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

CASE NO: 2025/249561

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: YES

DATE: 20 February 2026

SIGNATURE:

In the matter between:

F[...] B[...] S[...]

Applicant

and

THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

1st Respondent

**MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

2nd Respondent

THE DEPARTMENT OF CORRECTIONAL SERVICES

3rd Respondent

**THE NATIONAL COMMISSIONER OF
CORRECTIONAL SERVICES
SUN CITY CORRECTIONAL CENTRE**

4th Respondent

**JOHANNESBURG CORRECTIONAL FACILITY
SUN CITY PRISON**

5th Respondent

THE MINISTER OF HOME AFFAIRS

6th Respondent

THE DEPARTMENT OF HOME AFFAIRS

7th Respondent

THE SOUTH AFRICA POLICE SERVICES

8th Respondent

THE INVESTIGATION OFFICER IN THE MATTER
OF THE APPLICANT UNDER CASE NUMBER 3/5921/2022

9th Respondent

THE MAGISTRATE OF THE RANDBURG
MAGISTRATE'S COURT RANDBURG

10th Respondent

JUDGMENT: HABEAS CORPUS APPLICATION

(This matter was heard in open court on 5 February 2026 after it paid visits to the urgent court on 23 and 30 December 2025. Having heard arguments on behalf of the applicant and the respondents, judgment was reserved to be uploaded onto the electronic file of the matter on Caselines. The parties were informed that the reserved judgment will be uploaded onto Caselines and the date of uploading will be deemed as the date of the judgment).

BEFORE: HOLLAND-MUTER J:

[1] The Applicant has been in detention since 29 November 2022. The Applicant paid several "visits" to various courts with applications clothed in almost similar ways for relief largely similar in all the applications. The main and ultimate relief sought is the unconditional release of the applicant from custody. The outstanding applications will be referred to below.

[2] The latest application is clothed as a ***Habeas Corpus Application***. The *habeas corpus* is an ***Interdictum de libero homine exhibendo***, literally meaning to issue a writ requiring that a person under arrest be brought before a court to secure

the person's release unless lawful grounds are shown for continuing the detention of the person.

[3] The applicant is at present involved in at least three different criminal matters, the *first* for alleged kidnapping of his minor child from Zimbabwe and robbery, the *second* for immigration offences including the unlawful entering the Republic of South Africa and *thirdly* at least nine counts of contravening the Tax Administration Act 28 of 2011("TAA"). He was arrested during November 2022 on an Interpol warrant regarding the alleged kidnapping charges and released on bail in the amount of R 150 000-00 after paying the R 150 000-00 bail amount set. For some undisclosed reason he remained in custody.

[4] The criminal matter regarding the contraventions of the Immigration Law is part heard in the Magistrate's Court at Randburg. The applicant has pleaded and the trial will continue on 20 February 2026. The tax matter, as far as being informed by the applicant's counsel is set down for March 2026. The parties did not inform the court on the kidnapping and robbery matter regarding a trial date. Mention was made of a possible extradition application from the Zimbabwean Authority but nothing has materialised in this regard. Fact remains the appellant is trial waiting on three different criminal cases and of which one part is part heard.

[5] The detention of the appellant from which he seeks his immediate release is his detention by court orders by the relevant criminal courts in which he is standing trial.

URGENCY:

[6] Rule 6(12)(b) of the Uniform Rules of Court clearly requires that an applicant set out the reasons for urgency and set reasonable time frames within which the opponent should answer. The applicant has to set out why the matter be heard out of order and the reason why he would not be afforded substantial redress in due course. This aspect was ruled upon in **East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd 2011 ZAGPHJ JHC 196 at para [6]** the court should consider that if the matter were to follow its normal course as laid down by the Rules,

whether the applicant will be afforded substantial redress. If not, then the matter qualifies to be enrolled on the urgent roll.

