[REPORTABLE]

In the High Court of South Africa
(Western Cape Division, Cape Town)

Case No: 4222/2021

In the matter between:

NAFIZ MODACK **Applicant**

and

THE REGIONAL COMMISSIONER, WESTERN CAPE,
OF THE DEPARTMNET OF CORRECTIONAL SERVICES **First Respondent**

THE HEAD OF PRISON, HELDERSTROOM PRISON,
CALEDON, WESTERN CAPE **Second Respondent**

JUDGMENT DELIVERED ON 21 JULY 2022

LEKHULENI J

INTRODUCTION

[1] The applicant seeks a mandatory interdict against the respondents, and in his notice of motion prays, *inter alia,* for the following relief:

a. That this application be heard as a matter of urgency, as contemplated in rule 6(12) of the Uniform Rules of Court;

b. That he be transferred from the Helderstroom Correctional Centre to either Pollsmoor Maximum Security Prison, or to Goodwood Correctional Centre;

c. Directing that a place be made available to the applicant, at the Correctional facility to which he may be transferred, where he may consult, in private, with his lawyers; and

d. Directing that he be allowed to receive food from his family and certain specified treatment from the prison authorities.

THE APPLICANT'S CASE

[2] The applicant is an awaiting trial detainee, currently detained at Helderstroom Correctional Centre. He is a high profile detainee, who is alleged to have been involved, *inter alia,* in murder, attempted murder, racketeering and other offences relating to firearms (approximately 200 charges). Shortly after his arrest on 29 April 2021, he was detained at Drakenstein Correctional Centre in the district of Paarl, Western Cape. He was, however, moved by the respondents from Drakenstein to Helderstroom Correctional Centre in January 2022, where he is currently detained. The applicant avers that the correctional facility nearer to his homestead is Pollsmoor Maximum Security Prison ("Pollsmoor"), in Tokai, Western Cape. He claims that despite the fact that it is the most convenient place for him to be incarcerated, the prison authorities have refused to detain him there, as they aver that there have been threats made against his life, and that they would not be able to guarantee his personal safety, should he be detained at Pollsmoor.

[3] The applicant avers that he was informed by prison authorities that he was being held at Helderstroom because it is a Maximum Security Prison, and the prison authorities could monitor his safety more effectively than they could in the other correctional centres in the Western Cape Province. The applicant brought this

application as he believes that it is utterly impossible for him to prepare adequately for his upcoming trial whilst he is held in Helderstroom. According to the applicant, Helderstroom is far from Cape Town where his attorneys of choice are based. It takes his legal representatives almost two hours to travel from Cape Town to Helderstroom to consult with him. His ability to consult with his lawyers is gravely limited by the distance they must travel to this facility. The applicant contends that there are also few warders at Helderstroom to supervise bathing, as a result, they are only allowed to shower once every second day. The applicant also has concerns regarding the food that is provided at Helderstroom, which he claims is neither tasty nor nourishing. Furthermore, he is aggrieved that he is not allowed to receive food, medication or supplements from his family. On the basis of these grievances, he implored the court to grant the relief sought in the notice of motion.

THE RESPONDENTS' CASE

[4] Both respondents are officers of the Department of Correctional Services. The first respondent is the Regional Commissioner of the Department of Correctional Services in the Western Cape. He exercises authority and control over all prisoners situated in the Western Cape, as well as the officers of the Department of Correctional Services. The second respondent is the Head of Helderstroom Prison, Caledon. Both respondents opposed the application, and contended that it is ill founded and fatally flawed, in that it does not meet the requirements for the grant of a final interdict. In addition, the respondents raised three preliminary points against the application: namely, (a) that an incorrect procedure had been adopted, in that the application is for a mandatory interdict as opposed to a review; (b) a lack of urgency, and (c) the failure to exhaust internal remedies. These preliminary points are discussed hereunder *ad seriatim*.

