



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

CASE NO: 2025-020851

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

25/09/2025
DATE


SIGNATURE

In the matter between:-

NDHLOVU ZIGGY XOLANE

Applicant

and

THE HEAD OF CASE MANAGEMENT COMMITTEE

KGOSI MAMPURU II CENTRAL

1st Respondent

THE HEAD OF PRISON KGOSI MAMPURU II CENTRAL

2nd Respondent

THE AREA COMMISSIONER GAUTENG, KGOSI

MAMPURU II CENTRAL

3rd Respondent

THE NATIONAL COMMISSIONER OF CORRECTIONAL

SERVICES

4th Respondent

THE MINISTER OF CORRECTIONAL SERVICES

5th Respondent

JUDGMENT

Mfenyana J

- [1] The applicant seeks an order declaring the respondents in contempt of an order issued by Du Plessis AJ (as she then was) on 22 August 2024. The reasons for the order were provided on 13 September 2024. The application was brought on an urgent basis.
- [2] The application is opposed by the respondents.
- [3] In her order, Du Plessis AJ (as she then was), directed the respondents to verify whether the identity document of the applicant is a valid South African identity document of the applicant, and to correctly reflect the applicant's nationality, once verified. The learned judge postponed the application *sine die* for the respondents to provide proof of the applicant's prison classification and whether he was classified as a medium or maximum offender.
- [4] The background facts to the application, which served before Du Plessis AJ (as she then was), are that the applicant, currently serving a prison term at

Kgosi Mampuru II Central Prison, instituted proceedings seeking to restrain the respondents from classifying him as an immigrant, questioning him about his nationality, or harassing and intimidating him. He had been arrested in 2013, released on bail and rearrested in the same year on a different matter. He states that on his arrival at the Modderbee prison, where he was initially detained, Mangani, one of the prison officials, refused to accept that he was a South African, telling him that he looked like a Nigerian. According to the applicant, this was the beginning of his troubles, which he continues to suffer to date, he contends.

[5] Following his conviction in 2014 and 2015, he was processed as a Nigerian, as the prison authorities relied on information provided by Mangani, the official who disputed his South African nationality and classified him as an immigrant. He was consequently put on a deportation list, whereafter the Department of Home Affairs confirmed that he was indeed a South African. However, the respondents failed to update his status as a South African.

[6] Four years later, so the applicant avers, unnamed members of the SAPS and the respondents confiscated his identity document, which led him to approach the court in 2020 for relief. In May 2024, he was provided with a new identity document, but despite this, in June 2024, he was given a deportation form to sign. On 21 July 2024, he met the first respondent to

discuss his release on parole as he believed he became eligible therefor, three years earlier. This did not progress further as the respondents once again questioned him about his nationality.

[7] It is noteworthy that Du Plessis AJ (as she then was) noted that the applicant's profile reflects that his release on parole was refused on the basis that he was a maximum offender, held at the super-maximum prison in Kokstad. The applicant, however, avers that this incarceration at Ebongweni in Kokstad is unlawful and jeopardises his chances of being released on parole. He states that he ultimately refused to cooperate with the respondents regarding any issue relating to his nationality.

[8] Du Plessis AJ did not grant the relief sought by the application in his notice of motion, as it was not supported by any evidence, holding that the respondent's version should prevail. She, however, found that it was necessary to get clarity on the issue of the applicant's nationality. In this regard, the learned judge ordered that the respondents should validate the applicant's identity document, and if found to be valid, reflect this on their system. The respondent agreed to this, although stating that this was not a simple issue. The present application is a sequel to that order.

[9] The applicant avers that the matter is urgent in that the respondents' conduct is not only wilful and mala fide, but also causes prejudice to him as his status as a South African has not been verified. He argues that his release on parole depends on this verification. The applicant further contends that there was no undue delay on his part in bringing the application. Finally, the applicant avers that he would not be afforded substantial redress if the matter is heard in due course, as it would take several months for the application to be heard.

