

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHERS JUDGES: NO
(3)	REVISED: YES/NO
2/8/25 [Redacted Signature]	

Case No: 089497/2025

In the matter between:

XOLANI ZULU

APPLICANT

and

THE MINISTER OF CORRECTIONAL SERVICES

FIRST RESPONDENT

HEAD OF PRISON, KGOSI MAMPURU

CORRECTIONAL CENTER (CENTRAL PRISON)

SECOND RESPONDENT

JUDGMENT

FRANCIS-SUBBIAH, J:

[1] The Applicant, Mr Zulu, an inmate at the Kgosi Mampuru Correctional Centre seeks an urgent declaratory and remedial application against the First and Second Respondents ("the Respondents") challenging the purported unlawful and arbitrary restriction of his visitation rights and the administration of his annual visitation cycle. Conditions of detention consistent with human dignity and subject to lawful limitation are hallmarks enshrined in the Constitution of the Republic of South Africa, 1996, ("the Constitution") as well as the Correctional Services Act 111 of 1998 ("CSA").

[2] Preceding this application, an urgent application was filed on the 27th of May 2025 but, was struck off the role for lack of extreme urgency. The Applicant persisted in pursuing this further application on the basis that he is suffering ongoing, irreparable harm and that he has no effective alternative remedy and the Respondent's actions in restricting his visitation rights are not lawful, not reasonable and not procedurally fair.

Background

[3] On the 15th of March 2025 the Applicant's family arrived at the prison to visit him and was turned away. After this incident he sought clarification from the Acting Head of the Prison, Ms Marinette, why he was not allowed a visit. He was informed that

visits previously granted under the free visit policy were being counted against his annual visit allocation. As of the 1st of March 2025, all free visits were discontinued, and he had exhausted his allocated visits for his annual cycle. He was informed that his family visits would be suspended for the remainder of the year, ending 1 September 2025. He therefore addressed a written communication to the Head of the Correctional Centre on the 15th of March 2025. As a result, he was informed that a single visit would be permitted the following day, 16th March. However, due to the lateness of the notification, the visit was impractical for his family.

[4] Further family visits were denied. Through his attorneys, he communicated a letter to Mr Tobar Keller at the National Commissioner and Mr Khoza the Area Commissioner of Kgosi Mampuru Correctional Centre, requesting a resolution of the issue within seven days. His attorney followed up on 10th of April and was informed that a response will be given on 14th of April. He was then granted two further visits. One on the 12th of April 2025 to receive his suit for his graduation ceremony. The second visit on the 26th of April 2025 concerned urgent issues relating to his child. He contends that the matter of family visits remains unresolved, and it was 53 days since he was able to receive a visit outside the 12th and 26th April 2025.

[5] Applicant was surprised that the Respondents in their answering affidavit states that he is entitled to 48 visits per annum, but at 45 visits prematurely stopped further visits without communicating with him about the number of visits that he had remaining. Applicant submits that this is indicative of a lack of transparency and

proper administration that has directly prejudiced his rights, while still being entitled to further visits.

[6] The Applicant contends that he relies on his family visits to obtain funds to purchase food from the prison tuck shop. He does not consume prison meals due to his health issues and the medications that he takes for high blood pressure. He maintains that he has not been consuming prison food since 2015 and rely on the prison tuck shop for his dietary needs. As a result, he is dependent upon the funds being deposited into the prison tuck shop when a family member visits him.

[7] The respondent confirms that offenders may receive funds during visits which are deposited into their accounts for use in the prison tuck shop. The Applicant retains access to the prison tuck shop which operates on a rotational basis for all units. His family is permitted to deposit funds during authorized visits, and he can utilize such funds for purchases. The tuck shop purchases on which the Applicant relies are elective and intended only to supply and not replace the comprehensive dietary provision of three nutritious meals per day made by the Respondents and the Applicant is not in any life-threatening condition or suffering from acute illness. Furthermore, that his annual quota does not deprive him of access to necessities, nor does it expose him to any nutritional or health risks.

The legal framework

[8] Section 35(2)(e) of the Constitution provides that everyone who is detained, including sentenced prisoners have the fundamental right to conditions of detention that are consistent with human dignity. Section 10 entrenches a vital right to human dignity. Detention facilities are under a legal duty to uphold human dignity. Section 35(2)(f) of the CSA guarantees every detained person including sentenced prisoners, the right to communicate with and be visited by their spouse or partner or next of kin, chosen religious councillors and chosen medical practitioners. Section 13 mandates the Respondents to encourage prisoners to maintain contact with the community and enable them to stay abreast of current affairs and to give prisoners the opportunity to communicate with and be visited by at least their spouses, partners and next of kin. It is encouraged that inmates retain family contact and connection.

[9] Section 33 (1) of the Constitution guarantees everyone the right to administrative action that is lawful, reasonable, and procedurally fair. Similarly, section 3 of the Promotion of Administrative Action Justice Act 3 of 2000 (PAJA) requires administrative action that materially and adversely affects the rights or legitimate expectations of any person to be lawful, reasonable and procedurally fair.

Exhausted internal remedies

[10] The Applicant submits that he diligently pursued all reasonable internal remedies, as required in terms of PAJA. His efforts included direct communication with the Head of the Correctional facility and formal written representation by his attorneys. His attempts proved ineffective, leaving him with no alternative remedy available to him. He approached the court on an urgent basis. He submits that the urgency is not

self-created. The harm he complains about is ongoing and escalating and since the continued arbitrary denial of visitation rights impacts his emotional well-being, rehabilitation and human dignity.

