



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

(Sitting in PRETORIA)

CASE NO: SS 40/2006

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

6 March 2026

SIGNATURE

THE STATE

v

PORRITT, GARY PATRICK

Accused no. 1

BENNETT, SUSAN HILLARY

Accused no. 2

REASONS FOR DIRECTIONS OF 6 MARCH 2026

CONCERNING

INDEPENDENT PRISON VISITOR

SPILG, J:

INTRODUCTION

1. Porritt, who is accused no 1, has on numerous occasions complained about the Correctional Service Facilities both at Johannesburg Central (when he was a trial detainee there) and at Kgosi Mampuru II. He has invariably been supported by accused no 2, Ms Bennett, who has attended these facilities to meet Porritt to consult with him, bring him food and the like.

2. The record will show that from time to time this court has called senior officials from the respective facilities to attend court to deal with complaints. Prior to March 2026, the previous one was during the last week of November 2025. On that occasion Colonel Sebothoma who was at the time the Acting Head of Local Remand Detention Centre attended. By letter dated 26 November 2025 he admitted that there were many errors on the part of the Department until he was deployed there and that he has been working hard to ensure that matters are handled correctly and that measures will be in place to avoid a recurrence of the concerns.
3. When court resumed this Monday, 2 March, Porritt presented a list of complaints with regard to his detention. He is supported by Bennett. Once again, the contention is that these complaints affect his fair trial rights and that the court must deal with them.
4. Porritt was requested to tabulate his grievances and identify which were disputed in MT Moleki's written response (as current Acting Head of the Local Remand Detention Centre) dated 2 March 2026.
5. Porritt had raised four issues and received responses to two of them. The four issues were;

- a. The provision of standby electricity. Moleki however claimed that this had been resolved
- b. That inmates were not receiving balanced meals. Moleki disputed this too

The lack of hot water. This was pertinently raised by Porritt in the handwritten complaint of December which Adv Newman on behalf of the prosecution had forwarded to Moleki for response. Moleki responded to this by letter of 2 March 2026

- c. The continued failure to provide Porritt with his medical reports. Although the Colonel had explained the procedure in relation to medical reports, this

was not dealt with in Moleki's response. However it had not been raised by Porritt in the handwritten note referred to earlier that had been sent to him by Adv Newman.

6. In view of the outstanding issues the State advised that it would ask for a response.
7. It should be added by way of introduction that Porritt wished to hand up a document that was sent to the National Commissioner of Correctional Services and to the Minister of Correctional Services. He said that he had dictated it to a fellow inmate.
8. The document was handed up. It is a thirty four page typed set of requests for information and reasons (with an additional four pages of annexures) made *inter alia* under the provisions of the Promotion of Administrative Justice Act no 3 of 2000 ("PAJA") and the Promotion of Access to Information Act no 2 of 2000 ("PAIA"). The request was made on the basis that a number of decisions and actions were taken which it was contended adversely affect Porritt's rights. One of the issues to which the request related concerned the "*Unlawfully inadequate provision of food/nutrition to detainees*". The others related to the detainees' right to acquire food from outside the prison, issues around the prisoners shop and the lack of washing powder.
9. The document was signed by Porritt placing an "X" as his signature and Bennett recording that she witnessed this on 23 February 2026.
10. Bennett said that she in fact had typed it from the notes the inmate had supplied and did a cut and paste of legal submissions made previously by, if I recall Bennet correctly, attorneys Moss Morris, which would have been many years back.

EVENTS OF 6 MARCH

11. On 2 March 2026 Moleki in writing claim that hot water is being provided and further claimed that it was during the period 19 to 25 February that the boiler was not working as the contractor had taken apart for repair. This was disputed by Porritt in court on 6 March.
12. In regard to the medical reports; On 6 March party informed the court that he believed that it was being sorted out by a person who I understood from him was a top doctor at Correctional Services. Part gave an explanation which suggests that the problem was with a duplication of file numbers for him and that the issue lay between Baragwanath and Correctional Services

THE ISSUE

13. The accused contend that this court is in dereliction of its duty by not investigating the conditions complained of and in failing to hold officials responsible through court orders it should make. The thrust of the argument is that the issues complained of affect the accused's fair trial rights. It is also contended that there exists an order granted in the Gauteng High Court sitting in Johannesburg dealing with the provision of food which is being breached and this court should also enforce that order.

CRIMINAL TRIAL COURT'S ORDINARY FUNCTION AND WAY FORWARD

14. This court has in the past sought to resolve issues and deal with the accused's complaints relating to both Correctional Services and the South African Police Services. Indeed in the past this court held an enquiry with regard to the transportation of the accused which included obtaining the opinion of a medical practitioner at Baragwanath.
15. There is however a limit to what this court can or should do. It is concerned with concluding a criminal trial that was first on the roll in about 2005, where evidence has been led before me since September 2016 and where the State case has still not closed.

