

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates	NO



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

CASE NUMBER: 2025/123747

In the matter between:-

ZIGGY XOLANE NDHLOVU

Applicant

and

**THE HEAD OF THE KGOSI MAMPURU II
CORRECTIONAL CENTRE**

1st Respondent

**THE AREA COMMISSIONER, GAUTENG:
DEPARTMENT OF CORRECTIONAL SERVICES**

2nd Respondent

**THE NATIONAL COMMISSIONER OF
CORRECTIONAL SERVICES**

3rd Respondent

THE MINISTER OF CORRECTIONAL SERVICES

4th Respondent

This judgment is handed down electronically to the email addresses of the parties as indicated in the practice notes. The date of the handing down is deemed to be 25 September 2025.

JUDGMENT

Reid J

Introduction

- [1] In this urgent application the applicant seeks to review and set aside the decision and pursuant action taken by the 1st to 4th respondents in terms of which the applicant was transferred as a detained prisoner from the medium security facility to the C-Max maximum security facility at Kgosi Mampuru II Correctional Centre on **6 June 2025**. The applicant seeks to be transferred to either the medium security facility at the Johannesburg Correctional Centre, the medium security facility at the Devon Correctional Centre or the medium security facility at the Leeuwkop Medium A Correctional Centre, alternatively back to the medium security facility at the Kgosi Mampuru II Correctional Centre. The applicant also seeks re-possession of his study material and laptop.
- [2] The applicant further seeks a declaratory order that the 1st to 4th respondents is in contempt of the court order granted by the Local Gauteng Division, Johannesburg on 4 June 2024 in case number 2024/00096, in which order the applicant was allowed to resume and continue his studies, which order included that the applicant must have possession of his study material and laptop.

Court Order dated 4 June 2024

[3] A court order under case number: 2024/00096 has been handed down in the Gauteng Division, Johannesburg on 4 June 2024 by du Plessis AJ (“the 2024 court order”). The applicant argues that this Court has jurisdiction by virtue of the concurrent jurisdiction that this Court has with the Gauteng Local Division, Johannesburg. This is disputed by the respondents.

[4] The 2024 court order reads as follows:

- “1. *The applicant be granted an opportunity to resume his studies at C-Max Section, Kgosi Mampuru Correctional Facility for the duration of his stay at the said maximum correctional facility, which includes his study material and includes a laptop.*
2. *The urgent court cannot deal with the remaining prayers in the application and in this regard the remaining prayers are to be postponed sine die.*
3. *No order as to costs.*

[5] The content of the remaining prayers, and the basis on which the prayers were made in the 2024, are not before this Court.

[6] In *Els v Weideman* 2009 JDR 0213 (WCC) the application for contempt brought in a different court than the court that originally issued the order, was dismissed. It was found on Pages 8, 9 and 10 that:

“It is clear that divorce proceedings could be instituted in either Court. The Plaintiff would be dominus litis and could elect in which

*Court to proceed. **What is now in issue is whether once the Plaintiff has made such an election any subsequent proceedings in enforcement of the judgment must be taken in the same Court or whether he has the right to proceed in the other Court.** If the Applicant had asked **only** for the committal of the Respondent for contempt of court there would have been no doubt as to the answer. For insofar as the contempt consisted in a **wilful disobedience of a Court's order, it is to that Court that application would have to be made.** (See Herbstein & Van Winsen, *Civil Practice of Superior Courts*, p.513 and decisions cited under Note 7)."*

(own emphasis)

- [7] The relief sought that this Court declare the respondents in contempt of court is thus incompetent on 2 grounds: (a) the content of the relief that was postponed *sine die* is not before this Court, and (b) the applicant is bound to proceed with contempt proceedings in the court it elected as *dominus litis*.

- [8] The prayers in relation to contempt of court stand to be dismissed.

