

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBERS: 2022/19104

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

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M.C. MAUBANE
September 2023

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In the matter between:

RABELANI EMMANUEL MANKHILI

Applicant

and

JOHANNESBURG PRISON (SUN CITY PRISON)
Respondent

First

THE HEAD OF JOHANNESBURG PRISON
MEDIUM B CENTRE

Second Respondent

THE HEAD OF CASE MANAGEMENT
COMMITTEE MEDIUM B CENTRE

Third Respondent

JUDGMENT

MAUBANE AJ

Background Facts

[1] The Applicant who was an inmate at the First Respondent's Medium center facility brought an application, on an urgent basis against the Respondents, *inter alia*, for:

2. *[C]alling upon the Respondents to show cause as to why an order in the following terms should not be made final:*

2.1 *An interim order be granted pending the final decision that, the Respondents interdicted from transferring the applicant from Sun City Prison to Mangaung Prison in Bloemfontein and or any other Correctional Service Centre,*

2.2 *Pending the final order, the applicant be returned to Medium B Section Johannesburg.*

- [2] The Application was initially heard by my learned brother, Justice Vally, who according to the Applicant, indicated that the application was urgent but nevertheless both parties were ordered to file supplementary affidavits of which they did. It was further ordered that the parties should file their heads of argument by not later than the 19th of August 2022 and 26th August 2022 respectively.
- [3] The matter came before me on the basis of urgency, as espoused by the Applicant, though more than twelve months have passed since the initial hearing.
- [4] I have gone through the caseline and nowhere did I find a court order which states that when the matter resumes, it should be heard as one of urgency and in terms of provisions of Rule 6(12) of the Uniform Rules of Court. For the interest of justice and fairness, after considering the assertion by the applicant that it was agreed that the matter should be heard as one of urgency, I allowed the application to proceed as such. It is worth noting that both parties ultimately complied with learned Justice Vally's court order.
- [5] The Applicant was arrested for murder and kidnapping on the 29th January 2018 and was then convicted on the 4th November 2021 and detained at the First Respondent at Medium B center. He is currently serving a life sentence.
- [6] On the 24th of July 2022 the Applicant was informed that he would be transferred to Mangaung prison, and such transfer was occasioned as a result of full capacity of the First Respondent. He accordingly remonstrated against the pending transfer and advanced reasons that he was a student at UNISA Florida campus, Roodepoort and if transferred it would be difficult to be furnished with study material. He further raised the issues that his domicile of origin was Limpopo, and his family will not be able to visit him in Free State if transferred and he was detained in a single cell due to the fact that he is a former police officer and he was not certain about the arrangements made for him at Mangaung for his security.
- [7] The Applicant contends that the Respondents did not consult with him for the transfer and as such they ignored an alteram partem principle. The Applicant was eventually transferred to Grootvlei Prison on the 26th July 2022.

- [8] The Applicant told the court that by being told of the pending transfer a day or two was not sufficient to make a representation. He further told the court that an order should be made that he be returned to First Respondent so that he can make a representation.
- [9] The Respondents told the court that the Applicant was informed of the pending transfer on the 24th July 2022, and he signed the acknowledgment of receipt. The Respondent alluded to the court that Applicant was transferred to Mungaung Prison in terms of Section 43 of the Correctional Services Act 111 of 1998 (“Correctional Services Act”) which states that:
- (1) *A sentenced offender must be housed at the correctional center closest to the place where he or she is to reside after release, with due regard to the availability of accommodation and facilities to meet his or her security requirements and with reference to the availability of programmes.*
- [10] The Applicant further disputes that he was medically examined, as prescribed by the law, before transfer. The Respondents placed before court a proof of medical examination of the Applicant and as such dispute the Applicant ‘s allegation about examination and the applicant being not informed about transfer. The Respondents further submitted to the court that the First Respondent was more than 200,01% overcrowded and as such there was insufficient space to house more prisoners including the Applicant.

Transfer Requirements

- [11] The Respondents told the court that the Applicant was transferred to Mungaung Prison after complying with the following:
- 11.1 Section 43 of the Correctional Services Act in that there was not sufficient accommodation in the First Respondent.
- 11.2 The First Respondent did not meet the security requirements of the inmate.
- 11.3 The First Respondent does not have the required programmes necessary for rehabilitation of the inmates.
- 11.4 The Applicant was informed of the pending transfer or reasons thereof.
- 11.5 The Applicant underwent medical examination prior to being transferred and was declared fit for transfer, thus proper medical screening of the Applicant did take place prior to being transferred. According to the Respondents, the selection criteria for the transfer was based on the length of sentence with the

proviso that it should be people who have recently been sentenced and still have lengthy sentences to serve and the Applicant fell in that category.

Internal Remedies

[12] The Respondent argued that the Applicant should have exhausted internal remedies in terms of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”) in conjunction with the Correctional Services Act.

