



Mazibuko v. Minister of Correctional Services, et al.

Case No: 38151 / 05; [2007] JOL 18957 (T)

Country: South Africa

Region: Africa

Year: 2005

Court: High court of Transvaal Provincial Division

Health Topics: Disabilities, Health care and health services, HIV/AIDS, Hospitals, Infectious diseases, Medicines, Prisons

Facts

The Applicant, Simon Musi Mazibuko, was a prisoner living with HIV. He had been convicted of murder assault with intent to do grievous bodily harm, robbery, theft, and unlawful possession of a firearm and ammunition, and sentenced to life in prison. The Applicant was suffering from several opportunistic infections, including tuberculosis, and his CD4 count had registered at 96. He claimed he did not receive proper medical care or pain control medication and that he lacked access to antiretroviral treatment in prison.

The Correctional Services Act provides that a prisoner:

“whose placement on parole is expedient on the grounds of his physical condition . . . may at any time, on the recommendation of the medical officer, be placed on parole by the commission, provided that a prisoner sentenced to imprisonment for life, shall not be placed on parole, without the consent of the Minister.”
A medical parole board (the Board) recommended that the Applicant be placed on medical parole. The Board stated that the Applicant had a lesion on his lung suggestive of cancer, his condition was deteriorating daily and his life expectancy was uncertain. The Board proposed that he be accommodated at home. The Regional Commissioner of Correctional Services declined to release the Applicant and instead sought a second opinion.

The Applicant sought an order to review and set aside the Commissioner’s refusal to release him on medical parole.

Decision and Reasoning

The Court stated that it was “clear from all medical reports, the recommendations of the parole board, and the averments by the applicant” that he suffered from a terminal disease that had no cure. The Court declared that it was “expedient to qualify him to meet the requirements” of medical parole. It stated that there was nothing in the Correctional Services Act (the Act) that required the Minister of Correctional Services to base his decision on a second opinion. The Court thus held that the Applicant was entitled to medical parole.

The Court stated that it was necessary to consider whether the continued incarceration of the Applicant served any purpose and whether he would enjoy life at his home. In this case, the Court held that continued incarceration served no purpose and, because of his deteriorating condition, the Applicant would not enjoy his life at home. The Court stated that there was “no good life for him outside prison when his health is deteriorating daily.” It declared that granting the Applicant medical parole would “serve him, his relatives and the community well” and would accord him his “right to security and control over his body.”

The Court declared that prisoners were “entitled to their personal rights and personal dignity.” It held that to deny the Applicant release on medical parole was “to deny him his dignity and respect” and was “unjust, unlawful, unreasonable, and procedurally unfair.” The Court thus held that the refusal to grant parole constituted an infringement of the right to just administrative action guaranteed by article 33 of the Constitution. The Court stated that mercy was “a hallmark of a civilised and democratic country” and the Applicant deserved “to be treated with mercy, within the precincts of the law,” and should be “allowed to go home and complete his life there.”

Decision Excerpts

“In the circumstances, one is at pains to ask the following: is the continued incarceration of the applicant

...serving any purpose in terms of imprisonment; if the applicant is released in terms of the Act, is he going to enjoy life at his home when in his own words, he is a spent-force? The answer is no." Pg. 7.

"There is no good life for him outside prison when his health is deteriorating daily. 5 January 2006, may be too long a period to wait for the second opinion, of pending results. The sooner he leaves prison, in terms of the act, will serve him, his relatives and the community well. In this way the applicant will be accorded his right to security and control over his body (see section 12(2)(b) of the constitution)." Pg. 7.

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