

SOUTH AFRICA / JUDGMENT

S v Porritt (SS 40/2006) [2024] ZAGPJHC 180 (29 January 2024)

[2024] ZAGPJHC 180

COURT

South Gauteng High Court, Johannesburg

BEFORE

Spilg

CASE / FILE NUMBER

SS 40/2006

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FLYNOTES: FLYNOTES:. CRIMINAL – Prison – Transfer – Accused alleged his life in danger while in prison – Gang related threats – Facilities at prison continued to jeopardise his fair trial right – Complaints against prison staff and conditions – Interests of justice in transferring accused – Court will operate more efficiently from Pretoria with more court time per session and less delays – Accused transferred from Jhb Central to single cell at correctional service facility in Pretoria.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS 40/2006

In the matter between:

THE STATE

and

GARY PATRICK PORRITT

Accused No.1

SUSAN HILARY BENNETT

Accused No.2

REASONS

FOR ORDER AND DIRECTIONS ON

24 NOVEMBER 2023

Spilg J

29 January 2024

INTRODUCTION

1. I intend to be brief. On 21 November 2023 I heard argument with regard to whether or not Mr. Porritt, who is accused 1, should be transferred to the Kgosi Mampuru Correctional Facility in Pretoria and that the trial proceeds at the Pretoria High Court.
 2. During argument for a postponement of contempt proceedings and of the cross examination of Mr. Ramsay, Porritt revealed that he was once again applying for bail and that among the grounds was that his life was in danger while in prison and that facilities at the prison where he was currently detained, being Johannesburg Central, continued to jeopardise his fair trial right.
 3. Some months before, Ms. Bennett (accused 2), had sent an e-mail on 23 May 2023 about an incident which would result in Porritt not being able to attend court because of a hand injury which required a plaster cast. It was claimed that the injury was as a result of an assault on him by a 26 gang member. Due to concern for Porritt's safety, I sent an e-mail enquiring whether he remained at risk. On Porritt's appearance in court it appeared that all was resolved and that the gang member had apologised to him. If at that time Porritt or Bennett had said that he remained at risk from the gang or as a result of his activities which appeared to trigger the assault (namely the trading by Porritt of cigarettes between inmates at the facility) the court would there and then have requested his removal to another facility.
 4. The allegation now by Porritt that his life is in danger required the court to reconsider whether he should remain at Johannesburg Central.
 5. Another factor which has persisted is Porritt's complaints, which are on record, against prison staff, including nurses, as well as prison conditions and which are claimed still to remain unattended at Johannesburg Central. Porritt has claims that the court failed to properly investigate his complaints. The court had in fact set aside court time to call prison officials including the most senior personnel from time to time to try and resolve issues or get to the bottom of complaints.
- Save on a few occasions, such as holding an inspection to securing individual transport for Porritt instead of using the normal trucks, there are inevitably two sides given which a court hearing a criminal trial is not able to resolve. Porritt has been informed on a number of occasions that he must take his issues up with the prison officials, raise formal complaints and if necessary approach the ordinary motion court for relief. There are enough periods where the court does not sit in this trial for him to do so
6. The complaints against various prison officials at Johannesburg

Central remain on-going as do those relating to the conditions there which he asserts affects his fair trial rights. The persistence of his complaints against senior officials at Johannesburg Central is another reason why the court was concerned about the advisability of him remaining there. The court obviously wishes to avoid Porritt's fair trial rights being jeopardised.

7. These two considerations also brought into focus the actual duration of each court session, with Porritt arriving late at court on more and more occasion. The court should start at 10.00 and adjourn at 15.30.

However the procedures involved in taking him back to Johannesburg Central and what is said to have occurred when he did return there, according to Porritt resulted in him only entering his cell by 22.00 or even 23.00- only to be woken very early the following morning. Porritt asserted that this also affected his ability to concentrate during the trial and that his fair trial rights were once again prejudiced in such circumstances.

8. In an attempt to alleviate this situation, and in view of the medical reports, it was established that the court would have to adjourn at 13.30 in order to secure Porritt's return to Johannesburg Central by 16.00. This was the latest he could return in order to avoid only returning to his cell very late. Porritt claims that even after this was introduced, on occasion he would only return to the cell very late

This meant that provided the court can start at 10.00 a session would only be of three hours and a quarter hours at best, with delays in Porritt's arrival of up to an hour and a half on one occasion this came down to below three hours (whether attributable to load shedding or increased traffic because of the closure of Bree Street after the explosion and diversion of taxis onto Pritchard street or otherwise) . This falls significantly short of an ordinary court day's sitting. Accordingly, each day well over an hour and a half is lost by reason of transport and prison logistical issues occasioned while he remains at Johannesburg Central.

