IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: NO
(2) OF INTEREST OF OTHER JUDGES: NO
(3) REVISED
22/4/2022
DATE SIGNITURE

CASE NUMBER: 2022/349

In the matter of

PETRUS WILLEM JOHANNES DU RANDT
APPLICANT

And

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
FIRST RESPONDENT

DIRECTOR GENERAL DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES
SECOND RESPONDENT

NATIONAL COMMISSIONER FOR THE DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES
THIRD RESPONDENT

THE DEPARTMENT OF CORRECTIONAL SERVICES, JOHANNESBURG MANAGEMENT AREA, AREA COMMISSIONER
FOUTH RESPONDENT

THE DEPARTMENT OF CORRECTIONAL SERVICES, JOHANNESBURG CORRECTIONAL CENTRE B, HEAD OF PRISON
FIFTH RESPONDENT

JUDGMENT- Urgent Application

OOSTHUIZEN-SENEKAL CSP AJ:

Introduction

[1] This is an application in terms of Rule 6(12)(b) of the Uniform Court Rules. On 7 April 2022 the applicant on an urgent basis issued a Notice of Motion seeking the following relief:

1. That the application is one of urgency in terms of Rule 6(12)(a) of the Uniform Rules of Court, and that the normal forms and service provided for in the Uniform Rules be dispensed with.
2. That the respondents are interdicted from moving the applicant to another facility.
3. That the respondents are ordered to grant the applicant permission to have and to use his personal laptop, speakers and printer in his cell for as long as he remains a registered student with a recognised tertiary institution in South Africa.
4. That the laptop will be made available for inspection at any time.
5. That the first and second respondents pay the costs of the application, jointly and severally, the one paying the other to be absolved.

[2] The fifth respondent head of Correctional Centre B, Department of Correctional Services Johannesburg opposes the application for reasons set out below.

Background of relevant facts

[3] The applicant is an ex-Police Officer, currently serving 20 years imprisonment which commenced in 2020, at the Johannesburg Correctional Facility, Centre B.

[4] In terms of certain policy at the Department of Correctional Services the applicant is currently placed in a single cell due to safety concerns relating to ex-Police Officers.

[5] During 2021 the applicant registered at Oxbridge Academy and UNISA for tertiary studies.

[6] On 5 October 2021 the applicant made an application for permission to have a laptop available in his single cell in order to study.

[7] On 19 October 2021 the Functional Educationalist, Mr Rambuda recommended that the applicant be transferred to a Centre where a Computer Hub is available, reason being, computers were not allowed in cells. The recommendation was endorsed by the Manager of Education in the Johannesburg area, Mrs Steenberg on 19 November 2021.

[8] On 25 November 2021 the decision was made by the Acting Head of the Correctional Centre "B" and the Education Officer to facilitate the process.

Submissions by the applicant- Urgency

[9] Counsel for the applicant argued that the urgency in the matter stems from the fact that the applicant was informed by the Head of the Correctional Facility that he will be transferred to another correctional facility where he will have access to a computer hub.

[10] Furthermore, it was stated that urgency is further exacerbated by the fact that the applicant was registered for further studies and his right to education as contained in section 29 of the Constitution is infringed.

[11] The applicant stated that he complied with the procedures to grant him access to a computer, which process was delayed by the respondent and as such his studies are affected negatively.

[12] The applicant contended that his safety will be in jeopardy if transferred to another Correctional facility, because he will be placed in a two-person cell. His life

will also be endangered, when he goes into the computer hub with other prisoners. The applicant referred the court to section 4 of the Correctional Services Act, Act 111 of 1998, which states that the HCF must ensure that every prisoner is kept in safe custody until he/she is legally released.

[13] Counsel referred the court to the following case law in support of the argument that the matter is urgent and therefore the application should be granted;

1. *Mabalenhle Sidney Ntuli v Minister of Justice and Correctional Services and Others under case number 083/2019 delivered on 29 September 2019 in the Gauteng Division of the High Court- Johannesburg,*
2. *Wilhelm Pretorius and Others v Minister of Justice and Correctional Services and Others under case number 83909/2016 delivered on 25 April 2018 in the Gauteng Division of the High Court – Pretoria,* and
3. *Ambrose Hennie and Others v Minister of Correctional Services and Others under case number 729/2015 delivered on 7 May 2015 in the Gauteng Division of the High Court – Pretoria.*

[14] The applicant asserts that he has exhausted all internal remedies and therefore approaches o this Court for the relief prayed.

[15] The applicant relied on various sections in terms of the Constitution don't have to quote any more well know. Put the below sections in numerical order 9.10,12,29,33

1. Section 9 - Right of equality,
2. Section 10 – Right to human dignity,
3. Section 12 – Right to freedom and security,
4. Section 29 – Right to education, and
5. Section 33 – Right to fair administrative action.

Submissions by the fifth respondent- Urgency

[16] Counsel for the fifth respondent argued that there is no urgency for the matter to be hear on the urgent roll. He contended that the application for permission to have a

laptop and to further his studies, was submitted by the applicant on 5 and 13 October 2021. The applicant was informed about the decision made by the HCF and the Manager Education on 25 November 2021. The applicant was also informed that he will be transferred to another facility which has a a computer hub. The respondent argued that the applicant launched the urgent application 5 months after being informed about the outcome of his application, and urgency was self-created.

[17] The fifth respondent argued that the applicant's founding affidavit does not comply with Rule 6 (12) (1) as no reasons were provided as to why the matter is urgent. The respondent asserted that the basis for the application is unfounded in that the applicant should not fear for his safety as when he is transferred to Centre "C" he will be allocated a single cell in terms of the regulations. Furthermore, he will be allowed to continue with his studies.