[11] Furthermore he explains that if this application were to proceed on the ordinary roll, it is highly unlikely that it would be heard and finalised by September 2025, the delay will render the relief sought academic and defeat the very purpose of the application.

[12] Moreover the Applicant avers that retrospective application of the policy to exhaust his visits from the 1st of March 2025 without prior notice or an opportunity to make representations thereto is a clear violation of procedural fairness and constitutes arbitrary administrative action. As it undermines his human dignity, has a direct impact on his health due to the inability to purchase specific dietary items from the prison shop.

Free visits

[13] The core of the dispute arises from the provision of free visits. At the outset of the 2023–2024 period, the former Head of Correctional Centre, Mr Sebothoma made free visits available to all inmates, including the Applicant. These visits were explicitly stated not to count against the inmates' annual visit allocation.

[14] In a supplementary affidavit delivered after the hearing, Ms Ellen Nthwese Mphahlele, the Head of Correctional Service Centre in Pretoria states that in terms of the Respondents' Correctional Services Policy, it prescribes that Group A offenders are entitled to a maximum of four contact visits per month, which provide for an annual allocation of forty-eight (48) visits per inmate. Upon the exhaustion of the allocated visits, the visitation system automatically reverts to a default of one visit per month to accommodate the inmate until such time as the annual cycle of new allocation is approved.

[15] In this regard the Respondents contend that the Applicant has exhausted his entitlement for the current cycle but is not being denied visitation. Instead, he is limited to one visit per month after the exhaustion of the said allocation. Further, that there is no official binding policy on free visits that was announced or promulgated by the Respondents. Emphasising that free visits are at the discretion of the Head of the Correctional Centre.

[16] The Applicant stated that he only became aware of the termination of the free visits when his visitors were turned away in March 2025 and no update or information was provided to the inmates to say from a specified date onwards all free unlimited visits would be terminated. The Applicant's new visitation cycle will commence on 2 September 2025, and he fears that when he is granted a visitation his quota will be deducted from his new cycle.

[17] The Applicant's argument lies in the determination of the free visits, whether these visits provided were deducted from the forty-eight (48) visit allocation. That these free visits are merely an advance on future entitlements and therefore cannot be considered a discretionary privilege that the Respondents avers that it is. Discretionary privilege will result in the inmate receiving more than forty-eight (48) visits per annum.

[18] The Respondents do not address whether such free visits were counted against the Applicant's allocated total of forty-eight (48) visits per annum. No clear and specific visitation breakdown or relevant documents are provided to clarify and support its position from which the computation can be assessed. This failure undermines principles of fair administrative action and obstructs the Applicant's ability to challenge or rectify the situation. But the Respondents maintains that free visits are discretionary, no longer applies, and was not established as an official policy. However, without further clarity the Respondents maintain that it is the responsibility of the Applicant to manage his visitation within the confines of the annual allocation.

[19] I find that the Applicant's concern is well founded in light of ambiguities relating to the free visits. It remains unclear whether any such free visits were counted against the 48-visit annual allocation.

[20] It is trite that prisoners retain their constitutional rights and any State action that infringes such rights must be justified as reasonable in an open and democratic society. In *Minister of Justice and Correctional Services and others v Ntuli*

(539/2020) [2023] ZASCA 146; [2024] 1 All SA 333 (SCA), at para 15 the SCA held that:

"There is a principle in our law, of some considerable pedigree, that the power of the State to punish with imprisonment those convicted of certain crimes does not deprive prisoners of all their fundamental rights."

[21] In the light of human rights involved, the Applicant's right to humane treatment and the right to maintain contact with family in terms of section 35(2)(e) of the Constitution results in an administrative failure. The failure to clarify the status of free visits and the providing of a visitation breakdown prejudices the Applicant. State institutions as a public authority hold a duty in exercising public power and must do so lawfully, reasonably and in a procedurally fair manner in accordance with section 33 of the Constitution and PAJA. - *Ehrlich v Minister of Correctional Services and another* 2009 (2) SA 373 (E). As a result the Respondents in exercising their administrative function failed to do so reasonably and in a procedurally fair manner. Therefore, the application succeeds.

[22] In the result, the following order is made:

[a] The Respondents are directed to provide the Applicant, within fifteen (15) days of this order, with a written breakdown of all visits recorded against his annual allocation for the 2024–2025 cycle, specifying which

visits were counted as part of the forty- eight (48) allocated visits and whether any "free visits" were included therein.

[b] Should it be determined that free visits were included and counted towards the forty-eight (48) allocated annual visits, the Respondents are directed to review the Applicant's visitation status and, where appropriate, reinstate any visits that were erroneously deducted.

[c] There is no order as to costs.



R. FRANCIS-SUBBIAH

Judge of the Gauteng High Court: Pretoria

APPEARANCES

For the Applicant: Xolani Zulu (self-represented)
Assisted by: Mlambe Attorneys.

For the Respondents: Adv MC Baloyi-Mbembele
Instructed by: State Attorney, Pretoria

Date of hearing: 31 July 2025
Supplementary affidavit: 11 August 2025
Date of Judgment: 21 August 2025

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 16H00 on 21 August 2025