



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

**CASE NO: 2022/037664**

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

12 June 2023  
DATE

  
.....  
SIGNATURE

In the matter between:

**HLOMPHO HUMPHREY LEPHAILA**

Applicant

and

**MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

First Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL OF  
CORRECTIONAL SERVICES**

Second Respondent

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**JUDGMENT**

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**CRUTCHFIELD J:**

[1] This matter came before me on the unopposed motion roll of 12 April 2023. The applicant, Hlompho Humphrey Lephaila, appeared in person. The first respondent, the Minister of Justice and Correctional Services, and the second respondent, the Chairperson of the National Council of Correctional Services, opposed the application and were represented by the state attorney at the hearing.

[2] The state attorney complained that the respondents had not been served with the application. The respondents had not filed opposing affidavits but the state attorney elected to proceed with argument in the matter.

[3] The applicant claimed the following relief:

- 3.1 That the matter be dealt with urgently;
- 3.2 A mandamus compelling the first respondent to consider placing the applicant on day parole and parole within 30 days;
- 3.3 That s 3(1) of the Promotion of Administrative Justice Act 3 of 2000 and s 33(1) of the Constitution be considered;
- 3.4 That the first and second respondents act in terms of s 136(3)(b) of the Correctional Services Act, 111 of 1998 ("the Act") within 180 days; and
- 3.5 Costs of the application on an attorney and client scale.

[4] The applicant delivered a supplementary affidavit signed on 14 October 2022 ("supplementary affidavit").

[5] The applicant is a prisoner incarcerated at Johannesburg Correctional Centre where he is serving a life sentence imposed on 12 September 2005, under prisoner number 205294007.

[6] The applicant, in his founding papers, sought a determination in terms of s 136(3)(c) of the Act in respect of his application for parole and contended that the respondents were unreasonably delaying consideration of his application.

[7] The applicant relied upon *Phaahla v Minister of Justice and Correctional Services & Another (Tlhakanye intervening)*<sup>1</sup> together with Circular 8/2019 issued by the Department, ("the circular"). The applicant alleged that the circular resulted from the judgment in *C J van Wyk v The Minister of Correctional Services & Others*.<sup>2</sup>

[8] The applicant, in his supplementary affidavit, appeared to change course and sought a review of the decision taken by the second respondent on 23 – 25 March 2022 and a review of the decision taken by the first respondent on 18 September 2022.

[9] In terms of the second respondent's decision of 23 – 25 March 2022,<sup>3</sup> signed by the Minister on 18 September 2022, the applicant was not recommended for parole but that the matter should return to the Council in 24 months. Furthermore, the second respondent urged the applicant to improve his situation by undergoing various

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<sup>1</sup> *Phaahla v Minister of Justice and Correctional Services & Another (Tlhakanye intervening)* (CCT44/18) [2019] ZACC 18; 2019 (2) SACR 88 (CC); 2019 (7) BCLR 795 (CC) (3 May 2019) ("*Phaahla*").

<sup>2</sup> *C J van Wyk v The Minister of Correctional Services & Others* Case No 40915/10.

<sup>3</sup> Annexure HHL1

additional rehabilitation programmes, including psychotherapy and a risk assessment as well upskilling himself.

[10] The applicant alleged in his supplementary affidavit that he submitted an application for parole on 12 August 2022.

[11] Further, that the Judge President of this Division issued a directive dated 11 August 2022,<sup>4</sup> that the Minister file an answering affidavit on or before 5 September 2022 and thereafter heads of argument on or before 26 September 2022. The Minister allegedly failed to comply with the directive. Thereafter, the applicant was furnished allegedly with a copy of his prisoner profile, signed by the Minister on 18 September 2022.

[12] The applicant appeared before the parole board on 24 October 2022. The second respondent's decision pursuant to the applicant's appearance on 24 October 2022, signed by the Minister, was not included in the papers before me.

[13] The respondents submitted, however, that the applicant was not recommended for parole but that the second respondent parole board recommended that he return in 24 months and that only seven months of that 24-month period had expired. Furthermore, that the parole board recommended that the applicant participate in additional rehabilitation programmes, including psychotherapy and undergo a risk assessment.

[14] The respondents submitted further that the matter was dealt with and signed off accordingly and that this application should be dismissed in that the parole process was proceeding. The applicant contended in reply that he had complied with the

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<sup>4</sup> Annexure HHL2 CaseLines 03-3.



recommendations of the parole board although he did not include proof of his compliance in the application.

[15] The applicant alleged that the Minister's signatures on documents dated 18 September 2022 and 26 September 2019 were markedly different to the extent that those differences raised suspicions as to the authenticity of the signatures and that I should order that the signatures be examined by handwriting experts.<sup>5</sup> The document dated 26 September 2019 concerned a prisoner other than the applicant. There is no cogent basis for me to make an order that the signatures be examined.

[16] In the circumstances of this application, where the applicant appeared before the parole board which issued certain recommendations, including that the applicant be eligible to return to the parole board after 24 months, the appropriate order to be made in this matter, in my view, is that the application be postponed pending the outcome of the applicant going before the parole board after the expiry of the 24-month period referred to in the second respondent's decision of 23-25 March 2022, and completion by the applicant of the various programmes recommended by the parole board.

[17] As regards the applicant's claim for costs on a punitive scale, the applicant appeared in person without legal representation and accordingly there are no legal costs incurred by him.

[18] Accordingly, the following order is granted:

1. The application is postponed *sine die* pending the applicant appearing before the parole board after 24 months of his appearance referred to in the second respondent's decision of 23-25 March 2022.

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<sup>5</sup> CaseLines 01-30.

2. No order is granted in respect of the costs of this application.



**CRUTCHFIELD J**  
**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG LOCAL DIVISION**  
**JOHANNESBURG**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 12 June 2023.

FOR THE APPLICANT:

In person.

FOR THE FIRST AND  
SECOND RESPONDENTS:

State Attorney Johannesburg.

DATE OF THE HEARING:

12 April 2023.

DATE OF JUDGMENT:

12 June 2023.