[10] The notice of motion required the respondents to deliver their answering affidavit on 6 March 2025. It was only served on 11 March 2025. The respondents seek condonation for the late filing of the answering affidavit, which they state was due to unforeseen circumstances, as the deponent to the answering affidavit was on leave and out of reach until 11 March 2025. As she has personal knowledge of the matter, no other person could depose to the answering affidavit.

[11] The respondents aver that there was still sufficient time to file a reply ahead of the hearing. Although the applicant contends that this is not the case, I am of the view that no prejudice was suffered by the applicant. It is not uncommon in urgent applications for parties not to achieve strict compliance with the rules, particularly in relation to timeframes. This less-than-perfect

compliance applies to both the applicant and the respondents. Despite the applicant's assertions, the delay was not inordinate. In the circumstances, condonation is granted.

[12] The respondents contend that the matter is not urgent, as this court does not consider semi-urgent matters, and a matter can either be urgent or not urgent. Notably, the respondents contend that they have already commenced with their investigation, and the case management committee has already compiled a profile which, according to the requirements of the parole board, must include a reliable home address and a competent identity document. Consequently, the parole board postponed the applicant's matter to June 2025 for further profiling.

[13] The respondents further state that the investigation revealed that the applicant's identity document was obtained fraudulently. They provide details of the steps they have taken in complying with the Du Plessis order. Having thus complied with the order, the respondents contend that there can be no urgency to the application.

[14] On the merits, the respondents submitted that the applicant was classified as a maximum offender following the findings of the disciplinary committee. As this finding has not been properly challenged by the applicant, it remains

in effect. As part of their investigation, the respondents included a letter from Mr Ngele, the principal of Morewane P School in Driekop, Limpopo, where the applicant allegedly attended in 1991. In the letter, Mr Ngele states that the applicant provided a false record: the applicant's name does not appear in the school records, and admission number 216, provided by the applicant, actually belongs to another student.

[15] The respondents also submit a sworn statement from Mr Samuel Sebata Mashiane (Mr Mashiane), the headman of Riba Central, deposed to on 17 February 2025, in which he confirms that the applicant is not Ms Suzy Ndhlovu's (Ms Ndhlovu) child. Ms Ndhlovu resides in the village where Mr Mashiane serves as headman. Furthermore, the headman asserts that the applicant is from Nigeria, which contradicts a sworn statement made by Ms Ndhlovu in 2016 affirming that the applicant is her son.

[16] On 13 February 2025, Mr Ntando George (Mr George), an official at the Department of Home Affairs (the Department), deposed to an affidavit stating that the Department had not issued any confirmation letter for the applicant's identity number (8503126454086), and that the stamp on the identity document in question is fraudulent and does not originate from their office.

[17] Further, Mr Solani Moses Msengi (Mr Msengi), another immigration officer employed by the Department, states in his confirmatory affidavit that he investigated issues relating to the applicant's identity document and the letter bearing a stamp of the Department of Home Affairs as part of his duties as an immigration and law enforcement officer. He states that, based on his interview with the applicant, he concluded the applicant was not born in South Africa. The applicant stated that he entered South Africa using the name "Ekene Umeh," with a date of birth of 1985-03-12; however, the Department's movement control system contains no record of his entry. Subsequently, Mr Msengi travelled to Limpopo to interview the applicant's alleged mother, Ms Ndhlovu.

[18] Mr Msengi further states that Ndhlovu informed him that the applicant was born in Burgersfort, following a relationship with the applicant's father, whom she met while both were working at a shop in Kempton Park in 1985. She said the applicant's father was from Nigeria and was only known to her as Richard. However, Mr Msengi discovered that the applicant was not born in South Africa; instead, the applicant's identity document was fraudulently obtained through a late registration of birth process on 12 July 2006 at the Home Affairs service point in Lebowakgomo. Home Affairs has no record of the applicant's birth, and the requirements for late registration of birth were not met.

[19] It is worth noting that the registration of birth document lists the applicant as female. Mr Msengi also states he obtained a court order to collect DNA samples from both the applicant and Ndhlovu. He concludes that the applicant entered South Africa unlawfully, in contravention of the Immigration Act.

