



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

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☐ / No ☒

Case 2024/00413

Date: 25 October 2024


WJ du Plessis

In the matter between:

GEORGE MAHLANGU

First Applicant

and

THE MINISTER OF CORRECTIONAL SERVICES

First Respondent

**THE NATIONAL COMMISSIONER OF CORRECTIONAL
SERVICES**

Second Respondent

**THE REGIONAL COMMISSIONER OF CORRECTIONAL
SERVICES**

Third Respondent

**THE JOHANNESBURG CORRECTIONAL SERVICES
AREA COMMISSIONER**

Fourth Respondent

THE HEAD OF CORRECTIONAL CENTRE MEDIUM B

Fifth Respondent

**THE JOHANNESBURG MEDIUM B HEAD OF HOSPITAL
UNIT**

Sixth Respondent

**THE JOHANNESBURG MEDIUM B KITCHEN UNIT
MANAGEMENT**

Seventh Respondent

Coram: Du Plessis AJ
Heard on: 22 August 2024
Decided on: 22 August 2024, reasons on 25 October 2024.

This judgment has been delivered by uploading it to the CaseLines digital data base of the Gauteng Division of the High Court of South Africa, Johannesburg, and by email to the attorneys of record of the parties. The delivery date and time is 10H00 on 22 August 2024.

Summary: Sentenced offender – right to adequate nutrition and medical care – special diet.

JUDGMENT

DU PLESSIS AJ

Introduction

[1] I heard the matter on 22 August 2024 and gave the order as in the last paragraph of this judgment, stating that the reasons for the order will follow. This then the reasons for the order.

[2] It should be noted from the outset that Mr Mahlangu represented himself in court, and therefore, his affidavits must be generously construed.¹ As with many of these applications, clarity was sought in the court from Mr Mahlangu and counsel for the state to get to the crux of Mr Mahlangu's complaint and to craft a suitable court order.

[3] Mr Mahlangu approached the court to hold the respondents in contempt of court for failing to adhere to a court order of 17 August 2022 to provide him with a High-Fibre diet as per paragraph 6.4.2.5 of the Department of Correctional Service's Therapeutic Diet Manual ("the manual").

[4] Mr Mahlangu states that the court ordered the respondents to provide him with a high-fibre diet. They did not comply with the court order, and he lodged a formal complaint in the Complaint and Request Book on 19 January 2024, which he followed

¹ *Xinwa v Volkswagen of South Africa (Pty) Ltd* [2003] ZACC 7.

up on 6 March 2024 because the respondents did not respond. Because of severe bleeding, he was taken to hospital on 12 March 2024. The doctor examined him and referred him to consult with the dietician so that the dietician could prescribe a diet in line with his condition. The dietician, however, refused to consult with the applicant.

[5] He then launched a third request to the area commissioner to intervene. He was again referred to a dietician, and again, the dietician refused to consult with him.

[6] He was then given a follow-up appointment at the hospital with the surgeon on 4 June 2024. The doctor advised Mr Mahlangu that due to the severity of his condition, he must continue to manage his condition until an operation could be scheduled. The communication he received from the hospital was that they could only provide a one-on-one session if they received a court order or letter from the head of the prison permitting him to provide his own food while in prison.

[7] Mr Mahlangu states that his right of access to healthcare services is infringed. He asks for a contempt of court order and for the court to intervene to protect and fulfil his right to health care services. He asks for an order per the dietetics requirements, so that the applicant can buy himself food that will better his condition.

[8] The letter states that the hospital cannot provide the session because Mr Mahlangu is not responsible for providing his own food, and therefore, a one-on-one will not benefit him. The Department of Correctional Services must provide him with a high fibre diet in line with the manual.

[9] The respondents deny that they are in contempt of court, as they have complied with s 8 of the Correctional Services Act, which provides that each prisoner must be provided with an adequate diet to promote good health as prescribed in the regulations, including making provision for special diets. S 12 provides that the Department must provide adequate health care services within its available resources to allow every prisoner to lead a healthy life. S 21 states that the prisoners must be given the

opportunity to make complaints or requests and that this must be recorded along with the steps taken to deal with the complaints. It then sets out the steps the person must take if this is not done.

[10] The respondents state that Mr Mahlangu was referred to the hospital, and he is provided with sorghum porridge – they have thus complied with the court order. He is provided with a high-fibre diet. They acted in good faith and did not disobey or ignore the court order. They have also called meetings with the relevant people in prison to listen to his complaints and accede to his demands. They rejected his request to have his family provide him with food, which was in line with the prison policy (for security reasons).

[11] They also deny that he was admitted to hospital for severe bleeding – he was examined, and no bleeding was found. He had another Therapeutic Diet prescribed on 17 June 2024, showing that his nutritional needs are being addressed. There was also no denial by the dietician to consult with him – he received a prescription on a Correctional Service letterhead as the dieticians work with the Department of Correctional Services. They deny that his condition is severe. They state that his health has not deteriorated and that he is opportunistic and abusing the court processes.

