

SOUTHERN AFRICA LITIGATION CENTRE

SUMMARY OF *M AND ANOTHER V ATTORNEY GENERAL*

Introduction

In *M and Another v Attorney General*, two HIV-positive individuals on anti-retroviral treatment are suing the Government of Zambia. The petitioners argue that the lack of adequate food, poor prison conditions, and the barriers to accessing HIV treatment they experienced while incarcerated in the Lusaka Central Prison violated their constitutional rights and their rights under international law. The matter is before the High Court in Lusaka, Zambia.

This case is important because it seeks to establish the duties which rest on the State to protect the health of prisoners living with HIV. HIV prevalence in Zambia prisons is currently estimated at 27 percent.

Parties

The petitioners are two HIV-positive individuals on anti-retroviral treatment. The respondent is the Attorney General of the Republic of Zambia.

Facts

The two petitioners complained that while incarcerated at the Lusaka Central Prison -

- They did not receive the needed food to ensure the full efficacy of their anti-retroviral treatment;
- They were given only two meals a day comprised of maize meal for breakfast and porridge with beans or anchovies for lunch and many times the food provided was rotten or uncooked;
- Poor prison conditions, including the lack of ventilation, unsanitary toilets, and overcrowding resulted in the deterioration of their health; and
- They were denied access to their anti-retroviral treatment in a number of instances.

The Government of Zambia argues that prisoners living with HIV are given adequate food with supplementary food brought in by external non-profit organisations. They further deny the petitioners' allegations of poor prison conditions and claim that there is a clinic on the prison premises to provide treatment to all HIV-positive prisoners.

Legal Argument

The petitioners argue that the above conditions violated their rights:

- The lack of adequate food violated their right to life and their right to be free from inhuman and degrading treatment under the Constitution; their right to adequate food under the International Covenant on Economic, Social and Cultural Rights; their right to food under the UN Standard Minimum Rules for the Treatment of Prisoners; and their right to medical and health facilities under the Directive Principles of State Policy in the Constitution.

Second Floor, President Place, 1 Hood Avenue/148 Jan Smuts Avenue (corner Bolton Road), Rosebank, 2196,
Johannesburg,
PO Box 678 Wits 2050

| T: 27 (0) 11 587 5000 | F: 27 (0) 587 5099

www.southernafricalitigationcentre.org

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- The poor prison conditions violated their right to be free from torture, inhuman and degrading treatment under the Constitution.
- The denial of access to their anti-retroviral treatment while in prison violated their right to life under the Constitution and their right to adequate medical and health facilities provided for under the Directive Principles of State Policy in the Constitution.

The respondent denies that the petitioners' constitutional rights and their rights under international law have been violated.

What has happened so far?

On Monday, 3 December 2012, the Zambia High Court began hearing arguments in this case. The case was heard by Judge J.K. Kabuka and began with the direct examination of the first petitioner, by his advocate, followed by cross-examination by the state's advocate. The petitioner explained the conditions at prison and the difficulties he faces as a result and the impact this has on his health.

On 11 September 2013, the trial continued and the court heard expert medical evidence on the nature and progression of HIV; the nature and impact of Highly Active Anti-Retroviral Treatment (HAART) on persons living with HIV/AIDS; and the importance of adequate nutrition for an HIV-positive individual on HAART.

On 26 September 2013, the High Court heard the testimony of the three state witnesses who are stationed at Lusaka Central Prison: the Office in Charge; the Nurse in charge; and an Environmental Health Officer. The case concluded and judgment was reserved. It is expected that judgment will be delivered on 15 May 2015.

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