



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 4096/2024

In the matter between

THABO BESTER

APPLICANT

and

THE STATE

1ST RESPONDENT

NATIONAL COMMISSIONER, CORRECTIONAL SERVICES

2ND RESPONDENT

HEAD OF CENTRE: KGOSI MAMPURU CORRECTIONAL

SERVICE CENTRE

3RD RESPONDENT

MINISTER OF CORRECTIONAL SERVICE

4TH RESPONDENT

Neutral citation: *Bester v The State and Others* (4096/2024) [2026] ZAFSHC 72 (24 February 2026)

Coram: DAFFUE J

Heard: 5 February 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 24 February 2026.

Summary: Application for declaratory order by a sentenced inmate and awaiting trial accused – his constitutional rights, to wit the rights to dignity and to have adequate time and facilities to prepare a defence and humane detention conditions considered – respondents in compliance with applicable regulations – application dismissed.

ORDER

- 1 The application is dismissed.
 - 2 There shall be no order as to costs.
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JUDGMENT

Daffue J

Introduction

[1] In these proceedings the right to dignity is a crucial aspect relied upon by the applicant. He is a sentenced prisoner and also an accused awaiting trial. He not only complains about his treatment whilst in custody, but objects to the manner in which his right contained in s 35(3)(b) of the Constitution of South Africa (the Constitution) to prepare for his forthcoming criminal trial is being jeopardized.

[2] Recently, the Constitutional Court expressed itself as follows in *Van Wyk and Others v Minister of Employment and Labour; Commission for Gender Equality and Another v Minister of Employment and Labour and Others*:¹

'In Dawood, this Court highlighted the interconnectedness of the right to equality with the right to human dignity, and why the right to human dignity is significant. It reasoned:

"Human dignity therefore informs constitutional adjudication and interpretation at a range of levels. It is a value that informs the interpretation of many, possibly all, other rights. This Court has already acknowledged the importance of the constitutional value of dignity in interpreting rights such as the right to equality, the right not to be punished in a cruel, inhumane or degrading way, and the right to life. Human dignity is also a constitutional value that is of central significance in the limitations analysis. Section 10, however, makes it plain that dignity is not only a value fundamental to our Constitution, it is a justiciable and enforceable right that must be respected and protected. In many cases, however, where the value of human dignity is offended, the primary constitutional breach occasioned may be of a more specific right such as the right to bodily integrity, the right to equality

¹ *Van Wyk and Others v Minister of Employment and Labour; Commission for Gender Equality and Another v Minister of Employment and Labour and Others* [2025] ZACC 20; [2025] 12 BLLR 1213 (CC); 2026 (1) SA 38 (CC) at para 43; the reference to Dawood is *Dawood v Minister of Home Affairs; Shalabi v Minister of Home Affairs; Thomas v Minister of Home Affairs* [2000] ZACC 8; 2000 (3) SA 936 (CC).

or the right not to be subjected to slavery, servitude or forced labour.” (Emphasis in original.)’

The parties

[3] The applicant in this application is Mr Thabo Bester. He is accused 7 in criminal case number 83/2023. This application was initially set down for hearing on 31 July 2024, at which stage Dinana Reid Inc of Midrand still acted as the applicant’s attorney of record.

[4] The four respondents are cited as the State, the National Commissioner: Correctional Services, the Head of Centre: Kgosi Mampuru Correctional Service Centre (Kgosi Mampuru) and the Minister of Correctional Service respectively.

The relief sought

[5] I do not intend to quote the relief sought in the notice of motion, but mention that the applicant *inter alia* seeks the following declaratory orders:

- a) that the second and third respondents' refusal of allowing meaningful consultations with his legal representatives is unconstitutional and invalid;
- b) that the conduct of second and third respondents in keeping him in solitary confinement for 23 hours a day is unconstitutional and invalid; and
- c) that the conduct of second and third respondents in transporting him to attend his criminal case whilst hand-and leg-cuffed is unconstitutional and invalid.

[6] During oral argument, the applicant recorded that he would not insist on using a laptop or a suitable gadget whilst in custody in preparation of his criminal trial as initially sought in the notice of motion. Furthermore, he recorded now being satisfied with two hours' consultations per day when required to consult and prepare for the criminal trial, instead of the seven hours per day sought in the notice of motion.

[7] During oral argument, the applicant insisted, as requested by his former attorney before the application was launched, that he should be allowed the opportunity to consult in a consultation room without a glass partition between him and his legal team, not only out of earshot of the correctional service employees, but they should not be allowed in the same room, although be entitled to watch him through the room's window. The room identified at Kgosi Mampuru is room B9.

