

SOUTH AFRICA / JUDGMENT

Moodley v Minister of Justice and Correctional Services and Others (21/53385) [2023] ZAGPJHC 260 (24 March 2023)

[2023] ZAGPJHC 260

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

21/53385

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IN THE HIGH COURT OF
SOUTH AFRICA
(GAUTENG LOCAL
DIVISION, JOHANNESBURG)
Case No. 21/53385
NOT REPORTABLE
NOT OF INTEREST TO
OTHER JUDGES
REVISED
24.03.23

In the matter between:

DONOVAN
SAMUEL MOODLEY
Applicant
and
MINISTER
OF JUSTICE AND CORRECTIONAL SERVICES
First
Respondent

DIRECTOR-GENERAL: DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES
Second
Respondent
NATIONAL
COMMISSIONER: DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES
Third
Respondent
JOHANNESBURG
AREA COMMISSIONER: DEPARTMENT OF CORRECTIONAL SERVICES
Fourth
Respondent
HEAD
OF PRISON: JOHANNESBURG CORRECTIONAL CENTRE B
Fifth
Respondent
PAROLE
BOARD: JOHANNESBURG CORRECTIONAL CENTRE B
Sixth
Respondent

JUDGMENT

WILSON J:

1 The applicant, Mr. Moodley, seeks urgent interim relief interdicting and restraining the respondents from proceeding with a parole hearing scheduled for 29 March 2023, pending a determination of whether the respondents are in contempt of a court order I granted on 15 December 2022.

2 Mr. Moodley's notice of motion requires that the respondents indicate whether they intend to oppose his application by 23 March 2023. The respondents have taken no steps to do so. However, as should be clear from what follows, neither an answering affidavit

nor opposed argument is really necessary to deal fairly with Mr. Moodley's application. Having regard to the nature of Mr.

Moodley's case, and the urgency of the matter, I have disposed of the application without oral argument, and without the benefit of an answering affidavit from the respondents.

The forthcoming parole hearing

3 Mr. Moodley's parole hearing is set to proceed on 29 March 2023. This is because, on 15 December 2023, I set aside the outcome of Mr. Moodley's previous parole hearing for the reasons I gave in *Moodley v Minister of Justice and Correctional Services* [2022] ZAGPJHC 1041 (15 December 2022).

4 My 15 December 2022 order requires that Mr. Moodley is to be afforded a new hearing. I directed that “[a]ll reports and other preparatory steps necessary to hold the hearing on or before 31 March 2023 must be completed on or before 28 February 2023”. I also required that, at least two weeks before the new hearing proceeds, Mr. Moodley is to be “afforded access to all the material that will be placed before the Parole Board” and to “all the applicable Parole Board manuals, practice directives, policies and other material relevant to the process” by which the Parole Board will consider his fitness for parole.

5 Mr. Moodley now complains that these steps have not been taken, and that he has not been given access to the relevant material. He argues that the scheduled parole hearing cannot proceed as a result. Mr. Moodley asks that the respondents be held in contempt of my 15 December 2022 order, because the respondents’ failure to place him in possession of the material I have outlined is itself contemptuous, and because the effect of that failure is to necessitate the postponement of his parole hearing beyond the date by which I directed that it should take place.

Preparatory reports

6 Mr. Moodley says that a new social worker’s report should have been completed and submitted to the Parole Board. He suggests that this is a requirement of the 15 December 2022 order. But he is mistaken. The 15 December 2022 says only that any reports or other preparatory steps necessary to hold the parole hearing by 31 March 2023 must be taken by 28 February 2023. The fact that a new social worker’s report was not completed by 28 February 2023 can mean only that reliance will be placed on the existing report, which was placed before the Parole Board at the hearing I set aside, and which has already been provided to Mr. Moodley.

7 Mr. Moodley accepts that the report that was used at his previous parole board hearing has been revised and updated, albeit not as comprehensively and as expertly as he would like. Mr. Moodley is free to raise the quality of the report at the 29 March 2023

hearing and to address any prejudice the alleged shortcomings of the report have caused him. However, it is not a requirement of my order that a completely new report be compiled, and Mr. Moodley has not made out a case that the updated report with which he has been provided is so poor as not to constitute a “report” for the purposes of my 15 December 2022 order. Indeed, the social worker’s report that was placed before the Parole Board at the hearing I set aside was a lucid enough document. The Parole Board’s failure to explain its departure from the report’s conclusions was one of the bases on which I set aside its decision in Mr. Moodley’s case.

