

SOUTH AFRICA / JUDGMENT

Ndhlovu v Correctional Supervision Parole Board and Others (2025/16719) [2025] ZAGPJHC 427 (29 April 2025) [2025] ZAGPJHC 427

COURT

South Gauteng High Court, Johannesburg

BEFORE

Raubenheimer

CASE / FILE NUMBER

2025/16719

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IN

THE HIGH COURT OF SOUTH AFRICA,
GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 2025/16719

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES / NO

(3)

REVIEWED: YES/NO

29

April 2025

In

the application by

NDHLOVU: ZIGGY XOLANI
Applicant
And
THE
CORRECTIONAL SUPERVISION AND
PAROLE
BOARD
1st Respondent
THE
MINISTER OF CORRECTIONAL SERVICES
2nd Respondent
HEAD
PERSON: KGOSI MAMPURU II CORRECTIONAL
SERVICE
3rd Respondent
DIRECTOR
GENERAL: DEPARTMENT OF HOME
AFFAIRS
PRETORIA
4th Respondent

JUDGMENT

Raubenheimer AJ:

Introduction

[1] The application served before me in Urgent Court on 4 March 2025.

[2] The applicant applied for the following relief:

“To review and set aside the decision of the First Respondent [Parole Board] to refuse Applicant parole on the grounds of unreasonableness,

irrationality and unlawfulness.

This decision be replaced by an order to be released on parole immediately.

The court to declare that the respondents do not have an empowering provision to alter, add or remove anything from the warrant of committal duly issued by a court of law.”

[3] I dismissed the application.

[4] The reasons for the order are as follows.

Submissions

by the applicant.

- [5] The applicant is currently serving a 16 years sentence of which he had completed 11 years at the time of the application. By 2022 when he qualified to be considered for parole he had completed all the required rehabilitative pre-release programs.
- [6] The applicant first appeared before the Parole Board allegedly during 2022 when his parole was denied, a further profile was recommended and his next appearance was set for 12 November 2024. Prior to the Parole Board making a decision certain errors in respect of his nationality were identified that had to be corrected. He was recalled to the Parole Board on 9 December 2024 where his parole consideration was postponed to 30 June 2025. The reason for the postponement was to confirm the nationality of the applicant and the validity of his South African Identity document. It is clear that the applicant is aggrieved by the postponement of his parole hearing to 30 June 2025, and that this postponement informs the relief sought in the Notice of Motion.
- [7] He contended that his South African Identity document is a valid identity document that was issued to him in 2024 while he was incarcerated in Kgosi Mampuru Correctional Facility. This identity document has never been cancelled by the Department of Home affairs neither has a deportation order been issued at any stage by a court for his deportation.
- [8] He argues that the decision whether to be released on parole does not require the nationality of the applicant to be considered by the Parole Board as it is not one of the jurisdictional facts to be considered in accordance with the Correctional Services Act[1]

Submissions

by the respondents

- [9] In opposing the application the Head of Medium B, Kgosi Mampuru II Correctional Centre deposed to an affidavit in which the following preliminary points were raised:

9.1 The Parole Board did not consider the applicant for parole and consequently no decision was made by the Board.

9.2 The applicant was informed during the appearance before the Board on 25 July 2022 that he does not qualify for parole as he was classified as a maximum offender and that in terms of the provisions of the Correctional Services Act only offenders classified as medium offenders qualify to be considered for parole. This appearance did not entail an assessment and the applicant was provided with a new date, namely 8 June 2024 which date were dependant on his status at that stage. On 8 June 2024 there were still outstanding aspects to be clarified and the assessment was postponed to 12 November 2024 and eventually to 9 December 2024 on which date the applicant was provided with a final date for consideration of this parole application, namely 30 June

2025. The reason for the postponement was for the final confirmation of the validity of the applicant's identity document as well as

the provision of proof of the applicant's prisoner status as medium or maximum offender as ordered by the court in the judgement

of Ndhlovu Ziggy Xolane v The Head of Case Management Committee Kgosi Mampuru II Central and others Case No: 2024/00410 dated 13 September 2024.

9.3 In respect of the nationality of the applicant, the Department of Home Affairs has confirmed that his nationality is under investigation as well as whether the identity document was obtained fraudulently.

9.4 The Parole Board has not made a decision and consequently there is no decision to review. The Board is still involved in the process of gathering information on which to base its decision.

Discussion

[10] The applicant does not have a right to be released on parole.[2]

[11] The applicant contends that the decision not to release him on parole amounts to administrative action and is consequently reviewable as the decision was irrational, unreasonable and unlawful. The applicant did not rely on a "failure" by the Parole Board to take a decision as provided for in Section 1 of PAJA.

[12] The applicant also did not rely on the ground that the postponement by the Parole Board equates to a refusal to make a decision in respect of this parole but merely on the fact that the Board postponed his consideration. The applicant ostensibly equates the postponement with a refusal to grant him parole.

