

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 116396/2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED

29 NOVEMBER 2023

In the matter between:

SIMON, YANIV NOSSI BEN

Applicant

and

NATIONAL COMMISSIONER, DCS

First Respondent

MINISTER OF JUSTICE & CORRECTIONAL SERVICE

Second Respondent

REGIONAL COMMISSIONER, GAUTENG

Respondent

Third

AREA COMMISSIONER, KGOSI MAMPURU II AREA

Respondent

Fourth

**HEAD OFFICE, KGOSI MAPURU II CORRECTIONAL
CENTRE**

Fifth Respondent

**HEAD OF C-MAX, KGOSI MAPURU II CORRECTIONAL
CENTRE**

Sixth Respondent

**INDEPENDENT CORRECTIONAL CENTRE VISITOR,
KGOSI MAPURU II CORRECTIONAL CENTRE**

Seventh Respondent

**JUDICIAL INSPECTOR FOR CORRECTIONAL
SERVICES**

Eighth Respondent

JUDGMENT

NGALWANA AJ

[1] This is an application for the transfer of an unsentenced inmate from the C-max part to the remand centre part of the Kgosi Mampuru Correctional Centre, pending the outcome of the review of that decision.

[2] The application is brought on an urgent basis essentially on the ground that being held in solitary confinement constitutes torture, cruel, degrading and inhumane punishment. The submission is that interim relief to be released from such punishment is always urgent.

[3] The first respondent says the application is not urgent as the decision to transfer the applicant was made in January 2023 and he threatened legal action in February 2023. There is no explanation for the delay of 9 months. In any event, says the first respondent, an interdict is a remedy that is available to stop conduct that has not yet occurred, not to stop conduct that has already occurred. He says what the applicant is inviting this court to do is usurp the functions of the correctional services, thereby trenching on the separation of powers doctrine.

[4] In reply, the applicant says delay in bringing the application cannot trump his right not to be subjected to torture.

[5] Then he says he has made out a case for interim relief, largely because the respondents have not denied his allegations that tend to prove a *prima facie* case, balance of convenience in his favour and apprehension of irreparable harm.

[6] In my view, this case falls to be disposed of on urgency. There is no adequate explanation for the delay in the bringing of this application for a period of 9 months. The applicant was transferred to C-max in January 2023. He threatened legal challenge in February 2023. He only launched this application in November 2023. His

Counsel says an application to stop torture is always urgent. Well, it might have been in January or February 2023 when the applicant threatened to challenge his transfer. That it took him 9 months to realise that this was torture places the element of urgency in doubt.

[7] In any event, I agree with Counsel for the first respondent that an urgent court is not suited for dealing with complex and novel matters of law. This case engages complex issues of international law including the treatment of inmates and torture. It engages the power of the correctional services to classify inmates by their risk profile and house them accordingly. Whether the exercise of such powers, or the manner of their exercise, breaches an inmate's constitutional rights is not a matter that founds urgency or can be determined in urgent court. These are issues that can best be debated in the review court which will have sufficient time to consider them intimately.

[8] I am not persuaded that the applicant cannot obtain substantial relief in due course. In any event, the applicant has created his own urgency by delaying his challenge for over 9 months.

Order

In the result, I make the following order:

1. The application is struck off the roll for lack of urgency.
2. The applicant is to pay the costs of this application on a party and party scale.

V NGALWANA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 29 November 2023.

Date of hearing: 28 November 2023

Date of judgment: 29 November 2023

Appearances:

Attorneys for the Applicants:

Ian Levitt Attorneys

Counsel for the Applicant:

A Katz SC (082 706
1744)E Cohen (076 905
2342)

Attorneys for First Respondent:

State Attorney, Pretoria

Counsel for First Respondent:

M Vimbi (083 269 9465)