to consider the applicant as eligible for release on parole. However, the request has not been granted. The case from the applicant is based entirely on this fact.

[6] By way of Notice of Motion dated 4 June 2019, the applicant approached this court seeking the following order.

‘6.1 An order in the form of a declarator that the first respondent failed to consider and render a decision with regard to the applicants request to be considered for recommendation to the third respondent to authorize the applicant’s release on medical grounds in terms of Section 109 of the Correctional Services Act, No. 8 of 2012 read with regulation 274.

6.2 A declarator that the failure on the part of the first respondent to do so is a dereliction of his duties and a wilful disregard the law.

6.3 A mandamus which compels the first respondent to consider and render a decision.

6.4 In the alternative to 7.4 above a mandamus directing the third respondent to release the applicant.’

[7] It appears from the facts that the first respondent is long ago as September 2018 advised the applicant, in correspondence addressed to the applicants legal practitioners, that the first respondent had in fact concluded and advised, that in his view the condition of the applicant did not meet the prescribed criteria for the release of the applicant on parole for medical reasons. The prescribed criteria are those mentioned in Regulation 274 (1) to (3) which read as follows:

‘274. Recommendation by medical officer.

(i) The medical officer may, in terms of Section 109 of the Act, recommend an offender for release on medical grounds if the offender.

(a) is suffering from'

(i) a dangerous disease, for which the medical officer certifies that, if not immediately released, will lead to the offenders death or;

(ii) infectious or contagious disease for which the medical officer certifies that there are no other way to prevent the spread of the disease while the offender is detained in a correctional facility and if not immediately released the disease will spread to the whole correctional facility.”

[8] In my view the remedy being sought being in the form of a declarator and a mandamus is entirely misplaced. It may well be that no applicant has other remedies. I express as view on that. Suffice it to state that the remedy being sought in this matter, finds no support in its facts and the application is destined to fail on that basis.

[10] The respondents correctly do not seek a cost order, since the Legal Aid board assisted the applicant.

[11] I make the following orders:

(a) The application is dismissed.

(b) There will be no order as to costs

(c) The matter is finalised and removed from the roll.

K MILLER

APPEARANCES:

APPLICANTS:

P Muluti
Muluti & Partners

RESPONDENTS:

A Makemba
Office of the Government Attorney