

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025/00035

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<u>3/06/2025</u>	
DATE	SIGNATURE

In the matter between:

RADOVAN KREJCIR

Applicant

VS

**HEAD OF PRISON, KGOSI MAMPURU
MAXIMUM CORRECTIONAL FACILITY**

1st Respondent

**AREA COMMISSIONER, DEPARTMENT
OF CORRECTIONAL SERVICE**

2nd Respondent

**REGIONAL COMMISSIONER, DEPARTMENT
OF CORRECTIONAL SERVICE**

3rd Respondent

**NATIONAL COMMISSIONER, DEPARTMENT
OF CORRECTIONAL SERVICE**

4th Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

5th Respondent

**JUDICIAL INSPECTORATE FOR CORRECTIONAL
SERVICES**

6th Respondent

JUDGMENT

STRYDOM, J

- [1] This is an *ex tempore* judgment in the urgent application brought by the applicant against five respondents, including the head of the prison, the Kgosi Mampuru Maximum Correctional Facility (C-Max).
- [2] In the notice of motion, the following relief is sought. The first prayer relates to urgency, the second prayer is for condoning any noncompliance with the Uniform Rules of Court and then the third prayer is for an order declaring that the applicant be allowed to study, declaring that the applicant may have access to his study material and permitting the use of his personal device for studying purposes.
- [3] This urgent application which was referred to this Court for hearing, was initially brought in terms of a defective notice of motion, dated 21 May 2025, which provided for no date for the hearing, no proof of service on the respondents and no notice to the respondents providing a timeline to oppose the application, or to file an answering affidavit.
- [4] This Court directed the attorney acting for the applicant to serve the application and indicate on a fresh notice of motion that the matter would be heard on 3 June 2025. Time periods for the filing of a notice to oppose the application and to file an answering affidavit were now provided to the respondent.
- [5] Undoubtedly, the initial notice of motion would have led to the application, either to be struck off the roll or be dismissed. After the fresh notice of motion was served, the matter became opposed, and an answering affidavit was filed. Condonation for the late filing of the answering affidavit should be granted, as a relatively short period was afforded to the respondents for the filing of their answering affidavit.
- [6] The applicant, despite having attorneys assisting him, appeared in person.

- [7] The first issue the Court dealt with was the issue of urgency. The Court already made a ruling that the matter was sufficiently urgent to be heard on this basis and nothing further needs to be said in this regard.
- [8] The applicant registered as a student with Oxbridge Academy on 11 September 2024. On the papers before the Court, it has been shown that the applicant is still a registered student at this institution.
- [9] From a reading of the papers, and pursuant to the argument advanced by the respondent, it appears that there was no formal application made by the applicant, either to the prison authorities, or previously to this Court, for allowing the applicant to pursue his studies and to keep a personal laptop for study purposes.
- [10] Various informal applications, by way of written correspondence, were made to the prison authorities to allow the applicant to study and to make use of a laptop. No answers were forthcoming from the prison authorities. The applicant, now during May 2025, approached this Court for relief. This application was undoubtedly prompted by the decision of the Constitutional Court in the matter of *Minister of Justice and Correctional Services and Others v Ntuli* [2025] ZACC 07.¹
- [11] This decision made the legal position clear relating to the use of personal computers for educational purposes in holding cells. A Policy Procedure Directorate of Formal Education approved on 8 February 2007 by the National Commissioner of Correctional Services was declared to be unconstitutional and invalid, to the extent that it prohibits the use of personal computers in cells for the purpose of further education in circumstances where such use is reasonably required for such education.
- [12] The Constitutional Court ordered on 30 April 2025 that the constitutional invalidity was suspended for 12 months from the date of the order. It was directed that the National Commissioner of Correctional Services, within 12 months from the date

¹ Minister of Justice and Correctional Services and Others V Ntuli 2025 JDR 1814 (CC).

of the Constitutional Court order, had to prepare and promulgate a revised policy consistent with the principle laid down in the Constitutional Court judgment.

- [13] Important for deciding this matter is paragraph 7,² of the Constitutional Court order, which put in place interim arrangements pending the revision of the policies. Paragraph 7 of the Constitutional Court order reads as follows:

" Pending the revision of the policy:

- (a) Any inmate in a correctional centre registered as a student with a recognised tertiary or further educational institution and who reasonably needs a computer to support their studies, and any student who has registered for a course of study that reasonably requires a computer as a compulsory part of the course, is entitled to use their personal computer without the use of a modem in their cell.*
- (b) Any registered student who keeps a personal computer in their cell in accordance with paragraph 7(a) above must make it available for inspection at any given time by the head of the correctional centre or any representative of the second applicant.*
- (c) In the event of a breach of the rules relating to the use by an inmate of their computer in their cell, the head of the correctional services centre may, after considering any representations the inmate may make, direct that the inmate may not use their computer in their cell."*

- [14] It should be noted that no distinction is drawn in this order between any specific inmate or any specific correctional centre.

- [15] It was argued on behalf of the respondent that the C-Max prison has no educational centre and facility for study purposes. This however makes no difference as the application of the applicant is to have a laptop for study purposes in his cell, which in the case of the applicant is a single cell. No further facilities are required.

² Minister of Justice and Correctional Services and Others V Ntuli 2025 JDR 1815 (CC) at para 7.

- [16] Further, it was argued that the applicant should have followed a further policy referred to in heads of argument dated 30 September 2024. This policy is dated on a date after the applicant's registration at the Oxbridge Academy to further his studies which relate to the use of computers.
- [17] He could therefore not have followed the steps which all sentenced prisoners must now comply with, should they wish to study whilst they are serving a sentence.
- [18] It should be mentioned that the policy dated 30 September 2024 was not even mentioned in the answering affidavit on behalf of the respondents; it was only mentioned in the heads of argument.
- [19] The stance taken in the answering affidavit, which was often repeated in such affidavit, is set out in paragraph 65 of the answering affidavit as follows:

"As stated herein above, C-Max does not have study facilities and therefore applicant cannot be given permission to study whilst at C-Max. Secondly, the applicant deliberately registered for Oxbridge Academy, knowing very well that C-Max does not cater for study facilities."

- [20] If this is the stance taken by the respondents, even after the Constitutional Court decision in *Ntuli*, the probability of a positive outcome pursuant to a formal application made by the applicant to study, the probabilities indicate that his application would have been refused. Such a refusal to use his personal laptop would have been unconstitutional, as was fully set out in the Constitutional Court decision in *Ntuli*.
- [21] This Court would accordingly grant the application of the applicant, and the following order is made:
1. The late filing of the affidavit on behalf of the respondent is condoned.
 - a. It is declared that the applicant be allowed to study whilst incarcerated in Kgosi Mampuru II C-Max prison, or any other prison, whilst he remains a registered student at a registered academic institution.

- b. It is declared that the applicant may have access to all his study material.
- c. Applicant is permitted to the use of his personal computer device for studying purposes, without a modem, in his cell.
- d. Before the applicant is provided with his personal computer to be used in his cell, such device must be made available for inspection by the head of the correctional centre or any of his or her representatives and thereafter it must be made available for inspection at any given time.
- e. In the event of breach of the rules by the applicant relating to the use by him of his computer in his cell, the head of the correctional services centre may, after considering any representations made by applicant, direct that the applicant may not use his computer in his cell.
- f. No order as to costs.



R. STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 03 June 2025

Delivered on: 03 June 2025

Appearances:

For the Applicant: Mr. R. Krejcir

Instructed by: In person

For the Respondent: Adv. E. Mahlangu

Instructed by: State Attorney - Johannesburg