



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 203913/2025

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

[REDACTED]

10/02/2026

.....
SIGNATURE

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DATE

In the matter between:

JERMAINE PRIM

Applicant

and

THE MINISTER OF CORRECTIONAL SERVICES

First Respondent

**THE NATIONAL COMMISSIONER OF CORRECTIONAL
SERVICES**

Second Respondent

**THE HEAD OF C-MAX KGOSI MAMPURU II
CORRECTIONAL CENTRE**

Third Respondent

**THE AREA COMMISSIONER JOHANNESBURG
MANAGEMENT AREA**

Fourth Respondent

THE REGIONAL COMMISSIONER OF GAUTENG REGION

Fifth Respondent

JUDGMENT

LABUSCHAGNE J:

- [1] The applicant is a remand prisoner who is incarcerated at the C-Max Kgosi Mampuru II Correctional Centre (“C-Max”). As its name denotes, it is a maximum security facility.
- [2] The applicant is challenging his detention in review proceedings, Part B of which serve before this court. Part A proceedings failed due a finding of a lack of urgency. In Part B proceedings the applicant seeks an order in terms of section 9(1)(b) of the Promotion of Administrative Justice Act, 3 of 2000 condoning the lateness of the application in respect of two decision, namely the decision of the second and/or fifth respondent to extend the applicant’s detention in C-Max beyond a period of 18 months; and secondly the decision by the respondents to continuously detain the applicant in C-Max. He seeks an order exempting the applicant from exhausting internal remedies, if they are found to exist.
- [3] The applicant also seeks to challenge on review a decision of the fourth and/or fifth respondent to transfer the applicant from Johannesburg Correctional Centre to Kgosi Mampuru Correctional Centre (hereafter “C-Max”).
- [4] As will appear from the chronology below, the applicant has been in C-Max for more than 3 years. In the absence of a condonation application pertaining to the decision to transfer the applicant from Johannesburg Correctional Centre to Kgosi Mampuru Correctional Centre, this court’s review jurisdiction is not engaged. The decision to transfer the applicant constitutes administrative action in terms of PAJA, and proceedings had to be instituted

within 180 days of the decision to transfer. There is no such application and no condonation application. Prayer 3 of the notice of motion is consequently stillborn.

BACKGROUND FACTS

- [5] The applicant is a remand prisoner awaiting trial. On 8 November 2022 the applicant was transferred from the Johannesburg Management Area to C-Max.
- [6] The cause for the transfer is that complaints were being received from the community of Eldorado Park that the applicant was making threats to members of the community. These threats could be made because the applicant had access to cell phones. Cell phones were found in his possession, and this prompted the decision to transfer him to a maximum security facility. As indicated above, that decision to transfer him cannot be assailed in these proceedings due to the lapsing of time and the absence of a condonation application.
- [7] Prior to the institution of the current proceedings, the applicant under case number 150033/24 brought proceedings against the respondents. That application was however withdrawn on 17 February 2025.
- [8] The applicant was arrested on charges of theft of a motor vehicle and fraud and has been in custody since October 2017. There is no explanation before this court for the long delay in finalisation of these criminal proceedings.

THE APPLICANT'S CONTENTIONS

- [9] The applicant contends that he is being incarcerated in circumstances amounting to solitary confinement, in breach of sec 30 of the Correctional Services Act, since arriving at C-Max approximately 3 years ago. He is kept in a single cell with no human contact for 23 hours per day. The deprivation of human contact, fresh air and meaningful activity is adversely affecting his physical, mental and emotional health. He describes the prolonged solitary confinement as a severe form of psychological torture.
- [10] The applicant relies on an infringement of his constitutional right to liberty, dignity and bodily integrity.
- [11] C-Max has two phases. Phase 1 has approximately 50 inmates and Phase 2 has approximately 60 inmates. The applicant is in Phase 1. He is permanently cuffed by the hands and feet whenever he is outside of his cell. The cuffs are removed when he is in an exercise cage, or when he is permitted to have a shower. He receives two phone calls per month of 10 minutes each and he is allowed two visits per month of 30 minutes each. He is not allowed to partake in any programmes.
- [12] In Phase 2 prisoners are not permanently cuffed when they are taken to the exercise and shower cage. They get one extra phone call per month of 10 minutes each. Whether in Phase 1 or in Phase 2, the only practice in C-Max is of one of segregation or solitary confinement for at least 23 hours per day.

