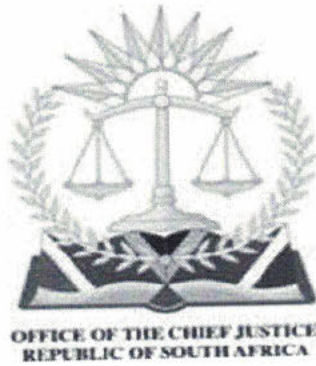




IN THE HIGH COURT OF SOUTH AFRICA

(Gauteng Division, Pretoria)

Case no: 038699/2025

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

DATE: 30 APRIL 2025

SIGNATURE

Judgment Reserved: 10 APRIL 2025

Judgment handed down: 30 APRIL 2025

In the matter between:

PRINCE CHARLES OBI

APPLICANT

And

THE MINISTER OF CORRECTIONAL
SERVICES

FIRST RESPONDENT

THE NATIONAL COMMISSIONER
OF CORRECTIONAL SERVICES

SECOND RESPONDENT

THE HEAD OF C-MAX KGOSI

MAMPURU 11 CORRECTIONAL CENTRE THIRD RESPONDENT

THE AREA COMMISSIONER

OF LEEUWKOP CORRECTIONAL CENTRE FOURTH RESPONDENT

THE HEAD OF LEEUWKOP

CORRECTIONAL CENTRE

FIFTH RESPONDENT

JUDGMENT

STRIJDOM, J

1. In this application the applicant seeks an interim interdict and order in the following terms:
 - 1.1 That no-compliance with the rules of this Court be condoned and that the matter be heard and dealt with as urgent in terms of rule 6(12)(a) of the Rules.
 - 1.2 That an interdict is issued pending the final determination of an application which is currently pending in the Pretoria High Court under case number 2024-104661, in the following terms:
 - 1.2.1 The first and/or second and/or third respondents are ordered to transfer the applicant from the C-Max section or detention cells to the Maximum-security Correctional Centre Group B, of Kgosi Mampuru Correctional Centre (B Max) within 24 hours of service of the order.

2. The applicant was sentenced on 26 February 2013 to life imprisonment. In July 2024, he was found in possession of a cellular phone and subjected to a disciplinary hearing by the Leeuwkop Centre. As a disciplinary measure, he was transferred on 25 July 2024 from Leeuwkop Correctional Centre to C-Max Correctional Centre, Kgosi Mampuru 11 Management Area.

3. In November 2024, the applicant instituted an application in this Court against the respondents for the review of the decision to transfer him in terms of the Promotion of Administrative Justice Act, 3 of 2000.
4. The previous urgent application was struck from the roll due to a lack of urgency. It was premised thereon that the applicant was unlawfully transferred from Leeuwkop Prison to G-Max. The previous application did not deal with the continued segregation under which the applicant is currently detained.
5. At the commencement of this application I ruled that the application is urgent.
6. The applicant's contention is that he is kept or incarcerated in a cell approximately 2m x 2,5m for at least 23 hours a day, with no windows, no sunlight, and no concept of time. He is now been in segregation for more than 8 months. He is not allowed to have a watch or a calender. The only human interaction he has is when food is pushed through a small latch in his door. He does not see people or are able to speak to anyone in a meaningful way.
7. The applicant alleges that the exercise is a maximum of 1 hour in a cage, and 2 minutes' shower each day in a cage. He alleges that the respondents disappointed him and the nurse or medical doctor do not come for his health checks daily. The applicant's main contention is that his mental, emotional and physical health is deteriorating due to the fact that he is held in a solitary confinement which is unlawful.
8. It is common cause that the applicant was transferred from Leeuwkop Prison to C-Max prison after a disciplinary hearing was conducted. C-Max and Ebonweni Correctional facilities are the only facilities of their kind that provide single-cell accommodation for incarceration.¹ C-Max is established to cater for high profile inmates.

