

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 0000429/2025

DATE: 2025-01-03

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.



13 January 2025

10 In the matter between

DR SELLO ATHLOANE RATHETE

Applicant

and

MINISTER OF CORRECTIONAL SERVICES

AND OTHERS

Respondents

J U D G M E N T *EX TEMPORE*

20 **WILSON, J:** The applicant, Doctor Rathete, is a prisoner at the Johannesburg Correctional Services Centre. While his conviction and sentence are not yet final, as he is petitioning the Supreme Court of Appeal for leave to appeal, he is treated as a sentenced prisoner.

On 29 December 2024 Doctor Rathete's mother died in or around Polokwane. An application to compel the

Minister of Correctional Services, the National Commissioner of Correctional Services and various other subordinate officials to release Doctor Rathete so that he may attend his mother's funeral was brought today. Initially, so I am told, the application was enrolled before my sister, Acting Justice Benson, at noon.

For reasons that are not entirely clear to me, the matter was not considered at noon. The application was first brought to my attention at around 5:30 in the afternoon.

10 It was not immediately clear to me whether the funeral of Doctor Rathete's mother had actually already taken place. On the papers, the funeral is alleged to be taking place tomorrow, 4 January 2025, at around 7am. However, the invitation to the funeral annexed to the papers suggests that the funeral took place at 7 o'clock this morning, 3 January 2025.

Further papers that have been brought to my attention, though not under oath, seem to suggest that there is a memorial on 3 January, to be followed by a funeral on 4
20 January. I accordingly accept, for present purposes, that Doctor Rathete wants to be released to attend his mother's funeral tomorrow.

Officials acting on behalf of the Minister appear to have refused that request on two bases. Firstly, that there are insufficient personnel to escort Dr Rathete to

Polokwane to attend the funeral. Secondly, it is said that, as a maximum-security prisoner, Dr Rathete does not qualify for compassionate release, even on a temporary basis.

I do not have the respondent's word for any of this. It is rather conveyed to me in a confirmatory affidavit deposed to in support of the application by a Ms Mocketimi, who is Doctor Rathete's daughter. Reference to the reasons for refusal is also made somewhat obliquely in the founding affidavit.

10 The principal difficulty before me is that I know for a fact that none of the respondents, whose decision I am being asked to set aside, have been served with this application, whether by email or physically.

 There is an affidavit from a candidate attorney, handed up at the hearing of the matter, which suggests that some papers have been Whatsapp'd to certain of the respondents, but those papers indicate that a hearing will be held at noon today. There is no indication on the papers that the respondents know that there is a hearing taking
20 place now, at 8:30 in the evening.

 Section 44 of the Correctional Services Act 111 of 1999 gives the National Commissioner, who is the second respondent, the discretion to temporarily release Doctor Rathete on compassionate grounds. I am being asked to interfere with his exercise of that discretion.

It is one thing to do so knowing that the respondents have been given an opportunity to justify their exercise of that discretion but have elected not to do so. It is quite another to interfere with the discretion in circumstances where the papers show conclusively that the respondents have not been given any meaningful opportunity to appear before me and defend their exercise of the discretion.

At this stage therefore I am disinclined to make an
10 order on the application. I will remove the matter from the roll. However, if the funeral is postponed to enable Doctor Rathete to attend it, I will give the applicant leave on proper notice to the respondents to re-enrol the matter before me in my urgent court on Tuesday 7 January at 10am. It may at that point be possible to consider the application on its merits, if it is still live.

At this stage, however, although I am acutely sympathetic to Doctor Rathete's situation, there is no basis for me to step in and interfere with the exercise of the
20 section 44 discretion in circumstances where I know that the respondents have been given no reasonable opportunity to justify their exercise of that discretion, notwithstanding the fact that the applicant and his legal representatives could and should have informed the respondents that they would have such an opportunity this evening at 8:30.

For all those reasons I make the following order:

1: The matter is removed from the roll.

2: There is no order as to costs.

[**JUDGE'S NOTE:** After I gave judgment, Dr. Rathete's mother's funeral was postponed to 10 January 2025. Dr. Rathete's application for temporary release was then renewed in my urgent court on 7 January 2025. On 9 January 2025, the parties consented to an order allowing
10 Dr. Rathete to attend his mother's funeral under escort between the hours of 8am and 1pm on Friday 10 January 2025.]



WILSON, J
JUDGE OF THE HIGH COURT
13 January 2025