

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2026-070671

Delete whichever is not applicable	
(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<u>28 APRIL 2026</u>	
DATE	SIGNATURE

In the matter between:

ADAMS CLAUDE

Applicant

and

**NATIONAL COMMISSIONER OF CORRECTIONAL
SERVICE**

1st Respondent

**HEAD OF PRISON: KGOSI MAMPURU II CORRECTIONAL
SERVICES C-MAX**

2nd Respondent

THE MINISTER OF CORRECTIONAL SERVICES

3rd Respondent

**HEAD OF PRISON: BAVIAANSPOORT
CORRECTIONAL SERVICES**

4th Respondent

JUDGMENT

Mazibuko J

Introduction

- [1] The applicant seeks, on an urgent basis, an order reviewing and setting aside the respondents' decision of 8 March 2026 of transferring him from Kgosi Mampuru II Correctional Services C-Max ('C-Max') to Boksburg Medium Prison ('Boksburg').
- [2] The matter served before me on 15 April 2026, by consent between the parties, the matter stood down to 17 April for the applicant to file a supplementary affidavit and for the respondent to determine whether or not to file a confirmatory affidavit.
- [3] It was common course between the parties that on 11 June 2019 the applicant was found guilty of various crimes and sentenced to prison. He was incarcerated at Baviaanspoort Medium Prison ('Baviaanspoort').
- [4] According to his supplementary affidavit, the applicant asserted that following a raid operation on 4 July 2025 at Baviaanspoort, conducted by the first respondent together with officials of Baviaanspoort, several cell phones and items classified as contraband were discovered and confiscated within the facility. On the same day, he, together with nine other inmates were informed of the transfer at the first respondent's instruction. He was transferred to C-Max. Consequent to the review application launched by one of the nine inmates, Orphan Motswere, on 13 February 2026, the court reviewed and set aside the first respondent's decision to transfer him ('the Motswere judgment').¹
- [5] In his supplementary affidavit, the applicant challenged his transfer from Baviaanspoort to C-Max, relying on the Motswere judgment. He stated that the respondents failed to comply with section 24(2), (3), (4), (5) and (7) of the

¹ *Orphan Motswere*, case number 2026-011781.

Correctional Services Act ('the Act').² He averred that the respondents' decision to transfer him to C-Max was *ultra vires* as there was no preceding disciplinary process. His transfer from C-Max to Boksburg was executed arbitrarily and devoid of procedural safeguards as it did not comply with section 43(3) of the Act. Regarding his request on 12 March that his belongings and file be brought to Boksburg or he be transferred to Baviaanspoort, he was informed there is nothing they could do in that regard. He further stated that he was suffering daily from the unlawful detention at Boksburg. Furthermore, in September, he would be due for parole consideration. However, he could not participate in parole processes, work, educational opportunities, and other rehabilitative programs due to the unlawful incarceration in Boksburg.

- [6] Deposing to his founding affidavit, the applicant stated that on 8 March 2026, he was called by the respondents. They informed him to pack his belongings as he was being transferred. He was not furnished with notice of transfer nor reasons for his transfer nor informed to which correctional centre and was never invited to make representations regarding the transfer. He was then transferred to Boksburg Medium Prison. He stated that in their conduct, the respondents did not comply with section 35(2)³ of the Constitution and section 7 of the Act read with Regulations 25(1)(a) and (b).
- [7] The application is opposed by the respondents on the grounds that the urgency is self-created, that procedural failures occurred, and that the substantive legality of the administrative action. The respondents, through the head of prison who deposed to the answering affidavit, raising two points in limine that the applicant failed to exhaust internal remedies by not utilizing internal grievance procedures mandated by Section 21 of the Act and Section 7 of the Promotion of

² Act No. 111 of 1998.