The supplementary affidavits

[8] The respondents filed an application on 9 December 2024 for leave to file a supplementary answering affidavit in order to deal with issues raised in the applicant's replying affidavit. On 8 December 2025, a year later, the applicant served and filed an application to file a so-called supplementary founding and replying affidavit to the respondents' supplementary answering affidavit. At the hearing of the application, the applicant who appeared in person and Mr Snellenburg SC on behalf of the respondents confirmed that these two supplementary affidavits could be accepted as such. These affidavits were admitted accordingly.

Brief background

[9] As mentioned, the main application was initially set down for hearing on 31 July 2024. The application was eventually heard by Mbhele DJP on 28 November 2024, who had to consider the applicant's objection to the civil court's jurisdiction. On 21 February 2025, judgment was delivered in terms whereof the applicant's objection to the civil court's jurisdiction was dismissed with costs. On 21 July 2025, Molitsoane J heard an application for leave to appeal in the absence of Mbhele DJP. On 18 September 2025, the application for leave to appeal was dismissed with costs.

[10] The application was set down for hearing on 5 February 2026, whereupon it was allocated to me. On 2 February 2026, the applicant's attorney, I. Courage Morero, forwarded an email to my secretary, confirming that it was written on behalf of the applicant. The attorney confirmed that the applicant would represent himself during the opposed application, but that he would not participate if the hearing was to be held virtually. I was also informed that the applicant was transferred to Ebongweni Supermax Centre (Ebongweni) in KwaZulu-Natal, on 25 January 2026. The same day, I contacted the acting head of Ebongweni and made arrangements for the applicant to attend a virtual hearing. The applicant not only joined the meeting on the MS-Teams platform but also confirmed that he was prepared to argue his case on this platform. He confirmed that he was not in possession of the application papers which were left behind at Kgosi Mampuru, but was prepared to continue with the hearing.

[11] The applicant recorded during oral argument that Morero and Moeketsi Inc and its director, I. Courage Morero in particular, is still his attorney of record. Bearing in mind his incarceration, he confirmed that this judgment may be sent electronically to the attorney of

record.

Evaluation of the evidence and submissions by the parties

[12] The jurisdiction of the court to make orders pertaining to the conditions at Kgosi Mampuru was not raised in the application papers or in argument. I have some doubt as to whether this Court has any jurisdiction whatsoever although the applicant is bound to appear in this court in the criminal case. However, I shall assume that this Court has jurisdiction to entertain the applicant's claims for declaratory orders which have a direct bearing on his right to a fair trial.

[13] When the applicant attended pre-trial meetings in Bloemfontein, he was transported from Kgosi Mampuru in Pretoria to the High Court. After the court proceedings, he was transported back to Pretoria the same day. On the applicant's version, they would leave Pretoria at about 2 o'clock in the early morning and return to Kgosi Mampuru that same day where they would arrive between 19h00 and 20h00. He was transported whilst cuffed at all times and had to sit at the back of a van. It is not recorded how many times this occurred, but I find it difficult to understand why arrangements could not be made that the applicant be transported to Bloemfontein during the day, to be kept here overnight and to be taken back at a convenient time after the court proceedings.

[14] I am reminded of the right to human dignity as expressed in the Constitution. Section 10 thereof reads: 'Everyone has inherent dignity and the right to have their dignity respected and protected.' Furthermore, everyone has the right to freedom and security of the person, which includes the right not to be tortured in any way and not to be treated or punished in a cruel, inhumane or degrading way, as expressed in s 12(1)(d) and (e) of the Constitution.

[15] The applicant relies on the Constitutional Court judgment in *Sonke Gender Justice NPC v President of the Republic of South Africa and Others*² in support of his case. The relevant passage relied upon reads as follows:

'If constitutional values find clear expression in the functioning of correctional facilities, the protection of the rights of inmates will be optimised and better results will be achieved by correctional centres. In addition, adherence to the rule of law will be maintained and, ultimately,

² *Sonke Gender Justice NPC v President of the Republic of South Africa and Others* [2020] ZACC 26; 2021 (3) BCLR 269 (CC) para 31.

society as a whole will benefit as a result of reduced crime rates and recidivism. For correctional centres to function as hidden enclaves, beyond the reach of the Constitution, would be an intolerable position in our constitutional dispensation.'

It is appropriate to quote the following quotation by the late Desmond Tutu which reads as follows: 'My humanity is bound up in yours, for we can only be human together.'

[16] I accept that the applicant's constitutional rights may be limited to the extent that the limitation is reasonable and justifiable as provided for in s 36 of the Constitution.

