IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. **052550-2024**

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

---------- 09 JULY 2024
SIGNATURE **DATE**

In the matter between:

DESAI MDUDUZI LUPHONDO Applicant

and

MINISTER OF JUSTICE First Respondent

PRESIDENT C.M RAMAPHOSA Second Respondent

This matter was heard virtually (MS TEAMS) and disposed of in terms of the directives issued by the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.

JUDGMENT

KUBUSHI J

[1] The Applicant, Desai Mduduzi Luphondo, is currently serving a 35-year effective custodial sentence at Leeuwkop Maximum Correctional Facility. He appeared in the urgent court in person and confirmed that he does not require legal representation and that he would be able to represent himself. The papers serving before court have also been drafted and prepared by him personally. It appears from the papers that he seeks a remission of sentence in terms of section 82(1)(b) of the Correctional Services Act 111 of 1998 ("the Correctional Services Act").

[2] The matter was unopposed. The Minister of Justice, who is the first respondent herein, has been duly served but has not opposed the application. On perusal of the notice of motion it appears that the applicant has not indicated a date on which the respondents should file their notice to oppose the application, if any, which might be the reason why notice to oppose has not been filed. There is no proof that service was effected on President C M Ramaphosa, the second respondent. The fact that there is no notice of intention to oppose the application by the second respondent might be because he is not aware of these proceedings.

[3] In the founding papers, the applicant alleges that on 13 October 2023, he requested the services of a legal consultant to go and drop off an application for the remission of the remaining portion of his sentence at the Presidency, Union Buildings, Pretoria. Upon arrival at the Union Buildings, the bearer of the application was informed that prior to the application being placed before the President for a decision, the application would have to be served on the Minister of Justice and Correctional Services in order for the Minister to recommend (be it negatively or positively), the granting of the remission prayed for.

[4] As a consequence, thereof, the bearer took the application to the Department of Correctional Services, and she was informed that she should take the application to the Minister's office at Bothongo House, Department of Justice & Constitutional Development. This was duly done, and a date stamp was affixed to a copy of the application as proof that the application was accepted. A copy of the application showing the Department's date stamp is attached to the Founding Affidavit as Annexure "A".

[5] The applicant, further, avers that on 10 December 2023, his relatives contacted the Ministry and were given the name of Ms Carol Mobu. Having contacted Ms Mobu, it became clear to him that the said office had misconstrued the provisions of section 82(1)(b) of the Correctional Services Act, as there was a denial that a single offender could benefit from the remission of sentence. After what he was told was a long and tedious debate, the caller was then advised that this was a Department of Justice function and not a Department of Correctional Services one.

[6] According to the applicant, the toing and froing continued, and it became clear to his relatives that the Department of Correctional Services had incorrectly viewed the application as one where the applicant wanted to qualify for special remission of sentence granted by the President to certain categories of offenders. What was unfortunate, according to the applicant, is that whilst the Presidency communicated via email, the office of the first respondent did not at any stage bother to even acknowledge receipt of 'Annexure A'.

[7] Around 23 February 2024, Mr Makatu called the Department of Justice and was informed that he must send an email to a Mrs Steyn. Mr Makatu duly did so on behalf of the applicant, and he received a response that Mrs Steyn was no longer in the employ of the Department. Copies of the emails that show that communication, are attached to the Founding Affidavit as Annexures “E” and “F”. The applicant alleges that it, thus, became clear, from the above, that his rights to just administrative action have been violated.

[8] Aggrieved by this conduct of the officials of the Department of Justice and Correctional Services, the applicant has now approached court on an urgent basis seeking relief, as set out in the notice of motion.

[9] In terms of the notice of motion, the applicant has approached court pursuant to section 6(1) of the Promotion of Administrative Justice Act 3 of 2000 (hereinafter referred to as “PAJA”), to institute review proceedings seeking an order in the following terms: -

> “1. That the Court, in the interest of justice and pursuant to section 9(2) of PAJA, read with rule 6(12) of the Uniform Rules of Court, as well as the

Practice Directives for the Gauteng Division of the High Court, has regard to this matter on the basis of semi-urgency, alternatively preference, varying and abbreviating the time limits so provided for the Uniform Rules of Court.