¹ Caselines: AA p02-129 para 2.7

9. It was contended on behalf of the respondents that the C-Max cells are single cells with an area length of 2,4 metres, a width of 2,1 metres, a height of 4 metres and the area of square metres is 5,4 metres.
10. It was further contended that the applicant is incarcerated in a single cell like all the other inmates. They are allowed limited activities such as exercise, visiting a psychologist and taking a shower. The applicant receives food daily and is allowed 2 (two) visits in a month and 2 (two) calls in a week to interact with his family.² The applicant is in phase 2 and the number of inmates is roughly sixty. In phase 1 they are handcuffed when they leave the cells but not handcuffed when exercising. They are allowed two (2) phone calls per month, but they are allowed to request more if there is a valid reason and normally the Centre allows them to call.³
11. It was submitted by the respondents that should the Court grant this order it will open the floodgates that all inmates who are kept at the C-Max prison will ask to be transferred which will accordingly fail the system and the respondents will not have a place to keep the high-profile inmates who are a danger to the society and security of the society.

Applicable Legislation

12. The Correctional Services Act 111 of 1998 intends:
- 12.1 to provide for a correctional system;
 - 12.2 the establishment, functions and control of the Department of Correctional Services;
 - 12.3 the custody of all prisoners under conditions of human dignity; and
 - 12.4 the rights and obligations of sentenced prisoners.

² Caselines: AA p02-131 para 8.3.

³ CaselinesL: AA p02-134 para 14

13. The Bill of Rights contained in Chapter 2 of the Constitution protects the rights of all, including those of prisoners. Section 35 protects detainees, including sentenced prisoners, against conditions that are inconsistent with human dignity.
14. The Correctional Services Act, its regulations and the Standard Operating Procedures for C-Max ("SOP") provide for certain standards that must be adhered to in detention centres. Specific standards and procedures have been laid down for the treatment of prisoners in maximum security facilities such as C-Max.
15. The SOP provides that prisoners are subjected to a mandatory three-phase treatment program for a minimum of 12 to 18 months. The intention with a prisoner's incarceration at C-Max is to prepare them for integration into another maximum correctional facility and not to detain him at C-Max indefinitely.⁴
16. "No offender may be kept at C-Max Correctional Facility for more than 12 to 18 months unless risks posed dictate otherwise and pre-approval is granted ... (Clause 4.2.3.2).

In exceptional circumstances, where it is required for an offender to be incarcerated at C-Max Correctional Facility for a period longer than 12 to 18 months, written application must be submitted by the center 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 center/region of origin "(Clause 4.2.3.3).

17. In terms of the SOP, the applicant can be detained for (18) months in C-Max. It is now approximately (9) months since the applicant has been transferred.
18. If the interdictory relief sought is interim in effect, form and substance the applicant must establish the following to succeed:

⁴ Caselines: AA p02-127 para 2.5

- (a) A prima facie right, even though open to some doubt;
- (b) A well-grounded apprehension of irreparable harm if interim relief is not granted;
- (c) A balance of convenience in their favour; and
- (d) The lack of another remedy is adequate in the circumstance.

Prima facie right

19. The manner in which a Court should evaluate whether a prima facie right has been established was set out in *Simon NO v Air Operation of Europe ABE and Others* 1999 (1) SA 217 (SCA) at 228 F-1, as follows:

“Insofar as the appellant also sought an interim interdict pendente lite, it was incumbent upon him to establish, as one of the requirements for the relief sought; a prima facie right, even though open to some doubt. The accepted test for a prima facie right in the context of an interim interdict is to take the facts averred by the applicant together with such facts set out by the respondent that are not or cannot be disputed and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered and, if serious doubt is thrown upon the case of the applicant, he cannot succeed.”

20. For the applicant it was contended that the applicant has the right to dignity, the right to be protected against inhumane treatment and the right to fair and just detention which were all infringed upon for a continuous duration.

21. A reasonable prospect of success in the main action is a useful indication when considering applications for interim interdicts. In my view the applicant must in order to bring prima facie proof of a right, establish a case founded on the greatest probabilities.