[17] Mr Snellenburg placed on record that insofar as the applicant was transferred to Ebongweni a few days before the hearing, this Court could not consider making any orders pertaining to the new correctional facility. Also, the National Commissioner did not have an opportunity to deal with any of the submissions made by the applicant during oral argument. Mr Snellenburg submitted that this Court could not make an order in vacuum, bearing in mind the relief sought by the applicant in the notice of motion. I agree but must say that I find it strange that the applicant was transferred a few days before the hearing of the opposed application. This is either a coincidence or a deliberate attempt to flout the applicant's rights. The applicant's right to proper consultation with his Gauteng legal representatives who will have to drive in excess of 700 km was totally ignored. However, I do not have to speculate or arrive at any conclusion in this regard, bearing in mind that the applicant has filed an urgent application in the Gauteng High Court to challenge the transfer.

[18] Mr Snellenburg submitted that the respondents acted within the bounds of the law and the regulations issued in terms of the Correctional Services Act 111 of 1998 as fully set out in the answering affidavit of Mr Qebengu, the Acting Head of Kgosi Mampuru. It is evident that Kgosi Mampuru is a high-security correctional centre comprising of only single cells and that inmates in the facility do not share cells. When at Kgosi Mampuru the applicant had an opportunity, on his own version, to exercise daily for an hour. This took place, on the respondents' version, in the open air, unless the weather did not permit it. The applicant also had an option to participate in other recreational activities. This being opposed motion proceedings, I am bound to accept the respondents' version unless I find it to be far-fetched and/or false. I have no reason not to accept the respondents' version.

[19] Although the applicant complains about the fact that he could not properly consult with his legal representatives at Kgosi Mampuru, evidence has been presented by the respondents pertaining to the visits to him by various legal representatives over an extended period of time. This must again be accepted as correct. The applicant's initial insistence to be allowed seven hours per day for consultations was not only impractical but also disingenuous. He now accepts that two hours per day, when required, as proposed by the respondents in paragraph 39 of the answering affidavit, is sufficient.

[20] The applicant's insistence to be consulted at Kgosi Mampuru in a private room not allocated for consultations by inmates with their legal representatives has been addressed. Mr Snellenburg made the point that the applicant is not the only inmate and if such a right would be afforded to him, all other inmates would insist on the same privileges. I do not intend to make a ruling in this regard for the reasons advanced herein but merely wish to state that I am not in agreement with the respondents' attitude. Pastors and other therapists are making use of this room, identified as room B9, to consult with inmates. The applicant is not accused of one crime of murder or robbery involving the testimony of three of four state witnesses. He is one of nine accused. 38 counts are levelled against the accused in the indictment and 25 thereof are applicable to the applicant. The indictment consists of 43 pages and I have been told that 5 000 pages of documents may be used by the State in the forthcoming trial. Clearly, the case against the applicant requires much more preparation than the ordinary criminal case. This is apparently not appreciated by the respondents. They should be cautioned not to put a spoke in the wheels of justice.

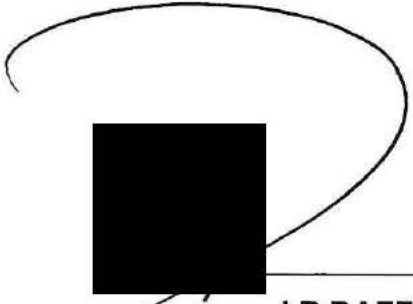
[21] The criminal matter has been dragging on for a long time and several pre-trial conferences have been held in this Court in an effort to certify it trial-ready. In fact, it is common cause that trial dates have been agreed upon earlier on more than one occasion, but notwithstanding that, the criminal trial could not get off the ground yet. The applicant confirmed that a further pre-trial had been scheduled for 24 March 2026. The purpose thereof is unclear, but fact of the matter is that some more time should be allowed for him to consult further with his legal team if required to ensure that they are ready for the criminal trial.

[22] Although I have some sympathy for the applicant based on what I have said herein, he has not convinced me that he is entitled to the relief claimed. Finally, the issue of costs should be considered. In accordance with the general rule, the applicant should in principle

bear the costs of the application, including that of the respondents. However, Mr Snellenburg referred me to the *Biowatch*-principle³ and submitted that in the circumstances of this case it would be reasonable to make no order as to costs. I am in agreement with this submission.

[23] Therefore, the following order is made.

- 1 The application is dismissed.
- 2 There shall be no order as to costs.



J P DAFFUE
JUDGE OF THE HIGH COURT

³ *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (6) SA 232 (CC).

Appearances

For the Applicant: T Bester

Instructed by: In person (the judgment to be sent electronically to couragem@mmlegalco.co.za as agreed to by the applicant)

For the Respondents: N Snelleburg SC
MS Mazibuko

Instructed by: State Attorney