[7] It will be clear below that the applicant is no stranger to litigation, and that he is aware what urgency entails. The court will deal with his numerous urgent applications during 2024 to 2025 when he lodged at least ten different urgent applications for similar relief, with no relief awarded in any of the urgent applications. The majority were struck from the roll for lack of urgency or removed by the applicant shortly before the hearing thereof.

[8] The applicant lodged the present urgent application on 22 December 2025 which was served on the Office of the State Attorney on 22 December 2025 at 13h54. The abridged time frames set for the respondents were to file any intention to oppose before 12h00 on 22 December 2025 (before service occurred) and any answering affidavit before 16h00 on the same day. This was on very last days before the festive season came into full swing. It needs no experienced practitioner to realise the impossibility of the chosen time frames laid down by the applicant for the respondents to answer.

[9] The matter was set down for 23 December 2025 before Retief J but was removed from the roll before hearing. On 25 December 2025 (Christmas day) the applicant served the State Attorney with a Rule 28(1) notice amending the existing notice of motion for set down on 30 December 2025. The amended notice required the respondents to file its intention to oppose by 28 December 2025 and answering affidavits before 29 December 2025 at 16h00. This was impossible and the matter was postponed by Neukircher J *sine die* with the proviso that the applicant should approach the DJP for a special allocation after all affidavits were commissioned and served. The applicant annexed unsigned affidavits to the original notice of motion. The matter was then set down by the ADJP for 5 February 2026 in this court.

[10] After hearing both parties' representatives on 5 February 2026, this court was convinced that there is no urgency for this application, but decided to hear the merits of the matter to give some finalization to the ongoing litigation saga although the

court is of the view that the applicant will have substantial redress in due course the merits.

THE APPLICANT'S CASE:

[11] The applicant advanced four propositions justifying his application namely:

11.1 The *first* proposition is that his arrest and continued detention is unlawful because the Department of Home Affairs has now confirmed that his identity document was issued by Home Affairs. His argument is based on the affidavit obtained from a Home Affairs office in Durban in December 2025. He does not mention that this urgent application was struck from the urgent roll early December 2025. All that was stated in the affidavit he relies upon is that the Home Affairs official merely stated that the applicant is in possession of an identity document issued by Home Affairs. This fact is not in dispute. What is in dispute in the part heard criminal trial is the completing of the preceding documentation to obtain the identity document. The state is alleging that the information completed on the application is false. It is not for this court to intervene in the part heard criminal matter and to pronounce any verdict on the status of the issued identity document. The aspect of unlawfulness would have been considered during the bail applications and appeals thereof. The court is not privy thereto. This court cannot assess the merits of the part heard criminal case to determine whether the state's case is strong enough and order his release.

11.2 The *second* proposition by the applicant is that the State has no prima facie case against him, particularly in relation to the allegations of fraud, misrepresentation and contraventions of the Immigration Act. It is not for this court to scrutinise the section 212 statement (into the Criminal Procedure Act 51 of 1977 "CPA") and to pronounce on the part heard criminal matter. This court is not to pronounce on the status and value of the section 212 statement; this is for the criminal trial court to decide on the evidence produced in the trial. This court is not sitting as a court of second instance and the correct way is to have the criminal trial finalised in the Magistrate's Court and thereafter follow

the correct procedure to appeal the outcome if dissatisfied with the outcome of the trial.

11.3 The applicant is referred to section 212 (1) of the CPA to satisfy himself that the provisions of section 212 finds application in ***criminal matters*** (my emphasise). In par 97 in the heads of arguments on behalf of the applicant reference is made to *section 112* presumably of the CPA. Any affidavit in terms of section 212 of the CPA will be *prima facie* proof by mere production thereof of the contents of it in criminal matters. The present application is not brought in terms of the CPA but as an urgent application in a civil court. The argument on behalf of the applicant is meritless in the present matter.

