



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

CASE NO.: 073384/2025

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
 SIGNATURE	
27/June 2025 DATE	

In the matter between:

ROTONDWA JETHRO RALIPHASWA

APPLICANT

and

MINISTER OF CORRECTIONAL SERVICES

FIRST RESPONDENT

**NATIONAL COMMISSIONER OF CORRECTIONAL
SERVICES**

SECOND RESPONDENT

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

THIRD RESPONDENT

**REGIONAL COMMISSIONER OF
GAUTENG REGION**

FOURTH RESPONDENT

HEAD OF ODI CORRECTIONAL CENTRE

FIFTH RESPONDENT

JUDGMENT

CORAM NTHAMBELENI, AJ

HEARD: 17 June 2025

DELIVERED: 27 June 2024

INTRODUCTION

[1] This is an urgent review application, whereby the applicant seeks various relief¹ as well as a costs order against the respondents. The applicant is an inmate serving a sentence for murder and was transferred to the C-Max Kgosi Mampuru from ODI Correctional Services Facility. The basis of this urgent review application was brought due to the transfer of the applicant from the ODI Correctional Services Facility in January 2025 to Kgosi Mampuru II Correctional Centre C-Max Section (Kgosi Mampuru).

[2] The Applicant was found guilty and convicted of murder in 2021. The court imposed a sentenced of 15 years imprisonment on him with half thereof

¹ See prayers contained in the applicant's Notice of Motion at 02; 02-2 to 02-5.

suspended. He was detained at ODI Correctional Centre (ODI). In December 2024, while conducting a routine search of the prisoners and the prison cells, the Department's prison officials found a cellular device (cell-phone) in the applicant's possession. This allegation is not denied by the applicant and it is also common cause between the parties that a prison inmate is prohibited from being in possession of a cell-phone.

- [3] The contents of the cell-phone were searched by the prison officials and therein they discovered the pictures of some of the Department's officials as well as some conversations between the Applicant and some prison officials.
- [4] The applicant was then moved to the C Section of the ODI Correctional Centre, and detained in a single cell to allow for further investigation to be carried out. In scrutinising the applicant's offence, which negatively impacted the well-being of some prison officials in the facility, it was deemed appropriate, for safety reasons, to transfer the Applicant from ODI to Kgosi Mampuru II Correctional Centre C-Max Section (Kgosi Mampuru).
- [5] The applicant had been found in possession of a cell phone in the cells before. In this regard we refer to annexure A² to the answering affidavit. His continued acquisition of cell phones and the capturing of the pictures of some of the prison officials and contact with some of the prison officials posed a serious security threat to the correctional facility and its officials as well as to the safekeeping of his person.

² See annexure A to the Answering Affidavit at page 06-24.

- [6] The Department took a security conscious decision to transfer the applicant to Kgosi Mampuru. Kgosi Mampuru (C-Max) in a single cell section. It was submitted that the facility is similar to the C-Section at ODI.

THE URGENT REVIEW APPLICATION

- [7] In an urgent review application such as this, the rules require the absence of substantial redress³. Once such prejudice is established, other factors to be considered include, but are not limited to: whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondents and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights⁴. Each case should be determined based on its own merits.
- [8] The applicant submits that this application is urgent in terms of **Rule 6(12) of the Uniform Rules of Court**⁵ and warrants immediate judicial intervention. Rule 53 has to be read in conjunction with Uniform Rule 6, the long form of which can be departed from in cases of urgency and it does not have to be coupled with a prayer for interim relief.⁶

³ *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196 (23 September 2011) at par 6-7.

⁴ *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo* 2016 (4) SA 99 (GP) at par 64.

⁵ See Applicant's Heads of Arguments at page paragraph 2 (unnumbered pages).

⁶ *Safcor Forwarding (Pty) Ltd v NTC* 1982 (3) SA 654 (A) at 675B-H.