Summary of material events

- [9] The sequence of events goes back to 2022 when the Applicant was transferred from Leeuwkop Correctional Centre ("Leeuwkop") to Ebongweni Correctional Centre ("Ebongweni"). A violent incident occurred at Leeuwkop where the applicant allegedly played a key role in the violence, where loss of lives had taken place. For the greater part of 2022 and 2023, the applicant was accommodated at Ebongweni when the applicant launched applications to both this Division of the High Court as well as the South Gauteng High Court Johannesburg, for a transfer out of Ebongweni.

- [10] The applicant launched an application in 2022 in the South Gauteng High Court under case number 038179/2022, seeking the review and setting aside of the decision taken by the respondents on 18 May 2022 to transfer the applicant from Leeuwkop Medium C Prison to Ebongweni Correctional Centre. On 17 January 2024 judgment was delivered by Mia J dismissing the application on the basis that the applicant has not exhausted the internal remedies available and the court was able to consider the matter in terms of PAJA until the applicant has exhausted internal remedies.
- [11] The implication of the transfer to Ebongweni was as a result of the applicant being re-classified as a maximum offender with loss of privileges such as appearing before the Correctional Supervision and the Parole Board ("the Parole Board"). Later in 2024 and while at Kgosi Mampuru, the applicant was re-classified as a medium offender. During 2024, the applicant was transferred to Kgosi Mampuru to attend court in the Magisterial District of Benoni. He applied for a conversion of his sentence to one of correctional supervision under the *Criminal Procedure Act* 51 of 1977. The application for conversion was not successful. During 2024, the applicant was re-categorised as a medium offender which entitled him to appear before the Parole Board. The hearing at the Parole Board was postponed several times.
- [12] The parole hearing was postponed on the basis that the validity of the applicant's identity status in South Africa could not be verified by the Parole Board.
- [13] The applicant approached the court and judgment was granted in South Gauteng High Court, Johannesburg on 13 September 2024 under case number 2024/00410 by du Plessis AJ to the effect that (i) the 1st to 5th respondents is required to verify whether the identity document of the

applicant is indeed a valid South African identity document. (ii) Once the applicant's nationality is verified, this should reflect correctly on the correctional services system. (ii) The remainder of the application is postponed *sine die* for the 1st to 5th respondents to provide proof clarifying applicant's prison status, whether applicant is classified as a medium or maximum offender in terms of its records.

- [14] The investigation has revealed that the identity document belonging to the applicant was obtained through fraudulent means. The applicant is currently facing charges of fraud in this regard. He is required to appear in the Burgersfort Magistrates Court on charges of fraud.
- [15] The 2024 court order was handed down ordering that the applicant be placed in possession of his laptop. A laptop was handed to the applicant on or around 26 July 2024. On or around 8 October 2024 the Acting Head of Operational Support, responsible for safety and security at the Central Correctional Centre confiscated the applicant's laptop on grounds of allegations made in respect of the applicant conducting fraudulent activities on his laptop. The laptop was handed to the Cybercrime Unit of the South African Police Services (SAPS) for investigation and for purposes of down-loading the content of the laptop in order to detect any fraudulent activities. A report was sent from SAPS to the Acting Head of Operational Support wherein was stated, *inter alia*, and for purposes of this application, that "*no study material was found on the laptop*". It is important to bear in mind that the laptop was intended to be used for study purposes only.
- [16] On 5 June 2025, information was received by the Area Commissioner pertaining to the applicant's use of a cell-phone to contact people outside the Correctional Centre. The applicant was searched and was found in possession of a cell phone (this is denied by the applicant) which resulted in the applicant being transferred to C-Max, further resulting in

the applicant's offender category being re-classified to a maximum offender.