8 For these reasons, the respondents’ failure to facilitate a new social worker’s report constitutes neither a breach of my 15 December 2022 order nor a reason for delaying the parole board hearing scheduled for 29 March 2023.

Other material to be placed before the Parole Board

9 Mr. Moodley says that, at his previous hearing, the Parole Board received and considered written submissions from the family of his victim, Leigh Matthews, and from the South African Police Services (SAPS). He anticipates that this material will be presented

again, and complains that he has not been given access to it. He anticipates being ambushed by the material on the day of the hearing.

10 Although they appear to have been given notice of the new hearing, there is presently no indication on the papers that Leigh Matthews' family or the SAPS have produced written submissions for the 29 March 2023 hearing or that such material will be presented at the hearing set to proceed on 29 March 2023. If they had, I expect that Mr. Moodley would have been given that material. If written

submissions from either the Matthews family or the SAPS later emerge and the Parole Board is asked to consider that material, then it will be for the Parole Board to decide how to deal with the material in light of my order.

11 In that event, it will be incumbent upon the Parole Board to deal with the material openly and fairly. Mr. Moodley will obviously

have to be given a reasonable opportunity to consider and respond to it, by means of a postponement if necessary. If Mr. Moodley is not given such an opportunity, that may affect the fairness, and consequently the lawfulness, of the 29 March 2023 hearing. But to say much more than that is to interfere impermissibly with the Parole Board's power to control its own proceedings.

12 The same goes for Mr. Moodley's complaint that there is material missing from the Victim Offender Dialogue report he has been

provided with. If that material has not yet been provided to Mr. Moodley, the natural inference is that the Parole Board will not have regard to it. If, for any reason, the material is nonetheless produced at or shortly before the hearing, then Mr. Moodley has the right to expect that it will be introduced and dealt with fairly. However, he does not have a right to postpone the hearing. Nor has he established that what he says is the incompleteness of the Victim Offender Dialogue report constitutes a breach, let alone contempt, of my 15 December 2022 order.

The process material

13 Mr. Moodley accepts that he has been given copies of the applicable legislation and of the Parole Board Manual. He says, however, that certain directives and regulations referred to the Parole Board Manual that bear on the process have not been provided to him. It is not clear from his papers whether Mr. Moodley has specifically asked for these documents, but that is of no moment. He is clearly entitled to have sight of them if they apply to the process to which he is now subject. There will be an order directing

that he is given the relevant documents forthwith.

14 The mere failure to provide these documents two weeks in advance of hearing does not, however, mean that the respondents are in contempt of the 15 December 2022 order, as Mr. Moodley claims. The documents Mr. Moodley requires, and to which he is entitled, were not specifically referred to in my order. Mr. Moodley's entitlement to them arises from the fact that they have been referred to in another document which is specifically referred to in the order. In these circumstances, it is not clear to me that the failure to provide the documents two weeks in advance of the hearing could constitute anything more than a very technical breach of the order, if that. On the information contained in Mr. Moodley's founding affidavit, it is plainly not a wilful breach of the 15 December 2022 order.

15 In addition, the failure to provide the documents does not mean that the parole hearing scheduled for 29 March 2023 cannot fairly proceed. As Mr. Moodley has himself pointed out, he has endured significant delays in his parole process. I may have been persuaded to interdict or postpone the 29 March 2023 hearing if it were established that the Parole Board was intent on proceeding even though it knew that the hearing could not be fair, but that case has not been made out. There is accordingly no reason why Mr. Moodley

should not be given the benefit of that hearing, on the assumption that the Parole Board will deal fairly with him, and with whatever

material that is ultimately placed before it.

16 For all these reasons, I make the following order –

The fourth to sixth respondents are directed to take the necessary steps to supply Mr. Moodley immediately with the material referred to in paragraph 19.3 of his affidavit dated 21 March 2023 (which appears at on Caselines at pages 044-20 and 044-21).

16.2 The relief sought in Part A of the urgent application dated 21 March 2023 is otherwise refused.

16.3 Each party will pay their own costs.

S D J WILSON

Judge of the High Court

This judgment was prepared and authored by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 24 March 2023.

APPLICATION PAPERS RECEIVED ON: 22 March 2023

DECIDED ON: 24 March 2023

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