



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

CASE NO: 2025/120498

In the matter between:

ALBERT MANTJIE

Applicant

and

NATIONAL COUNCIL FOR CORRECTIONAL SERVICES First Respondent

**THE MINISTER OF CORRECTIONAL
SERVICES** Second Respondent

**THE CORRECTIONAL SUPERVISION AND
PAROLE BOARD GAUTENG, PRETORIA** Third Respondent

REASONS FOR ORDER

LUKHAIMANE AJ

[1] This is an application brought by A Mantjie, the applicant against several respondents, including the Minister of Correctional Services, the second respondent (hereinafter referred to as the Minister) seeking the following order:

"1.1 The First and Second Respondents decision taken on the 22 November 2024 to refuse me parole is to be reviewed and set aside and the parole to be granted in my favour, with condition that, I continue to attend all the outstanding or required programs while outside and the respondents are to ensure, that, these programs are made available to me.

*1.2 The respondents to pay the costs of this Application on Attorney and Client scale."*¹

The application is opposed by the Minister.

[2] The applicant was one of four individuals who committed aggravated robbery and murder of a victim that some of them worked for. They were sentenced on 15 October 2004 and the applicant was sentenced to life imprisonment for murder and 15 (fifteen) years for aggravated robbery, the latter to run concurrently with the life sentence. The applicant has been in prison for over 20 (twenty) years now. He has been eligible for parole since 2016. During his imprisonment, he has attended all rehabilitation programmes and assessments according to his sentence plan, some more than once.

[3] He was first considered for parole which was denied in October 2021. He was given 18 (eighteen) months further profile, wherein he was required to attend the programmes and assessment listed in the further profile. The applicant attended parole consideration for the second time and was denied parole and given further profile of 12 (twelve) months to attend these assessments and was denied parole and required to repeat same assessments and programmes. The Correctional Supervision and Parole Board (CSPB) recommended that he be placed on parole after receiving recommendations from the Case Management Committee (CMC). The first respondent, National Council for Correctional Services (NCCS) recommended that the applicant undergo certain profile and assessments, adding that *"Compliance with the above will not guarantee the offender placement on*

¹ Notice of Motion CaseLines 001-17 to 18

*parole*². The Minister agreed with the recommendation of the NCCS not to grant parole, stating as follows³:

- a) *"The offender's level of risk of offending falls within the moderate to high range. He lacks remorse for the crimes committed and he minimises his role which increases his risk.*
- b) *He committed violent crimes and it is reported that he started at seventeen years to engage in violent criminal activities.*
- c) *It is reported that he started drinking at seventeen and they were drinking with his friends on the eve of the commission of the crime."*

[4] He further made recommendations on his further profile as captured by the NCCS.

[5] The respondents oppose the relief sought. They submit that the Minister's decision to refuse the applicant parole was procedurally fair, lawful, reasonable and rationally connected to the purpose and prescripts of the empowering legislation.

[6] At the outset, it is so that parole is not a right but a privilege. Section 33 of the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution) guarantees everyone the right to just administrative action, which is procedurally fair, lawful and reasonable. The Correctional Services Act 111 of 1998 (the Act) is the governing legislation that regulates parole, correctional supervision and release mechanisms for offenders. The Act further promotes rehabilitation and integration, protects the rights of prisoners while maintaining safety, security and discipline of inmates.

[7] The CSPB is an independent body, established under the Act, responsible for deciding on a prisoner's placement on parole, correctional supervision, or medical parole; setting conditions for release aimed at offender reintegration into society.

² Recommendation signed off on 15 October 2024

³ Letter dated 07 May 2025 recording the Reasons for the Decision on Offender

[8] The NCCS is the statutory body established in terms of the Act to advise the Minister on matters relating to correctional policy, sentencing, and parole, ensuring a humane system through policy advice, review and quality assurance.

[9] The Minister is the executive authority appointed in terms of the Act, with the responsibility to manage and oversee the Department of Correctional Services (DCS) and to make final decisions regarding parole for inmates serving life sentences. Section 78(1) of the Act reads as follows:

"Having considered the record of proceedings of the Correctional Supervision and Parole Board and its recommendations in the case of a person sentenced to life incarceration, the National Council may subject to the provisions of section 73(6)(b)(iv); recommend to the Minister to grant parole or day parole and to prescribe the conditions of community corrections in terms of section 52."