[5] The respondents averred that after the applicant was arrested, he was brought before court and a warrant for his detention was authorised. The warrant authorised the applicant's detention at Pollsmoor. The respondents further contend that a place of detention may, notwithstanding the fact that such a warrant specifies the correctional centre at which the detainee may be detained, be varied depending upon the exigencies of the situation. The primary considerations in determining

where a remand detainee should be held are, amongst others, the maintenance of security and good order in the remand detention facility. These include, *inter alia*, the safety and the conduct of the detainee, the safety of officials, the safety of other detainees and the potential for the detainee to interfere with potential witnesses in matters in respect of which the detainee is detained. The respondents contend that these factors were taken into account when a decision was made to transfer the applicant from Drakenstein to Helderstroom. The respondents further allege that while detained at Drakenstein, the applicant was found in possession of contraband, in the form of cell phones, on the 19 September 2021 and on 5 October 2021 respectively. To this end, the respondents alluded to the fact that the security at Drakenstein is not as good as that at Helderstroom. They urged this court to dismiss the application with costs.

PRELIMINARY POINTS

[6] I will now discuss the points *in limine* referred to above and, for the sake of convenience, I will consider these points sequentially.

MANDATORY INTERDICT AS OPPOSED TO REVIEW

[7] The respondents contend that the applicant does not seek to review and set aside their decision to transfer him from Drakenstein to Helderstroom, nor any of the rules and regulations determining how the applicant is to be treated. Mr Warner, who appeared for the respondents, argued that there is no indication on the papers that the respondents have exercised their powers, in terms of the Correctional Services Act 111 of 1998 ("the Correctional Services Act"), unlawfully, irrationally or capriciously. Counsel submitted that this court is bound to accept that the respondents' decision to transfer the applicant to Helderstroom is sound in law, and that the rules and regulations and conduct in terms thereof are sound in law.

[8] Mr Warner emphasised that the doctrine of separation of powers requires that courts, in exercising their constitutionally ordained powers, do not trespass on the territory of other organs of state where they are exercising their powers appropriately. It was counsel's contention that the applicant essentially seeks to have

this court substitute the respondents' decision with this court's own through a mandatory interdict. In light of the discretion involved, *inter alia*, to transfer an inmate to another facility, and in the absence of any evidence to the contrary, so the contention proceeded, it cannot be said that this court is in a better position than the respondents to make this determination.

[9] In response, the applicant averred that he does not seek an order reviewing the respondents' decision, but that instead he seeks an order directing the respondents to treat him in a way which respects his rights, including the rights to a fair trial and to be detained in humane circumstances. Mr Uys, who appeared for the applicant, argued that the applicant does not seek to have this court substitute the respondents' decision with its own. Instead, he argued, the applicant seeks only an order directing the respondents not to act unlawfully against him. Mr Uys further contended that the applicant's application is predicated on section 38 of the Constitution, which provides that anyone listed in that section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and that the court may grant appropriate relief, including a declaration of rights.

[10] It was further contended on behalf of the applicant that the applicant's right to a fair trial is infringed, to the extent that he cannot adequately consult with his legal representatives in preparation for his trial. Helderstroom is too far from Cape Town where the applicant's attorneys of choice are based, so the argument proceeded, and this violates the applicant's right to a fair trial. The applicant's counsel relied on *Van Rooyen en andere v Department van Korrektiewe Dienste en 'n ander* [2006] JOL 17434 (T), where the court stated that an applicant who is of the opinion that his constitutional rights have been violated, or that there is an imminent threat of violation of those rights, cannot be restrained by all sorts of rules to prevent that violation of rights, or imminent violation of rights.

[11] In my view, the respondents' decision to transfer the applicant from Drakenstein to Helderstroom is an administrative decision, as defined in section 1 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). The respondents' decisions had to be lawful and consistent with the Constitution and the rule of law.