[18] The fifth respondent referred to prayer (2) where the applicant requests the Court to interdict the respondents from moving the applicant to another detention facility. It was argued that a Court should only interfere with a public power in terms of legislation in exceptional circumstances. The Minister of Justice and Correctional Services is mandated by legislation to incarcerate prisoners in appropriate facilities. Therefore, the Court has to be cautious of interfering with the legislative mandate.

[19] The fifth respondent argued that in terms of the policy pertaining to education in correctional facilities, the applicant will be afforded the opportunity to study and he will be given access to a computer. As such his right to education will not be infringed as he will be transferred to a facility where effect will be given to his right to education in terms of the Constitution.

[20] Counsel for the fifth respondent argued that the urgent application is an abuse of court processes, based on baseless fears and misperceptions, because when the applicant experience challenges after being transferred to Centre "C", he can lodge a complaint at the head of the facility.

[21] The fifth respondent therefore urges the Court that the matter be struck from the court roll due to a lack of urgency with an appropriate cost order.

Case law and evaluation

[22] Rule 6(12)(b) of the Uniform Court Rules requires applicants, in all affidavits filed in support of urgent applications, to "set forth explicitly":

1. the circumstances which render the matter urgent; and

2. the reasons why they claim that they cannot be afforded substantial redress at a hearing in due course.

[23] In *Luna Meubelvervaardigers (Edms) Bpk v Makin 1977 (4) SA 135 (W)* Coetzee J held that mere lip service to the requirements of Rule 6(12)(b) is insufficient and that an applicant must make out a case in the founding affidavit to justify the extent of the departure from the norm.

[24] It is common cause that the applicant enrolled at the end of 2021 for further studies while being incarcerated at the Johannesburg Correctional Centre "B". Furthermore, that the applicant during October 2021 applied for permission to have his personal computer in his cell, which application was refused on 25 November 2021. The applicant was informed that the request was not granted and that he would be transferred to Centre "C" where he will have access to a computer hub for study purposes.

[25] The fifth respondent does not dispute that the applicant has the right to further his education while serving his sentence. The fifth respondent is undoubtedly alive to section 29 of the Constitution in that the section place a positive obligation upon the State to make such education progressively "*available and accessible"*.

[26] In the case of *Minister of Prisons and Others 1979 (1) SA 14 (A)* at 39 C-F Corbett JA said the following,

"It seems to me that fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties ....of an ordinary citizen, except those taken away from him by law, expressly, or those necessarily inconsistent with the circumstances in which he as a prisoner, is placed. Off course, the inroads which incarceration necessarily make upon a prisoner's personal rights and liberties .... are very considerable....Nevertheless, there is a substantial residuum of basic rights which he cannot be denied; and if he is denied them, then he is entitled, in to legal redress."

[27] My view is that the applicant has the right to study while being incarcerated, however this must be allowed within the legitimate limitations that prison life inevitable presents. The right to education is not being limited by policy pertaining to Correctional Services.

[28] After perusing the case law presented by the applicant, I am of the view that the facts pertaining to the cases differs from this matter before me.

[29] The facts in the *Ntuli case supra* relates to an applicant who had the permission to have his personal computer in his single cell, for study purposes however, the permission was withdrawn after a period of two years. Furthermore, he was transferred to another facility for undisclosed reasons. In that case it was further contended that the applicant was deprived of sufficient time to study due to the computer centre's operational hours.

[30] In the matter of *Ambrose Hennie and Others supra* the applicants had access to personal computers in their single cells. After being transferred to another facility the applicants had to access the computer hub for purposes of their studies, which they contended was insufficient, and therefore an application was launched to compel Correctional Services to re-instate their access to personal laptop computers. The applicants in their founding affidavits presented the Court with concrete evidence as to why the withdrawal of the permission for access to their personal laptop computers was revoked. Important to mention that the applicants escalated their complaints

internally and because they were unsuccessful in their plight, the application was launched in court.

[31] Similar facts were presented in the *Pretorius and Others* case.

[32] Clearly the facts in the matter before me are not the same, the right to education of the applicant in this matter is not infringed, in fact the fifth respondent is assisting him to study, which can only be done at a facility where a computer hub is available.

[33] There is no substance or basis in the following arguments presented by the applicant;

1. that his safety would be impaired if transferred to Centre "C",

2. that he will not have sufficient time for his studies by given access to the computer hub at Centre "C", and

3. that he will be placed in a two- person cell, which is in contradiction with policy relating to ex- Police Officers serving sentences of imprisonment.

[34] This urgent application launched by the applicant is prematurely instituted

[35] On the question of urgency, it is evident that the applicant was informed by the fifth respondent during November 2021 that his request relating to access to his personal laptop computer was refused. During argument by counsel for the responded the lack of urgency was mentioned in *"passing."* The reason for this was because the applicant knew during November 2021 of the decision, and he did not approach the Court for relief for nearly five months.

[36] I am of the view, if urgency exists in the matter, it is undoubtedly self-created.

Costs

[37] The fifth respondent argued that a cost order should be made in the matter. The basic principles governing granting of cost orders in civil litigation is that the judicial

officer has the discretion in granting same, but that costs should generally follow the result.

[38] However, Courts do not usually grant costs order against a prisoner who has no income. A costs order might have a chilling effect on prisoners pursuing their constitutional rights albeit it unsuccessfully. The applicant may have failed in this application, but it cannot be said that his application is frivolous or spurious. Therefore, I would not grant costs.

Order

[39] In the premises of the above I make the following order:
The application is struck from the roll for want of urgency.

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CSP OOSTHUIZEN-SENEKAL
ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant: Adv. Venter
Instructed by: Hurter Spies Inc

For the Respondent: Adv. Matlou
Office of the State Attorney

DATE OF HEARING: 20 April 2022
DATE OF JUDGMENT: 22 APRIL 2022