³ (2) Everyone who is detained, including every sentenced prisoner, has the right- (a) to be informed promptly of the reason for being detained; (b) to choose, and to consult with, a legal practitioner, and to be informed of this, right promptly; (c) to have a legal practitioner assigned to the detained person by the state and at the state expense, if substantial injustice would otherwise result, and to be informed of this right promptly; (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released; (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and (f) to communicate with, and be visited by, that person's- (i) spouse or partner; (ii) next of kin; (iii) chosen religious counsellor; and (iv) chosen medical practitioner.

Administrative Justice Act⁴ ('PAJA'). Further, the applicant failed to comply with Rule 53(1)(b) of the Uniform Rules of Court, as the applicant did not dispatch the record of proceedings.

- [8] Regarding the application, the respondents stated that in July 2025, they received a tip-off from a whistle-blower that the applicant, together with nine other inmates was in possession of the contra bands, namely cell phones, amongst others and that they were scamming and extorting money from members of the public whilst in prison using those cell phones. They were charged and their security status was reclassified. The applicant was transferred to C-Max. The other inmates were sent to other Correctional Services centres within the Gauteng Province to ensure that they do not regroup as a gang and continue to commit illegal acts whilst in prison.
- [9] The issue to be determined is whether the matter is urgent. Further, whether the transfer of the applicant on 8 March 2026 was unlawful for violation and non-compliance with regulation 25(1)(a) under the Act? If yes, should it be set aside and the applicant be incarcerated returned to Baviaanspoort?
- [10] It was argued on behalf of the applicant that the matter be heard as urgent, as it involves violation of the law and that any act or decision that violate the law regarding an inmate who is detained unlawfully the correction thereof is urgent. When the applicant was transferred, he was not informed of the reasons even after the transfer had taken place and that the applicant is unlawfully, detained at Boksburg Medium Prison. As a result, he would not be afforded substantial redress at a later stage and that the applicant be returned to Baviaanspoort Medium immediately.
- [11] The respondents contended that the matter was not urgent due to the fact that the decision to transfer was taken and effected on 8 March 2026. The application was only pursued a month and a half later, inconsistent with the immediate irreparable harm required for an urgent enrolment. There is no threat to life or safety, as the applicant is being held in a condition with human dignity at

⁴ Act No. 3 of 2000.

Boksburg. Further the mere allegation of unlawfulness does not bypass the requirement to prove that substantial redress cannot be obtained in due course.

- [12] Further, the decision to transfer the applicant to Boksburg was not ultra vires. There was no duty on the respondents to consult the applicant on his transfer. It is an administrative act and was taken in line with the provisions of sections 7 read with section 43 of the Act, as well as regulation 25(1)(a). A decision to transfer the applicant constitutes an internal operational decision falling within the powers of the National Commissioner based on available space and security risk categories, amongst others, in terms of section 7(2)(e) of the Act.
- [13] Even if there was a duty, and the court finds the failure to consult the applicant was unlawful, it does not follow that the decision needs to be set aside, as there are no adverse impact suffered by the applicant in terms of section 8 of PAJA. Further, it was argued, Section 21 of the Act establishes the right of every inmate to submit complaints and requests, it provides that an inmate aggrieved by a decision must first take a complaint or request to the Head of the Correctional centre, Area Manager, Inspecting Judge, etc.
- [14] Under PAJA, for an act to be reviewable, it must “adversely affect the rights of any person and have a direct external legal effect. The applicant’s transfer placed him in more a beneficial position in a more than one way as according to their records, the applicant is from Johannesburg, Gauteng.
- [15] It was argued that the applicant failed to dispatch the record of proceedings as required by Rule 53(1)(b) of the Uniform Rules of Court. Therefore, reviewing an administrative decision without the underlying record is a legal impossibility, as the court cannot determine rationality or procedural fairness in a vacuum.
- [16] Regarding urgency, Rule 6(12) of the Uniform Rules requires applicants, in all affidavits filed in support of urgent applications, to set out the circumstances that render the matter urgent and why they cannot be afforded substantial redress at a hearing in due course.