The respondents exercised a public power, or performed a public function when, in terms of section 6(1)(b) of the Correctional Services Act, they transferred the applicant from Drakenstein to Helderstroom. Section 6(1)(b) of the Correctional Services Act provides that: 'Despite the wording of the warrant relating to the place of detention but subject to the provisions of this Act, such warrant authorises the National Commissioner to detain the person concerned at any correctional centre.' The Department of Correctional Services is obliged, in terms of section 3(2)(d), of the Correctional Services Act to manage remand detainees. Important factors that the respondents had to take into account when managing remand detainees, and determining where a detainee should be held, are questions of security, both in respect of the detainee and others, and also the maintenance of good order in the correctional centres. Section 4(2)(a) of the Correctional Services Act underscores this injunction, and provides that the Department must take such steps as are necessary to ensure the safe custody of every inmate and to maintain security and good order in every correctional centre.

[12] The applicant is *dominus litis* and bears the onus to show that the respondents' decision to transfer him was bad in law or unlawful. He did not allege or show that the respondents acted unlawfully, or *ultra vires* the Correctional Services Act, the Constitution, or any other law. Notably, the applicant does not seek to review or set aside any regulations or conduct in relation to his transfer. Instead, the upshot of the order sought by the applicant is that this court should override the respondents' decision and substitute same with its own order. This in my view, would be far-reaching and legally incompetent.

[13] Furthermore, the order sought by the applicant has the effect of setting aside the respondents' decision. In my view, setting aside the respondents' decision without a proper review would be unfair to the respondents. Even if the decisions of the respondents were defective or ineffectual, the applicant had to formally apply to court to have those decisions set aside. In *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* 2014 (3) SA 481 (CC) the Constitutional Court held that the essential basis of *Oudekraal* was that invalid administrative action may not simply be ignored, but may be valid and effectual, and continue to have legal consequences, until set aside by proper

process. The court further found that formally applying to a court to set aside a decision, gives the reviewing court the opportunity to properly consider all the effects of that decision on those subject to it.

[14] Most importantly, this court must respect and heed the doctrine of separation of powers. It must observe the limits of its powers. It is trite that this doctrine requires courts, in the exercise of their constitutionally ordained powers, not to trespass on the territory of other organs of state where they exercise their powers appropriately. (See *Minister of Home Affairs and Others v Saidi and Others* 2017 (4) SA 435 (SCA) para 43; See also *Glenister v President of the Republic of South Africa* 2009 (1) SA 287 (cc) at paras 33 and 35). In my view, there is nothing to suggest that the respondents did not exercise their powers appropriately when they took the decision to transfer the applicant from Drakenstein to Helderstroom. More so, the applicant did not challenge the lawfulness of the respondents' decision to transfer him. In my view, there is no basis in law or fact that warrants this court to override the respondents' decision.

[15] Of great importance is that the orders sought by the applicant are administrative in nature. The applicant seeks a mandatory interdict and predicated his application on section 38 of the Constitution. I am of the view that these proceedings should have been brought in terms of PAJA. It must be stressed that legislation enacted by Parliament to give effect to a constitutional right ought not to be ignored. Our courts, in particular the Constitutional Court, have warned against direct reliance on the Constitution. The Constitutional Court has maintained that when it is possible to decide a case without raising a constitutional issue, such a course is to be followed. For instance, in *SANDU v Minister of Defence and Others* 2007 (8) BCLR 863 (CC), para 51, the Constitutional Court unanimously held that: '. . . where legislation is enacted to give effect to a constitutional right, a litigant may not bypass that legislation and rely directly on the Constitution without challenging that legislation as falling short of the constitutional standard.' In *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others (Treatment Action Campaign and Another as Amici Curiae)* 2006 (2) SA 311 (CC), para 437, it was said that where a litigant found a cause of action on such legislation, it is equally impermissible for a court to bypass the legislation and to decide the matter on the

basis of the constitutional provision that is being given effect to by the legislation in question.

