



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No. 1484/2016

In the matter between:

JOHANNES SEPTEMBER

Applicant

and

THE MINISTER OF CORRECTIONAL SERVICES
THE NATIONAL COUNCIL OF CORRECTIONAL
SERVICES
THE NATIONAL COMMISSIONER OF
CORRECTIONAL SERVICES

1st Respondent

2nd Respondent

3rd Respondent

JUDGEMENT BY: MBHELE, J

HEARD ON: 04 AUGUST 2016

DELIVERED ON: 13 OCTOBER 2016

- [1] Applicant is an inmate serving a sentence of life imprisonment at Grootvlei Prison for murder and attempted murder. He was convicted and sentenced in 2001.

- [2] First respondent is the Minister of Correctional Services according to the papers.
- [3] Second Respondent is the National Council of Correctional Services.
- [4] Third respondent is the National Commissioner of Correctional Services.
- [5] Applicant approached this court on motion for an order compelling the second and third respondent to properly consider the applicant's suitability for day parole or parole and to make necessary recommendations and placement of the applicant on day parole or parole.
- [6] The applicant drafted and filed his papers on his own without assistance from a legal practitioner. This is evident from the clumsy manner in which the content is presented on the papers and the incorrect citing of the parties. I am grateful to Mr. Snellenburg for assisting the applicant to prepare heads of argument and presenting oral argument on his behalf *pro bono*.
- [7] The applicant's matter served before the case management committee and parole board at Grootvlei prison which recommended the applicant for possible placement on day parole or parole.

- [8] The recommendation was sent to the second respondent on 26 January 2016.
- [9] The second respondent has on the date of hearing of the application not considered the applicant's suitability for placement either on parole or day parole.
- [10] The parties are in agreement that the applicant completed all rehabilitation programmes and has reached out to the family of the victims related to the crimes he was convicted of.
- [11] The respondents effectively contend that the application is premature as 180 days had not passed when the applicant approached the court on motion. Mr Bomela, on behalf of the respondents, further contended that the court lacks jurisdiction to hear the matter as the respondents' *domicillium* falls outside the jurisdiction of this court.
- [12] Mr Snellenburg, on behalf of the applicant, argued that this court may assume jurisdiction even if it lacks same on the basis of convenience. He submitted that the fact that the applicant is incarcerated at Grootvlei correctional services, which is situated in Bloemfontein, makes it difficult for him to freely approach courts outside his area of jurisdiction as his movement is restricted.
- [13] Section 21(1) of the Superior Court Act 10 of 2013 provides as follows:

“A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within its area of jurisdiction and all other matters of which it may according to law take cognisance,...”

- [14] Applicant is serving his sentence at a prison situated in the area of jurisdiction of this court. As a prisoner his freedom of movement is limited. He prepared his papers on his own without legal representation. Owing to the applicant's limited knowledge of the law, circumstances surrounding his current status and lack of resources at his disposal, I am of the view that the applicant's access to justice can be realised without putting him travelling to Pretoria to have his matter enrolled at North Gauteng High Court.
- [15] None of the respondents will suffer prejudice or inconvenience by this court adjudicating the matter.
- [16] Having considered all issues surrounding this matter, common sense and convenience dictate that this court should adjudicate this matter. In the circumstances, the respondents' objection to jurisdiction falls to be rejected.
- [17] Respondents have submitted that the reasonable period within which the second respondent has to consider the recommendation by the Grootvlei case management committee is 180 days. On the date of hearing this application the 180 days

had lapsed and the second respondent had advanced no reasons for the delay.

Administrative action

[18] Section 1 of the Promotion of Administrative Justice Act, defines administrative action as follows:

“**administrative action**” means any decision taken, or any failure to take a decision, by –

(a) An organ of state, when –

(i) Exercising a power in terms of the Constitution or a provincial constitution; or

(ii) Exercising a public power or performing a public function in terms of any legislation; or

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, ...”

[19] Second respondent got seized with the applicant's request on 26 January 2016 and six months later no decision has been taken. It was submitted on behalf of the respondents that the applicant must give reasons why his matter must jump queue and get preference over other two matters that were submitted on the same day as his. The above argument is misplaced. The

applicant cannot be prohibited from exercising his rights just because other people are doing nothing to enforce theirs.

[20] The PAJA came into effect as a direct consequence of section 33 of the Constitution which provides that everyone has a right to an administrative action that is lawful, reasonable and procedurally fair. It cannot be said that the applicant's right as stated above was observed to the letter owing to the fact that long period it took for the second respondent to take a decision on his request.

[21] It is for the above reasons that I believe that the applicant's request is not unreasonable.

[22] There is no need for a cost order.

[23] When all is considered, I make the following order:

ORDER

- i The second respondent is directed to consider and make recommendation to the first respondent on the suitability of the applicant to be placed on day parole or parole within 30 days of the granting of this order.

- ii The first respondent to consider the recommendations by the second respondent within 8 weeks of receipt of such recommendations.
- iii No order as to costs.

N. M. MBHELE, J

On behalf of the applicant:	Adv. N. Snellenburg Instructed by: Kramer Weihmann & Joubert Inc BLOEMFONTEIN
On behalf of the Respondents:	Adv. L. Bomela Instructed by: State Attorney BLOEMFONTEIN

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