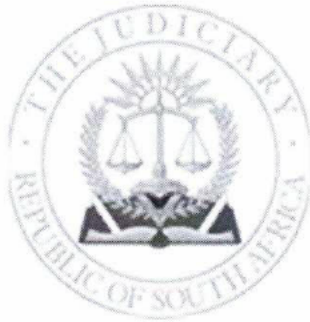


IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: 2024-060382

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
05/08/2024...	
[Redacted Signature]	

In the matter between:

PRESBY LINDA NYAMAKAZI

Applicant

and

HEAD OF MODDERBEE CORRECTIONAL CENTRE
(Ms MASUKU)

First Respondent

THE CHAIRPERSON OF THE CASE MANAGEMENT
COMMITTEE MODDERBEE

Second Respondent

CHIEF OPERATIONS COMMISSIONER FOR THE
DEPARTMENT OF CORRECTIONAL SERVICE Mr
J.M MKABELA

Third Respondent

NATIONAL COMMISSIONER FOR THE
DEPARTMENT OF CORRECTIONAL SERVICES

Fourth Respondent

MINISTER OF JUSTICE AND CORRECTIONAL
SERVICE

Fifth Respondent

JUDGMENT

van der Westhuizen, J

- [1] The applicant, an inmate serving sentence at Modderbee Correctional Centre, Benoni, applied on an urgent basis for certain relief pertaining to the issue of being granted parole. The particular issue to be determined is whether he qualified for certain remissions granted by the President of South Africa.
- [2] The matter was entertained as an urgent application in view of the fact that the liberty of a person is of constitutional concern. Judgment was reserved.
- [3] This is not the first attempt by the applicant to be granted the relief now sought. During November 2023, the applicant, also by way of an urgent application, sought similar, if not identical, relief to that in the present application. That application served before me during November 2023, and in an *ex tempore* judgment, the relief sought in that application was refused.
- [4] It would be prudent to record the relief sought in the 2023 urgent application as set out in that Notice of Motion:
- 1] The applicant is granted urgency in terms of Rule 6(12)(a) of the Uniformed rules of Court and that the normal forms and service provided for in the uniformed rules be dispensed with.
 - 2] Granting the applicant condonation, where I failed to comply with the rules of this

Honourable Court.

- 3] The Honourable Court to grant me condonation in case my affidavit is not commissioned.
- 4] That the applicant be granted access to this court.
- 5] That the decision by the record's office (Mr. Gouws) is reviewed and set aside.
- 6] It is declared and confirmed that the applicant qualifies for the additional 12 months' remission, granted by the President of South Africa, in terms of Circular 4 of 2023: "Granting of special remission of sentence (amnesty)".
- 7] The decision by the case management committee chairperson (CMC) is reviewed and set aside.
- 8] It is declared and confirmed that the applicant qualifies for the Covid 19 parole special dispensation.
- 9] That the respondents be, and are hereby ordered to urgently consider processing the applicant (Presby Linda Nyamakazi) for placement on parole, by not later than 30 days from the date of this judgment.
- 10] Any further and/or alternative relief the Court deems fit.

[5] It is gleaned from the above quoted passage that the applicant sought relief in particular in respect of two specific remissions granted to incarcerated persons. The first pertained to the Covid-19 parole special dispensation. The second related to an additional 12 months' remission granted by the President of the Republic of South Africa in terms of Circular 4 of 2023: "Granting of special remission (amnesty)."

[6] In the present application, prayer 5 of the Notice of Motion reads as follows:

"It is declared and confirmed that the applicant (Mr Linda Nyamakazi) qualify (sic) for the additional 12 months remission granted by the President of South Africa in terms of circular 04 of 2023 "Granting of special remission of Sentence (Amnesty)."

[7] Prayer 5 of the Notice of Motion in this application reads identical to prayer 6 of the Notice of Motion of the previous urgent application heard in November 2023.

[8] In my judgment in the previous urgent application of November 2023, I dealt with both the Covid-19 special parole dispensation the as well as in terms of Circular 4 of 2023: "Granting of special remission of sentence." In respect of the Covid-19 remission, I held that it only applied to already sentenced and incarcerated inmates. I further held the applicant did not qualify for that dispensation as he was not sentenced and incarcerated at the time when the remission applied. He was only convicted and sentenced after the lapse of the period to which that special parole dispensation applied. He was so convicted in December 2021 and sentenced in January 2022. The Covid-19 remission was granted in Proclamation 19 of 2020.

[9] I further held in respect of the Amnesty in terms of Circular 4 of 2023, that the applicant was disqualified to benefit from that Amnesty, in view of his conviction for kidnapping. Circular 4 specifically stipulated that

inmates were excluded from the Amnesty where they were convicted on a charge of kidnapping. I held that the applicant accordingly did not qualify for the additional 12 months remission.

- [10] The applicant sought leave to appeal the whole of my judgment and order. That application for leave to appeal was refused. Thereafter, the applicant applied to the Constitutional Court for direct access to appeal my judgment. That request was refused by the Constitutional Court.
- [11] In this application, the applicant again seeks a declaration that he is to benefit from the Amnesty in terms of Circular 4 of 2023. The angle taken by the applicant is slightly different this time. He now submits that the sentence in respect of the conviction on the charge of kidnapping has run its course and furthermore, that it was part of a period of suspension ordered in respect of a specific sentence relating to a specific conviction, namely that of extortion.
- [12] There is no merit in the applicant's aforementioned contentions for what follows. In my judgment of November 2023, I found that Circular 4 of 2023 specifically excludes a conviction on a charge of kidnapping. However, the Circular allows for a deviation in respect of disqualifying offences where the sentence provided an option for the paying of a fine, or where the sentence in respect of the disqualifying offence was suspended. The applicant was sentenced to direct imprisonment without the option of paying a fine in respect of the conviction of kidnapping. Secondly, the ordered period of suspension of sentence was limited to a subsequent conviction on a charge of extortion committed within the five year period of suspension. The sentence on the charge of kidnapping was not included in the suspension.
- [13] The further relief that was sought in the present application is dependent on a positive finding on the relief in prayer 5 of the Notice of Motion. In view of my findings above in respect of prayer 5, it is not required to deal with the merits of the further relief sought.

[14] It follows that the applicant cannot succeed in respect of the relief in prayer 5 of the Notice of Motion. The application stands to be refused.

I grant the following order:

1. The application is urgent;
2. The application is dismissed.


C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT

On behalf of Applicant: In Person

On behalf of Respondent: Heads of Argument submitted by Adv D Bleki
Instructed by: State Attorney

Date of Hearing: 23 July 2024

Judgment Delivered: 05 August 2024