[16] In my view, the applicant's reliance directly on section 38 of the Constitution, notwithstanding the available remedies in terms of PAJA, is ill-conceived and cannot be countenanced. Furthermore, the reliance on *Van Rooyen* is, with respect, misplaced. *Van Rooyen* is distinguishable from the facts of this case, as in that matter, the trial court was already seized with the matter and the accused were on trial before that court. Prison authorities deprived the accused adequate time to consult with their legal representatives. This was in violation of the accused's constitutional right to a fair trial. The trial court in that matter had to ensure that the accused enjoyed a fair trial and that the legal representatives were properly instructed to represent their clients. In the present matter, the facts are different. The trial has not yet commenced. Pre-trial proceedings have not yet been completed. A date for trial has not been set. In the event the applicant is faced with similar challenges during the trial, the court seized with the matter will be better placed to address those challenges.

FAILURE TO EXHAUST INTERNAL REMEDIES

[17] The respondents also contended that the application is premature, as the applicant did not follow the complaint procedure provided for in section 21 of the Correctional Services Act. For the sake of completeness, section 21 provides as follows:

"(1) Every inmate must, on admission and on a 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.

(2) The official referred to in subsection (1) must—

> (a) record all such complaints and requests and any steps taken in dealing with them;

(b) deal with complaints and requests promptly and inform the inmate of the outcome; and

(c) if the complaint concerns an alleged assault, ensure that the inmate undergoes an immediate medical examination and receives the treatment prescribed by the correctional medical practitioner.

(3) If an inmate is not satisfied with the response to his or her complaint or request, the inmate may indicate this together with the reasons for the dissatisfaction to the Head of the Correctional Centre, who must refer the matter to the National Commissioner

(4) The response of the National Commissioner must be conveyed to the inmate.

(5) If not satisfied with the response of the National Commissioner, the inmate may refer the matter to the Independent Correctional Centre Visitor, who must deal with it in terms of the procedures laid down in section 93."

[18] There is nothing on the papers before this court that shows that the procedure prescribed by section 21, read with section 93, was followed. In fact, it is common cause that the applicant did not follow the procedure set out in the Correctional Services Act. I agree with the views expressed by the respondents' counsel that this application was prematurely launched. The applicant is being legally represented by counsel and attorneys and they are aware, or should be aware, of the provisions of section 21. I am aware that the applicant, through his legal representative, addressed correspondence on 27 January 2022, requesting that he be moved from Helderstroom to a facility nearer to Cape Town so that he could prepare for trial. There was no response to this letter.

[19] There is no doubt that the silence on the part of the respondents triggered section 21(5). The applicant should have referred the matter to the Independent Correctional Centre Visitor, who would have been obliged to deal with the applicant's complaint in terms of the procedures laid down in section 93 of the Correctional Services Act. It must be stressed that section 93 instructs the Independent

Correctional Centre Visitor to deal with complaints of inmates, amongst others, by interviewing inmates in private and discussing complaints with the Head of the Correctional Centre, or the relevant subordinate correctional official, with a view to resolving the issues internally. The Independent Correctional Centre Visitor could have considered the applicant's complaint and resolved the matter internally.

[20] I consider the views expressed by Bertelsmann J in *Masilela and Others v Minister of Correctional Services and Others; Bouwers and Others v Minister of Correctional Services and Others* (63532/2012, 16995/2013) [2013] ZAGPPHC 103 (16 April 2013), in which the learned justice dealt with the dissatisfaction of inmates with regard to their transfer, to be apposite in this matter. The court stated as follows:

"[13] Should an offender be of the view that his classification is incorrect or that his placement in a particular correctional centre is unreasonable, irrational or mala fide, the complaints procedure provided for in section 21 must be followed.

[14] An offender may, of course, also follow the same route by way of a request to be transferred to another centre. If the head of the relevant correctional centre reacts in a manner the inmate regards as unsatisfactory to a complaint or request, an appeal may be directed to the National Commissioner. If the inmate is still displeased with the National Commissioner's response, he has the option to seek the assistance of the Independent Prison Visitor."