[10] The Minister must take into consideration all the reports, considerations and recommendations by all relevant bodies, including the medical experts. It is the respondents' case that the Minister considered all the information in the applicant's profile, the respective reports from professionals and the recommendations by the relevant bodies. The respondents further submit that the applicant was duly informed of the reasons for the decision.

[11] The court may only intervene and set aside the administrative decision by the Minister, if such a decision warrants a review in terms of section 6 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

[12] Section 6(2)(h) of PAJA provides for administrative action to be reviewable where the exercise of power is so unreasonable that no reasonable person could have exercised such power. Reasonableness includes the elements of rationality

and proportionality⁴. Rationality requires a rational connection between the purpose of power and the information supported by facts before the decision-maker. The decision taken must be objectively capable of furthering the purpose for which the power was given and for which the decision was purportedly taken, and it must be supported by the evidence and information before the administrator as well as the reasons given for it. The provision for a review is if the action is not rationally connected to the reasons given for it by the administrator or the information before the administrator⁵.

[13] The Minister when taking a decision is expected to consider all the relevant information placed before him. What is difficult in this instance is that in justifying the Minister's decision and attempting to show that he relied on various reports and not just one comment in one of the reports to reach his decision, the respondents' also relied on a Clinical Psychologist report from 2020; a report that was considered in 2021 during the applicant's very first parole application; before he underwent further assessments as recommended⁶.

[14] What further complicates the issue is that the report that indicates that the applicant poses a moderate to high risk as per the Minister's reasons for the decision, recommends that the decision-maker considers all other reports in making the decision. In addition, whilst this level of risk is noted, the report includes both risk increasing factors and risk decreasing factors, with the former being made up of aspects of past actions that the applicant cannot change and the latter being made up of current and future aspects that the applicant may continuously improve on⁷. The respondents admit that the Minister relied on grounds extracted from the report of a professional⁸. Whilst the respondents seek to portray that the Minister considered all the reports holistically, this is not borne by the reasons and the communication to the applicant.

⁴ Ndlovu v Minister of Justice and Correctional Services and Others (2025/1679) [2025] ZAGPJHC 427 29 April 2025

⁵ Section 6(2)(f)(iii) of PAJA

⁶ CaseLines 009 154 to 009 – 169

⁷ CaseLines 009-144 to 145

⁸ Paragraph 16 of the Answering Affidavit to the Supplementary Supporting Affidavit CaseLines 39 - 20

- [15] It is not necessary to traverse in detail the issue of *audi alteram partem* as far as the applicant contends that before the decision was taken, he was entitled to be heard, as in terms of the process, the Minister adhered to the legislated framework in taking the decision. Therefore, the Minister's decision cannot be said to be procedurally unfair. The lawfulness of the decision is however suspect as it cannot be rationally connected to the reasons provided nor the evidence it is based on.

LEGAL PRINCIPLES

- [16] This matter was dealt with in the Constitutional Court judgment of *Phaahla v Minister of Justice and Correctional Services and Another*⁹. Paragraph 7 of the judgment states as follows:

"From 1 March 1994 until 1 October 2004, inmates serving life sentences were required to serve a minimum period of 20 years in prison before they became eligible for parole. However, in terms of section 22A of the 1959 Prisons Act, introduced by an amendment in 1993, inmates could earn credits for good behaviour. These credits translated into days served, with the effect that the date for consideration for parole for those inmates was moved earlier. The effect of this was that inmates sentenced to life incarceration between 1 March 1994 and 1 October 2004 became eligible for parole after having served a minimum period of 13 years and four months of their life sentence. "

- [17] The applicant falls under the *Phaahla* judgment.