- [9] The applicant has been detained in C-Max since **13 January 2025**, enduring conditions of extreme isolation, and restricted human contact for over four months. These conditions, described in detail in the Founding Affidavit (paragraphs 5.2–5.9), amount to solitary confinement, which is recognised as causing severe psychological and physical harm⁷.
- [10] The applicant is locked in a small cell approximately 2m x 2.3m for at least 23 hours a day, with no windows, no sunlight, and no concept of time. He is not allowed to have a watch or a calendar. 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.
- [11] The detention exceeds the 30-day limit for segregation prescribed by section 30(3) of the Act, rendering it unlawful and necessitating urgent relief. The absence of periodic reviews or justifications, as required by section 30(4), exacerbates the urgency.
- [12] It is noteworthy to point out that the practice at C-max Kgosi Mampuru is that of solitary confinement which was abolished under the new legislation. The Judicial Inspectorate for Correctional Services has raised these issues in every annual report. Page 9 of the 2023 2024 Annual Report states as follows:

"Unlawful solitary confinement - This practice persists at Ebongweni Supermaximum Correctional Centre and Kgosi Mampuru II C-Max. JICS initiated a study and hosted a seminar that vividly showed solitary confinement's adverse mental health effects. This resulted in reinvigorated engagements with DCS. Regrettably, JICS's reports on

⁷ See *Minister of Justice v Hofmeyr* 1993 (3) SA 131 (A); *Mahlangu v Area Commissioner* at para [52]).

solitary confinement to the previous Parliamentary Portfolio Committee have not produced interventions.to the previous Parliamentary Portfolio Committee have not produced interventions."

- [13] The applicant's rights under sections 10 (dignity), 12 (freedom and security of the person), and 35(2)(e) (humane detention conditions) of the Constitution are being violated daily. Each additional day in these conditions aggravates the harm and entrenches the unlawfulness.⁸
- [14] The applicant is eligible for parole consideration in July 2025.⁹ However, his detention in C-Max precludes him from appearing before the parole board, effectively extending his incarceration without lawful justification. This constitutes immediate prejudice requiring urgent relief.
- [15] The respondent's contention that urgency is self-created is misplaced. The urgency stems not from the date of transfer but from the ongoing and cumulative harm caused by prolonged solitary confinement¹⁰. The applicant acted promptly upon securing legal representation, as evidenced by his attorneys' letter to the Department on 14 May 2025.¹¹

APPLICABLE LEGISLATION

- [16] The Correctional Services Act 111 of 1998 intends:

⁸ See *Stanfield v Minister of Correctional Services* 2004 (4) SA 43 (C); *Mahlangu v Area Commissioner* at para [39].

⁹ (Founding Affidavit, para 5.15)

¹⁰ (*Mahlangu v Area Commissioner* at para [56]) *supra*.

¹¹ (Founding Affidavit, para 10.1)

- 16.1 to provide for a correctional system;
- 16.2 the establishment, functions and control of the Department of Correctional Services;
- 16.3 the custody of all prisoners under conditions of human dignity; and
- 16.4 the rights and obligations of sentenced prisoners.

[17] 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.

[18] 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 centers. Specific standards and procedures have been laid down for the treatment of prisoners in maximum security facilities such as C-Max.

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.¹²

[19] "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

¹² Caselines: AA p02-127 para 2.5

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).

[20] In terms of the SOP, the applicant can be detained for (18) months in C-Max. It is now approximately (6) months since the applicant has been transferred. If the interdictory relief sought is interim in effect, form and substance the applicant must establish the following to succeed:

- (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

[21] 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**¹³, 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

¹³1999 (1) SA 217 (SCA) at 228 F-1

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."

- [22] 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.
- [23] 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.
- [24] 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.
- [25] The applicant relies on the decision in **Mahlangu v Area Commissioner of Kgosi Mampuru II Prison**¹⁴. The facts in Mahlangu are distinguishable from

¹⁴ **Mahlangu v Area Commissioner of Kgosi Mampuru II Prison**¹⁴ (Case No. 093770/2024, Gauteng Division, Pretoria, 4 October 2024).

the present matter. The *Mahlangu* matter dealt with the issues pertaining the diet of a prisoner and right to adequate nutrition, which has nothing to do with the matter before this Court.

[26] The respondents in this matter deny that the applicant has been in solitary confinement as the CSA provides for segregation and not solitary confinement, *"The Applicant is not kept in segregation or in solitary confinement C-Max is a single cell facility where all inmates are accommodated under similar conditions and are all treated the same. They are all allowed limited activities such as exercise, visitation hours and taking a shower. In a prison context, segregation means isolating an inmate from the general prison population, typically in a separate unit or cell. Segregation, as contemplated in section 30 of the Act, does not apply to C-Max"*¹⁵.

[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.

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.¹⁶

¹⁵ See paragraph 10 of the Respondents' Heads of Arguments under Headings Merits at pages 10-11.

¹⁶ See *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA).

- [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. 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..

An interim interdict will open a floodgate for inmates who are kept in prison to be transferred to different sections in C-Max. The applicant in his own version is eligible for parole in July 2025 and thus if he is considered for release, his period of detention will be limited.