[21] In addition to the above, there was nothing that prevented the applicant from escalating his complaint to the next level of decision-making, if no response was received from the other levels. The applicant could also have referred the matter to the Inspecting Judge if he did not get any assistance from the various decision-making bodies. In my opinion, there is a duty on the applicant to exhaust all internal remedies set out in section 21, to state if such complaints were registered, and what the outcome was of the various levels of decision-making. To this end, I share the views expressed in *Krecjir v Minister of Correctional Services of RSA and Others* (81261/2015; 80959/2015) [2015] ZAGPPHC 921 (25 November 2015), para 18, where the court observed that the internal remedies entrenched in section 21 of the Act must be exhausted as a conjunctive whole and not disjunctively. The reasons

why such remedies are provided is to ensure that where no administrative decision is taken by a particular person or sector, the next rung of decision-making must be pursued, and that the failure to do this plagues the whole chain of events.

LACK OF URGENCY

[22] The respondents further averred that there are no grounds of urgency set out in the applicant's application. Rule 6(12)(b) of the Uniform Rules of Court provides a follows:

"In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course."

[23] The applicant is required by rule 6(12) to expressly set out the circumstances which render his matter urgent, and the reasons why he cannot obtain proper redress, or why compliance with the normal court rules will make proper redress impossible. (See *Salt and Another v Smith* 1991 (2) SA 186 (NM) p187; see also *Krecjir* (above) para 13.) In *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufactures* 1977 (4) SA 135 (W) at p137F the court stated:

"Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down."

[24] In *casu,* the applicant launched this application on an urgent basis for hearing on 18 March 2022. In his founding affidavit, the applicant did not plead or aver urgency whatsoever. The applicant gave no explanation in his founding affidavit why his application was not brought earlier, especially when one considers the fact that he was transferred to Helderstroom on 12 January 2022. It is a trite principle of our law that in all instances where urgency is alleged, the applicant must satisfy the court

that indeed the application is urgent. Thus, it is required of the applicant to adequately set out in his founding affidavit the reasons for urgency, and to give cogent reasons why urgent relief is necessary. (See *Maqubela v South African Graduates Development Association and others* [2014] 6 BLLR 582 (LC) para 32.) In my view, the applicant herein failed dismally to meet the requisite threshold.

[25] In addition, it must be emphasises that the explanation for urgency must be made out in the founding affidavit. In this case, the applicant only attempted to plead urgency in his replying affidavit. The applicant averred in reply that his Cape Town Regional Court trial was due to start on 20 April 2022. He had been arrested in connection with other matters in April 2021, and was so busy with a bail application in Blue Downs such that there had been no time to devote to the Cape Town Regional Court matter. When he realised that the Correctional Services authorities were obstinate and refused to move him nearer to Cape Town, he brought this application to compel them to transfer him.

[26] It is also worth noting that the applicant is seeking a final interdict on an urgent basis, or through an urgent application. In my view, the urgency alluded to by the applicant is self-created. The applicant addressed correspondence to the respondents and demanded a response no later than 01 February 2022. As at 01 February 2022, the applicant had not received a response from the respondents and did nothing to vindicate his rights. A month thereafter the applicant brought this application on an urgent basis, and without making a case at all for urgency. In my view, the applicant failed to bring this application at the first available opportunity and did not give any satisfactory explanation at all why the application was not launched timeously. In *Tshwaedi v Greater Louis Trichardt Transitional Council* [2000] 4 BLLR 469 (LC), para 11, the Court said that an applicant who comes to court on an urgent basis for final relief bears an even greater burden to establish his right to urgent relief than an applicant who comes to court for an interim relief. In my view, the circumstances of this case do not qualify to have this matter treated as an urgent matter.

[27] For the reasons already advanced, I respectfully consider that all the preliminary points raised by the respondents must succeed. Ordinarily, this finding

would lead to the end of the dispute. However, I deem it prudent to consider the matter on the merits, in order to ensure that all the disputed issues involving the parties herein are addressed. In my view, this approach conforms with the Constitutional Court's guidance provided by Ngcobo J in *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae)* 2002 (6) SA 642 (CC) para 21. (See also *Minister of Justice and Another v SA Restructuring and Insolvency Practitioners Association and Others* 2017 (3) SA 95 (SCA) para 38.) I intend to follow it.