- [18] The criteria used to decide whether a prisoner should be placed on parole are provided for in Chapter VI(1A)(19) of the CSPB Manual. The introduction states as follows:

"(i) The criteria for selection for placement on parole is not meant to be used as the ultimate model. It should rather be seen as a predisposition according to which the Parole Board may serve the interests of the

⁹ (CCT44/18) [2019] ZACC18; 2019 (2) SACR 88 (CC); 2019 (7) BCLR 795 (CC) (3 May 2019) (*Phaahla*)

community on the one hand and those of the prisoner on the other hand to the best of their ability and in a responsible manner.

- (ii) Thus, the primary issue is that it should be attempted to evaluate prisoners fairly and justly for parole, to submit well-considered recommendations and to effectuate the highest possible form of professionalism."*

[19] The policy is quite clear that such evaluation must be done fairly and justly.

[20] Section 73(5) states as follows:

"(5)(a) A sentenced offender may be placed under correctional supervision, on the day parole, parole or medical parole –

- (i) On a date determined by the Correctional Supervision and Parole Board; or*
- (ii) In the case of an offender sentenced to life incarceration, on a date to be determined by the Minister.*

- (b) Such placement is subject to the provisions of Chapter IV and such offender accepting the conditions for placement."*

[21] For prisoners sentenced to life imprisonment, section 75(1)(c) gives the CSPB's power to make recommendations to the Minister on the granting of parole. This must be read together with section 78 which reads as follows:-

"(1) Having considered the record of proceedings of the Correctional Supervision and Parole Board and its recommendations in the case of a prisoner sentenced to life imprisonment, the court may, subject to the provisions of section 73(6)(b)(iv), grant parole or day parole or prescribe the conditions of community corrections in terms of section 52.

- (2) If the court refuses to grant parole or day parole in terms of subsection (1), it may make recommendations in respect of treatment, development and support of the prisoner which may contribute to improving the likelihood of future placement on parole or day parole.*

- (3) *Where the Correctional Supervision and Parole Board acting in terms of section 73 recommends, in the case of a person sentenced to life imprisonment, that parole or day parole be withdrawn or that the conditions of community corrections imposed on such a person be amended, the court must consider and make a decision upon the recommendation.*
- (4) *Where the court refuses or withdraws parole or day parole the matter must be reconsidered by the court within two years."*

[22] In his answering affidavit, the Minister set out his reasons for refusing the applicant's parole.

RATIONALITY

[23] The applicant contends that the Minister's decision must be reviewed and set aside as irrational, unlawful and arbitrary in terms of PAJA and the Constitution. The applicant further states that the decision is not in line with any of the objective material evidence that is contained in his parole file. The applicant further states that he is expected to repeat the same programs that he has already completed. The applicant stated as follows:

EVALUATION OF THE MINISTER'S DECISION

[24] The Minister states that he considered all the information in the applicant's profile, the reports from various professionals as well as the recommendations of the CSPB and NCCS.

[25] From the evidence, the Minister based his decision on one report, that of the Clinical Psychologist dated 11 March 2024¹⁰. Even then, he considered a small part of it.

¹⁰ CaseLines 007-33

[26] The applicant on the other hand seeks to rely on the *Walus* judgment¹¹ which dealt with the crime committed:

"82. One can put what I have said in the preceding paragraph in a different way. That is that, if more than 26 years after the applicant was sentenced for the crime he committed, it was appropriate for the Minister not to release the applicant on parole in 2020 because of the nature of the crime, the seriousness thereof and the Court's sentencing remarks, why would it be appropriate for the Minister to release him one or two or three or five years thereafter? These three factors are immutable. They will not change one or two or three or five years later. This the Minister has not explained, notwithstanding the fact that it cried out for an explanation because the applicant clearly put it in issue. Therefore, this Court must vitiate the Minister's decision. If it were not to do so, it would be appropriate for the Minister to deny the applicant parole even when he may have served 30 or 35 or even 40 years of imprisonment. That, simply on the basis of the nature of the crime, the seriousness thereof and the trial Court's and Supreme Court of Appeal's sentencing remarks despite the fact that the applicant has complied with all other requirements for him to be placed on parole which the Minister concedes. The Minister's decision is not rationally connected to the purpose of the power conferred upon him. His decision is, therefore, irrational and it falls to be reviewed and set aside."