2. That a Certificate of Urgency is issued as prayed for in Paragraph 1 supra.

3. That the Court condones the non-compliance with rule 4(1) of the Uniform Rules of Court and authorizes the applicant to effect personal service of the process herein, as contemplated in rule 4(2) of the Uniform Rules of Court.

4. That the Court, reviews and sets aside pursuant to section 8 of PAJA, the decision of the first respondent taken in violation of applicant's right to just administrative action as enshrined in section 33 of the Constitution, as the said first respondent, refused or failed to furnish the second respondent with the requisite recommendation as required by the regulations and/or guidelines made under section 82(1)(b) of the Correctional Services Act 111 of 1998, read with section 84(2)(j) of the Constitution 1996.

5. That the Court reviews and sets aside the failure of the first respondent to make the decision he, by law is required to make and declares the said failure by the first respondent to give effect to section 33 of the Constitution, unlawful and constitutionally invalid as provided for in section 6(2)(i) of PAJA.

6. That the first respondent is hereby directed to consider the application of the applicant at Annexure “A” and for the first respondent, within 14 days of this Order, to make a recommendation to the second respondent either for or against the granting of the remission of the remaining portion of the sentence of the applicant. The Court thus remits the matter back to the administrator pursuant to section 8(1)(c)(i) for a decision afresh.

7. That the second respondent is directed, within 30 days of receipt of the recommendation from the first respondent, to decide whether or not to grant the remission applied for and for reasons to be provided to the applicant in the event that the second respondent declines the application.

8. The matter is postponed *sine die* in order to avoid further dilatoriness.

9. In the event that either the first respondent and/or the second respondent fail to comply with this Order, the applicant shall set the matter down on abbreviated notice and the Court shall then make the decision which the respondent(s), ought to have made.

10. Costs on the basis of employment of counsel in the event that the matter is opposed.

11. Further and/or alternative relief, which in the Court, in its discretion shall deem meet."

[10] It is trite that before a court makes a finding on the merits of an urgent application, it must first consider whether the application is indeed so urgent that it must be dealt with on the urgent court roll.

[11] The procedure for urgent applications is governed by rule 6(12)(b) of the Uniform Rules of Court ("the Rules"), which provides that

> "In every affidavit filed in support of any application under paragraph (a) of this subrule,[1] the applicant must set forth explicitly the circumstances which is *[sic!]* averred render *[sic!]* the matter urgent and the reasons why the applicant claims that applicant cannot be afforded substantial redress in due course."

[12] In the case of *Arse v Minister of Home Affairs and Others* 2012 (4) SA 455 (SCA) at para 10 it was said that

> "a detained person should not be deprived of his or her right to freedom for one second longer than necessary".

[1] Rule 12(a): In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.

[13] Ordinarily, the application in this instance would be regarded as inherently urgent due to the fact that the applicant is incarcerated. However, there are flaws in the application that render the application not to be heard.

[14] First and foremost, the application has not been served upon the second respondent, the application can therefore not be heard as against the second respondent.

[15] Secondly, although the application has been served on the first respondent, it is not indicated in the notice of motion when the respondent(s) should file the notice to oppose the application. This, as earlier stated, might be a reason why the first respondent has not filed the notice to oppose the matter.

[16] Thirdly, there are no confirmatory affidavits filed in regard to the evidence of the legal consultant sent to deliver the remission application, the applicant's relatives who contacted the Ministry and Ms Mobu, and Mr Makatu who sent an email to Mrs Steyn.

[17] Fourthly, the relief sought by the applicant is for an order to review and set aside the first respondent's decision in failing to make the necessary recommendation pertaining to the remission application, to the second respondent.

[18] It is trite that review applications cannot be heard in the urgent court. Notice is taken of the fact that the applicant is a lay person and may not have been able to formulate his papers properly. The proper relief might have been a mandatory interdict that would have compelled the first respondent to make the required recommendation. Be as it may, this court as constituted, cannot assist the applicant in the relief he seeks.

[19] Consequently, the application stands to be struck from the roll.

E M KUBUSHI

Judge of the High Court

Gauteng Division

Appearances:

For the applicant:	Desai Mduduzi Luphondo (in-person) Email: ramasia.makatu@gmail.com Mobile: 082 930 6503
For the respondents 1st & 2nd :	No appearance.
Date of argument:	20 June 2024
Date of judgment:	09 July 2024