ANALYSIS OF THE MATTER ON THE MERITS

[28] The applicant is seeking a final mandatory interdict. The requirements for the granting of a final interdict are well established in our law. They are a clear right on the part of the applicant; an injury actually committed or reasonably apprehended; and the absence of any other satisfactory remedy available to the applicant. All of these three requirements must be present conjunctively before a final interdict may be granted. The applicant must establish a clear right before an interdictory relief can be granted. What this means is that a party seeking to establish a clear right to justify a final interdict is required to establish, on a balance of probability, facts and evidence which prove that he has a definite right in terms of substantive law. The right must of course be capable of protection. See *Edrei Investments 9 Ltd (In Liquidation) v Dis-chem Pharmacies* 2012 (2) SA 553 (ECP).

[29] In casu, the applicant did not set out in his founding affidavit upon what clear legal or constitutional right he relies. However, during the hearing of the application the court was informed that the applicant relies on section 38 of the Constitution. Furthermore, from the reading of the applicant's application, it seems the applicant relies on his constitutional right to a fair trial, in particular section 35(2)(b), which guarantees the right to choose and to consult with a legal practitioner, and on 35(3(b), which guarantees the right to have adequate time and facilities to prepare a defence. Section 17(1) and (4) of the Correctional Services Act specify that every inmate is entitled to consult on any legal matter with a legal practitioner of his or her choice, at his or her own expense, and that opportunities and facilities must be provided to a remand detainee to prepare a defence. To this end, the applicant

contends that due to his detention at Helderstroom, which is far from Cape Town where his attorneys of choice are based, his ability to consult is restricted.

[30] It is common cause that the applicant has been afforded the right to consult with his legal representatives in private and out of earshot of prison officials. The only concern raised is that this correctional centre is very far from Cape Town, and it takes his legal representatives almost 2 hours to travel to this prison. In my opinion, the applicant's counsel can easily make alternative arrangements to consult with the applicant adequately at Helderstroom. The suggestion by the respondents that the applicant's legal representatives can sleep over in Helderstroom area, so that they can have ample time to consult with the applicant, is not far-fetched and cannot be said to be unreasonable. Furthermore, the applicant's trial has not yet commenced. The applicant still has ample time to consult with his legal representatives in preparation for his trial.

[31] In my view, the applicant has no right to determine where he wishes to be, or to dictate to the prison officials where he should be detained. To hold otherwise, in my view, will offend against the respondents' constitutional obligation to address overcrowding in prison. In *Sonke Gender Justice v The Government of the Republic of South Africa and Another* (24087/15) (WCC) (23 February 2017), para 6, Saldanha J, observed that the government, bears constitutional and statutory responsibilities for the safe custody of inmates in conditions consistent with the law.

[32] It must be emphasised that the rights enshrined in the Constitution are not absolute in the manner in which they must be implemented. They are subject to limitations in terms of section 36 of the Constitution, to the extent that the limitation is reasonable and justifiable in an open and democratic society. The applicant's right in this regard to consult with his legal representatives (in Pollsmoor as he so applies) must be balanced against the imperative to maintain security and good order in remand detention facilities. The applicant's right to consult with his attorneys in Cape Town cannot be looked at in isolation. It must be balanced against the reasons advanced by the respondents that necessitated the applicant's detention at Helderstroom. Among others, the respondents alluded to the fact that there were

threats against the applicant's life. They also alluded to the fact that the applicant was twice found in possession of cell phones whilst in detention.

[33] The possession of cell phones in prison is regarded as a particularly serious offence, as not only does it allow the detainee to potentially conduct illegal activity from within a correctional centre, but it also allows the detainee to contact and/or threaten potential witnesses. The respondents contended that security at Drakenstein is not as good as that in Helderstroom, hence the applicant was able to illegally smuggle a cell phone into his cell. The reasons advanced by the respondents were not impugned by the applicant in terms of section 21 of the Correctional Services Act, or in terms of section 6 of PAJA. In my view, it must therefore be accepted that on the proper conspectus of the facts placed before court, the applicant's rights were not materially negated.

