



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

17/2/15

CASE NO: 74301/13

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

2015/02/17

DATE



SIGNATURE

IN THE MATTER BETWEEN

CASPER RAY CHITEME

Applicant

and

MINISTER OF CORRECTIONAL SERVICES

First Respondent

CHAIRPERSON OF NATIONAL COUNCIL FOR

Second Respondent

CORRECTIONAL SERVICES

JUDGMENT

LEGODI, J

[1] On the 5 February 2015 I made an order as follows:

- "1. The matter is postponed sine die;*
- 2. The Parole Board and Case Management Committee of Leeukop Prison are ordered to submit within 30 days of this order a new profile for the applicant to the second respondent.*
- 3. The second respondent is ordered to within 30 days after receipt of the above mentioned profile to make a new recommendation to the first respondent for the applicant's possible placement on parole.*
- 4. The first respondent is ordered to make a decision with regard to the applicant's placement on parole within 30 days of having received the recommendation of the second respondent".*

[2] I must immediately say that in the event the order was not brought to the attention of the Parole Board and Case Management Committee from the date the order was made, that is, 15 February 2015, it must then comply with the order within 30 days from the date on which it is brought to its attention.

[3] Having made the order as indicated in paragraph 1 above, I reserved judgment on the issue of costs. I now turn to deal with the issue of costs. On Monday the 2 February 2015, the matter could not proceed, because the respondents' heads of argument were only served that morning. That was contrary to the practice directives. As a result, the matter was stood down until 5 February 2015 to enable both the court and the applicant to read the heads of argument.

[4] I was particularly not impressed with the filing of heads on the date of hearing. For that, I ordered the State Attorney to file an affidavit to explain why there has not been compliance. The affidavit has been filed and I do not intend taking the issue any further. It suffices to mention that many of the State Attorney's matters are not properly handled. This should be a matter of great concern to this court and to the public at large, as it results in unnecessary legal costs.

[5] Coming back to the issue of costs, there can be no doubt that the defendant should be held liable for the wasted costs occasioned by the stand down on the 2 February 2015. In my view, the applicant should not be placed out of pocket due to the inefficiency in the office of the State Attorney. For example, the non-compliance with the rules and practice directives were blamed on lack of capacity and involvement of inexperienced staff, some of whom had just completed schooling. An order for costs on an attorney and client scale for the wasted costs occasioned by the stand down on the 2 February 2015 would be fair.

[6] The costs for the 5 February 2015 should be dealt with like any other costs in the application. The applicant wanted review and setting aside of the decision by the Minister of Correctional Services in terms of which the applicant's request to be placed on parole was refused. An order to this effect has not been made. Instead, I proposed the draft order quoted in paragraph 1 of this judgment. In doing so, I was persuaded by my *prima facie* of the matter.

[7] However, counsel for the applicant sought to suggest that the respondents should be held liable for the costs incurred after delivery of his replying affidavit. In that affidavit, a referral was suggested, as an alternative, without abandoning the main relief sought. Secondly, a relief for costs on an attorney and client scale was never abandoned. Therefore it cannot be said that the respondents should have conceded to referral at an earlier stage. For this, it would only be fair for each party to pay his or her own costs.

[8] Consequently, an order is hereby made as follows:

- 8.1 The respondents to pay to the applicant wasted costs occasioned by the stand down of the matter on 2 February 2015, the one paying the other to be absolved.
- 8.2 Such costs be on an attorney and client scale including the costs of two counsel.
- 8.3 As regards to other costs in the proceedings, each party to pay his or her own costs.


JUDGE M FLEGODI
JUDGE OF THE HIGH COURT

FOR THE APPLICANT: ADV. K FRITZROY

INSTRUCTED BY: JULIAN KNIGHT & ASSOCIATES
129 Murray Street,
BROOKLYN, PRETORIA
REF: Mr Knight/C100
TEL: 012 346 1463

FOR THE RESPONDENTS: ADV. MTK MOERANE SC & E B NDEBELE

INSTRUCTED BY: THE STATE ATTORNEY
316 Salu Building,
Cnr Francis Baard & Thabo Sehume Streets
PRETORIA
0002
REF: S RABAMBI 8676/13/Z57
TEL: 012 309 1674

Matter heard on: 5 FEBRUARY 2015

Judgment Handed down: 17 FEBRUARY 2015