- [17] The applicant must make out their case in the founding affidavit to justify their departure from the norm.⁵
- [18] When a matter is brought to court on an urgent basis, the question to be answered is whether or not the applicant will be afforded substantial redress in due course.⁶ In the event that the applicant does not succeed to convince the court that he will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll.⁷ The matter may also be struck from the urgent roll where the court finds that urgency was self-created.
- [19] The threshold to establish the juristic fact of "absence of substantive redress" is lower than that of "irreparable harm" for the purposes of establishing an interim interdict.⁸
- [20] Section 7, read with Section 43 of the Act, empowers the National Commissioner to accommodate and transfer an inmate from one correctional centre to another, according to available space and security risk categories.⁹ This includes the power to manage population distribution across centres. Regulation 25(1)(b) explicitly allows for transfers to occur without prior notice for security reasons, provided the inmate is informed "as soon as practicable" thereafter.
- [21] The applicant is *dominus litis* and bears the onus to demonstrate that the respondents' decision to transfer him to Boksburg was unlawful and adversely affected his rights.
- [22] In terms of section 21 of the Act, every inmate has, on a daily basis, a right to make complaints and requests to the Head of the Correctional Centre or a correctional official authorised to represent such Head of the Correctional Centre. An inmate aggrieved by a decision must first exhaust internal remedies by submitting complaints and requests by taking them to the next line of command within the

⁵ *Luna Meubel Vervaardiger (Edms) Bpk v Makin* 1977(4) SA 135 (W) at 137E.

⁶ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

⁷ *SARS v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA).

⁸ *Several matters on the urgent court roll* 2013 (1) SA 549 (GSJ).

⁹ Section 7(2) of the Act.

facility, which could be the Area Manager, or an Inspecting Judge. Further, if not satisfied with the response of the National Commissioner, the inmate may refer the matter to the Independent Correctional Centre Visitor, who must deal with it in terms of the procedures laid down in section 93 of the Act.

- [23] In terms of section 93, an Independent Prison Visitor has access to any part of the prison, any document and or record. He has power to interview inmates in private, record complaints, monitor how they are dealt with, and discuss them with the Head of prison for a purpose of resolving the issues internally.
- [24] Except that he was informed there was nothing they could do with regard to his request on 12 March for his belongings and file to be brought to Boksburg, alternatively that he be transferred to Baviaanspoort, there was no evidence presented by the applicant suggesting that the procedure in section 21 read with section 93¹⁰, was followed. It was not his case that he escalated the matter or even invoke section 21(5) of the Act. In my respectful view, nothing prevented the applicant from requesting the respondents to transfer him to Baviaanspoort. Where no response is received or not satisfactory, he could escalate his complaint and / or request to the next level of decision-making. The matter could also be referred to the Inspecting Judge, if he did not get any assistance from the various levels of decision-making bodies.
- [25] In *Masilela and Others v Minister of Correctional Services and Others; Bowers and Others v Minister of Correctional Services and Others*,¹¹ dealing with the dissatisfaction of inmates concerning their transfer, the court expressed a view, which I consider, that: *“Should an offender be of the view that his classification is incorrect or that his placement in a particular correctional centre is unreasonable, irrational or mala fide, the complaints procedure provided for in section 21 must be followed.”* The reasons why the internal remedies are

¹⁰ Section 93(1) An Independent Prison Visitor shall deal with the complaints of prisoners By---(a) regular visits: (b) interviewing prisoners in private; (c) recording complaints in an official diary and monitoring the manner in which they have been dealt with; and (d) discussing complaints with the Head of Prison. or the relevant subordinate correctional official, with a view to resolving the issues internally.

(5) An Independent Prison Visitor must report any unresolved complaint to the Visitors' Committee and may, in cases of urgency or in the absence of such a committee, refer such complaint to the Inspecting Judge.

