

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2019/41462

In the matter between:

GARY PATRICK PORRITT

Applicant

and

**THE HEAD OF JHB MEDIUM A
CORRECTIONAL FACILITY & 5 OTHERS**

Respondents

JUDGMENT SUMMARY

Urgent application – section 35 of the Constitution – right to a fair trial – self-represented accused in custody – right to consult with co-accused – question of whether principles and procedures applicable to consultation between legal representative and client applicable where co-accused assume role akin to that of legal representative – failure by state to show that applicant's request for meaningful consultation could not be accommodated – failure by state to demonstrate that applicant's rights outweighed by conflicting rights and/or interests – state ordered to permit consultation, within its available resources, between the two co-accused.

Background facts

The applicant was incarcerated pending the continuation of his trial. He brought an urgent application seeking an order which would permit him to consult with his co-accused in the same manner which is allowed for consultations between accused persons in custody and their legal representatives. The accused had no legal representation, and therefore conducted their own defence. The trial judge in the accused's matter had directed that the two co-accused consult with

one another and, if necessary, bring an application to enable the consultation. This gave rise to the urgent application.

Argument

The applicant stated that his co-accused had consulted with him as if she was his legal representative. He claimed that consulting with his co-accused during hours allocated for visitors, or during court adjournments, was not conducive to adequate or meaningful consultation. He contended that this breached his right to a fair trial in terms of s 35 of the Constitution.

The respondents argued that the applicant's co-accused did not fall within the definition of a legal practitioner as envisaged by s 17 and s 46 of the Correctional Services Act 111 of 1998, its regulations, and the policy of the Department of Correctional Services. Therefore, the rights accruing to a legal practitioner did not accrue to the applicant's co-accused.

They respondents further argued that the relief sought could not be implemented due to the limitation of resources, particularly space. The respondents contended that ordinary visitation rules had to apply in order to accommodate all the prisoners awaiting trial. They stated that all awaiting trial prisoners had to be treated equally, and the applicant should not be accorded preferential treatment.

The Court

The matter brought a novel question to the fore, as the applicable legislation did not provide for circumstances where a co-accused assumes the role of a legal practitioner in respect of a co-accused. The Court stated that the respondents have mischaracterised the nature of the application – it was not founded on the right of the co-accused to be treated as a legal practitioner, but on the applicant's right to a fair trial and, particularly, a speedy trial. The Court noted that it was the trial judge who had directed that the consultation take place to ensure a speedy resolution of the matter, which had commenced in 2016. The respondents did not dispute this direction.

Further, the Court stated that the state has an obligation to take steps to ensure the realisation of constitutionally protected rights. It held that the respondents had failed to put up facts evidencing their lack of resources, and a resulting inability to fulfil the applicant's request. The respondents had also failed to provide any indication that they had considered or sought to balance the applicant's requirements with any other conflicting rights and/or interests, as it should have done.

The Court granted an order directing that the respondents make reasonable accommodation, within the available resources, to permit the consultation between the applicant and his co-accused at his place of incarceration.

Coram: Siwendu J
Heard: 10 – 12 December 2019
Order: 13 December 2019
Reasons: 30 January 2020