



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

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

DATE: 31/03/2020

SIGNATURE [REDACTED]

CASE NO: 011761-2026

In the matter between:

ORPHAN MOTSWERE

APPLICANT

and

**NATIONAL COUNCIL FOR CORRECTIONAL
SERVICES**

FIRST RESPONDENT

THE MINISTER OF CORRECTIONAL SERVICES

SECOND RESPONDENT

**HEAD PRISON: KOSI MAMPURU II CORRECTIONAL
C-MAX**

THIRD RESPONDENT

REASONS FOR ORDER

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

[1] On Monday 9 March 2026 the Applicant applied by way of an application, described in the founding affidavit as “*extreme urgency*” for an interdict against the Respondents in terms whereof the Respondents be interdicted from proceeding with a scheduled disciplinary hearing against the Applicant on 10 March 2026. The interdict sought is an interim interdict pending a review application to be launched by the Applicant against the decision to subject Applicant to the disciplinary hearing. On 9 March 2026 I struck the matter from the roll and on 27 March 2026 Applicant caused a request for reasons for that order to be delivered to my registrar by email. The reasons for striking the matter from the roll follow hereunder.

[2] The impugned disciplinary hearing relates to the alleged unlawful possession of a cellular telephone by the Applicant, who is an inmate at Kosi Mampuru Correctional facility and who is thus subject to the provisions of the Correctional Services Act 111 of 1998 (“CSA”) and regulations promulgated in terms of CSA. The grounds for the relief claimed by the Applicant can conveniently be summarised as follows:

[2.1] On 3 March 2026 the Applicant was served a notice to appear before a disciplinary hearing, relating to an incident which occurred on 4 July 2025 when the Applicant was found to be in the possession of an unauthorised cellular

telephone. This conduct constitutes an offense in terms of CSA and its regulations;

[2.2] Respondents averred in a previous application under the same case number (where Applicant challenged his confinement to maximum security) that the Applicant was found guilty of that particular offence after pleading guilty. Applicant may thus not be charged again for the same offence under the principle of *autrefois convict*;

[2.3] The notice to appear before the disciplinary hearing does not comply with Regulation 40 of GN35277 dated 25 April 2012, because it falls outside the period of 14 days as envisaged in that regulation.

[3] Based on the aforesaid, the Applicant avers that the charges and penalties are serious, that it is embarrassing, and that he has a "*clear right*" to an interdict. In support of urgency the Applicant averred that the impugned disciplinary hearing is "*happening*" at 10h00 on 10 March 2026, rendering the application to be one of extreme urgency.

[4] In the founding affidavit Applicant failed to disclose that, in the previous application to which he refers where he was allegedly found guilty of the same offence and which forms the basis of the Applicant's reliance on the principle of *autrefois convict*, he denied under oath that he was found guilty and/or pleaded guilty and stated that this allegation was false.

[5] The matter was struck from the roll after I exercised my discretion in terms of Rule 6(12), having found that the matter was not urgent, for the following reasons:

- [5.1] Applicant has an alternative remedy available. Applicant may appear at the hearing and plead not guilty, and at the hearing plead his defence of *autrefois convict*. For that purpose the Applicant may be represented by a legal representative who, instead of appearing before me and attempting to obtain cost orders against the Respondents, could appear at the disciplinary hearing and plead all defences available to Applicant.
- [5.2] Should the Applicant's defence of *autrefois convict* not be upheld during that disciplinary hearing, (or for that matter, any other defence raised by the Applicant), the Applicant may request that the proceedings be reviewed by the Commissioner in terms of section 24(7) of CSA. There is therefore an alternative internal remedy available to the Applicant and it is not necessary to engage this Court on a basis of "*extreme urgency*", relying in this application on a defence which the Applicant may raise during the disciplinary hearing, and seeking this court to decide on the merits of that defence.
- [6] Applicant thus failed to disclose irreparable harm, and/or lack of a suitable alternative remedy, and/or that the balance of convenience favours Applicant, for that very reason failed to disclose any grounds why the application should be entertained as an "*extreme urgent*" application. I am of the view that, should I have found that the merits of the Application required urgent determination, I would have dismissed the Application.
- [7] The matter was accordingly struck of the roll.


P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA

APPEARANCES

APPLICANT

Adv D B Melhapi

INSTRUCTED BY:

M.E MAKGOPA ATTORNEYS

RESPONDENT:

No appearance.