[34] Significantly, whilst the applicant must be granted facilities and time to consult, this must be done with great caution. His rights may have to be limited when viewed in the light of the circumstances in which the state officials find themselves. The applicant's right to consult with his legal representatives must be compared and balanced carefully. (See *Krecjir* (above) para 42.) I am also of the view that the applicant's complaint, that the prison authorities refuse to detain him in Pollsmoor situated in Tokai nearer to his home, is without merits. In *Masilela* (above), para 12, the court observed that the locality of the correctional centre best equipped to accommodate the offender must be considered with reference to the ease with which the offender's next of kin or friends may be able to visit him. The court further noted and correctly so in my view, that an offender may lawfully be placed in a centre that is far removed from his family's residence, if it is necessary to do so in the bona fide opinion of the responsible officials in the respondents' service.

[35] While in Helderstroom, the applicant underwent continuous remand assessment as part of the process of deciding where he should be detained, or where he should be moved. Pursuant to that assessment, the applicant is regarded as a high risk detainee, and the respondents determined that he should be detained at Helderstroom. As articulated hereinabove, if the applicant is of the view that his placement in this facility is unreasonable, irrational or mala fide, he should follow the

complaints procedure set out in section 21 of the Correctional Services Act, or apply in terms of PAJA to review the respondents' decision. In my view, it was also open to the applicant to invoke the provisions of rule 53 of the Uniform Rules, to review the respondents' decision to transfer him from Drakenstein to Helderstroom. On a proper conspectus of all the evidence placed before court, I am of the view that there are a number of alternative remedies available to the applicant which he failed to exhaust. It is further my considered view, that the reasons advanced by the respondents for placing the applicant at this institution cannot be faulted.

[36] Lastly, the applicant contends that he received inadequate medical treatment at Helderstroom and that the prison officials do not allow him to receive food from his family. The applicant argues that the food provided by this correctional centre is neither tasty nor nourishing, and that he should be allowed to supplement his diet with nutritious food from his family. In response, the respondents averred that this centre does not allow any medications, dietary supplements and/or vitamins or the like to be brought in, whether by family members or others, as they have no idea what will be in these supplements. The standing rule for all inmates is that if they need any medication, supplements or vitamins they need to see the resident doctor at this facility, who will prescribe it if it is needed. If needed, the relevant medication is procured by the department and dispensed to the relevant detainees.

[37] In my view, this limitation cannot be faulted or discounted. It must be emphasised that the question of security, both in respect of the applicant and other detainees, and the maintenance of good order, is critical in a maximum security facility such as Helderstroom. More so, section 46(1) and (2) of the Correctional Services Act provides that remand detainees may be subject to such restrictions as are necessary for the maintenance of security and good order in the remand detention facility. In my opinion, as an awaiting trial detainee in a maximum security centre and in a high care unit, security concerns dictate that no food should be allowed to be brought from outside into the institution, and that he should receive food provided by the centre. This limitation, in my view, is justified in an open and democratic society based on human dignity, equality and freedom.

[38] In conclusion, I am of the view that the applicant failed to establish the requirements for a final interdict. I am further of the opinion that the applicant failed to establish that he has no alternative remedy, the ambit and extent of the rights which he alleges have been infringed, or that his rights have, in fact, been infringed.

ORDER

[38] In the result, I would dismiss the application with costs.

LEKHULENI J
JUDGE OF THE HIGH COURT

I agree and it is so ordered:

HLOPHE JP
JUDGE OF THE HIGH COURT

Date of Hearing: 09 June 2022
Date of Judgment: 21 July 2022

Counsel for the Applicant: Adv D Uys SC

Counsel for the Respondent: Adv K H Warner