16. While issues of fair trial rights and the welfare of an accused before it must be of concern to a presiding judge, there is a stage where it cannot be allowed to swamp the proceedings. This will occur where there is no readily resolvable solution.
17. Secondly the court must always be mindful that trying to find a solution does not mean that it can determine how either Correctional Services or SAPS are to exercise their powers and even if *prima facie* the way they have done so is reviewable, the requirement of *audi alteram* requires a proper ventilation of the issues motivated by a proper application. I repeat, this court is here to deal with a criminal trial pursuant to charges laid some 20 years ago against both accused.
18. The accused's recourse is first to exhaust internal remedies, unless urgent intervention is required, and even then, if there is a dispute or failure to remedy the situation when a formal complaint has been lodged is to approach the ordinary civil courts for relief. This court has done its best to resolve issues that appear capable of easy resolution- as occurred when the nature of transport for Porritt became a difficulty because of the medical assessment, from recollection, of his back.
19. There are additional factors which may also come into consideration which may result in a broader enquiry which would delay the completion of this trial even further. It is that in one of Moleka's responses of 2 March he claimed that Porritt is deliberately uncooperative in order "*to delay his ... (criminal trial) ... based on complaints and demands that he always makes*". Moleki alleges that on 25 February Porritt refused to attend his medical appointment at Baragwanath Chris Hani Hospital, giving as his reason that he does not want to be cuffed. This according to Moleki required him to instruct that Porritt be forcibly cuffed and taken to the hospital "*to honor his appointment*". Porritt disputes these allegations.
20. It is therefore clear that Porritt has set in motion steps under PAJA and PAIA to deal with the food issue as a precursor, so it is stated by him, to litigation against

both the responsible Minister and Commissioner. There is a clear dispute and this court is not going to conduct an opposed motion court hearing where there already exists a dispute of fact; nor should this court be used to gather evidence once that process has taken place.

21. With regard to the issues raised by Porritt and not covered by the PAJA and PAIA requests, one appears to be resolved or is in the process of resolution according to Porritt and the other remain in dispute and therefore are not capable of a speedy facilitated resolution.

22. There are no doubt other compelling reasons why a criminal trial court should not ordinarily be used to ventilate complaints by accused standing trial against officials and that there may be occasions where a court exercising its discretion does attempt to facilitate a resolution. But it cannot allow itself to be sidetracked from its function to try persons accused of crime by being expected to hear complaints about prison conditions, whether interminably or otherwise.

23. There is another process available to the accused. In terms of Chapter X of the Correctional Services Act 111 of 1998 the Judicial Inspectorate through duly appointed Independent Prison Visitors "*shall deal with the complaints of prisoners*" in the manner provided for in s 93(1) and under s 93(5) is obliged to report any unresolved complaint to the Visitors' Committee and may, in cases of urgency refer the complaint to the Inspecting Judge. Gauteng has a Visitors' Committee responsible for Kgosi Mampuru II. The functions, duties and powers of the Inspecting Judge includes dealing with complaints submitted *inter alia* by a Visitors' Committee (s 90(2)). In dealing with complaints the Inspecting Judge may make any enquiry and hold hearings (s 90(5)).

24. In terms of the Regulations promulgated under the Correctional Services Act the custody of all inmates under conditions of human dignity concerns itself with twenty or so issues. Accommodation, nutrition and healthcare are included. They cover the complaints the accused seek to raise before this court.

25. It is evident that the mechanism of Chapter X, aside from giving effect to the Bill of Rights provisions in the Constitution also provides what the legislature considers an effective means of addressing complaints by an independent and impartial body in an efficient way. It is unnecessary to decide whether this must be considered to be an internal remedy which must be exhausted before approaching the trial court hearing the detainees' criminal case (whereas the civil court may always be open to direct access). Suffice it that in the present case that is pre-eminently to recourse available to the accused.
26. In terms of s 93(1) the process of investigation is triggered by a complaint made by a prisoner to the Independent Prison Visitor and that person is obliged to conduct regular visits.
27. Porritt complains that these processes are damp squibs and that he has tried to use them. The court is not going to debate the point but will give an appropriate direction to the Registrar.

DIRECTION TO REGISTRAR

28. The court issues the following direction to the Registrar:

The Registrar is directed to request the Independent Prison Visitor, through the Judicial Inspectorate for Correctional Services Tshwane Management Area, that when next he or she makes a visit to Kgosi Mampuru II Correctional Facility that Mr Gary Patrick Porritt be interviewed and that such complaints as he makes be dealt with as envisaged under Chapter X of the Correctional Services Act 111 of 1998.



SPILG, J

DATES OF HEARING:	2 and 6 March 2026
DATE OF ORDER	
AND REASONS:	6 March 2026
FOR THE ACCUSED:	In person
FOR THE STATE:	Adv. EM Coetzee SC
	Adv. Y Newman