- [13] On 27 January 2025 the applicant engaged the Head of the C-Max section of the prison as he was walking by, enquiring when he would be transferred out of C-Max. A harsh exchange of words took place and the Head of C-Max, Mr Qebengu told the applicant that he would stay in C-Max until he died.
- [14] The next day he was informed that he was sanctioned to no phone calls and no visits for 30 days. This was without affording the applicant an opportunity to make representations or a hearing on the issue of sanction.
- [15] After the filing of a record in terms of rule 53, the applicant filed a supplementary affidavit. The Standard Operating Procedures (SOP) in respect of C-Max provide for a maximum stay of 18 months unless there are exceptional circumstances which would require the approval of the National Commissioner of Correctional Services for an extended stay.
- [16] After the applicant's mother has raised a complaint with the Department of Correctional Services, a report was prepared dated 06 August 2024. A recommendation for the extension of stay of the applicant at C-Max was approved by the National Commissioner on 18 September 2024. However, the applicant had already been in C-Max for more than 18 months, which period had expired in May 2024. The applicant therefore contends that the extension of his incarceration for longer than 18 months at C-Max and his continued detention is unlawful.

THE DEFENCE

- [17] The deponent for the respondents is Mr Qebengu, Head of Prison at Kgosi Mampuru Correctional Centre, who is also cited as the third respondent.

FAILURE TO EXHAUST INTERNAL REMEDIES

- [18] The third respondent contends that the applicant failed to exhaust remedies provided to him in terms of section 21 of the Correctional Services Act, 111 of 1998 ("the Act") and section 93 of the Act.
- [19] It is trite that judicial review is available as a remedy once internal remedies have been exhausted or if an application for exemption succeeds.
- [20] The remedy created by section 21 is a grievance procedure which permits an inmate an opportunity on admission and on a daily basis, of making complaints or requests to the Head of the Correctional Centre or a Correctional Official (section 21(1)). The complaint requests must be recorded and be dealt with promptly (section 21(2)(a) and (b)). If dissatisfied with the response, the inmate may indicate his dissatisfaction together with reasons to the Head of the Correctional Centre, who must refer the matter to the National Commissioner (section 23(3)). If dissatisfied with the response from the National Commissioner, the inmate may refer the matter to the Independent Correctional Centre Visitor (section 21(5), read with section 93). The statutory process prescribed in section 91(1) is a mediation process following an investigation, resulting in discussions with the Head of Correctional Services or the relevant Subordinate Correctional Official, with a view to resolving the

issues internally. If such mediation process fails, a dispute must be referred to the Inspecting Judge, whose decision will be final.

[21] The question whether the applicant should have been transferred or not was raised by him directly with the third respondent and he received a rebuttal and response. Following the internal complaints procedure in such circumstances would be pointless. Further, the continued detention of the applicant is a matter of legality and even the Inspecting Judge does not sit as a court of law in assessing such legality. Legality is the province of the High Court. In such circumstances, a failure to follow internal remedies would not have been avoided in the inquiry into the legality of the detention of the applicant which serves before this court.

[22] The exemption application set out in the notice of motion is therefore justified and the exemption is granted.

[23] The respondents justify the transfer of the applicant to C-Max due to the high security risk that he posed at his centre of origin, Johannesburg Correctional Centre (Medium C). The fact that he was in possession of cell phones was in itself a contravention of Correctional Services' Policy. The applicant further used the devices to victimise and threaten community members from Eldorado Park.

[24] As stated *supra*, the decision to transfer him to C-Max is not a decision on which the court must review jurisdiction, in the absence of a condonation application.

- [25] The third respondent contends that offenders are kept in single cells between 18 and 19 hours per day.
- [26] The third respondent denies that the applicant is kept in solitary confinement. He contends that C-Max does not have solitary confinement cells.
- [27] The deponent further contends that awaiting trial offenders like the applicant get four phone calls in a week and get two visits in a week, which last up to 30 minutes per visit. He denies that the prisoners are kept in solitary confinement for 23 hours a day.
- [28] With reference to the altercation between the deponent and the applicant, the deponent denies the allegations made by the applicant, save for stating that the applicant verbally insulted him and was sanctioned for his conduct.
- [29] The deponent denies that the Standard Operating Procedures are being unlawfully utilised and denies that the SOP is not being complied with.

DISCUSSION

- [30] The period of the applicant's daily detention in the cell is disputed by the third respondent. The applicant has questioned the veracity of the response by the third respondent as to the duration of lock-up and the number of social visits afforded to the applicant. A report by the office of the Inspecting Judge (JICS) confirmed in its annual report of 2023/2024 that the detention practice at C-Max is that of solitary confinement. There is therefore reason to doubt the

correctness of the response of the third respondent as to the conditions under which inmates are held at C-Max.

[31] The standard operating procedures pertaining to C-Max places a limitation on the period for which an inmate may be kept at C-Max. The paragraphs dealing with this reading are as follow:

“4.2.3.2 No offender may be kept at C-Max Correctional Facility for more than 12 to 18 months unless risks posed dictate otherwise **and pre-approval is granted.** Offenders to be collected by the centre/region of origin within 14 (fourteen) days of receiving communication from GP Region and after completing the 3 Phase and/or minimum detention period. All costs related to the collection of the offender to be incurred by the Centre/Region of origin.

4.2.3.3 In exceptional circumstances, where it is required by an offender to be incarcerated at C-Max correctional facility for a period longer than 12 to 18 months, written application must be submitted by the Centre/Regional of origin to be approved by the National Commissioner or his/her delegate. Should this rule not be applied the offender must be collected by the Centre/Region of origin.”

