

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

Case Number: **2025-023913**

|                      |                                                                                   |
|----------------------|-----------------------------------------------------------------------------------|
| (1)                  | REPORTABLE: NO                                                                    |
| (2)                  | OF INTEREST TO OTHER JUDGES: NO                                                   |
| (3)                  | REVISED: YES                                                                      |
| <u>27 MARCH 2025</u> |  |
| DATE                 | SIGNATURE                                                                         |

In the matter between:

**JERMAINE PRIM**

Applicant

and

**THE MINISTER OF CORRECTIONAL SERVICES**

First Respondent

**THE NATIONAL COMMISSIONER OF  
CORRECTIONAL SERVICES**

Second Respondent

**THE HEAD OF C-MAX KGOSI MAMPURU II  
CORRECTIONAL CENTRE**

Third Respondent

**THE AREA COMMISSIONER JOHANNESBURG  
MANAGEMENT AREA**

Fourth Respondent

**THE REGIONAL COMMISSIONER OF GAUTENG  
REGION**

Fifth Respondent

***Delivered:*** This judgment 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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 27 March 2025.

---

## **JUDGMENT**

---

KUBUSHI, J

[1] The purpose of this application is said to be to remove the Applicant from the unlawful segregation where he is currently detained. The application is brought in two parts, namely, Part A and Part B. Part A of the application entails the unlawful segregation or solitary confinement of the Applicant where he is currently held at C Max section of the Kgosi Mampuru Correctional Centre (“C Max”). Part B of the application has to do with the transfer back to his remand centre and will only be adjudicated in due course.

[2] Essentially, in Part A of the application, the Applicant seeks interim interdictory relief for an order to the effect that pending the final determination of the relief sought under Part B of the application, the First and/or Second and/or Third Respondents be ordered to transfer the Applicant from C Max or detention cells to the local remand centre of Kgosi Mampuru Correctional Centre (“local remand centre”) within 24 hours of service of the order.

[3] In Part B of the application, the Applicant seeks to review and set aside a decision by the Fourth and Fifth Respondents to firstly, transfer the Applicant from Johannesburg Correctional Centre to C Max; secondly, to extend the Applicant’s C Max detention to longer than 18 months in terms of the Standard Operating Procedures; and thirdly, to continuously detain the Applicant in solitary confinement and/or segregation.

[4] This court is ceased only with Part A of the application. Part B of the application is to be determined in due course.

[5] The Applicant is said to be an awaiting trial inmate,<sup>1</sup> currently detained at C Max, where he has been awaiting trial for almost two years now. Prior to his incarceration there, he was detained and was awaiting trial at Johannesburg Correctional Centre for almost four years.

[6] The Applicant was transferred from Johannesburg Correctional Centre to C Max after he was, on two occasions, found in possession of unauthorised contrabands in the form of three cell phones. It was also discovered that he used the said devices to victimize and threaten some members of the community from Eldorado Park. As a result, his profile was classified as high risk. A decision was taken by the National Commissioner to transfer him to C Max, where he was to be detained until the finalisation of the cases against him.

[7] The Applicant has approached court on an urgent basis on the ground that he is kept in solitary confinement or is segregated, particularly because he has no human interaction. It is said that he is kept in a single cell, which are the only cells that C Max has, for 23 hours without any meaningful human interaction. According to the Applicant, the only human interaction he has is when food is pushed through a small latch in his door; he does not see people; he does not speak to anyone in a meaningful way; and has been cut off from the outside world. His so-called exercise is one hour in a cage, and his two-minute shower each day is also in a cage. This, he says, is solitary confinement, which is unlawful. Thus, he requires to be moved to the local remand

---

<sup>1</sup> An inmate is defined in section 1 of the Correctional Services Act 111 of 1998 as meaning “any person, whether convicted or not, who is detained in custody in any correctional centre or remand detention facility or who is being transferred in custody or is en route from one correctional centre or remand detention facility to another correctional centre or remand detention facility”.

centre pending the outcome of Part B of the application, so that he can have that meaningful human interaction.

[8] The Respondents are opposing the application, and have, in addition to the defence on the merits, raised a number of *in limine* points like urgency, failure to adhere to internal remedies before approaching court, and approaching court for interdictory relief instead of by means of the Promotion of Administrative Justice Act (“PAJA”)<sup>2</sup> since the decisions sought to be set aside are administrative decisions.

[9] In argument for and against the grant of the relief sought by the Applicant, I was referred to the judgments in *Mncube and Another v Minister of Correctional Services and Others* (“*Mncube*”),<sup>3</sup> by the Applicant’s counsel and in *Modack v Regional Commissioner, Western Cape, of the Department of Correctional Services and Another* (“*Modack*”),<sup>4</sup> by the Respondents’ counsel.