¹¹ (63532/2012, 16995/2013) [2013] ZAGPPHC 103 (16 April 2013), para 13.

provided is to ensure that where no administrative decision is taken by a particular person or sector, the next rung of decision-making must be pursued, and that the failure to do this plagues the whole chain of events. (See *Krecjir v Minister of Correctional Services of RSA and Others* (81261/2015; 80959/2015) [2015] ZAGPPHC 921 (25 November 2015), para 18. Furthermore, the respect for administrative autonomy requires that the Department be allowed to correct its own errors before judicial intervention. Consequently, in the absence of exceptional circumstances, this application is not ripe for adjudication.¹²

- [26] When called upon to review and set aside an administrative decision, the court must, among others, consider the effects of that decision. Initially, the applicant did not challenge the lawfulness of the respondents' decision to transfer him from a medium prison to C-Max, though he placed his reliance on the Motswere judgment, which set aside the respondents' decision.
- [27] I accept that C-Max is the more stringent and restrictive part of the facility than the Medium. It is not clear how the applicant suffered daily from his detention at Boksburg medium prison, considering that in his application he did not seek to be returned to C-Max but to Baviaanspoort Medium prison, which is where he was before his transfer to C-Max. Baviaanspoort is a medium prison like Boksburg, where he is currently kept. It became common cause that the applicant, according to the respondents' records was from Johannesburg, and an address in Johannesburg reflected as where he would go after serving his sentence. In my view, the transfer was not prejudicial to his liberty. It was still beneficial to the applicant as he was closer to his home and relatives, as he would be when kept in Baviaanspoort.
- [28] There is nothing to suggest that the respondents did not exercise their powers appropriately when they made the decision to transfer the applicant from C-Max to Boksburg. His complaint is that he was not informed when he was moved. I accept that it is crucial to inform the inmate of the transfer and the reasons thereof. Nothing impeded the respondents from informing the applicant to where they were transferring him and furnishing him with reasons thereof. It is only

¹² *Koyabe v Minister for Home Affairs* 2010 (4) SA 327 (CC), para

human to have him know, even if hypothetically, the provisions of Regulation 25(1)(a) and (b) did not exist.

- [29] The correctional centres, like other departmental institutions, are permitted to correct their own errors before judicial intervention, unless the applicant demonstrated in their papers that there existed exceptional circumstances.¹³ Absent them, an application brought before court would not be ripe for adjudication.
- [30] In my view, the applicant did not demonstrate any exceptional circumstances for judicial intervention before exhausting the internal remedies. There is no basis in law or fact that warrants this court to override the respondents' decision. Even if the respondents' decision was procedurally flawed and unlawful, setting it aside would serve no practical purpose.
- [31] With regard to the provision of the record. Though I agree and consider the guide laid in the case of *Jockey Club of South Africa v Forbes* 1993 (1) SA 649 (A), where it was held that the purpose of Rule 53 is to ensure that the person whose decision is being challenged provides the reasons and the record so that the Court can perform its review function effectively. I do not agree with the argument of the respondents' counsel, as it was common cause between the parties that the applicant was not informed where he was transferred to or for what reasons. It is not clear for what purpose the record would serve under such circumstances.
- [32] In conclusion, I am persuaded by the argument raised of the respondents' counsel that urgency was self-created as the applicant elected to launch the application, thereby ignoring internal remedies.
- [33] Accordingly, in my view, for this reason, the applicant has not passed the threshold prescribed in uniform rule 6(12)(b). Therefore, the application ought to be struck from the roll for lack of urgency.
- [34] The facts of the present matter and the interest of justice justify me to follow the general rule that the successful party should be awarded costs.

¹³ *Koyabe v Minister for Home Affairs* 2010 (4) SA 327 (CC), para 34.

[35] Consequently, I make the following order.

Order:

- a) The applicant's urgent application is hereby struck off the roll due to lack of urgency.
- b) The applicant will pay the costs, including those of counsel, on scale B.


N G M MAZIBUKO
JUDGE OF THE HIGH COURT

Heard on: 17 April 2026

Judgment delivered on: 28 April 2026

For the applicant: Mr DB Melaphi

Instructed by: ME Makgopa Attorneys

For the respondent: Mr K Mapengo

Instructed by: The State Attorney