[20] In reply, the applicant asserts that the respondents have unnecessarily delayed their opposition to the current application. He criticises the time taken in filing both the notice of opposition and the answering affidavit. Notably, the applicant concedes that the respondents have complied with the Du Plessis order but points out that this compliance was late and occurred only after the present application was lodged. Nevertheless, the applicant maintains that the respondents are in contempt, arguing that they have not raised reasonable doubt that their non-compliance was neither wilful nor in bad faith. Accordingly, the applicant submits that this application became necessary solely due to the respondents' non-compliance and their disregard for the court's orders. For these reasons, he argues that the respondents should bear the costs of this application, even if the court finds them not to be in contempt. He further requests that these costs be awarded on a punitive attorney-and-client scale.

[21] When the matter was heard, it was submitted on behalf of the applicant that the committal of the respondents to prison for a period of 30 days was not persisted with, the key issue being the finding of contempt against the respondent and for the respondents to comply with the Du Plessis. In this regard, the respondents aver that in the notice of motion, the applicant only seeks committal if the respondents do not comply with the Du Plessis order and the order of this court, within seven days. There is no dispute that the respondents complied with the order during February 2025.

[22] The issue is whether the applicant was entitled to bring this application. It is common cause that, as of 17 February 2025, the date on which this application was instituted, the respondents had not informed the applicant that they were taking any steps to comply with the Du Plessis order and as such had not complied with the order. At that point, it had been five months since the order was granted and two months since the Adams order. Moreover, considering the nature of the application, there can be no suggestion that the applicant acted hastily or recklessly in bringing this application. Non-adherence to a court order is a serious issue which engages the urgent attention of the court. Contempt proceedings serve to vindicate the court's honour and dignity and compel future compliance.

[23] In *Pheko v Ekurhuleni City*¹, the Constitutional Court noted that:

“(t)he rule of law, a fundamental value of the Constitution, requires that the dignity of the courts be upheld. This is crucial as the capacity of the courts to carry out their functions depends on it.”

[24] The court further highlighted that allowing litigants to disregard court orders (to which they had agreed) would bring the administration of justice into disrepute.

[25] It appears that at the time the application was enrolled, the applicant had a reasonable apprehension of harm due to the respondents' non-compliance with the court order. The relief sought by the applicant is conditional on the respondents' compliance with the Du Plessis order. There can thus be no point in persisting with the contempt application save for the determination of costs. To the extent that the respondents have purged their contempt, there is no longer a need to hold them in contempt.

Costs

[26] The general rule is that costs follow the outcome. However, the court has a discretion to depart from this rule if it would be fair and just to do so. The applicant was entitled to institute these proceedings as the respondents had not complied with the Du Plessis order, as well as the orders of 5 December

¹ [2015] ZACC 10; 2015 (5) SA 600 (CC); 2016 (6) BCLR (CC).

2024 by Allen AJ, and the judgment of Adams J on 9 December 2024 directing them to provide the outcome of the verification process to the applicant.

[27] The applicant seeks costs against the respondents on an attorney-and-client scale, arguing that the respondents defied three court orders, causing him prejudice. I agree. The respondents' non-compliance not only prejudices the applicant but also undermines the honour and dignity of the court. Moreover, it unnecessarily burdens the court roll, diverting scarce judicial resources that could have been allocated to other matters had the respondents complied with the orders timeously. Were it not for the respondents' delay in complying with the Du Plessis order, as well as the subsequent orders, one of which was issued following agreement between the parties, this application would have been obviated. In my view, that is sufficient reason for this court to deviate from the general rule of costs.

Order

[28] In the result, I make the following order:

- a. Condonation for the late filing of the answering affidavit is granted.
- b. The application is dismissed.
- c. The first to fifth respondents shall pay the costs of this application jointly and severally, the one paying the other to be absolved on an attorney and client scale.

[REDACTED]

S MFENYANA
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

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