

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2023-011042

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

28/08/2026
DATE


SIGNATURE

In the matter between:

OUPA CHIPANE PHAAHLA

Applicant

and

**NATIONAL COUNCIL FOR CORRECTIONAL
SERVICES**

First Respondent

**THE MINISTER OF CORRECTIONAL
SERVICES**

Second Respondent

**CORRECTIONAL SUPERVISION
AND PAROLE BOARD**

Third Respondent

Delivered: This judgment was prepared and authored by the judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 28 August 2026.

JUDGMENT

TEFFO J

Introduction

[1] The applicant, a sentenced prisoner, obtained an order of this Court on 7 November 2024, taken by agreement, regulating his consideration for parole and the furnishing of written reasons in the event of refusal. In February 2025 he launched an application to have the respondents held in contempt of that order. On 12 March 2025 the reasons were furnished, and the alleged contempt was purged. Only the issue of costs remains for determination. The applicant seeks the costs of the contempt application on attorney and client scale. The application is only opposed by the second respondent (“the Minister”). The Minister contends that the application was premature and unnecessary, and seeks costs also on attorney and client scale, alternatively no order as to costs.

The legal framework

[2] Costs lie within the discretion of the Court and are in essence a matter of fairness to both sides.¹ Where the relief has become moot, the Court does not retry the merits. It takes a broad, practical view of prospects and conduct, and litigants then owe a duty, in the efficient use of judicial resources, to make sensible proposals, unreasonable rejection weighs heavily in the costs order.² Contempt proceedings vindicate the authority of the courts and the rule of law. The state, which here holds the applicant in custody in the name of the law, must be exemplary in obeying court orders.³ The litigation in *casu*, is litigation by a private individual to compel state compliance with a court order, constitutional litigation in the *Biowatch* sense.⁴

¹ *Ward v Sulzer* 1973 (3) SA 701 (A) at para 706; *Ferreira v Levin NO and Others* 1996 (2) SA 621 (CC) at para 3; *Vryenhoek and Others v Powell NO and Others* [1996] ZACC 27.

² *Pretoria Garrison Institutes v Danish Variety Products (Pty) Ltd* 1948 (1) SA 839 (A) at para 863; *John Walker Pools v Consolidated Aone Trade & Invest 6 (Pty) Ltd (in liquidation) and Another* 2018 (4) SA 433 (SCA) at para 10.

³ Sections 1(c) and 165(4) – (5) of the Constitution of the Republic of South Africa, 1996; *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC); cf *MEC, Department of Welfare, Eastern Cape v Kate* 2006 (4) SA 478 (SCA).

⁴ *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC) at paras 21 – 24; *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC).

The background facts

[3] The order of 7 November 2024⁵ reads as follows:

“(a) The first respondent is to consider the applicant for parole on or before 4 December 2024;

(b) Thereafter, the second respondent is to consider the decision of the first respondent within 60 (sixty) days from the date of the order, and should parole or day parole be refused, to provide his written reasons together with the decision, within 60 (sixty) days from the date of the order;

(c) No order as to costs.”

[4] The order was granted by consent, and it was served on the respondents on 14 November 2024. The first respondent (“the NCCS”) considered the applicant for parole on 4 December 2024. The contempt application was filed on 10 February 2025 and on 12 March 2025 the respondents, purged contempt and provided reasons in terms of the court order. Parole was not granted.⁶

[5] The Minister’s version is that he considered the decision of the NCCS and made his decision on 09 January 2025, that is, within sixty days after the decision of the NCCS.⁷ The order pegs the sixty days to the date of the order. The Minister’s assertion is not supported by any admissible material, as appears below. In correspondence, the respondents invoked the *dies non*. The applicant’s attorneys disputed this and invited them to furnish reasons and tender costs. That was declined, as was the State Attorney’s post-launch invitation to withdraw the application to avoid the costs of opposition.

Non-compliance and the prematurity defence

[6] The papers disclose four terminal dates for the sixty-day period running from the date of the order: (a) on a calendar-day computation, 6 January 2025; (b) on court days, on or about 5 February 2025; (c) on the respondents’

⁵ CaseLines 80-1.

⁶ Joint practice note dated 20 January 2026. CaseLines 88-10 at para 8.

⁷ CaseLines 83-9 AA para 21 & 83-15 AA at para 49.

dies non approach, excluding 16 December to 15 January, a date in early March 2025; and (d) on the applicant's own heads which assert the date without disclosing the computation, 21 February 2025.