[32] The facts of this matter indicate that, regardless of the duration of daily detention in a cell, the applicant has been in detention at C-Max for more than the maximum of 18 months. There was no “pre-approval” for an extension. The extension by the National Commissioner was *ex post facto*, after a period of six months had expired from the cut-off period of 18 months. On the

respondent's version, the applicant's detention from May 2024 would be illegal. It is further not competent to ratify an illegality. The National Commissioner could therefore not ratify the extended stay of the applicant after the 18 month period of his detention at C-Max had expired (see *De Villiers v ...*, as confirmed by the Constitutional Court in *AAA Investments*).

[33] It is also apparent that there has been no request from the applicant's centre of origin or an attempt to collect him from C-Max as required by the Standard Operating Procedures referred to.

[34] In these circumstances it is not necessary to decide the dispute on how long the applicant spends in his cell per day, despite there are reasons to doubt the version put forward by the third respondent.

[35] It is the failure by C-Max to comply with its own SOP (standard operating procedures) that decides this matter. It is not without moment that this was also the ratio of Swanepoel J in deciding **Mncube and Another v Minister of Correctional Services and Others** (119373/2024– In this division)

[36] In **Mncube** Swanepoel J, on similar facts, concluded:

“[27] In consequence, not only has the first applicant been incarcerated at C-Max longer than the SOP's provide for, also, no application has been brought to extend the period. The first applicant has, in my view, been detained unlawfully in C-Max beyond the 18-month period.”

- [37] I agree with the reasoning of the Court in **Mncube**. Further, in this instance the extension of the applicant's stay is invalid as it was granted *ex post facto* and not before the expiry of the 18 month period (as required by the SOP).
- [38] In **Mahlangu v Area Commissioner of Kgosi Mampuru II Prison and Another** (Case Number 093770/2024 – this division), Lenyai J referred to the constitutional obligations of the respondents. She was critical of the respondents for failing to uphold and respect the law and to obey the obligation of the State to respect, protect, promote and fulfil the rights in the Bill of Rights (paragraphs 67 to 68).
- [39] Compliance by Kgosi Mampuru with its own SOP is not an onerous matter. One would expect proactive conduct on the part of C-Max in ensuring compliance with its own SOP. Organs of state are under a constitutional obligation in terms of section 237 to perform their constitutional obligations diligently and promptly. The persistent failure to do so, as is evident in the current matter, is not only cause for concern but warrants further action.
- [40] The applicant's case for detention in circumstances amounting to solitary confinement is compelling. I have considered doing an inspection *in loco* to determine the veracity of his contentions, particularly in the face of an outright denial by the third respondent and the contention that detention in cells is for 18 to 19 hours per day. However, it is not necessary to resolve this dispute as the failure to comply with the Standard Operating Procedures is in itself an indicator that the continued detention of the applicant is unlawful.

[41] The respondents have suggested that coming to the assistance of the applicant would open floodgates of litigation. Where the respondents are complicit in the breaching of the constitutional rights, such floodgates should be opened. However, it is for the respondents to monitor their own compliance with the Standard Operating Procedures and to act proactively to ensure compliance with the law.

[42] In the premises I decline to decide the matter on the basis of a breach of the provisions of section 30 of the Correctional Services Act insofar as they relate to solitary confinement. I do, however, find that the continued detention of the applicant is unlawful and that he should be returned to his centre/region of origin. The fact that the applicant is regarded as a high-risk inmate is no reason to continue his unlawful detention. His risk category is a matter for the centre of origin to determine and to deal with according to internal protocols and policy.

[43] In the premises I make the following order:

1. An order condoning the terms of section 9(1)(b) of the Promotion of Administrative Justice Act, 3 of 2000 the late institution of the application in respect of the administrative decisions in paragraphs 4 and 5 of the notice of motion.
2. The applicant is exempted from exhausting internal remedies.

3. The decision of one or more of the respondents to extend the applicant's detention in C-Max beyond the period of 18 months is reviewed and set aside.
4. It is declared that the applicant's continued detention in C-Max is unlawful.
5. The respondents are directed to transfer the applicant to his centre/region of origin within 48 hours of delivery of this order.
6. Prayer 3 of the notice of motion is dismissed due to lack of jurisdiction.
7. This judgment is referred to the Office of the Investigating Judge (JICS).
8. This judgment is referred to the Parliamentary Portfolio Committee responsible for the oversight of the Department of Correctional Services for consideration and further action, if so advised.
9. The first, second and third respondents are directed to pay the costs of this application on an attorney and client scale, Scale C.

[REDACTED]

LABUSCHAGNE J

JUDGE OF THE HIGH COURT

APPEARANCES:

APPLICANT IN PERSON : JERMAINE PRIME

ATTORNEYS FOR RESPONDENT : STATE ATTORNEY PRETORIA
SALU BUILDING
316 THABO SEHUME