

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2026-077285

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
	<u>18/06/2026</u>
DATE	SIGNATURE

In the matter between:

BONGANI KHEDENI

Applicant

and

NATIONAL COMMISSIONER OF CORRECTIONAL SERVICE

1st Respondent

THE MINISTER OF CORRECTIONAL SERVICES

2nd Respondent

THE HEAD OF PRISON: KGOSI MAMPURU II

CORRECTIONAL CENTRE C-MAX

3rd Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

- [1] The Applicant, Mr. Khedeni Bongani, seeks urgent relief declaring his transfer from Kgosi Mampuru II Correctional Centre (C-Max) to Leeuwkop Medium B on 8 March 2026 unlawful, unconstitutional, and to be set aside. He further seeks an order directing his return to Baviaanspoort Medium Correctional Centre.
- [2] The Respondents oppose the application, contending that the transfer was lawful, rational, and necessitated by security concerns, and that the application lacks urgency.

URGENCY

- [3] It is trite that an applicant seeking urgent relief must demonstrate circumstances rendering the matter urgent and why substantial redress cannot be obtained in due course.¹
- [4] The Applicant argues that unlawful detention is inherently urgent² The Respondents counter that urgency is self-created and that multiple identical urgent applications amount to an abuse of process.
- [5] While the Court is mindful of the caution against fragmented litigation,³ the principle that unlawful detention warrants urgent intervention cannot be ignored. I am satisfied that the matter is sufficiently urgent to be heard.

¹ *Luna Meubel Vervaardigers v Makin* 1977 (4) SA 135 (W).

² *Mcube v Minister of Correctional Services* [2024] ZAGPPHC 1157.

³ *Absa Bank Ltd v De Villiers* 2001 (1) SA 481 (SCA).

FACTUAL BACKGROUND

- [6] The Applicant was initially transferred to C-Max in July 2025, a transfer later conceded by the Respondents to have been irregular. On 8 March 2026, he was transferred to Leeuwkop Medium B.
- [7] The Respondents allege that the Applicant was implicated in serious misconduct, including cartel activity and contraband smuggling, necessitating stricter security measures. The Applicant disputes these allegations, noting he was never charged or found guilty of contraband possession.

LEGAL FRAMEWORK

- [8] Regulation 25(1)(a) requires that reasons for transfer be conveyed to the inmate with an opportunity to make representations. Regulation 25(1)(b) permits omission of prior notice for security transfers but requires reasons to be given “as soon as practicable” thereafter.
- [9] Section 22 of the Correctional Services Act empowers authorities to transfer inmates for security and good order. However, such powers must be exercised lawfully, reasonably, and procedurally fairly.⁴

ANALYSIS

- [10] The Applicant was not furnished with written reasons either prior to or after the transfer. This omission constitutes non-compliance with Regulation 25(1)(a) and (b).

⁴ *Pharmaceutical Manufacturers Association v President of RSA* 2000 (2) SA 674 (CC).

- [11] The Respondents' reliance on security concerns is undermined by the absence of objective evidence that the Applicant posed a risk. The mere allegation of misconduct, without charges or findings, does not suffice.
- [12] The *audi alteram partem* principle requires that an affected person be heard before adverse administrative action is taken.⁵ The failure to afford the Applicant such opportunity renders the decision procedurally unfair.
- [13] While correctional authorities enjoy discretion in inmate placement,⁶ such discretion must be exercised within the bounds of legality and fairness.
- [14] The Respondents' contention that Section 35 rights are not implicated is misplaced. Section 35(2) guarantees detainees the right to be informed promptly of reasons for detention and to conditions consistent with human dignity. The failure to provide reasons infringes these rights.

PREJUDICE AND SEPARATION OF POWERS

- [15] The Respondents argue that returning the Applicant would compromise institutional security and amount to judicial overreach. While courts must exercise restraint in operational matters,⁷ they cannot abdicate their duty to ensure legality and constitutional compliance.

⁵ *Nortjé v Minister van Korrektiewe Dienste* [2001] 2 All SA 623 (A).

⁶ *Minister of Correctional Services v Tobani* 2003 (5) SA 126 (E).

⁷ *National Commissioner of Correctional Services v Maseko* 2011 (2) SACR 315 (SCA).

[16] The Applicant has demonstrated prejudice in being transferred without due process. The Respondents' fears of security compromise remain speculative in the absence of proven misconduct.

CONCLUSION

[17] The transfer of the Applicant on 8 March 2026 was procedurally unfair, unlawful, and unconstitutional.

[18] The application succeeds.

ORDER

1. The decision of the Respondents to transfer the Applicant from Kgosi Mampuru II Correctional Centre (C-Max) to Leeuwkop Medium B on 8 March 2026 is declared unlawful and set aside.
2. The Respondents are directed to return the Applicant to Baviaanspoort Medium Correctional Centre forthwith.
3. The Respondents are ordered to pay the costs of this application on the attorney-and-client scale.



MPN MBONGWE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION**PRETORIA****APPEARANCES**

For the Applicant: **Mr D. B. MELAPHI**
Instructed by: M.E. Makgopa Attorneys

For the Respondents: **Ms A. K. SITHOLE**
Instructed by: The State Attorney

Date of Hearing: 29 April 2026

Date of Judgment: 18 June 2026

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 18 JUNE 2026.