HABEAS CORPUS:

11.4 The *third* proposition by the applicant is that his arrest, the dates thereof, the case docket and the 48 hour requirement in the CPA renders his continued detention unconstitutional. The applicant disputes the dates of his arrest, the contents of the various police dockets and the 48 hour requirement in section 50 of the CPA. Although the purpose of section 50 (c) (ii) is that a detainee be brought before a court within 48 hours after arrest, the period can be extended in terms of section 50 (2) (i) & (ii) of the CPA. The purpose of the 48 hour is to prevent detaining a person indefinite or for prolonged periods which will contravene the constitutional right in section 35 (1)(d) of the Constitution.

* Section 35 (2)(d) empowers anyone in detention to challenge the lawfulness of his detention before a court and if unlawful, to be released. This is subject to the 48 hours not being extended. This is for the criminal court to decide upon.

* In **Minister of Law and Order v Kader 1991(1) SA 41 (A)** at 49-50 the Appellate Division dealt with the 48 hour period. It was held that the function of a judicial officer was to guard against the accused being detained on insubstantial or improper grounds in any event and to ensure that the detention is not unduly extended. If

applied to the present matter the court cannot find that detention of the appellant after his first appearance was on insubstantial or improper. The charges against the appellant are serious and part heard. The appellant previously made use of the legal mechanisms available to convince different courts to try and secure his release. The 48 hour issue was most probably central in the previous urgent applications and needs no further attention. The court will deal with these pending urgent applications below.

* The scope of Habeas Corpus is not limitless. The enquiry is whether the detention of the applicant is unlawful or not. In this matter the applicant is detained by way of the order granted by the Magistrate Randburg where the criminal matter against the applicant is part heard. It is not whether the case against him is weak and he is not entitled to release merely because he disputed the case against him. He should raise this aspect in the part heard criminal case. His argument about the section 212 affidavit can only apply in criminal matters where the evidential value of the section 212 statement will be decided. The court is of the view that the applicant has not made a case for his release on these grounds. The court is further of the view that his detention is lawful.

11.5 The *fourth* proposition is that the length of his detention, coupled with his dissatisfaction with the bail applications' outcome, justifies the habeas corpus relief sought.

* The appellant launched various unsuccessful bail applications before the Magistrate as early as in the beginning of 2023 shortly after his detention. He appealed the refusal of bail in the Magistrate Court to the Johannesburg High Court without success. Yacoob J and Wanless J dismissed his bail appeals on two different occasions. It is not for this court to "review" these decisions.

* The appellant brought several urgent applications in the High Court to secure his release for detention. Although the relief sought in these urgent applications were not titled to be habeas corpus, the result if granted would have resulted in the immediate release of the applicant from detention. The list of these applications is as follows:

[12] The applicant has followed the prescribed route for applying for bail on more than one occasion. His first bail application during December 2022 was refused by the Magistrate in Randburg and the subsequent bail appeal dismissed by the Johannesburg High Court. See *supra*.

[13] What will follow is a brief overview of the various legal processes instituted by the applicant and the outcome thereof. There is no need to give the detail of each application and outcome thereof. Suffice to state that the majority of the urgent applications were struck from the roll for lack of urgency. An application struck from the roll for lack of urgency is still a pending matter and should be enrolled in the ordinary course business. To date of the hearing all these matters are still pending.

[14] The applicant brought two different bail applications, two bail appeals, numerous urgent applications and one unsuccessful attempt for direct access to the Constitutional Court. The underlying relief in all these matters were the release of the applicant from custody.

14.1 He was held in custody in lieu of a court order granted by the Magistrate Randburg after an unsuccessful bail application on 3 December 2022. This was within a few days after his initial arrest. This refusal of bail was appealed to the Johannesburg High Court where the appeal was dismissed by Yacoob. J

14.2 A further bail application was launched on 20 March 2024 which was refused by the Randburg Magistrate. The subsequent bail appeal was dismissed by Wanless J during July 2024. The gist of the judgment was that the court held that the appellant was a flight risk.

14.3 On 16 August 2024 the applicant filed an urgent application against his former immigration consultants. The applicant withdrew this application shortly before the hearing.

