

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024/088827

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
20/08/2024	
DATE	SIGNATURE

In the matter between:

PRENASHEN GOVENDER

Applicant

and

**MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

First Respondent

**DIRECTOR-GENERAL OF THE DEPARTMENT OF
JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

Second Respondent

**NATIONAL COMMISSIONER FOR THE DEPARTMENT
OF CORRECTIONAL SERVICES**

Third Respondent

**DEPARTMENT OF CORRECTIONAL SERVICES,
JOHANNESBURG MANAGEMENT AREA, AREA
COMMISSIONER**

Fourth Respondent

**DEPARTMENT OF CORRECTIONAL SERVICES,
JOHANNESBURG CORRECTIONAL CENTRE B,
HEAD OF PRISON**

Fifth Respondent

JUDGMENT

Yacoob J:

- [1] The applicant, Mr Prenashen Govender, was convicted of two murders and sentenced to life imprisonment in August 2020. He was released on bail pending appeal, and his appeal was apparently dismissed in February 2024, when he was readmitted to prison, at Johannesburg Correctional Centre B, which is a medium security facility.
- [2] According to his brother, Mr Prenolan Govender, who deposed to the founding affidavit, the applicant intends to bring an application for leave to appeal to the Constitutional Court. No indication is given about when this application is intended to be brought, taking into account that it is now six months since he was apparently unsuccessful at the Supreme Court of Appeal. The founding affidavit is somewhat scanty in regard to these details. Since there are two Mr Govenders I shall refer to the applicant as Prenashen and the deponent as Prenolan.
- [3] According to the respondents' affidavit, the nature of Prenashen's convictions and sentence means that he is a maximum security offender. This is not disputed. On 6 August 2024, in the early morning, together with 39 other maximum security offenders, Prenashen was moved to Kutama Sinthumule Correctional Centre, in Venda. This application was instituted on an extremely urgent basis to bring the applicant back to the Johannesburg Correctional Centre.
- [4] The founding affidavit, which is dated 5 August 2024, is drafted on the basis that if the application is not heard immediately, Prenashen would have been moved already and it would be too late to do anything meaningful about it. However, the notice of motion, dated 6 August, does not seek to prevent Prenashen being moved, but rather to return him to the Johannesburg Correctional Centre, pending a review application to be instituted to set aside the decision to transfer Prenashen to Venda.
- [5] The application was served in the early hours of the morning of 06 August, and called upon the respondents to file their notice to oppose on or before 09h00 on Tuesday 6 August, and to file their answering affidavits by 17h00 on Friday 9

August 2024. The notice of motion provided further for the filing of a replying affidavit by 17h00 on Saturday 10 August 2024, and set the matter down on the urgent roll of 13 August 2024.

- [6] It is not clear exactly when the answering affidavit was served on the applicant's representatives. It is dated 10 August. The replying affidavit is dated 11 August. Certainly the answering affidavit was produced in a very short space of time, including a public holiday on a long weekend.
- [7] It is trite that an applicant in an urgent application must justify every departure from the rules. The founding affidavit was clearly produced under great time pressure and with the intention of approaching a court that very day, 5 August, to obtain an interdict to prevent Prenashen's transfer. It may well have been enough to support that relief. But once he had already been transferred, the imposition of extremely short time periods had to be justified, as well as the failure to adhere to the rule of having pleadings closed and the matter ripe for hearing before the Thursday before the Tuesday on which the matter is set down.
- [8] There is no evidence that Prenashen is suffering any severe harm by being in Venda. He had already been there for over a week before the matter was argued before me on 13 August. The extreme urgency imposed by the applicant was not justified by the founding affidavit taking into account that Prenashen had already been transferred.
- [9] In addition, the applicant's counsel complained of deficiencies in the respondents' answering affidavit. Taking into account the very short period of time that was given to the respondents to produce an answering affidavit, and that it included a public holiday on a long weekend, this is not surprising. Prenolan himself also complained of the short time he had to produce his replying affidavit, which could have been remedied had the applicant determined a more reasonable time period taking into account that Prenashen had already been transferred.

- [10] Mr Vally who appeared for Prenashen relied for urgency on the case of *Apleni v Minister of Home Affairs*,¹ in which Fabricius J held that allegations of abuse of power by public officials "which may impact upon the Rule of Law, and may have a detrimental impact upon the public purse, the relevant relief sought ought normally be urgently considered".² It must be noted that *Apleni* did not set a precedent that any allegation of an abuse of public power resulted in an automatic enrolment on the urgent roll. It required a probable impact on the Rule of Law [although that begs the question whether there could be an abuse of power by public officials that does not impact on the Rule of Law], and an impact on the public purse. Then the relief would *normally* be urgently considered. This does not oust the judge's discretion. The judge would still have to consider all the relevant elements of a claim to urgency. There is nothing in *Apleni* which exempts an applicant from justifying the degree of urgency imposed.
- [11] In my view the urgency imposed in this application is not justified, and, in fact, by attempting to come to court in such an expedited manner, on an affidavit which does not match the notice of motion, the applicant's case is done more harm than good. There is not one jot of evidence before more of prejudice to Prenashen in his transfer, and because Prenolan's founding affidavit was drafted before the transfer happened, it could not properly deal with that.
- [12] The respondents asked for costs to follow the result. The applicant asked that if they were successful costs be reserved. It is not clear what for. No submissions were made that, if the applicant were not successful, no costs order should be made.
- [13] For these reasons I make the following order:

"The application is struck for want of urgency, the applicant to pay the costs".


S YACOOB
JUDGE OF THE HIGH COURT
JOHANNESBURG

¹ [2018] 1 All SA 728 (GP)

² At para 10.

For the Applicant: M Vally instructed by Ghirao Inc

For the Respondent: Z Mokatsane instructed by the State Attorney,
Johannesburg

Date of Hearing: 15 August 2024

Date of Judgment: 20 August 2024