ALTERNATIVE REMEDY

[34] "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."¹⁸

[35] The respondents have argued that even though the applicant does not challenge the findings that resulted in his transfer to C-Max, he has alternative internal remedies to exhaust and failed to exhaust before approaching this Court for urgent relief.¹⁹

[36] In my view there is a remedy open to the applicant which can adequately protect him and his rights. If the applicant succeeds in the exhaustion of internal remedies, he might be transferred back to the center/region of origin.

¹⁸ See *Johannesburg Consolidated Investment Co Ltd v Mitchmor Investments (Pty) Ltd and Another* 1971 (2) SA (WLD) 404 E-F.

¹⁹ See paragraphs 5.9 to 5.16 of the Respondent's Heads of Arguments.

ANALYSIS OF THE MATTER BEFORE COURT

- [37] It is clear on the applicant's own version that the urgency of this matter commences from a transfer that started in December and the applicant has been detained with the third respondent since **13 January 2025**. The respondents provided the reasons for the transfer which are not disputed or denied by the applicant anywhere in his papers. The applicant has been living under the same conditions since the 13th January 2025 and nothing has changed according to the applicant's own version.
- [38] The period from the 13 January 2025 to the date of the hearing of this application before me being the 17 June 2025 is six (6) months and the applicant has been living under the same conditions and on his own papers it is the same conditions and nothing change that may have triggered the urgent application to have been brought in June 2025.
- [39] In **Roets N.O and another v SB Guarantee Company (RF) (Pty) Ltd and others**²⁰ the court found that the applicant had sat "on its laurels" and had unduly taken its time to approach the urgent court claiming irreparable harm. This led to the application being struck from the roll on the basis of "self-created urgency".
- [40] There is no explanation whatsoever provided by the applicant as to why his detention in C-Max has suddenly become a matter to be looked at on an urgent basis. The applicant does not allege any changes in the C-Max prison

²⁰ [2022] JOL 55628 (GJ) at [26]

conditions between January 2025 when he was transferred therein to the date of bringing this urgent application.

- [41] The high watermark of Counsel for the applicant's submissions is that the applicant is an inmate who is imprisoned and therefore a different criterion should be applied as he had difficulties in seeking legal representation to bring the urgent review application. Even on this argument the time-period of 6 months is unreasonable if the case of the applicant was urgent as alleged.
- [42] It is thus the finding of this Court that the applicant has thus sat "on its laurels" and had unduly taken its time to approach the urgent court and claiming irreparable harm, as was found in the **Roets N.O**²¹ case. Accordingly, this application stands to be struck from the roll on account of "self-created urgency"..
- [43] On the applicant's own papers, there is nowhere where the applicant alleges a new threat, either actual or implied from the respondents that will violate his rights that are already subject to limitation due to the fact that he is an inmate in prison. Once again when his Counsel was pressed in court, he made the submission that the applicant will become eligible for parole and as such his conditions should be improved for his re-integration within society.
- [44] It is trite law that parole is not a right, it is a rather a privilege and not a right that offenders can lay a claim to, "*A parolee remains at all times a sentenced*

²¹ Supra footnote 12.

prisoner and has no right to parole"²². Therefore, the statement that the applicant is eligible for parole doesn't render the matter urgent at all. It confirms that his case is that of self-created urgency that this Court should not entertain.

- [45] Therefore, based on the applicant's own papers the urgent application before me must fail as the urgency is clearly self-made as the transfer was made in January 2025 and the applicant brings this application in June 2025. It is important to also state that the statutory required period in this matter has not been exceeded at all as that may have justified the case of the applicant, however it is common cause between the parties that the transfer only happened in January 2025 and the application before me was brought in June.

CONCLUSION

- [46] This urgent application was brought in terms of the provisions of the Promotion of Administrative Justice Act No. 3 of 2000 (PAJA).²³ PAJA emphasises the importance of exhausting internal remedies before a person can seek judicial review of an administrative action.²⁴ Therefore, the law requires that where a law provides for review or appeal mechanism within the administration, these must be utilised before a person can approach the court. The objective is to allow for internal correction of decisions before they are subjected to a court's scrutiny.

²² See *Du Preez v Minister of Justice and Correctional Services* 2015 (1) SACR 478 (GP) para 12.

