REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(GRAHAMSTOWN)
In the matter between: Case No: 484/05
BRUCE EHRLICH **Applicant**

And

THE MINISTER OF CORRECTIONAL SERVICES **1st Respondent**

THE HEAD: MDANTSANE PRISON **2nd Respondent**

THE AREA COMMISSIONER: EAST LONDON **3rd Respondent**

Coram: **Chetty, J**
Date Heard: **12 June 2008**
Date Delivered: **23 June 2008**
Summary: ***Application by sentenced prisoner seeking redress for failure by respondents to comply with their statutory obligations circumscribed by sections 8 (b), 18, 38 and 41 of the Correctional Services Act 111/ 1998***

JUDGMENT

CHETTY, J

[1] The applicant is a sentenced prisoner incarcerated at the Mdantsane prison in the Province of the Eastern Cape. In this application, launched as one of urgency, he seeks relief, framed in his notice of motion as follows:

> *"2. Directing the second and third respondents to comply, and to*

cause officials under their command to comply, with the provisions of the order made in case number 2310/2005;

3. *Directing the second respondent to comply, and to cause officials under his command to comply, with the provisions of section 18 of Act 111 of 1998 and policy mandated by that section of the Act, in respect of the provisioning of library services to offenders at Mdantsane prison;*
4. *Directing the second respondent to comply with the provisions of section 38 (2) of Act 111 of 1998 in respect of providing the applicant with a sentence plan;*
5. *Directing the second respondent to comply, and to cause officials under his command to comply, with the provisions of section 41 of Act 111 of 1998 and policy mandated by that section of the Act, in respect of the provisioning of sport, recreation, arts and culture and training and development programmes to offenders at Mdantsane Prison;*
6. *Granting the applicant alternative and/or other relief;*
7. *That the costs of this application be paid by the first respondent."*

[2] In order to place the application in its proper context it is apposite to restate those principles which underlie the South African

correctional system. Section 2 of the **Correctional Services Act**[1] ("the Act") describes the purpose as being:-

> *". . . to contribute to maintaining and protecting a just peaceful and safe society by –*
>
> *a) enforcing sentences of the courts in the manner prescribed by this Act;*
>
> *b) detaining all prisoners in safe custody whilst ensuring their human dignity;*
>
> *c) promoting the social responsibility and human development of all prisoners and persons subject to community corrections."*

Such purpose furthermore, proclaims Chapter IV of the Act, has "the objective of enabling the sentenced prisoner to lead a socially responsible and crime free life in the future"[2]. Thus in order to achieve those objectives, the Act contains a number of innovative provisions, of relevance to the present application, section 18 (reading material), section 38 (assessment) and section 41 (Treatment, development and support services). The gravamen of the applicant's complaint as evinced by the form of the relief sought relates to the non-compliance by the respondents with these statutory provisions.

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1 Act No 111 of 1998
2 Section 36

[3] However, before I turn to consider the merits of the application, it is appropriate to have regard to what I believe to be the proper approach to matters of this nature. It was eloquently articulated by *Gubbay* CJ. in the Zimbabwean Supreme Court in **Conjwayo v The Minister of Justice, Legal and Parliamentary Affairs**[3] as follows:

> *"Traditionally, Courts in many jurisdictions have adopted a broad 'hands off' attitude towards matters of prison administration. This stems from a healthy sense of realism that prison administrators are responsible for securing their institutions against escape or unauthorised entry, for the preservation of internal order and discipline, and for rehabilitating, as far as is humanly possible, the inmates placed in their custody. The proper discharge of these duties is often beset with obstacles. It requires expertise, comprehensive planning and a commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government. Courts recognise that they are ill-equipped to deal with such problems.*
>
> *But a policy of judicial restraint cannot encompass any failure to take cognisance of a valid claim that a prison regulation or practice offends a fundamental constitutional protection.*
>
> *Fortunately the view no longer obtains that in consequence of his crime a prisoner forfeits not only his liberty but all his personal rights, except*

3 1992 (2) SA 56 (ZSC) at 60G-61A

> *those which the law in its humanity grants him. For while prison officials must be accorded latitude and understanding in the administration of prison affairs, and prisoners are necessarily subject to appropriate rules and regulations, it remains the continuing responsibility of Courts to enforce the constitutional rights of all persons, prisoners included."*

I endorse the remarks of the learned judge and am of the view that in addition to the aforegoing responsibility, in *casu* a court is obliged to ensure compliance by officials in the department of Correctional Services of statutory obligations imposed on them.

[4] Before proceeding with the merits of the application however, it is necessary, briefly, to detail the events which preceded this application. On 7 December 2007 the applicant addressed a letter to the third respondent complaining that his grievances had not been addressed by the second respondent and seeking his/her intervention. Therein the applicant set out in detailed form the issues raised in this application. This letter, notwithstanding the decisive provisions of section 21 (4) of the Act (the duty to respond) elicited neither acknowledgement nor answer from the third respondent.

Non- compliance with the court order

[5] On 15 December 2005 this court, (Erasmus J) made an order directing the respondents to comply with the provisions of section 8 (5) of the **Correctional Services Act**[4]. Under the rubric, ***Nutrition***, the section provides that *"Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than fourteen hours between the evening meal and breakfast"*. In his founding affidavit the applicant avers that during the period 20 to 29 January 2008 the respondents' failed to comply with the terms of the section and in amplification of such averment he has annexed a schedule (annexure B14) to his affidavit wherein he lists the exact times when meals were served in the prison. Annexure B14 is a meticulously kept document. It details not only the exact dates but the times and time periods during the period 21 January to 29 February showing non-compliance with the provisions of section 8 (5) of the Act.