9. Naturally Ms Bennett would be affected by a change of court from Johannesburg to Pretoria or Porritt's relocation and the court also heard her on whether she would be prejudiced.

PORRITT'S LIFE IN DANGER

10. During argument Porritt blew hot and cold about what he meant about the danger to his life. He again described the events which occurred and how they arose and with whom. While maintaining that his life was still at risk, he claimed that it would be at risk at any other correctional facility because of the reach of gangs and that now he felt better protected by another inmate group at Johannesburg Central. This does not reconcile with his claim in about May last year that the issue had resolved itself amicably.
11. Porritt did repeat in November the concern expressed in the initial email in May that his life was at risk while incarcerated at Johannesburg Central and has not satisfactorily explained them away.

JOHANNESBURG CENTRAL FACILITIES AND PRISON OFFICIALS

12. Porritt does not dispute continually making allegations that the facilities at Johannesburg Central are inadequate, which according to him (and for that matter Bennett as well) materially affect his fair trial rights in a number of ways which are well documented.
13. Porritt also does not dispute that he persists in accusing senior prison officials and staff of plotting against and frustrating him from attending set appointments for medical examinations or treatment and frustrating his ability to prepare. Among his many accusations are that senior prison officials lied to the justice commission regarding conditions at Johannesburg Central and that the nurses there have a vendetta against him.
14. Porritt also referred to the fact that he has a single cell and that his files are located in an adjoining empty cell. This court is able to make an order to secure adequate facilities for him at Kgosi Mampuru. Informing the Office of the Judicial Inspectorate for Correctional Services concerned with detainees also appears to be advisable.

PORRITT RECEIVES SPECIALIST MEDICAL CARE IN JOHANNESBURG

15. Porritt reminded the court that he is under the specialist care of Dr Tsitsi and his team of medical practitioners, which includes treating the hand injury, and that he was attending Chris Hani Baragwanath hospital ("Chris Hani")
16. Transferring Porritt to Kgosi Mampuru will not compromise his medical care. Dr Tsitsi of Chris Hani is able to remain Porritt's managing physician and it remains up to the doctor to decide what treatment, care, consultations, surgical procedures and the like should continue to be carried out for Porritt at Chris Hani. This can readily be put in a court order to ensure certainty.

LENGTH OF COURT SESSION

17. It is wholly unsatisfactory that the court sits at best for no more than three hours and a quarter per session. More so because Porritt has a medical report which indicates that the trial cannot run for more than three or so weeks without a break.
18. None of the parties could suggest a way of extending the court session if Porritt were to remain at Johannesburg Central
19. The distance between Kgosi Mampuru and the court is short (some two and a half kilometres) and literally on an L shaped route along one way roads of four or even five lanes width. The transportation of persons in custody to and from the court is therefore quick and efficient.
20. This will enable the court to start on time and proceed for more than three hours and a quarter a day.
21. The transportation problems from Johannesburg Central to the Johannesburg High Court, which is a distance of some 14 kilometres) that have been plaguing the trial will also fall away if Porritt is transferred to Kgosi Mampuru and the trial continues in Pretoria.

MS BENNETT'S PREJUDICE

22. Firstly, Bennett claims that she was not given enough time to prepare. She has been, and I do not believe that there was anything more she could raise. The issue is factual and any prejudice is well within her capabilities to readily assess, identify and convey to the court.
23. Bennett raised the inconvenience of travelling to and from Pretoria as opposed to the Johannesburg CBD.

She lives in Rosebank and uses app hailed transport to and from court. She says it is a very short trip and she must carry files.

24. Another alleged prejudice was that she would then have to find residence in Pretoria. She divulged that she is in rented occupation on what appear to be relatively short notice and has access to separate storage facilities.

Within the context of relocating and expense she confirmed that she had sold her residential home on Leisure Island in Knysna but that she owed her daughter money. If that be the case, there is no evidence presented to this court that her daughter will not be able to advance money again.

25. She also raised the issue of bringing Porritt food and hot drinks which she does not believe is possible if the court sits in Pretoria. and Porritt is transferred there.
26. Another point raised was that it had been necessary to obtain a court order to enable her to consult with Porritt at Johannesburg Central and if there is a relocation, she will have to obtain a fresh court order for consulting at Kgosi Mampuru.