[7] An order of court is interpreted like any other instrument.⁸ Absent any reference to court days, there is much to be said for the calendar meaning. However, it is not necessary to decide that for one decisive fact. On every one of the four computations, the terminal date had passed before 12 March 2025 when the reasons were first furnished, and the obligation was to provide the reasons, with the decision, to the applicant, not merely to decide in the departmental file. Non-compliance is established on any computation. Wilfulness and *mala fides* as requisites for contempt were never determined, and nothing in this judgment amounts to a finding of contempt. However, the objective breach matters for costs.

[8] The Minister contends that the application was premature. The application was instituted on 5 February 2025, served and delivered on 10 February 2025. These dates preceded the period's expiry. That holds only on the most generous computations. On the calendar reading the Minister had been in breach for over a month by then, and on the court-day reading, the period had expired by 10 February 2025. And if, as he asserts, the decision and reasons existed on 9 January 2025, nothing prevented their immediate furnishing, or an immediate tender once the application was brought. Instead, they materialised only on 12 March 2025, with no explanation for the interval.

[9] Fundamentally, the 9 January 2025 decision is not established. In motion proceedings the affidavits are both the pleadings and the evidence;⁹ heads of argument are not. The only supporting document tendered is another offender's NCCS recommendation and the ministerial approval reflecting an NCCS sitting

⁸ *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A); *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) at para 18; *Eke v Parsons* 2016 (3) SA 37 (CC).

⁹ *Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others* 2008 (2) SA 184 (SCA) at para 43.

of 18 to 21 February 2025, a recommendation of 7 March 2025, a decision of 10 March 2025 and communication to him on 12 March 2025.¹⁰ Those documents prove nothing in this application. Even if the institution of the application was early on one computation, the breach crystallised during its pendency. Prematurity cannot retrospectively sanitise it. Still less make the Minister the successful party.

The appropriate order

[10] The applicant had to institute the application for the Minister to comply with the order of 7 November 2025. Within one month of instituting the application, the Minister provided written reasons in compliance with the order. On the probabilities the application was the catalyst, in the only sense that matters, the applicant was substantially successful.

[11] The Minister nonetheless pressed, to the end, for attorney and client costs against a prisoner, dependent on family resources, litigating to compel the state to honour an order to which it consented. On the *Biowatch* principle, even outright failure would not have attracted an adverse costs order unless the litigation was frivolous or vexatious, and it was neither. On the common cause facts, the reasons were late.

[12] As between the respondents, only the Minister breached the order. Paragraph (b) of the order of 7 November 2024 obliged the Minister to consider the decision of the NCCS. The NCCS complied with the order on 4 December 2024, and the third respondent played no discernible role. This Court is persuaded having regard to the papers that the Minister should pay the costs of the application. For the following reasons, this Court is not convinced that an order for costs on a punitive scale is justified. First, wilfulness and *mala fides* were never determined. Secondly, the opposition, though it has failed, was not vexatious, the computation was genuinely muddled, not least by the applicant's own heads, whose 21 February 2025 date would make his own launch

¹⁰ CaseLines 86-18- 86-19.

premature on his own showing. Under the circumstances, this Court is of the view that the appropriate order for costs against the Minister should be costs on a party and party scale which includes counsel's fees on Scale B.

The state of the papers

[13] The state of the papers require comment. Both sets of heads are marred by errors of typography and of fact: two dates for the NCCS' consideration, two for the furnishing of the reasons. What is more concerning is the annexing of another prisoner's parole record – his name, prison registration number, the NCCS' confidential assessment and the Minister's decision concerning him. That is intimately personal information of a third party with no connection to this case; it implicates section 14 of the Constitution of South Africa and the Protection of Personal Information Act,¹¹ and its filing, at best careless, deprived the Minister of the very proof his argument required. The order provides for removal and for referral to the Head: Office of the State Attorney, Pretoria.

Order

[14] In the result, the following order is made:

1. The second respondent is to pay the applicant's costs of the contempt application, including the costs of the hearing of 26 January 2026, on party and party scale, which includes counsel's fees on Scale B.
2. The documents filed of record at CaseLines 86-18 to 86-19, relating to a third party, shall be removed from the court file, alternatively access thereto on Caselines shall be restricted. The second respondent's attorneys shall attend to such removal or restriction with the Registrar within ten (10) days of this order.

¹¹ Section 14 of the Constitution of the Republic of South Africa, 1996; Protection of Personal Information Act 4 of 2013.

3. The Registrar is directed to bring a copy of this judgment to the attention of the Head: Office of the State Attorney, Pretoria.



M J TEFFO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the applicant:	D B Melaphi
Instructed by:	M E Makgopa Attorneys, Pretoria
For the second respondent:	M W Dlamini & R A Ramuhlala
Instructed by:	The State Attorney, Pretoria
Date of hearing:	26 January 2026
Date of judgment:	28 August 2026