



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

5/8/15
40959/14

CASE NUMBER: ~~44933~~/2014

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

05 / 08 / 2015

DATE

SIGNATURE

In the matter between:

OKAH HENRY EMOMOTIMI

FIRST APPLICANT

OKAH AZUKA STELLA

SECOND APPLICANT

And

MINISTER OF JUSTICE AND CORRECTIONAL

FIRST RESPONDENT

SERVICES

NATIONAL COMMISSIONER OF

SECOND RESPONDENT

CORRECTIONAL SERVICES

JUDGMENT

MAVUNDLA J;

[1] The applicant applies for leave to appeal to the Supreme Court of Appeal alternatively to the Full Bench of this Division against the judgment of this Court delivered on 27 February 2015, dismissing with costs including the costs of two counsel his urgent application.

[2] The grounds upon which the application is founded are that the Court erred:

- 2.1 In finding that the Court was approached by the applicant by way of urgency;
- 2.2 In finding that the Court was requested to adjudicate the review of the disciplinary hearing on urgent basis and erred by refusing to adjudicate the review of the disciplinary hearing on that basis;
- 2.3 In refusing to interpret section 43(3) of the *Correctional Services Act* 111 of 1998 and to make a finding whether the Respondents were entitled to transfer the first applicant to Kokstad prison without complying with the requirements of section 43(3) of the abovementioned Act;
- 2.4 in finding that the respondents were entitled to transfer the first applicant to Kokstad despite the common cause facts that the first applicant was being treated by a medical practitioner and was not discharged from treatment when the first applicant was transferred to Kokstad prison;
- 2.5 in finding that section 43(1) overrides the provisions of s43 (3) and that section 43(3) has no effect whatsoever when a decision was made to transfer an inmate due to security requirements;
- 2.6 in finding that the first applicant applied for a mandamus;
- 2.7 in not finding that the first applicant relied on the **doctrine** of legality with regard to the transfer of the first applicant to Kokstad contrary to the provisions of section 43(3);

2.8 in not finding that the respondents acted *ultra vires* the provisions of section 43(3) when the first applicant was transferred to Kpskstad prison; and

2.9 in not finding that the provisions of section 43(3) are peremptory.

[3] It is trite that in an application for leave to appeal, the question to be asked is whether there are reasonable prospects of success on appeal.

[4] The applicant's notice of motion was issued on 9 June 2014 and served on the respondents on 9 June 2014, seeking *inter alia*, that:

- "1. The forms and service provided for in the Uniform Rules of this Court are dispensed with and this matter disposed of urgently against in terms of rule 6(12)(a);
2. an order in terms of which the disciplinary hearing held against the first applicant on the 3rd April together with its findings and sanctions be reviewed and set aside;
3. the consequent decision of the respondent to transfer the first applicant to Embonweni Maximum Correctional Centre 'Kokstad prison' in Kwa Zulu Natal be reviewed and set aside;"

[5] The applicant's application was issued on 9 June 2014, and served on the respondents on 9 June 2014, calling upon the respondents to file:

- 5.1 "copy of the transcripts of the hearing and sanctions imposed that was conducted against Henry Emomotimi Okah, prison number 21328945 on the 3rd April 2014 on or before Friday the 13 June 2014;
- 5.2 to "notify the applicant's Attorney in writing, alternatively *via* email on or before Wednesday the 11th June 2014 at 08h00; (b) and after you have given notice of your

intention to oppose the application, file your answering affidavit, if any, on or before Friday 13th June at 12h00." The respondents were afforded 2 days to inform the applicant's attorneys of their intention to oppose the application, and thereafter another two days to file their answering affidavit, contrary to five days and fifteen days respectively prescribed time frames in terms of Rule 6(5). These time frames may be abridged, depending on the degree of urgency in terms of Rule 6(12); *vide Gallagher v Norman's Transport Lines (Pty) Ltd* 1992 (3)SA 500 at 502E-503.

- [6] In paragraph 8 of his founding affidavit the applicant stated that "This matter should be regarded as being extremely urgent and ...that the normal Rules of Court should be dispensed with..."

- [7] The applicant in paragraph 7 of his founding affidavit stated that:

"7.1 In general terms this application is aimed at restoring the *status quo ante* and as such to return the prisoner Mr Henry Okah to **Newlock** Prison Pretoria..."

- [8] The paragraphs cited herein above, clearly demonstrate that the applicant deviated from the time frames referred to in rule 6(5) and resorted to rule 6(12), which permits him to truncate the time frames, depending on the perceived urgency, as he deemed fit; *vide Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 136H-137A-F. In my view, there are no reasonable prospects that another Court will find otherwise.

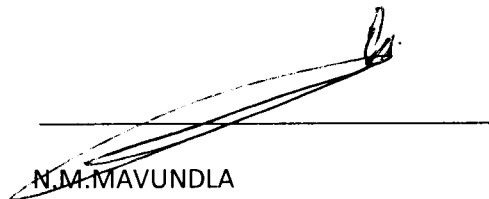
- [9] In so far as the question of the transfer of the applicant to another facility far removed from his next of kin is concerned, once the respondents regarded the applicant as a high risk prisoner, he could be transferred to another security, with reasons advanced at a later stage. This was also confirmed in the *Masilela v Bouwers*

2013 (2) SACR 350 (GNP) decision, which was also cited in the judgment leave to appeal against is sought.

[10] I deem it not necessary to traverse all the other points raised by the applicant. I am of the view that there are no prospects of success on appeal and therefore the application stands to be dismissed with costs.

[11] It is trite that costs follow the event. Both parties engaged the services of senior counsel. The respondent employed two counsel. In my view the respondent is entitled to the costs of both counsel.

[12] In the result the application for leave to appeal is dismissed with costs inclusive the costs of two counsel.



N.M. MAVUNDLA

Date of Judgment : 05 / 08 / 2015

APPLICANTS' ADVOCATE: ADV G. C. MULLER SC

INSTRUCTED BY : P. I. URIESI ATTORNEYS

RESPONDENT'S ADV : ADV MTK MOERANE SC, with ADV E B NDEBELE

INSTRUCTED BY : STATE ATTORNEY PRETORIA