



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED	
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DATE : 29 JULY 2026	SIGNATURE

Case number: 149050/2026

Heard on: 16 July 2026

Judgment: 29 July 2026

In the matter between:

Dlamini Thembeleli Headman

Applicant

and

Head Of Prison: Ebongweni
Super Maximum Correctional Centre

First Respondent

National Commissioner Of Correctional Service

Second Respondent

Head Of Prison: Kgosi Mampuru II Correctional
Service (C-Max)

Third Respondent

Judgment

Strijdom, J

Introduction

- [1] In this matter the applicant seeks an order on an urgent basis in the following terms:
- 1.1 that the decision of the first respondent taken on 15 October 2025 to transfer the applicant to C-Max Pretoria be declared arbitrary, unlawful, and consequently set aside;
 - 1.2 that the respondents be ordered to immediately remove the applicant from C-Max Pretoria (Kgosi Mampuru II Correctional Centre) and accommodate him in a medium security centre of their operational choice within the KwaZulu-Natal Province, preferably the Westville Medium Correctional Centre;
 - 1.3 that insofar as it may be necessary, an order be granted in terms of Section 9(1)(b) of the Promotion of Administrative Justice Act 3 of 2000 condoning the late institution of this application in respect of the impugned administrative decision referenced above;
 - 1.4 that applicant be exempted from the obligation to exhaust internal remedies prior to instituting this application.

Background Facts

- [2] The applicant is domiciled in the KwaZulu-Natal (KZN) Province. His entire family and his primary support network are situated within the province.
- [3] In 2022, he was convicted on charges of murder and sentenced to life imprisonment, along with an additional cumulative sentence of approximately 100 years.
- [4] Prior to his conviction and sentencing, his initial centre of admission was the Westville Correctional Centre. During 2021, while still an awaiting-trial detainee, he was transferred to the Kokstad Super Maximum Correctional Centre ("Ebongweni"). He was sentenced while detained at Ebongweni. In November 2022, he was transferred from Ebongweni back to Westville Medium Correctional Centre.

He remained incarcerated at Westville Medium from November 2022 until April 2025, at which point he was transferred back to Ebongweni.

- [5] He remained detained at Ebongweni having completed the requisite maximum detention period in Ebongweni, he formally applied for a transfer back to Westville. He was subsequently informed verbally that his transfer application had been approved. He was subsequently transferred to the C-Max facility at Kgosi Mampuru II Correctional Centre in Pretoria and not to Westville.
- [6] Prior to the expiration of his mandatory three-year term at Ebongweni, the institutional authorities actively prepared him for reintegration into a medium-security environment.

Issues To Be Determined

- [7] The issues requiring determination are:
 - 7.1 whether the application is inherently urgent;
 - 7.2 whether the transfer of the applicant to C-Max facility and his continued detention are lawful;
 - 7.3 whether the applicant ought to have pursued internal remedies, specifically the complaints procedure under section 21 of the Act.

Common Cause Facts

- [8] The following facts are common cause and not seriously disputed:
 - 8.1 the applicant was transferred from Ebongweni to C-Max facility in October 2025;
 - 8.2 the transfer of the applicant was done in terms of Regulation 25(1)(b) for security reasons;
 - 8.3 prior to his transfer to C-Max, the applicant completed the requisite detention period of three months in Ebongweni;
 - 8.4 the applicant has been incarcerated in C-Max for 9 months and is still in C-Max;
 - 8.5 in terms of the Standard Operating Procedures ("SOP") governing the handling of offenders in maximum security facilities, offenders are not

supposed to be detained in a maximum security facility for a period exceeding 3 years. In light of the 3-year cap, the applicant was supposed to be transferred back to a medium security facility; which ordinarily would be his centre of origin; and

- 8.6 written reasons were not provided to the applicant prior to or after his transfer to C-Max.