[10] This being the urgent court, urgency must be decided first. Urgency is regulated in terms of rule 6(12) of the Uniform Rules of Court, which provides as follows:

“Rule 6(12)

a. In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.

b. In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.”

---

<sup>2</sup> Act 3 of 2000.

<sup>3</sup> [2024] ZAGPPHC 1157.

<sup>4</sup> [2022] JOL 54621 (WCC).

[11] For the Applicant to succeed in this application, he must show why this application should be heard in the urgent court, and why he claims he cannot be afforded substantial redress in due course.

[12] Based on the reasons that follow hereunder, it is my view that this matter is not urgent, and that the Applicant will be afforded substantial redress in due course.

[13] The Applicant contends that the urgency in this application stems from his continued unlawful detention in C-Max under segregation or solitary confinement. The court in *Mncube*, correctly so in my view, held that “*if a prisoner is incarcerated unlawfully, an application to rectify the position is inherently urgent*”.<sup>5</sup> It is therefore, for the Applicant to show that he is unlawfully incarcerated in order to found urgency in this matter.

#### *Section 30 of the Correctional Services Act*

[14] According to the Applicant, it is clear from the founding papers that the current interdict is specifically brought under section 30 of the Correctional Services Act, in that the Applicant may not be segregated for longer than 30 days. The Applicant argues that he has now been in segregation for more than 2 years and his detention conditions currently amount to torture.

[15] Section 30 of the Correctional Services Act provides, in relevance, that –

#### “30 Segregation

- (1) Segregation of an inmate for a period of time, which may be for part of or the whole day and which may include detention in a single cell, other than normal

---

<sup>5</sup> Above n 3 at para 14.

accommodation in a single cell as contemplated in section 7(2)(e), is permissible—

- (a) upon the written request of an inmate;
- (b) to give effect to the penalty of the restriction of amenities imposed in terms of section 24(3)(c) or (5)(c) to the extent necessary to achieve this objective;
- (c) if such detention is prescribed by the correctional medical practitioner on medical grounds;
- (d) when an inmate displays violence or is threatened with violence;
- (e) if an inmate has been recaptured after escape and there is a reasonable suspicion that such inmate will again escape or attempt to escape; and
- (f) if at the request of the South African Police Service, the Head of the Correctional Centre considers that it is in the interests of the administration of justice.

- (2) (a) An inmate who is segregated in terms of subsection (1)(b) to (f)—
  - (i) must be visited by a correctional official at least once every four hours and by the Head of the Correctional Centre at least once a day; and
  - (ii) must have his or her health assessed by a registered nurse, psychologist or a correctional medical practitioner at least once a day.
- (b) Segregation must be discontinued if the registered nurse, psychologist or correctional medical practitioner determines that it poses a threat to the health of the inmate.
- (3) A request for segregation in terms of subsection (1)(a) may be withdrawn at any time.
- (4) Segregation in terms of subsection (1)(c) to (f) may only be enforced for the minimum period that is necessary and this period may not, subject to the provisions of subsection (5), exceed seven days.

- (5) If the Head of the Correctional Centre believes that it is necessary to extend the period of segregation in terms of subsection (1)(c) to (f) and if the correctional medical practitioner or psychologist certifies that such an extension would not be harmful to the health of the inmate, he or she may, with the permission of the National Commissioner, extend the period of segregation for a period not exceeding 30 days. . . ”

[16] From a proper reading of the section as set out above, reliance by the Applicant on this section is misplaced. The section provides that segregation of an inmate for a period of time may include detention in a single cell other than normal accommodation in a single cell as contemplated in section 7(2)(e) of the Correctional Services Act. Section 7(2)(e) provides that the National Commissioner may accommodate inmates in single or communal cells depending on the availability of accommodation. It means that inmates may be kept in single cells as normal accommodation.

[17] It is common cause that C Max is a single cell facility. All the inmates at C Max are detained in single cells. Therefore, single cells are normal accommodation at C Max. Section 30 of the Correctional Services Act, when read together with section 7(2)(e) thereof, makes it clear that other than C Max, where inmates are only accommodated in single cells, there are other facilities like the Johannesburg Correctional Centre and the local remand centre where there are common cells in which more than one inmate may be accommodated in the same cell. Those facilities also have single cells where, for example, inmates who have been found with contrabands or have offended, are placed as punishment for a specific duration of time. The duration of such incarceration may normally be part of or the whole day and may not exceed a period of seven days.<sup>6</sup> The period of segregation can, also, be extended to a period not exceeding 30 days, with the permission of the Commissioner if the correctional medical practitioner or psychologist has certified that such an extension will not be harmful to the health of the inmate.<sup>7</sup>

---

<sup>6</sup> Section 30(4) of the Correctional Services Act.