This point can be dealt with perfunctorily: The order obtained cited the national body, not just the facility or its head. Accordingly the reason for the decision would be binding on the officials at Kgosi Mampuru, that is if there was any possibility that they would not respect the reasoning for the order which is of general application.

Transport to and from court

27. I accept that transport to and from the Johannesburg Court will be cheaper and possibly quicker.
28. However living in Rosebank provides Bennett with ready access to the Gautrain which is fast and efficient.
29. Bennett's complaint about the length of the concourse at Pretoria and then carrying her files and getting other transport to court is little different to problems inherent in accessing the 6th floor court where the trial is taking place in Johannesburg. At present the ground floor courts will be available at Pretoria.
30. Once in Pretoria Bennett would be able to utilise the Gautrain bus service from the station to court or app hailed taxis.

31. Overall there will be a saving of time and money because the court will be able to sit for longer hours which will cut down the overall number of trial days.
32. However there is another factor. Bennett already selected the Pretoria High Court as opposed to the Johannesburg Court to launch an application in relation to this case. She saw no prejudice to herself in the possible inconvenience of forum selecting Pretoria for that case rather than the up-the-road Court in the Johannesburg CBD.

Relocation

33. It is up to Bennett to decide if she wishes to relocate and to where in Pretoria. It is evident that she is able to do so with reasonable expedition because of the terms of her lease.
34. There is also no reason to believe that the storage of her files cannot be accommodated.

Providing food and beverage for Porritt

35. At worst Bennett can no doubt procure a thermos flask and insulated lunch box if she cannot find a convenient place in Pretoria to obtain food or beverage for Porritt.

THE PROSECUTION

36. The State has no difficulty in arranging its witnesses to attend court in Pretoria. The fact that counsel are based in Pretoria however is not a consideration that comes into reckoning, but could be a factor I should weigh as to why they challenge the accused's allegations of prejudice if the case is transferred and Porritt there is a transfer of the case, and of Porritt to Kgosi Mampuru.

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INTERESTS OF JUSTICE

37. It is unnecessary to rephrase the factual situation outlined earlier within the context of the overall interests of justice in transferring Porritt from Johannesburg Central to Kgosi Mampuru and relocated the case within the

Gauteng Division from its seat in Johannesburg to its seat in Pretoria. They are obvious:

- a. The alleged threat to life while at Johannesburg Central which Porritt has blown hot and cold about is dissipated;
- b. The alleged conduct of correctional service official including nursing staff at Johannesburg Central which it is alleged prejudices Porritt's fair trial right in a number of ways is avoided;
- c. The court will operate on a far more efficient basis from Pretoria with more court time per session and less delays which will ultimately reduce the court days of the trial and release precious

court resources sooner.

BENNETT'S CONDUCT

38. Bennett addressed a letter to the Judge President and Deputy Judge President on 21 November which was after the court directed that it would hear the parties on the issue of transferring Porritt to Kgosi Mampuru and the trial to Pretoria.
39. In the letter Bennett claimed that in the interests of justice she was obliged to write the letter and alleged inter alia that I had already made up my mind and inferred that my motivation was because it was more convenient as Pretoria was nearer for me. The purpose of the letter was to request their urgent intervention "to instruct Judge Spilg that the hearing may not be heard at such short notice" (emphasis added) to which Bennett added that :

"I suggest that the proposed move of Mr Porritt and the trial should not be heard until after the hearing of the bail application."[1]

40. The issue of my convenience was never a consideration, nor could it be[2]. In any event the time taken to drive to either High Court is much the same even if the distance to Pretoria may be longer.
41. The concern the court has with Bennett's letter is that it is requesting members in the structural leadership of the judiciary to take action which is unconstitutional. In terms of s 165(2) of the Constitution:
- "The Courts are independent and subject only to the constitution and the law, which they must apply impartially and without fear, favour or prejudice."*
42. The independence of the judiciary which is guaranteed by the Constitution applies not only to the institutional independence of the judiciary but also to the individual independence of each judge in the performance of his or her judicial functions.

In *De Lange v Smuts NO and others*

[1998] ZACC 6; 1998 (7) BCLR 779 (CC) at para 70 Ackerman J had regard to the following statement of the Canadian Supreme Court in *Canada v Bearegard*: [3]

'Historically, the generally accepted core of the principle of judicial independence has been the complete liberty of individual Judges to hear and decide the cases that come before them: no outsider – be it government, pressure group, individual, or even another Judge – should interfere in fact, or attempt to interfere, with the way in which a Judge conducts his or her case and makes his or her decision. This core continues to be central to the principle of judicial independence.'