[13] The decision by the Parole Board to refuse a prisoner parole based on the provisions of section 75(1)(a) of the Correctional Service Act amounts to administrative action in terms of the Promotion of Administrative Justice Act, Act 3 of 2000 (PAJA).[3]

[14] The question therefore is whether the postponement of the decision by the Parole Board amounts to administrative action which is reviewable. PAJA defines a decision as follows:

"decision' means any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to-

- (a) making, suspending, revoking or refusing to make an order, award or determination;
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
- (d) imposing a condition or restriction;
- (e) making a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, an article; or

(9) doing or refusing to do any other act or thing of an administrative nature, and a reference to a failure to take a decision must be construed accordingly.”

[15] A review of such a decision is brought in terms of section 6 of PAJA by means of Rule 53 of the Uniform Rules of Court.[4]

[16] There has been no compliance with Rule 53 of the Uniform Rules of Court and is there consequently no record of proceedings of the impugned decision before the court.

[17] The contention of the applicant faces the further hurdle that the first respondent has not yet made a decision. When he appeared before the Parole Board in 2022 he was informed that he does not qualify to be considered for parole due to his classification and a maximum offender and not as a medium offender. This decision has not been the subject of attack by the applicant.

[18] In the absence of any record of the proceedings as to what the decision of the Parole Board was, and whether any decision had indeed been taken by the Board, the court is saddled with two mutually destructive versions of the events before the Board.

[19] The applicant seeks final relief on motion in the form of a review and a substitution in accordance with section 8(1)(cc)(ii) of PAJA. The first respondent is still in the process of complying with a court order to verify the nationality of the applicant as well as the validity of his identification document.

[20] The prisoner status of the applicant is also currently under investigation hence the postponement of the assessment to 25 June 2025.

THE STANDARD FOR REVIEW

Rationality

[21] Section 33(1) of the Constitution requires administrative action to be reasonable. Rationality is the first element of reasonableness.

Rationality is to be assessed objectively and dispassionately. A decision that does not meet this requirement is arbitrary[5] or even capricious in which case a review and setting aside of the impugned decision is justified.

[22] The rationality requirement entails the existence of a rational connection between the decision and the purpose for which the power was granted. Where the connection is lacking, the effect of the decision is arbitrary and inconsistent with this requirement.

[23] For a decision to pass constitutional scrutiny, the exercise of public power by the Executive must comply with this requirement.

Reasonableness

- [24] Section 6(2)(h) of PAJA provides that administrative action will be reviewable where the exercise of power is so unreasonable that no reasonable person could have exercised the power.
- [25] Reasonableness includes the elements of rationality and proportionality. Rationality not only entails that the decision be objectively capable of furthering its purpose, but also that it be supported by facts and capable of being arrived at on the evidence or information serving before the decision maker.[6]
- [26] Section 6(2)(h) of the PAJA provides that administrative action may be set aside if: ‘the exercise of the power or the performance of the function authorised by the empowering legislation in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.’
- [27] This section requires a simple test namely that an administrative action stands to be reviewed if it is such that a reasonable decision maker could not have exercised the power or performed the function in such manner.[7]

Unlawfulness

- [28] The applicant has failed to allege on what basis the postponement or failure to grant him parole is unlawful. The postponement of a hearing before the Parole Board and the setting of a new date for a hearing is provided for in section 75 of the Correctional Services Act.
- [29] The evidence on behalf of the first respondent was that the Parole Board was still in the process of investigating certain allegations in compliance with a court order previously granted. In my view as no “decision” within the ambit of PAJA had been taken, the reviewability of the postponement and the setting of a further date on the ground of irrationality, unreasonableness or unlawfulness does not arise.
- [30] Even if the postponement and the setting of a new date for a parole hearing amounted to a “decision” within the ambit of PAJA, I am not persuaded that the decision can be characterised as irrational or unreasonable or unlawful in view of the obligation to comply with the mentioned court order.

Conclusion

- [31] For the reasons mentioned above I dismissed the application.

E Raubenheimer

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting 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

COUNSEL FOR THE APPLICANT: Adv Mukwevho

INSTRUCTED BY:

ME Makgopa Attorneys

COUNSEL FOR THE RESPONDENT:

INSTRUCTED BY:

State Attorney

DATE OF ARGUMENT:

4 March 2025

DATE OF JUDGMENT:

29 April 2025

[1] Act 111 of 1998

[2] *Combrinck v Minister of Correctional Services* 2001 3 SA 338 (D) 342, *Motseme v Minister of Correctional Services and Others* 2006 (2) SACR 277 (W). *Du Preez v Minister of Justice and Correctional Services* 2015 1 SACR 478 (GP)

[3] *Combrinck v Minister of Correctional Services* (n 2 above)

[4] Section 6 Rules Board for Courts of Law Act, Act 107 of 1985. Rules Regulating the Conduct of Proceedings of the Provincial and Local Divisions of the High Court of South Africa. Promotion of Administrative Justice Act, 2009. Rules of Procedure for Judicial

Review of Administrative Action.

[5] *Democratic Alliance v President of the Republic of South Africa and Others* 2013 (1) SA 248 (CC)

[6] Hoexter, C (2021) *Administrative Law in South Africa* 479-480

[7] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004(7) BCLR 687 (CC)

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