<sup>7</sup> See section 30(5) of the Correctional Services Act.

[18] Therefore, section 30 of the Correctional Services Act does provide for segregation of inmates. However, the segregation in terms of that section, does not relate to inmates held at C Max. It is in respect of inmates who are detained in facilities that have communal cells as well as single cells.<sup>8</sup> Furthermore, segregation in terms of section 30 of the Correctional Services Act is granted only for the various reasons that are tabulated in subsection 1(a) to (f) of that section. At C Max, inmates are detained for security reasons and security is not one of the reasons proffered in section 30 of the Correctional Services Act. In terms of section 7(2)(d) of the Correctional Services Act, the National Commissioner may detain inmates of specific age, health or security risk categories separately. This is where C Max comes in. Undoubtedly, section 30 of the Correctional Services Act does not pertain to the detention of inmates at C Max. It can, therefore, not be said that the Applicant has been segregated in contravention of section 30 of the Correctional Services Act. Reliance on this section by the Applicant is misplaced.

[19] In terms of the Correctional Services Act, accommodation in a single cell at C Max is not regarded as segregation or solitary confinement, as the Applicant seeks to argue. C Max is a single cell facility where the duration of incarceration may not be longer than 18 months as *per* the Standard Operating Procedures thereof. At C Max, there are no other cells, accommodation in a single cell is normal accommodation. Inmates are incarcerated there for security reasons.

[20] It can be said that since the inmates at C Max have been removed from their respective centres of origin and kept in single cells at C Max, they are in segregation or solitary confinement. However, such segregation or solitary confinement is lawful since it is not in contravention of the provisions of the Correctional Services Act. This is not in dispute.

---

<sup>8</sup> See section 7(2)(e) of the Correctional Services Act.



### *Standard Operating Procedures*

[21] Nevertheless, the Applicant argues that his continued detention at C Max is unlawful as it does not comply with the Standard Operating Procedures of the Respondents, which require that an offender should not be kept at C Max for a period in excess of 18 months without prior application for the extension of the period of detention.

[22] On the evidence before this court, the Applicant was transferred to C Max on 8 November 2022. The period of 18 months expired roughly in May 2023. The Standard Operating Procedures require the centre of origin to have applied for the extension of the incarceration period before its expiry if it had wished for the period to be extended. No such application was ever made. In the absence of such an application, the Standard Operating Procedures enjoin the centre of origin to collect the inmate from C Max before the expiry of 14 days after the expiry of the 18 months. This was also not done.

[23] In the meanwhile, the Applicant's mother, Bridget Prim, lodged a complaint with the National Commissioner. An executive report was prepared for the National Commissioner with a recommendation that the National Commissioner approve the recommendation that the Applicant be detained and kept at C Max until his cases are finalised. On 18 September 2024, the National Commissioner approved the recommendation. It is the Respondents' submission that in approving the recommendation, the National Commissioner took a decision to extend the Applicant's incarceration period in excess of 18 months.

[24] The Applicant ignores the decision of 18 September 2024 by the National Commissioner, which is annexed to the Respondents' answering affidavit. The decision specifically states that the Applicant must be detained and kept at C Max until

his cases have been finalised. The question is, does this decision extend the Applicant's period of detention at C Max in excess of 18 months?

[25] As *per* the Respondents' Standard Operating Procedures, an offender may not be detained at C Max for a period longer than 12 to 18 months. However, in exceptional circumstances, where it is required for an offender to be incarcerated at C-Max for a period in excess of 18 months, written application must be submitted by the centre/ region of origin, to be approved by the National Commissioner or his/ her delegate. Should this rule not be applied, the offender must be collected by the centre/ region of origin. In the *Mncube* case, to which I was referred by the Applicant's counsel, the court held that failure by the centre/region of origin to apply for the extension of the detention period in excess of 18 months, rendered further detention unlawful.

[26] However, in this instance, there is a decision which was taken by the National Commissioner extending the incarceration of the Applicant at C Max. The said decision was not taken based on an application made by the centre /region of origin nor was it made prior to the expiration of the period of eighteen months. However, such a decision is in existence. It is still extant as it has not been set aside by a competent court.

[27] The Constitutional Court, in the case of *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute ("Kirland")*,<sup>9</sup> held that the essential basis of *Oudekraal* was that invalid administrative action may not simply be ignored, but may be valid and effectual, and continue to have legal consequences, until set aside by proper process. The court further found that formally applying to a court to set aside a decision, gives the reviewing court the opportunity to properly consider all the effects of that decision on those subject to it.<sup>10</sup> Therefore, it is my view that until set aside, the National Commissioner's decision of 18 September 2024

---

<sup>9</sup> 2014 (3) SA 481 (CC) at para 101.

