

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2023-098939

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO [REDACTED]

Date: 30 July 2025 E van der Schyff

In the matter between

BONGANI GIVEN MASHININI

Applicant

and

THE MINISTER OF CORRECTIONAL SERVICES

First Respondent

NATIONAL COUNCIL FOR CORRECTIONAL SERVICE

Second Respondent

EX TEMPORE JUDGMENT

Van der Schyff J

Introduction

- [1] The applicant obtained a court order on 20 January 2025 in terms of which the first respondent was ordered to release the applicant on parole. On 29 April 2025, an order was granted by agreement between the parties that the applicant would be released on parole on 18 June 2025. The applicant, who has not yet been released on parole, approached the urgent court to hold the first respondent in contempt for failing to comply with an order that was reached by agreement. The applicant seeks that the Minister of Correctional Services be imprisoned for twelve months for failure to comply with the order.
- [2] As for the submission that the matter is not inherently urgent, I disagree. Where an agreement was reached that a person would be released on parole on a particular date, and that date passes without the person being released, each day the person spends in prison is a day they can never spend outside of prison. He can never get that day back, and in that sense, he is not able to obtain substantial redress in due course.
- [3] The applicant, however, faces other insurmountable obstacles, both procedural and substantive.
- [4] In *Spectrum (Pty) Ltd and Others v City of Johannesburg Metropolitan Municipality and Another*,¹ the court confirmed that a contempt of court application stands alone, although flowing from the same case number as the main application. Based on the principle set out in this judgment, the first respondent ought to have been cited in his personal capacity in this contempt application as he undoubtedly has a direct and substantial interest in his personal capacity in the relief that is sought. Without him being cited in his personal capacity, the applicants have no remedy of any force.
- [5] In *Matjhabeng Local Municipality v Eskom Holdings Ltd and Others*² The Constitutional Court confirmed that respondents against whom a contempt of court order that could result in their committal was sought had to be cited in their personal, and not nominal, capacities. The court held that 'it was inconceivable how they could

¹ (28694/2020) [2024] ZAGPJHC 929 (17 September 2024) at para [15].

² 2018 (1) SA 1 (CC).

have been committed to prison when they were not informed in their personal capacities of the cases they were to face.'

- [6] Contempt of court is a criminal offence. It can only be committed deliberately and *mala fide*.³ The order granted by agreement on 29 April 2025 provides that the Parole Board of Kgosi Mampuru Correctional Centre shall, within a period mentioned in paragraph (b) of the order, subject the applicant to pre-release programmes and set conditions for his placement on parole. The Parole Board, however, was not a party to the proceedings before the urgent court when the order was granted.
- [7] If regard is had to the documents filed in the application that culminated in the order granted on 29 April 2025, it is evident that the applicant's release on parole is conditional on him being subjected to pre-release programmes and that conditions be set for his release on parole. In the absence of these conditions being met, it cannot be found that the first respondent was *mala fide* and deliberate in not effecting the applicant's release.
- [8] The question of whether the first respondent would be successful in a rescission application where a court order was reached by agreement is not for this court to answer. The fact, however, that the first respondent is of the view that reasons exist that would move a court to rescind an order reached by agreement, is indicative that there are no *mala fides* in the failure to comply with the order.
- [9] In these circumstances, the application stands to be dismissed. Having regard to the circumstances of the case and the existence of the order, I am, however, not inclined to grant a costs order against the applicant.

ORDER

In the result, the following order is granted:

- 1. The application is dismissed, each party to carry its own costs.**

³ *Jayiya v Member of the Executive Council for Welfare, Eastern Cape and Another* 2004 (2) SA 611 (SCA) at para [19]



E van der Schyff
Judge of the High Court

For the applicant:

Instructed by:

Mr. M.T. Mokgara

MOKGARA ATTORNEYS

For the respondent:

Instructed by:

Adv. M.I. Boko

State Attorney

Date of the hearing:

29 July 2025

Date of judgment:

30 July 2025