14.4 On 25 August 2024 another urgent application was filed, this time against the Minister of Home Affairs. The set down was for 3 September 2024

and the relief sought was declaring his detention unlawful and to order his release from custody. The reality of the requested relief is nothing more, nothing less than a habeas corpus application. The matter was struck from the roll for lack of urgency.

14.5 The application in 14.3 above was re-enrolled on the urgent court for 3 October 2024 but it was removed from the roll before hearing thereof.

14.6 The applicant again re-enrolled the urgent application in 14.5 above for 8 October 2024 but removed before hearing, the applicant alleging that a settlement was reached with his immigration consultants.

14.7 On 22 October 2024 another urgent application was brought against the Minister of Home Affairs, the relief sought an interdict against the Minister preventing the deportation of the applicant. It was removed from the roll and is currently pending.

14.8 On 29 October 2024 the applicant re-enrolled the urgent application in 13 6 supra. The application stood down to 1 November 2024 when it was struck from the roll for lack of urgency.

14.9 On 12 November 2024 the applicant brought an urgent application against the Magistrate of Randburg and various other parties seeking an order to set aside all decisions taken by inter alia the "Hawks" (Directorate of Priority Crimes Investigating Litigation Unit) since the applicant's first appearance on 22 November 2022. The matter was struck from the roll by Strijdom J for lack of urgency.

14.10 On 3 December 2024 another urgent application found it way to the urgent court which was struck from the roll by Van Nieuwenhuizen J for lack of urgency.

14.11 On 10 December 2024 another unsuccessful urgent application was struck from the roll by Joyini AJ for lack of urgency.

14.12 On 9 December 2024 the applicant brought an urgent application against Captain MP Magetse for his removal from any further involvement in the investigation, alleging that the Captain misled the court. The matter was removed from the roll.

14.13 On 19 December 2024 yet another urgent application was brought before Pienaar AJ but it was removed before hearing. The appellant was ordered to pay the costs of the application.

14.14 On 1 December 2024 the next urgent application was brought before Lenyai J but it was removed from the roll before hearing.

14.15 On 4 December 2024 the applicant's direct approach of the Constitutional Court was refused. The relief sought was the alleged breach of the applicant's constitutional rights of liberty and his request was for his immediate release from detention. The Con Court refused the applicant direct access to the court.

14.16 The latest urgent application was brought in the Kwa-Zulu Natal High Court on 11 December 2025 indirect seeking similar relief but the application was dismissed with costs for lack of urgency. The applicant now tries to incorporate an affidavit in terms of section 212 of the CPA by an official from the Durban Home Affairs Office in the current application as prove that the part heard criminal case has no merit. The Durban High Court did not pronounce on this aspect and the attempt to incorporate such cannot succeed.

[15] The Criminal Procedure Act 51 of 1977 (CPA) provides for a comprehensive framework to obtain the relief of releasing from detention/custody. The CPA provides for bail applications, appeals against refusal of bail, representations to the Director of Public Prosecutions for stopping the prosecution. The applicant has utilised these options without success and it does not entitle him to substitute a civil urgent application for the statutory criminal relief provided for in the CPA.

[16] It is clear that these urgent applications were disguised habeas corpus applications. The aim with these was to have the applicant released from detention. During arguments this was denied, but an unexpected turn about occurred after the hearing via a letter sent to the court via the clerk by the attorney of the applicant. In this letter dated 12 February 2026 the writer thereof in no uncertain terms "placed it on record that the applications of concern wherein similar relief has been sought has been withdrawn". There is no other finding that a pattern emerged in multiple applications in different courts that the applicant seeks the same outcome to be released from detention without the part heard criminal trial to proceed and be finalised. This is an abuse of proceedings.

[17] This letter is nothing more than an unashamed attempt to manipulate the court after the hearing by conceding what denied during arguments. There is now no uncertainty that the majority of the urgent applications supra were disguised Habeas Corpus applications. The conduct of the applicant's attorney to send such letter to the judge is unacceptable and borders on conduct unbecoming. This kind of conduct is not expected from legal representatives and must be discouraged at all costs. It however confirmed that the applicant was persistent in his abuse of the court process. A copy of the letter is annexed to this judgment as annexure "A".