<sup>10</sup> *Id* at para 64. See also *Modack* above n 4 at para 13.

remains extant. That decision has extended the Applicant's incarceration in excess of 18 months. The Applicant's continued incarceration at C Max cannot be said to be unlawful.

[28] The decision that I come to in this regard differs from that taken by Snyman J in *Mncube*. In that judgment, there was a decision that was made by the Acting Deputy Regional Commissioner refusing that the first applicant be returned to the centre of origin because he was attending a critical case. That decision, I agree, was wrongly taken and did not comply with the provisions of the Standard Operating Procedures on many facets. First and foremost, it is correct, as Snyman J found, that there was no application made by the centre of origin as required by the Standard Operating Procedures, secondly, the decision was not made by the National Commissioner as enjoined by the Standard Operating Procedures, and lastly, the reason for the extension of the incarceration period was not in terms of either the Correctional Services Act or the Standard Operating Procedures. Nonetheless, a decision had been made, whether wrongfully or otherwise, it had been taken. Following on *Kirland*, such decision remained extant until set aside by proper process. Snyman J declared the incarceration of the first applicant unlawful despite that decision. I do not align myself with the decision of Snyman J, in that regard.

[29] Where I agree with Snyman J is in refusing to make any findings in relation to the circumstances in C Max, and correctly so, left same for determination by the reviewing court. This is a similar route that this court takes because the National Commissioner's decision of 18 September 2024 is an administrative decision that ought to be reviewed in order to be set aside.

[30] As demonstrated, neither section 30 of the Correctional Services Act nor the Standard Operating Procedures of the Respondents come to the assistance of the Applicant's case, which shows that this matter is not urgent. The Applicant is still to be afforded substantial redress in due course.

*The type of relief sought*

[31] What further makes this application not urgent, is the type of relief the Applicant seeks. The relief, if granted, will have the effect of tempering with the decision of the of 18 September 2024 by the National Commissioner that the Applicant seeks to review and set aside in Part B of the application.

[32] The relief the Applicant seeks in prayers 2 and 2.1 of the notice of motion is for this court, pending the final determination of the relief sought in Part B of the notice of motion, to order the First and/or Second and/or Third Respondents to transfer the Applicant from the C Max section or detention cells to the local remand centre of Kgosi Mampuru Correctional Centre within 24 hours of service of the order. Yet, there is a decision of the National Commissioner which transferred the Applicant from the Johannesburg Correctional Centre to C Max. There is, as well, a decision of the National Commissioner, as I have found, that extended the Applicant's detention beyond the cut off period of 18 months. The challenge for the Applicant is that the relief cannot be granted whilst the decision of the National Commissioner, is still extant.

[33] The Constitutional Court, in *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* ("Economic Freedom Fighters"),<sup>11</sup> remarked that

"[47] Turning to the present matter, it should be borne in mind that both applicants seek urgently to appeal an interim interdict, which is purely interlocutory in nature. An interim interdict is a temporary order that aims to protect the rights of an applicant, pending the outcome of a main application or action. It attempts to preserve or restore the status quo until a final decision relating to the rights of the parties can be made by the review court in the main application. As a result, it is not a final determination of the rights of the parties. It bears stressing that the grant of an interim interdict does not, and should not, affect the review court's decision when making its final decision

---

<sup>11</sup> 2020 (6) SA 325 (CC).

and should not have an effect on the determination of the rights in the main application. The purpose of an interdict is to provide an applicant with adequate and effective temporary relief.” (footnotes omitted)

[34] The *status quo* in this matter, which the interdictory relief should preserve or restore until the review application has been finally decided, is the Applicant’s continued incarceration, which has been found not to be unlawful. The interdictory relief should not be used to finally determine the rights of the Applicant to be removed from C Max despite the pending review. If an order is made to remove the Applicant from C Max to the remand centre, it will be tantamount to setting aside the National Commissioner’s decision which the Applicant seeks to set aside in Part B of the application. As emphasised in *Economic Freedom Fighters*, the grant of an interim interdict does not, and should not, affect the review court’s decision when making its final decision and should not have an effect on the determination of the rights in the main application. This, in a sense, makes this application not urgent.

[35] In the premises, for lack of urgency, the application is struck from the roll with costs.

  
  
E M KUBUSHI  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

APPEARANCES:

|                      |                             |
|----------------------|-----------------------------|
| For the Applicant:   | Adv R Britz                 |
| Instructed by:       | Brandon-Swanepoel Attorneys |
| For the Respondents: | Adv Z Mokatsane             |
| Instructed by:       | State Attorney              |
| Date of the hearing: | 11 March 2025               |
| Date of judgment:    | 27 March 2025               |