[27] Having regard to the Minister's Answering Affidavit, he relied on the one report of the clinical psychologist, Dr Senwamadi¹², even then, sections thereof¹³ and not the totality of the report in context¹⁴. The Minister denied the applicant parole based on parts of one report in circumstances where the author of the report appeals to the decision-maker to read the report together with all other reports. The Minister's communication to the applicant on the outcome of his parole application attests to

¹¹ *Walus v Minister of Justice and Correctional Services and Others* (CCT 221/21) [2022] ZACC 39; 2023(2) BCLR 224 (CC)

¹² Department of Correctional Services: Psychologist Services Report on Mantjie A by Senwamadi JRMJ

¹³ CaseLines 007-33

¹⁴ Answering Affidavit Paragraphs 20,22 and 23

this as there are no other reasons provided except that he “may present moderate to high risk for offending”. The other reports from the Unit Manager, Workshop trainer, Spiritual caregiver, CMC and CSPB recommendation were recommending day parole for gradual integration into the community and parole. These reports dealt with aspects such as the risk of reoffending, poor insight into the crime, propensity for violence, substance abuse issues and discipline, amongst others. It is not necessary for this court to go into detail as to the content of these other reports as the court’s consideration relates to the failure of the Minister to consider all the other reports and will not replace the decision with its own.

[28] However, if consideration is had to the Minister’s letter, the Minister provided a reason based on one aspect of a report. The Minister’s decision as communicated is not supported by facts and expert evidence. He relied on a section in one report and failed to consider the applicant’s situation with reference to all reports. During argument and in the papers, the Minister sought to add other reasons, however, these were based on reports considered in earlier parole considerations before the applicant underwent further profile and assessment and did not feature in his latest reports and assessment.

[29] The Minister then recommended that the applicant must attend the intervention programmes under paragraph 2, which interventions would be a repeat of interventions already successfully completed. It is not clear what purpose these would serve, and therefore the expectation appears to be irrational. The Constitutional Court has indicated as quoted above that where there is no basis to deny placement of an offender on parole, the decision is irrational.

[30] Rationality is defined as follows:

“This means in essence that a decision must be supported by the evidence and information before the administrator as well as the reasons given for it. It must also be objectively capable of furthering the purpose for which the power was given and for which the decision was purportedly taken. The question to be asked is the following: ‘Is there a rational basis justifying the conclusion made

by the administrative decision-maker between the material property available to him and the conclusion he or he eventually arrived at?"¹⁵

[31] Whether or not a decision is rationally related to the purpose for which the power was given, calls for an objective enquiry. I cannot, on the reasons stated, confidently state that the Minister has no intention of placing the applicant on parole, hence the hesitancy to replace the Minister's decision with my own and rather to refer the matter back to the Minister for consideration and whatever decision is taken, provide the applicant with adequate reasons that will be based on the evidence. Whereas in terms of PAJA, the court is empowered to make an order not to remit this matter to the Minister, I have considered this and decided that there are no exceptional circumstances which would justify the court taking the decision not to remit the matter back to the Minister, for him to properly consider all the reports and information at hand to make an informed, rational decision.

[32] The Minister is required to consider the parole of the applicant expeditiously and must be fair and just in doing so.

[33] In the result, I made the following order:

Order:

1. The late filing of the respondent's opposing papers is hereby condoned;
2. The decision of the first and second respondents taken on 22 November 2024, refusing to approve the release of Albert Mantjie on parole, is hereby reviewed and set aside;
3. The matter is remitted to the first and second respondents for reconsideration, and decision to be made within sixty (60) days of the date of this Order.
4. The respondents shall jointly and severally pay the costs of this application on party-party Scale B, with the one paying the other to be absolved.

¹⁵ Hoexter: Administrative Law in South Africa, 2nd Edition, page 340



MA LUKHAIMANE

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 20 April 2026

Reasons provided: 11 May 2026

APPEARANCES:

For the Applicant : ME Makgopa Attorneys

Counsel for the Respondents : Adv MC Letsoalo, instructed by the State Attorney,
Pretoria