22. In respect of the applicant's success in the main action, the probability that a Court would interfere with the discretion of the Area Commissioner to transfer the applicant to C-Max is not strong and does not favour the applicant.
23. The rights in terms of the Constitution are limited in terms of section 36. The applicant is a prisoner and does not have the right to live freely as he wants or as he wishes. He cannot dictate to how his incarceration should be. The Correctional Services Act, the Regulations and the SOP is a tool used to limit the inmate's rights.
24. The applicant relies on the decision in *Mncube and Another v Minister of Correctional Services & Others*⁵. The facts in *Mncube* are distinguishable from the present matter.
25. In *Mncube* the applicant was incarcerated for more than 4 (four) years. The Court accepted that an inmate can be incarcerated for 18 months. The Court held that four years is unreasonable. The Court held that the applicant has been incarcerated at C-Max longer than the SOP's provide for and no application has been brought to extend the period. The Court concluded that the applicant has been detained unlawfully in C-Max beyond the 18-month period.
26. The respondents deny that the applicant has been in solitary confinement as the CSA provides for segregation and not solitary confinement.
27. I conclude that the SOP provides that the applicant can be kept in C-Max for a period of between twelve to eighteen months. He is still within the period prescribed and there are no exceptional circumstances which warrant his release at the C-Max. The Act read with the regulations provide for measures to cater for the applicant's wellbeing.

⁵ 2025 (1) SA CR 412 GP

Irreparable harm

28. A reasonable apprehension of injury is one which a reasonable man might entertain when faced with certain facts. The test is objective.⁶

29. It was argued by the applicant that he stands to suffer irreparable harm should the respondents continue to ignore their obligations and continue to unlawfully detain the applicant in C-Max in segregation.

30. It was pointed out by the respondents that C-Max was specifically designed as a single cell for all high-security profile inmates and its specification has been approved by the legislation. The treatment that is given to the applicant is given to all the inmates, which is acceptable according to the standards stated in the Act.

31. In my view the applicant is not unlawfully detained in C-Max. The SOP provides that the applicant should stay at C-Max for a period of between 12 to 18 months. I am not persuaded that under the circumstances the applicant will suffer any prejudice pending the review application. The infringement of his rights is not proved based on substantial grounds.

Balance of convenience

32. The essence of the balance of convenience is to assess which of the parties will be least seriously inconvenienced by being compelled to endure what may prove to be a temporary injustice until the answer can be found at the end of the trial.

33. The balance of convenience is inextricably bound up with the discretion of the Court.

⁶ See National Council of Societies for the Prevention of Cruelty to Animals v Openshaw 2008 (5) SA 339 (SCA).

34. I am of the view that there is a greater possible prejudice to the respondents than that of the applicant if an interim interdict is granted.

35. An interim interdict will open a floodgate for inmates who are kept in prison to be transferred to different sections in C-Max. If such an order is granted the respondents will not be able to accommodate the prisoners who might follow the precedent the Court might have given as C-Max at Empangeni is the only facility that is suitable to cater for inmates such as the applicant who pose a high risk to society.⁷

Alternative remedy

36. "It is also clear that the grant of an interdict is a discretionary remedy. One of the main factors which the Court is enjoined to take into account in deciding whether to exercise its jurisdiction is whether there is any other remedy open to the applicant which can adequately protect him in his rights."⁸

37. In November 2024, the applicant instituted an application in this Court against the respondents for the review of the decision to transfer him from Leeuwkop Prison to C-Max prison in terms of PAJA. The review application is still pending.

38. In my view there is a remedy open to the applicant which can adequately protect him in his right. If the applicant succeeds in the review application, he might be transferred back to the center/region of origin.

Conclusion

⁷ Caselines: AA p02-137 para 16.1

⁸ See Johannesburg Consolidated Investment Co Ltd v Mitchmor Investments (Pty) Ltd and Another 1971 (2) SA (WLD) 404 E-F.

39. The exercise of my discretion ultimately turns on the balance of convenience as already indicated, the balance of convenience favour the respondents

40. In the exercise of my general discretion I am of the view that the applicant did not establish the requisites for an interim interdict.

41. In the result the following order is made:

1. The application is dismissed.
2. The applicant is ordered to pay the costs of the respondents on a party and party Scale B.
3. The respondents is ordered to pay the wasted costs of the applicant as tendered for 8 April 2025 on a party and party Scale B.



JJ STRIJDOM

JUDGE OF THE HIGH COURT OF SOUTH-AFRICA,
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the applicants:

Adv R Britz

Instructed by:

Brandon Swanepoel Attorneys

For the first to sixth respondents:

Adv MC Baloyi-Mbembele

Instructed by:

State Attorney