- [17] The respondents state that the applicant's offender status was changed following a disciplinary hearing held on account of the cell-phone found in the applicant's single cell. The respondents claim, and the applicant denies, that the procedure is in accordance with the terms of the Standard Operating Procedures ("SOPS").
- [18] The Minutes of the Disciplinary Hearing reflect that the applicant had pleaded not guilty to the charges and that he refused to sign the Minutes of the hearing. The penalty resulted in applicant being transferred to C-Max with the resultant change in his offender status to a maximum offender.
- [19] If unsatisfied with the outcome of the disciplinary enquiry, the applicant is entitled to refer to the outcome of the disciplinary enquiry proceeding to the National Commissioner in terms of section 24(7) of the **Correctional Services Act** 111 of 1998 ("the Act").
- [20] The respondents argue that there is no indication that this decision was referred in terms of section 24(7) of the Act. The applicant is aware, alternatively ought to be aware that internal remedies ought to have been utilised before approaching this Court.
- [21] To the contrary, the applicant argues that he was never subjected to a disciplinary hearing and the avenue of an internal referral was thus not

available to him.

- [22] The applicant questions the legality of the disciplinary hearing. The disciplinary hearing appeared to have been held after the transfer of the applicant to the maximum security centre.

Legal arguments

- [23] The respondents argue that the review application is not duly before this Court and should not be adjudicated on an urgent basis.
- [24] The applicant argues that he was never charged disciplinary, and that the documents indicating a disciplinary hearing is fabricated. He also states that the cellular telephone was not found in his possession, but in a cell that he shares with 19 other inmates.
- [25] The applicant states that he has not been afforded any form of natural justice by the respondents, as specifically ordained by the Act, such failure having resulted in respondents having taken the decision and pursuant action whereby his status was re-classified and transferred to the C- Max maximum facility. The applicant states that this action constituted an administrative action which materially and adversely affected his constitutional rights and legitimate expectations of procedural fairness, particularly having offended section 33 of the Constitution of the RSA, 1996, which guarantees administrative action that is lawful, reasonable and procedurally fair.

[26] It is argued on behalf of the applicant that the dispute as to whether or not a proper disciplinary process had been duly implemented, lies at the heart of the issue as to whether applicant's re-classification and transfer to C-Max had been effected lawful and procedurally fair. The applicant's review application relies on sections 6(2)(a)(iii), 6(2)(b), 6(2)(c), 6(2)(d), 6(2)(e)(i),(ii),(v) and (vi), 6(2)(f)(i) and 6(2)(i) of the *Promotion of Administrative Justice Act* 3 of 2000 ("PAJA").

[27] The question of whether a disciplinary hearing has been instituted or not, is a factual question that cannot be answered by this Court, given the conflicting statements.

[28] Furthermore, this Court need not answer the issue of an administrative action due to the finding made on urgency, set out here under.

Urgency

[29] The applicant had already been transferred to C-Max on **6 June 2025**, the very next day after the alleged transgression on 5 June 2025.

[30] The applicant's attorney of record has addressed a letter of demand dated **17 June 2025** to the respondents.

[31] Service of the application has taken place on the respondents on **30 July 2025** and **1 August 2025** respectively.

[32] I find that the period from 6 June 2025 to 17 June 2025 is a prolonged period. Similarly, I find that the period from the letter of demand, 17 June 2025 to the service of the application on 30 July 2025 is a prolonged period.

[33] On this basis, the matter stands to be struck for want of urgency.

Costs

[34] The general principle is that the successful party is entitled to its costs.

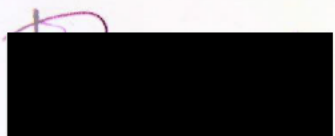
[35] *In casu*, the applicant is incarcerated and the respondents are government organisations.

[36] In my view, the application was not brought *mala fide*. To equal the fields of litigation, I find that it would be just and fair to make no cost order.

Order

[37] In the premise, I make the following order:

- i) The application is struck for want of urgency.
- ii) No order is made as to costs.



FMM REID
JUDGE OF THE HIGH COURT
GAUGENG DIVISION PRETORIA

DATE OF ARGUMENT: 9 SEPTEMBER 2025

DATE OF JUDGMENT: 25 SEPTEMBER 2025

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