[12] In their answering affidavit, they state that a visit has been arranged for Mr Mahlangu at the Colorectal Clinic on 8 October 2024.

[13] On the hearing date, Mr Mahlangu insisted that what was prescribed was not working for his condition – if it were, he would not be here. He wants to see a dietician so that a recommendation can be made to adjust his diet if necessary. He did not trust that the appointment was made.

The law

[14] S 27 of the Constitution states that everyone has a right to have access to health care, and that the state must take reasonable legislative and other measures within its available resources to achieve the progressive realisation of these rights.² A sentenced offender retains this right, and there is an obligation on the Department of Correctional services to provide access to medical care for people incarcerated, as they cannot take care for themselves.

[15] S 35(1) of the Constitution provides that everyone who is detained has a right to conditions of detention that are consistent with human dignity, including adequate nutrition and medical treatment.

[16] The Correctional Services Act 8 of 1959 ("the Act") sets out the mechanisms on how correctional facilities will comply with these constitutional obligations. S 8 deals with nutrition and provides:

8. Nutrition.-(1) Each inmate must be provided with an adequate diet to promote good health, as prescribed in the regulations.

(2) Such diet must make provision for the nutritional requirements of children, pregnant women and any other category of inmates whose physical condition requires a special diet.

(3) Where reasonably practicable, dietary regulations must take into account religious requirements and cultural preferences.

(4) The correctional medical practitioner may order a variation in the prescribed diet for an inmate and the intervals at which the food is served, when such a variation is required for medical reasons.

(5) Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than 14 hours between the evening meal and breakfast.

² For a thorough study on this right, see A Phela (2018) *The violation of rights of prisoners in South Africa after 1996: medico-legal implications* LLM, University of Kwazulu Natal.

(6) Clean drinking water must be available to every inmate.

[17] According to the manual, a high-fibre diet consists of, amongst other things, Sorghum porridge. Thus, according to the respondents' submission, Mr Mahlangu is on such a diet. Mr Mahlangu, however, seems to suggest that this diet is not working for his condition and that he needs to consult the dietician to prescribe him the correct diet.

[18] In that regard, se 12 of the Act deals with healthcare and states:

12. Health care.-(1) The Department must provide, within its available resources, adequate health care services, based on the principles of primary health care, in order to allow every inmate to lead a healthy life.

(2) (a) Every inmate has the right to adequate medical treatment but no inmate is entitled to cosmetic medical treatment at State expense.

(b) Medical treatment must be provided by a correctional medical practitioner, medical practitioners or by a specialist or health care institution or person or institution identified by such correctional medical practitioner except where the medical treatment is provided by a medical practitioner in terms of subsection (3).

(3) Every inmate may be visited and examined by a medical practitioner of his or her choice and, subject to the permission of the Head of the Correctional Centre, may be treated by such practitioner, in which event the inmate is personally liable for the costs of any such consultation, examination, service or treatment.

(4) (a) Every inmate should be encouraged to undergo medical treatment necessary for the maintenance or recovery of his or her health. (b) No inmate may be compelled to undergo medical intervention or treatment without informed consent unless failure to submit to such medical intervention or treatment will pose a threat to the health of other persons.

(c) Except as provided in paragraph (d), no surgery may be performed on an inmate without his or her informed consent, or, in the case of a minor, without the written consent of his or her legal guardian.

(d) Consent to surgery is not required if, in the opinion of the medical practitioner who is treating the inmate, the intervention is in the interests of the inmate's health and the inmate is unable to give such consent, or, in the case of a minor, if it is not possible or practical to delay it in order to obtain the consent of his or her legal guardian.

[19] Mr Mahlangu had access to healthcare by going to the hospital and consulting with surgeons. The extent of his problem is unclear from the documents submitted. It seems the respondents dispute that he suffers to the extent that he avers in his affidavit. That is an assessment that the court cannot make and one that the medical professionals treating Mr Mahlangu must make after consulting with him. At this stage, that includes the dietician, who must consider Mr Mahlangu's condition, together with his current diet, to make the appropriate recommendation to the head of the correctional centre.

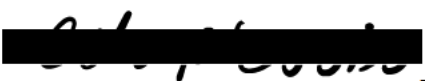
[20] Since the respondents adhered to the manual, they cannot be found to be in contempt of court. It is also not possible for the court to make an order that Mr Mahlangu can source his own food if there is no formal recommendation from a dietician to that effect. There might also be sound policy reasons why this cannot be allowed that the court can not readily interfere with unless the policy is challenged.

[21] To move the matter forward, it was therefore prudent to make an order for Mr Mahlangu to consult with a dietician that can then advise the respondents on the correct diet for Mr Mahlangu's condition.

Order

[22] Therefore, the following order was made:

1. The 5th respondent must make an appointment with a dietician for the applicant to consult on his condition.
2. The dietician must make a recommendation with regard to the most suitable diet for the applicant for the 5th respondent to consider.


WJ du Plessis
Acting Judge of the High Court

For the Applicants:

Self-represented

For the Respondents:

T Maluleka instructed by the State
attorney