Internal Remedies

- [9] The respondents contend that the applicant ought to have pursued internal remedies, specifically the complaints procedure under section 21 of the Act, before approaching the Court.
- [10] The applicant states that he persistently raised complaints with correctional officials regarding the unlawfulness of his transfer, but such complaints yielded no effective response or redress. The respondents do not dispute that no internal process resulted in a reconsideration.
- [11] Section 21 falls within Chapter III, Part A of the Correctional Services Act 111 of 1998 and regulates complaints and requests by inmates relating primarily to the ordinary day-to-day conditions of detention, including issues such as hygiene, nutrition, exercise, access to healthcare, and related prison conditions.
- [12] In my view, decisions relating to parole, classification or the transfer of inmates fall outside the scope of these internal complaint mechanisms. Section 21 does not constitute an available, competent or appropriate alternative remedy.
- [13] This court has inherent jurisdiction, and the respondent chose to approach this court.¹

The Legal Framework

- [14] The Correctional Services Act 111 of 1998 regulates discipline, transfers and conditions of detention.

¹ See *Mankhili v Johannesburg Prison (Sun City Prison) and Others* (2022/19104) [2023] ZAGPJ HC 1077.

- [15] Regulation 25(1)(a) provides that where an inmate is to be transferred, the inmate must be informed of the reasons for the proposed transfer and afforded an opportunity to make representations.
- [16] Regulation 25(1)(b) provides that where transfer is for security reasons, the inmate must still be informed of the reasons as soon as practicable after admission to the new facility and must be afforded an opportunity to make representations.
- [17] The legal position is now settled that the reasons contemplated in Regulation 25 must be conveyed in writing, and the failure to provide written reasons and allow representations constituted a violation of Regulation 25, Section 35(2) of the Constitution, and the *audi alteram partem* rule.²
- [18] Even transfers effected in terms of Regulation 25(1)(b) for security reasons require written reasons and procedural fairness.³
- [19] The respondents contend that the applicant's transfer was done legally and in terms of Regulation 25(1)(b) for security reasons.
- [20] Mr Hudson Soniabeso Dalwana stated that he received the applicant at C-Max and conducted an interview with him at which he explained to the applicant that he was transferred for security reasons.⁴
- [21] According to the evidence before me, the applicant was neither given any prior written reasons before the transfer to C-Max as required by Regulation 25(1)(a); conversely, there were no written reasons provided after his transfer as required by Regulation 25(1)(b). There is no factual dispute that Regulation 25 was violated.

Urgency

- [22] The respondents submitted that the applicant created his own urgency in that he waited 8 months to bring this application. It was further argued that the applicant does have other remedies available; he could have approached JICS and lodged a complaint against the alleged transfer.

² See *Tshikane v Minister of Correctional Services and Others* 2015 (2) SACR 99 (GJ).

³ See *Rakabaele Daniel Lenyone v National Commissioner of Correctional Services and Another* (2026-080589) [2026] ZAG PP HC.

⁴ Confirmatory affidavit to the answering affidavit – p. 008 (a) 6–7.

- [23] Where unlawful detention is alleged, and *prima facie* established, the matter is *sui generis*; the usual enquiry into self-created urgency and delay yields to the higher constitutional imperative to end ongoing illegality. In this matter, the unlawful detention is ongoing and continues.
- [24] The principle that unlawful detention warrants urgent intervention cannot be ignored. I am satisfied that the matter is sufficiently urgent to be heard.

Conclusion

- [25] I conclude that the respondents' decision to transfer the applicant to C-Max was unlawful, procedurally unfair and unconstitutional.
- [26] The applicant's continued detention at C-Max constitutes an ongoing violation of his rights under Section 35 of the Constitution and Regulation 25.
- [27] In the result, the following order is made:
1. The decision of the first respondent, taken on 15 October 2025, to transfer the applicant to C-Max Pretoria, is declared unlawful and is set aside.
 2. The respondents are ordered to immediately remove the applicant from C-Max Pretoria and accommodate him in a Medium Security Centre of their operational choice within the KwaZulu-Natal Province, preferably the Westville Medium Correctional Centre.
 3. The applicant is exempted from the obligation to exhaust internal remedies prior to the instituting of this application.
 4. The respondents are ordered to pay the costs of this application on a party-and-party scale, to be taxed on Scale C.


STRIJDOM J

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Appearances:

For the Applicant:

Adv. D.B. Melaphi

Instructed by:

M.E. Makgopa Attorneys

For the Respondents:

Adv. N. Mashabela

Instructed by:

State Attorney