

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: **B4170/2023**

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

Date: 13 August 2023

In the Ex Parte Application of:

RADOVAN KREJCIR

In re:

RADOVAN KREJCIR

APPLICANT

And

HEAD OF PRISON, KGOSI MAMPURU MAXIMUM

FIRST RESPONDENT

CORRECTIONAL FACILITY

**AREA COMMISSIONER, DEPARTMENT OF
CORRECTIONAL SERVICES**

SECOND RESPONDENT

**REGIONAL COMMISSIONER, DEPARTMENT OF
CORRECTIONAL SERVICES**

THIRD RESPONDENT

**NATIONAL COMMISSIONER, DEPARTMENT OF
CORRECTIONAL SERVICES**

FOURTH RESPONDENT

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

FIFTH RESPONDENT

JUDGMENT

[1] DE VOS AJ

- [1] The applicant seeks urgent ex parte relief. The applicant is currently serving a 35 years sentence at the Kgosi Mampuru II C-Max Prison in Pretoria. The relief sought generally relates to the applicant being provided with certain medications and consulting with specialist physicians.¹ The applicant asserts a constitutional right to access medical care.
- [2] The applicant launched the proceedings on the evening of Friday, 11 August 2023, and requested a hearing on Saturday, 12 August 2023, at 10:00. The Court considered the allegations that the applicant was suffering mental and physical distress as he was being deprived of the necessary medical care. Based on these allegations, the Court permitted the matter to be heard on shortened timeframes and out-of-ordinary court hours.

¹ Specifically, the applicant asks the Court to grant five orders in his favour. First, an order immediately moved the applicant to the hospital section of the Kgosi Mampuru Correctional Facility. Second, within seven days of the order, he is taken to Mediclinic Mediform in Pretoria Central. Third, the respondents provide the applicant with his chronic medication. The Court has been given a list of this chronic medication, including chronic pain medication and antipsychotics. The allegation is that the applicant usually receives his medications on the 28th of every month, and he has not received the medication. Fourth, the applicant wants access to contact "privileged consultations with all the medical practitioners of his choice, including the exchange of medical documents." Fifth, the applicant be allowed to contact his medical practitioners at his request.

- [3] The relief is being sought on an urgent basis. The papers before the Court have been deposed to by the applicant's attorney, Ms Otrebski. Ms Otrebski tells the Court that she consulted with the applicant on 4 August 2023 and was informed that he had not received "all of his chronic medication".² The Court is told that the medications treat the applicant's long-term psychiatric issues and chronic pain. Ms Otrebski contends that if not given his medication, the applicant will suffer serious dangers, including seizures, depression and suicidal thoughts, hallucinations, cardiac arrest and/or death. Ms Otrebski relies on the reports from the applicant's medical practitioner Doctor Loewke. Doctor Loewke's reports date from 22 April 2022 to 11 July 2023, in which the consequences of the applicant's medicine not being provided are set out.
- [4] Ms Otrebski further tells the Court that the applicant had a seizure on the eve of 10 August 2023, and the applicant, consequently, lost consciousness. When he regained consciousness, he pressed the intercom so that he could be assisted. The applicant told Ms Otrebski that he was being ignored. Ms Otrebski tells the Court that the applicant's health has seriously deteriorated due to the lack of medical assistance. These allegations are alarming. However, before the Court can consider whether they satisfy the test for urgency, the Court must consider whether a case has been made out to launch these proceedings on an ex parte basis.
- [5] Ex parte proceedings depart from the principle of audi alteram partem. It is a fundamental principle of the administration of justice that relief should not be granted without permitting an affected person to be heard. The principle of audi alteram partem is sacrosanct, and the only times that the Court will consider a matter behind a litigant's back are in exceptional circumstances. Whilst the principle is not absolute, it is "very rare" that a case is so urgent that there is no time to give notice.³
- [6] The applicant explains the need for bringing the application on an ex parte basis in one paragraph in the Founding Affidavit -

² The allegation is not provided with any more specificity. The Court is not told whether some were provided and others not or whether all were provided but insufficient quantities. Ms Otrebski provides the Court with a list of 14 types of medication. They range from sleeping pills (Stilnox) to treating seizures (Diazepam). The Court is not told which of this medicine the applicant did not receive, only that he did not receive "all of this chronic medication."

³ *Tsilane and Another v S and Others* (2023/072559) [2023] ZAGPJHC 858 (4 August 2023)

“The reason that this application is brought on an ex parte basis is because giving notice to the Respondents would defeat the purpose of the application. The prison is aware that they are responsible for providing adequate medical treatment to the applicant.”

- [7] This is the entirety of the allegations made in support of launching the proceedings ex parte. The allegation in support of launching the proceedings ex parte is a conclusion with no facts supporting it. The applicant has to plead facts which indicate how notice to the prison authorities would defeat the purpose of the application. No such facts are pleaded. Only the conclusion that the legal test has been met. The allegations to urgency do not go as far as stating the matter is so urgent and the applicant’s situation so serious that it outweighs providing notice or a hearing.
- [8] The Court notes the distress complained of. However, there is no factual basis laid for seeking relief on an ex parte notice. It weighs with the Court that the issue is not just notice but also the prison authorities' ability to put facts and submissions before the Court.
- [9] The applicant has not given the Court a basis to conclude that there are exceptional circumstances or that this is one of the rare cases where the principle of audi alteram partem can be departed from. The Court has not been told why the relief cannot be sought – or will not be able to be obtained – if notice is given to the prison authorities.
- [10] On this basis, the Court cannot grant the relief sought on an ex parte basis. The Court makes no finding in relation to the relief sought or whether it is urgent. The Court does so to not hamper the applicant's ability to approach the Court in a different format.

Order

[11] As a result, the following order is granted:

- a) That application is dismissed.

I De Vos

Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the Applicant:	NC Otrebski
Instructed by:	Otrebski Attorneys Inc
Date of the hearing:	12 August 2023
Date of judgment:	13 August 2023