

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH**

Case No.: 1027/2020

Date Heard: 30 July 2020

Date Delivered: 2 February 2021

In the matter between:

BRENDA WARDLE

Applicant

and

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

First Respondent

**THE NATIONAL COMMISSIONER OF
CORRECTIONAL SERVICES**

Second Respondent

JUDGMENT

RONAASEN AJ:

Introduction

[1] The applicant is an awaiting trial prisoner in the North End correctional facility (“the correctional facility”), where she has been detained since 30 June 2017.

[2] The applicant is not represented in these proceedings. Although the applicant claims to have a legal education the relief she seeks in terms of the notice of motion has not

been elegantly formulated and suffers from excessive verbiage as indeed do her affidavits filed in support of her application.

[3] Thus, rather than attempting to paraphrase the relief set out in the notice of motion I rather repeat it, below, verbatim:

"7. That the Court grants a Rule *Nisi* directing the Respondents, within fifteen (15) days of the Order, to show cause why the interim interdict, in the terms set out infra, should not be made final –

7.1. Respondents and/or their officials are prohibited from conducting unlawful, disorderly, baseless, inhumane and degrading searches of the Applicant's cell and personal item;

7.2. Where Respondents harbour a reasonable suspicion that Applicant has contravened DCS regulations, they are first to call and speak to the duty Judge in Order to set out what the suspicions are and seeking judicial authorization, prior to conducting the search;

7.3. The Respondents are directed to return to the Applicant, within 24 hours of this Order, all items which were in the lawful possession of Applicant, and which were confiscated during searches;

7.4. The Respondents are directed to return to the Applicant, within 24 hours of this Order, a flip-file with personal, and privileged, legal documents which were handed over to the officials at the gate during the week, preceding the lockdown;

7.5. The Respondents are directed during this Lockdown period, whilst visits are suspended, to ensure that Applicant is permitted to purchase from the centre tuck shop at least twice a week;

- 7.6. The Court grants an Essential Services permit to Mr Themba Qupe, authorizing him to purchase essential items for Applicant once a month during the period of Lockdown, and for the said items to be dropped off for handling over to Applicant at the Centre, at a non-contact, two minute visit or alternatively at the Specialized Commercial Crimes Court when Applicant appears in Court;
- 7.7. That items of the Essential Services permit referred to in paragraph 7.6 *supra*, Mr Qupe, is immediately authorized to purchase a few items, most importantly bread and a few essential immediate needs, to save the Applicant from starvation and for these to be dropped off at the Correctional Centre on the date of the granting of this Order;
- 7.8. Furthermore, Mr Qupe must be permitted to continue dropping off these few essential items at least twice a week, until the Respondents sort out the logistical arrangements of supplying Applicant with bread from Sasko and, until the prison tuck shop starts operating weekly;
- 7.9. The Respondents are directed to ensure that Applicant is permitted to keep all items purchased from the tuck shop in her cell as has been the case since 2017;
- 7.10. The Respondents ordered to ensure that amongst the items to be returned to Applicant, are her two toasters for which Applicant has written, prior, managerial approval;
- 7.11. The Respondents are directed to ensure the Applicant, is permitted to make use of the public phone daily, Monday to Friday, in order to call her family, the courts, her employees, witnesses as well as her legal representation in the Gauteng matter.”

Background

- [4] This application is a riposte to the measures the respondents were required to introduce in the correctional facility and similar facilities as a result of the declaration of a national state of emergency to deal with the effects of the Covid-19 pandemic which quite obviously poses a severe threat to inmates of correctional facilities. The respondents have to meet great challenges to ensure the continued safety of inmates in correctional facilities in the face of the pandemic. Of necessity this has required imposing restrictions on inmates which would not necessarily ordinarily apply.
- [5] Principally the restrictions placed on inmates at the correctional facility included the barring of visitors to ensure that visitors who were infected with the virus do not pass on the virus to inmates and limiting the use of public telephones by inmates in the correctional facility.

The applicant's complaints and the respondents' response thereto

- [6] The applicant's complaints are foreshadowed and summarised in the notice of motion.
- [7] In the following paragraphs I summarise the respondents' response to the applicant's complaints.
- [8] Inmates in the correctional facility have access to the cafeteria to buy items on sale of their choice. To this end they are entitled to receive money from outside through an approved money transfer system. The applicant has utilised the money transfer system

in place and has utilised funds so received to purchase items at the cafeteria. The applicant's access to the cafeteria has never been restricted and the respondents' records bear this out. Significantly the respondents point out that prior to the launching of the application the applicant did not complain or suggest that the system in place was inadequate.

[9] It is a fact of prison life that searches are conducted of inmates and their living quarters in order to ensure the safety of all inmates and correctional staff. Weapons and contraband, which are the focus of the searches, are regularly smuggled into prisons. The applicant's unique situation in terms of which she has been granted certain privileges to enable her to prepare for her trial, furthermore, necessitates searches of her cell. Despite having no entitlement in this regard the applicant has been allowed to keep a computer and a modem in her cell. This entails additional searches to ensure that she uses these items in terms of the conditions imposed when she was allowed to keep them in her cell. So too the fact that the applicant keeps a large volume of paperwork contained in files in her cell necessitates searches to ensure that contraband is not secreted in these files.

[10] The applicant, by her own admission, has access to a cellular telephone, which is not permitted. This also necessitates searches of her cell.

[11] Item such as a second toaster have been confiscated from the applicant because she came into possession of the toaster without explanation and in particular without consent of the respondents. The applicant has generally received favourable treatment

in that she has been allowed to keep a large number of items in her cell which are not ordinarily allowed.

[12] The applicant has full access to the public telephones in the correctional facility in the manner prescribed by the respondents and there is no truth in her allegations that calls are monitored or recorded.

[13] The applicant has enjoyed the benefits of all measures taken to avoid exposure to the Covid-19 virus and she is not at greater risk to be exposed to the virus.

[14] The confiscation of food contained in tins is in accordance with standard operating procedure and is for the safety of all inmates.

[15] The applicant's dietary concerns have been satisfactorily addressed and she is being provided with bread from a reputable baker.

[16] The respondents have no knowledge of the documents which the applicant claims were confiscated from her. Confiscations are recorded and there is no record of the alleged confiscation.

Discussion

[17] This court, previously, has had occasion to comment on the lenient manner in which the applicant has been treated by the respondents. So, for instance, despite this court confirming that the applicant has no entitlement to keep a computer and a modem in

her cell, she has been accommodated by the respondents in this regard and allowed to keep these items, together with many other items which would normally be prohibited, in her cell.

[18] A comparison of the two versions before me confirms a substantial dispute of fact, which must be resolved in favour of the respondents in the light of the well-established principle set out in ***Plascon Evans (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd*** **1984 (3) SA 623 (A)** at 634E-635D.

[19] I am not satisfied as to the inherent credibility of the applicant's factual averments and cannot therefore proceed on the basis of the correctness of these averments. On the contrary the applicant's version appears to me to be far-fetched and inherently improbable. The respondents, in turn, have succinctly and cogently dealt with the applicant's averments and supported their response with appropriate objective corroboration in the form of documents and registers. The respondents' version cannot be rejected as being untenable and must be accepted by me as being correct and dispositive of the applicant's case.

Conclusion

[20] I am therefore of the view that the applicant has not made out a case for the relief she seeks.

Order

[21] In the result the application is dismissed with costs.

O H RONAASEN
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the applicant: In person

For the respondents: Adv. M Nobatana, instructed by the State Attorney, Port
Elizabeth