



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case No: 2024-059539

- | | |
|-----|-------------------------------------|
| (1) | REPORTABLE: YES/NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED. |

	15 JULY 2024
SIGNATURE	DATE

In the matter between:

MPHO FLOYD MATLALA

First Applicant

JUANE STEPHANE JACOBS

Second Applicant

and

HEAD OF PRISON LEEUWKOP MAXIMUM PRISON

First Respondent

ASSISTANT HEAD OF LEEUWKOP MAXIMUM PRISON

Second Respondent

THE HEAD OF CASE MANAGEMENT COMMITTEE

Third Respondent

THE REGIONAL COMMISSIONER OF GAUTENG

Fourth Respondent

THE MINISTER OF JUSTICE AND CONSTITUTIONAL

DEVELOPMENT

Fifth Respondent

WRITTEN REASONS FOR ORDER

WINDELL, J:

[1] This is an urgent application for, inter alia, an order reviewing and setting aside the first and second applicants' decision to transfer the applicants from Leeuwkop Maximum Prison (Leeuwkop) to Kgosi Mampuru C-Max Prison (Kgosi Mampuru), as well as an order mandating the respondents to transfer the first applicant (Mr Matlala) to New Prison Pietermaritzburg and the second applicant (Mr Jacobs) to Baviaanspoort prison. The relief sought is final in nature.

[2] The applicants were both convicted and sentenced in 2017 for various serious crimes and are currently serving life sentences. On 20 May 2024, they were both transferred from Leeuwkop to Kgosi Mampuru for "security reasons". The first respondent is the Head of Kgosi Mapuru and the second respondent is the Assistant Head. The third respondent is the Head of Case Management Committee, the fourth respondent is the Regional Commissioner of Gauteng, and the fifth respondent is the Minister of Justice and Constitutional Development.

[3] On 12 June 2024, I struck the matter from the roll for want of urgency. The applicants have requested written reasons as they have lodged an application for leave to appeal. These are my reasons.

[4] Uniform Rule 6(12)(b) requires that an applicant shall: (a) set forth explicitly the circumstances which he avers render the matter urgent; and (b) the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.

[5] The applicants have filed a 156 page founding affidavit with annexures. The bulk of the founding affidavit is devoted to their stay at Leeuwkop; their medical conditions; the lack of medical treatment they received at Leeuwkop; the non-compliance by the respondents of court orders; the failure to give them *audi* during the

disciplinary hearings before they were transferred; and the assaults and harassment perpetrated against them by the first and second applicants at Leeuwkop.

[6] The applicants were transferred on 20 May 2024 and are no longer at Leeuwkop. They have expressed no desire to return to Leeuwkop, which was confirmed during the hearing. Consequently, I requested the applicants' counsel, Mr. Maake, to provide me with an explanation of the circumstances at Kgosi Mampuru that would render the review application and transfer of the applicants to the other facilities urgent. Specifically, I wanted to know why the applicants would not receive substantial redress at a hearing in due course. Despite the matter standing down to the following day to address me on this issue, Mr Maake was unable to point to any averments in the founding affidavit that constitutes urgency.

[7] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite and Others*¹ the Court held pertinently as follows:

'The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress'.

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAG PJHC 196 (23 September 2011).

[8] The sub-rule was also considered in *Luna Meubelvervaardigers Edms Bpk v Makin*,² in which Coetzee J remarked as follows:

'Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is invoked in the time and day for which the matter be set down'.

[9] None of the allegations advanced by the applicants in their founding affidavit satisfy the first, nor the second requirement of Rule 6(12)(b), and do not support any departure from the Uniform Rules and practice of this Court. It is trite that where an applicant seeks final relief (which is the case here), the Court must be even more circumspect when deciding whether or not urgency has been established. In *Tshwaedi v Greater Louis Trichardt Transitional Council*³ the Court said:

'... An applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for interim relief...'.

[10] The applicants were unable to convince me that there was compliance with Rule 6(12). As a result, I found that there was no urgency and that the application was a brazen abuse of the process. In the circumstances, the application was struck from the roll. No order as to costs.


L. WINDELL

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

² *Luna Meubel Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W) at 137F.

³ [2000] 4 BLLR 469 (LC) at para 11.

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 15 July 2024.

APPEARANCES

Counsel for the applicants:	Advocate L.M. Maake
Attorneys for the applicants:	Malale Nthapeleng Attorneys
Attorneys for the respondents:	Office of the State Attorney, Johannesburg
Date of hearing:	11 June 2024 & 12 June 2024
Date of order:	12 June 2024
Date of written reasons:	15 July 2024