²³ See: paragraph 4 of the founding affidavit, at Caselines pagination 02-10

²⁴ Section 7(2) of PAJA

- [47] The Correctional Services Act No. 111 of 1998 ("the Act") provides that an inmate should be subjected to a disciplinary hearing if he commits a disciplinary infringement. It is a disciplinary infringement for an inmate to be in a possession of an unauthorised article such as a cell phone.²⁵ It is also a disciplinary infringement for an inmate to communicate with any person at a time when or place where it is prohibited²⁶. This offence would include the inmate's communication with the officials of the Department on a cell phone.
- [48] Where the inmate undergoes a disciplinary process and he is found guilty as the applicant in this matter, he has a right to appeal the decision to the National Commissioner.²⁷ The National Commissioner may confirm the decision or set it aside or make any appropriate order he deems fit.
- [49] The applicant in this matter has undergone a disciplinary process for his infringement and was found guilty as charged. This court was referred to annexures 'A' and "A" to the answering affidavit in this regard and the contents of the annexures are undisputed.
- [50] The applicant, having been found guilty, and if aggrieved by such a decision, was left with an internal remedy in the form of an appeal to the National Commissioner. The applicant failed to appeal the decision for review to the National Commissioner as contemplated by the Act. In doing so the applicant has failed to exhaust the internal remedies available within the Department.

²⁵ Section 23(1)(m) of the Act
²⁶ Section 23(1)(i) of the Act
²⁷ Section 24(7) of the Act

- [51] The applicant does not advance any reason before this Court or prevailing circumstances which would result in him suffering an irreparable harm if the matter is not heard on an urgent basis. The applicant alleges that his dignity is violated, he is tormented and psychologically stressed by the conditions in C-Max. However, he provides no evidence whatsoever to substantiate his allegations.

THE PAPERS AND COMPLIANCE WITH THE RULES AND PRACTICE DIRECTIVES

- [52] In this matter there was non-compliance with the practice directive of this division by both the applicant and the respondents. The respondents failed to comply with time frames to file their answering papers before this Court. They sought condonation that is set out at paragraph 7 of their heads of arguments. Due to the nature of this matter and the strict time frames in terms of the Practice Manual and my practice directives. The condonation is granted.
- [53] The applicant on the other hand filed a certificate of urgency that does not comply with the Practice Manual of this Division that set out in clear terms what should be contained in a certificate of urgency. As if that was not enough, the replying affidavit was filed by the attorney instead of the applicant. This Court despite the patch up explanation by Counsel of the applicant cannot countenance such a non-compliance with the rules of this Court.

[54] This Court is not a fire extinguisher of poorly conceived timelines, courts are constitutional platforms of justice and fairness and that is applicable on both sides of the parties before it. Therefore, this matter is not urgent and fails to fall within the ambit of Rule 6(12) (b) read with the Practice Manual, and directives of this Court.

[55] It is common cause between the parties that the applicant did not dispose the replying affidavit, but that his attorneys has done so on his behalf, for reasons which I do not intend to repeat herein. It is trite law that a replying affidavit must be deposed by the applicant himself/herself. I have raised my concerns in this respect with the applicant's Counsel. Therefore, the finding of this court is that the replying affidavit carries no probative value under the rules of evidence. Therefore, there is no reply before this Court, it is thus my considered view seeing that the replying affidavit has not been disposed to by the applicant himself, that there is was no replying affidavit before me, For this reason I am in agreement that

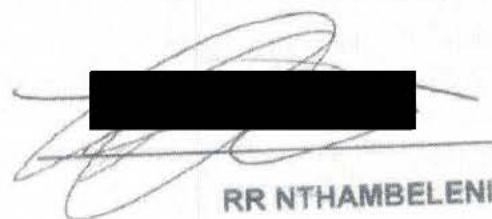
*"In the absence of a replying affidavit in the present application it was the applicant's submission that the applicant's version, as it stands in the answering affidavit, stands to be accepted as uncontested on those allegations that have challenged the content of the founding affidavit this much is trite."*²⁸

ORDER

[57] 1. The application is struck from the roll for lack of urgency;

²⁸ See **Nedbank Limited v Ramparsad and Another** (58806/2018) [2021] ZAGPPHC 746 (4 November 2021).

2. Applicants are ordered to pay costs on party to party scale B.



RR NTHAMBELENI
ACTING JUDGE GAUTENG DIVISION
PRETORIA

REPRESENTATION AND COUNSEL FOR THE PARTIES

FOR THE APPLICANTS: Adv Ruan Britz

INSTRUCTED BY: Brandon-Swanepoel Attorneys

REF: NJ009

FOR THE RESPONDENTS: Adv M Tjiana

INSTRUCTED BY: STATE ATTORNEYS, PRETORIA

ENQ: MS MMB MASIA