[18] The court is well aware of the constitutional provisions for a fair trial, the unlawful deprivation of liberty (**Bernstein v Bester 1996 ZACC 1996 (2) SA 751 CC**) and that justice must be seen to be done (**S v Tshilo 2000(4) SA 1078; 200(1) BCLR 1252 CC**) but also that the Constitutional Court held that these principles are not unqualified. It was held that if an application is frivolous, vexatious or inappropriate the worthiness of its cause will not immunise it against an adverse cost order. See **Biowatch Trust v Registrar, Genetic Resources and Others 2009 96) SA 232 CC**.

[19] The "admission" by the attorney in the letter supra confirms that the urgent process was abused in the past and in a vague unspecified manner making a sweeping statement that the applications of concern wherein similar relief has been sought has been withdrawn. There is no proof of such withdrawal nor any indication which of the pending applications previously struck for lack of urgency are now

withdrawn. This is "litigation" outside the application before court and such conduct is unbecoming.

[20] in view of the above the court is satisfied that the applicant failed to prove the application for Habeas Corpus.

[21] There were other "side issues" which has no bearing on the question whether the applicant made a case for the relief sought. Much was made of the history of the matter and the judgments handed down in the bail appeals, side issues not necessary to embark upon which have no real impact on the Habeas Corpus relief sought. In view of the pattern of ongoing abuse of the urgent application procedure these issues will not impact on the ultimate order.

COSTS:

[22] The normal principle is that costs follow success. I considered in view of the blatant abuse of the procedure to visit the applicant with a punitive cost order. After further consideration taking into account the wasted costs incurred by the during the saga ongoing litigation, I eventually decided that an order on a party-and-party scale will be most appropriate.

ORDER:

The application is dismissed with costs. The costs to be on a party and party scale "B".

POST SCRIPT:

[23] The only respondents that opposed the matter were the 1st to 4th and 6th & 7th respondents. The relief sought is the same against all the respondents and in the court's view the joining of the 5th to 11th respondents was unnecessary and indicative of the litigation fever suffered by the applicant. It is in the court's view not necessary to make any order in favour of these joined parties in view of the dismissal of the application.

HOLLAND-MUTER J
Judge of the Pretoria High Court
20 February 2026

Matter heard on 5 February 2026

Judgment delivered and uploaded onto the electronic file of the matter on Caselines on 20 February 2026

ANNEXURE "A": Letter by Danel Campbell Attorneys dd 12 February 2026.

APPEARANCES:

For the Applicant: Adv T Sellem (Indicated as a SC in the practice note dated December 2025, but not confirmed in court)
Adv V Rathilal

For the Respondents: Adv M D Sekwakweng

ANNEXURE “A”

Danel Campbell

ATTORNEYS

Personal Injury Litigation / General Litigation / Cost Consulting / Correspondent Work

BY EMAIL MESSAGE

To: S[...]

CC:

From: d[...]

My ref: DC/177

Your ref: 2025-249561

Date: 12 February 2026

THE HONOURABLE JUSTICE HOLLAND-MUTER

Dear Honourable Jude Holland Muter,

IN RE:F[...] B[...] S[...]//NDPP & OTHERS

CASE NUMBER: 2025-249561

We refer to the above matter which was argued before Your Lordship on 5 February 2026.

This matter concerns a habeas corpus application and accordingly involves the liberty interests of the Applicant.

We respectfully enquire whether an indication may be provided as to when Judgment is likely to be delivered, in order that we may properly advise our client.

We are mindful of the demands upon this Honourable Court and raise this enquiry with the utmost respect, given the nature of the relief sought and its constitutional implications.

Lastly, we wish to place on record that the applications of concern wherein similar relief has been sought has been withdrawn.

We remain grateful for the Court's attention to this matter and thank Your Lordship in advance for any guidance that may be provided.

Yours faithfully,

DANEL CAMPBELL ATTORNEYS

DANEL CAMPBELL

Checked and signed electronically