[13] Section 21 of the Correctional Service Act states that:

(1) *Every inmate must on admission and on daily basis, be given the opportunity of making complaints or requests to the Head of the Correctional Centre or a correctional official authorised to represent such Head of the Correctional centre.*

[14] The Respondents contended that the decision to transfer the Applicant was an administrative decision as defined in Section 1 of PAJA. The respondents further argued that if the Applicant is adamant that the decision to transfer him was unlawful and inconsistent with the Constitution or rule of law, he is enjoined to review it and also exhaust any internal remedies afforded to him by the Act, which he has failed to do. I beg to differ with the respondents in that respect reason being that the High Court has inherent jurisdiction and the respondent chose to approach this court.

Legislation and Legal Principles

[15] The applicant alluded to the court that he was informed about the pending transfer to Mangaung Prison and was furnished with a letter to which he acknowledges receipt of. The court was informed by the Respondents that the First Respondent was overcrowded by as much 200,01% as on the 26th July 2022, and the Applicant did not dispute that. The Applicant further submitted to the court that prior to being transferred, was attended to by the medical personnel and declared fit for transfer and as such it is clear that there was compliance with Section 43 of the Correctional Services Act 111 of 1998.

[16] The Respondent argued to the court that since the Applicant had served less than a year of his life sentence, given the overcrowding of the facility and the security risk, he was transferred to Mangaung Prison. The applicant told the court that he be returned to the Second Respondent so that he could lodge a complaint about his transfer.

[17] In *Brown Nkosi v Minister of Justice and Correctional Services and Others*, unreported judgment of the Mpumalanga Division, Mbombela, Case No: 1674/2021 (23 July 2021), at paragraph 15, the court held that “*the applicant does not have a*

right to be transferred to a facility of his choice. The refusal to transfer him to a facility of his choice, although in this application it does not appear that he applied for such transfer, does not amount to a violation of his rights in terms of the Constitution”.

[18] The Applicant referred the court to *Tshikane v Minister of Correctional Services and Others* (2014/233160 [2014] ZAGPJC 261,2015 (2) SACR 99 (GJ); [2015] All SA 384 (GJ) (17 October 2014) wherein the applicant approached the court on an interim basis for an interim relief interdicting the respondents not to transfer him from Johannesburg Medium B Centre to Baviaanspoort Prison. The applicant was serving 13 years’ imprisonment pursuant to conviction of armed robbery and unlawful possession of a firearm. According to him, he was originally incarcerated at the Johannesburg Medium B Prison, and later transferred to Baviaanspoort Prison. He argued that the respondents ignored the *audi alteram* principle. He resides at Rockville, Soweto, where he was born, and which was near the Johannesburg Prison.

[19] The court held that:

“a sentenced offender must be housed at the prison closest to the place where he or she is to reside after release, with due regard to the availability of accommodation and other facilities. The issue of transfer is therefore a discretionary matter and dependent on certain conditions. However, in this matter what is plain was that there was no evidence that the transfer of the applicant was conveyed to him in writing by the Head of Johannesburg Medium B Prison.”

[20] The court ruled in favour of the Applicant because there was no evidence that the Applicant was given the opportunity to make representations in regard to his transfer, which had to be in writing. Similarly, the Applicant referred the court to the *Dippenaar v Minister of Correctional Service and Others* (569/2015) [201] ZANHC 27 March 2017) where in the court found in favour of the Applicant due to non-consultation with the Applicant by the Prison officials.

[21] I have taken note of the evidence before me, and it is my considered view that unlike in the two referred cases, the applicant was given notice of transfer and reasons thereof. He was aware of the pending transfer two days before transfer. The notice of transfer was in writing, and he acknowledged receipt. I further took note of the provisions of Section 43(1), Regulation 25(a) framed under the Correctional Services Act and the Constitution of the Republic and having done that, and without any contradictions, the Applicant was informed of the pending transfer in writing and the reasons thereof. He had ample time to make representation against the transfer, but he did not do so.

Conclusion

[22] Having considered the evidence presented before court by the parties, I conclude that the Applicant did not make a proper case on a balance of probabilities for the relief sought. Regarding costs, given that the Applicant is in prison and not gainfully employed, he does not have means to pay the costs. I believe the requirements of the law and fairness dictate that there should be no order as to costs.

ORDER

[23] In the premises, I make the following order:

1. The Applicant 's application is treated as urgent in terms of Rule 6(12) of the Uniform Rules of Court.
2. The Applicant 's application is dismissed.
3. No order as to costs.

M.C. MAUBANE
Acting Judge of the High Court
Gauteng Division, Johannesburg

Heard: 14 August 2023
Judgment: 27 September 2023

Appearances:

For Applicants: E Netshipise
Instructed by: Mudau & Netshipise Attorneys

For Respondents: Z Mokatsane
Instructed by: The State Attorney (Johannesburg)