(emphasis added)

43. The independence of the judiciary is echoed in value 1 of the Bangalore Principles of Judicial Conduct[4], namely:

“Independence

Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.”

The official commentary dealing with the application of this provision states;

- under Application 1.1

“A judge shall exercise the judicial function independently on

the basis of the judge’s assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

- under Application 1.4

“In performing judicial duties, a judge shall be independent of

judicial colleagues in respect of decisions that the judge is obliged to make independently.”

These two applications of Value 1 of the Bangalore Principles with respect correctly express some of the principles inherent in s 165 (2) of the Constitution and the observation made by Ackerman J in De Lange.

44. There is a disquieting trend by some litigants during the course of a trial, and extra-curial of any appeal process, to try and muzzle

judges or try and put undue pressure on them through complaints to leadership within the judiciary or bodies established to oversee

compliance with the judiciary’s Code of Conduct (which is an adoption of the judicial conduct portion of the Bangalore Principles). Save possibly in exceptional circumstances pre-empting a judge from dealing with a matter, making a decision or attempting to influence the presiding judge by making representations to other judges undermines s 165(2) provisions which protect the rule of law through the recognition of judicial independence.

45. The letter written by Bennett to the Judge President and the Deputy Judge President to try and put pressure on this court and unduly influence it in performing its function is a serious breach of s 165(2). Litigants, including Bennett, must appreciate that acts

which violate the independence of the judiciary may have consequences, as does any other infraction of fundamental rights protected under the Constitution.

ORDER

The following order was made on 24 November 2023.

1. The trial will continue on 29 January 2024 at the High Court in Pretoria

2. Accused no 1, Mr Porritt is to be transferred by 29 January 2024 from the Johannesburg Central Correctional Facility (“Jhb Central”) to a single cell at the Kgosi Mampuru Correctional Service Facility in Pretoria (“Kgosi Mampuru”)
3. Correctional Services is requested to facilitate that Accused no 1 will be the sole occupier of the said cell
4. All Accused no 1’s files and documents which are currently with him are to be taken to Kgosi Mampuru at the time he is transferred there and to be located within a reasonable distance from his cell to enable him to work on them with the request that it be preferably at a table with the use of a chair
5. Mr Porritt is to be allowed the use of a Dictaphone subject to such reasonable restrictions as will not impede its use by him when he requires to work on this criminal trial
6. Mr Porritt shall be transported to and from the Pretoria High Court in a manner that will not compromise his neck or back
7. Dr Tsitsi of Chris Hani Baragwanath Hospital (“Chris Hani”) is to remain Mr Porritt’s managing physician
8. Dr Tsitsi shall decide what treatment, care, consultations, surgical procedures and the like in respect of Mr Porritt should continue to be carried out at Chris Hani
9. The Prosecution shall cause this order to be delivered to the responsible person at;
 - a. The Correctional Service facility where Mr Porritt is presently detained
 - b. The Kgosi Mampuru Correctional Service facility at Pretoria
 - c. The South African Police Services responsible for transporting Mr Porritt and his files, documents and belongings from Jhb Central to Kgosi Mampuru

in order that they execute this order

10. The Prosecution shall cause this order to be delivered to;
 - a. the Office of the Judicial Inspectorate for Correctional Services concerned with the detention of those in custody awaiting the conclusion of their trial
 - b. Dr Tsitsi

JUDGE SPILG

DATE OF HEARING: 23

November 2023

DATE OF ORDER:

24 November 2023

DATE OF

JUDGMENT:

29 January 2024

LEGAL REPRESENTATIVES:

FOR THE STATE:

Adv EM Coetzee SC

Adv JM Ferreira

FOR ACCUSED:

Each accused argued in person

- [1] This may explain Porritt blowing hot and cold before this court regarding his life being in danger and why Bennett was asking for a postponement until after the bail hearing
- [2] Since the appointment to the Land Claims Court, which sits in Randburg, the relocation may result in the inconvenience of commuting between courts in different cities on the same day

[3] (1986) 30 DLR (4th) 481 at 491

[4] In Dube & others v S

[2009] JOL 23351 (SCA) at ftn 6 Mhlantla JA (at the time) identifies the significance of the Bangalore Principles in the following terms: “The Bangalore Principles were adopted by the Judicial Group on Strengthening Judicial Integrity, at a meeting of Chief Justices held in The Hague, Netherlands on 25–27 November 2002. The principles are intended to establish standards for ethical conduct of judges and are designed to afford the judiciary a framework for regulating judicial conduct.

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