[6] In answer hereto the second respondent, whilst conceding that a staff shortage and the current load shedding disruptions foisted upon the general populace has impacted negatively upon the ability to give effect to section 8, has reaffirmed that overall there has been substantial compliance with the terms of the Act. As corroboration he

4 Act 111 of 1998

has annexed to the opposing affidavit an extract from the official register which he contends indicates strict adherence to the provisions of the Act. The register however only covers a five day period between 25 to 29 February 2008. Whilst these entries indicate some compliance with section 8 (5) for those days there is no attempt made to refute the applicant's allegations that during the period mentioned by him there was no compliance with section 8 (5). Although the assumption may thus validly be made that during the period December 2005 to January 20, 2008 there has been compliance with not only the terms of the section but the court order as well, the complaint lodged by the applicant in respect of the period referred to by him remains unchallenged and needs to be attended to. There would no doubt have been sound policy reasons why particular time periods are specified in section 8 and it cannot be a herculean task on the part of the respondents to ensure that at the very least there is substantial compliance with the provisions of section 8. The order sought by the applicant seeks no more than to enforce adherence to the feeding regime prescribed by the legislature.

Library Services

[7] The gravamen of the applicant's complaint relates to the inadequacy of the library at the prison. The applicant alleges that in

contrast to the East London prison which apparently has in excess of 4800 books, the Mdantsane prison is sparsely stocked with only 400 books which the applicant further alleges are outdated. Section 18 of the Act provides in sub-section (a) that *"(e)very prisoner must be allowed access to available reading material"* . . . and that such *". . . may be drawn from a library in the prison or sent to the prisoners from outside the prison . . ."* It appears from his affidavit that his complaint is rooted in the disparity between the facilities at the East London prison and that of the Mdantsane prison. It is to be gleaned from the affidavit of the second respondent that he considers the library adequate given the infrequency of its use by inmates. Budgetary constraints furthermore he says compound the problem and suggests that the applicant is not entirely remediless. If he requires a publication he may obtain it via the mechanism provided by sub-section (2). The second respondent's stance is, to say the least, disconcerting. His superficial response to the applicant's allegations suggests that he does not regard the provision of library services as a priority. It is no answer to say that the lack of interest shown by inmates justifies the current inaction. The lack of interest shown is no doubt occasioned by the outdated publications and the complete lack of interest displayed by the respondents' officials. It would appear from the second respondent's replying affidavit however that the applicant's complaint has galvanised the official in charge of the library to attempt to better the quality of the library books. The applicant's complaints in

this regard therefore seem well grounded given the assurance that concerted efforts will be made to redress the situation.

Sentencing Plan

[8] It is not in issue that at the time the applicant deposed to his founding affidavit and his application filed in this court, a correctional sentence plan in conformity with section 38 of the Act had not been completed. The second respondent has annexed such a plan to his opposing affidavit but has omitted to explain the inordinate delay in assessing the applicant and providing him with a sentencing plan. Section 38 (1) of the Act provides that the assessment should be done *"as soon as possible after admission"*. On the applicant's uncontradicted version he had spent approximately twenty months at the prison and several years at another facility without being furnished with such a plan. He has alleged that the correctional supervision and parole board requires that offenders comply with the terms of their respective sentencing plans. His allegation to that effect is that it is a requisite for *"offenders to have complied with the terms of their respective sentence plans which includes the participation in various programmes. This is supposedly mandatory before parole is granted. If offenders do not have sentence plans or access to programmes it is difficult to imagine how they can be released on parole which might well explain why MCC is 170% full."*. The applicant's allegations hereanent remain

unchallenged and the belated preparation and submission of the sentencing plan symptomatic of the malaise afflicting the administration of the prison. Be that as it may, the sentencing plan provided by the respondents appears to be in compliance with the provisions of section 38 of the Act, but as I have recounted, only produced after this application had been filed in this court.

Development Programmes

[9] Section 41 (1) of the Act obligates the respondents *". . . (to) provide or give access to as full a range of programs and activities as is practicable to meet the educational and training needs of sentenced prisoners".* The applicant contends that in the twenty months of his incarceration at the Mdantsane prison, he has not been afforded the benefit of any services envisaged in section 41. In the founding affidavit he has referred to his proposal for restructuring of sport, recreation, arts and culture (SRAC) at the prison which he forwarded to the second respondent during August 2007. It appears from his affidavit that the proposal was to an appreciable extent motivated by the success of a similar model initiated by him at the East London prison during his incarceration there. Those proposals concern inter alia the training of offenders as librarians, storemen and facilitators and a number of training programs. Annexed to the founding affidavit is a comprehensive report by one *Sims* of the SRAC

at the East London prison in March 2007. It appears from that report that the applicant's proposals were implemented and had made a meaningful contribution to assist in the educational and training needs of the inmates. In answer hereto the respondents take issue with the applicant and maintain that there are various programs in place to give effect to section 41. What precisely these are, I am left to divine, the second respondent being content to state that in the absence of "specific allegations" he is unable to deal with the applicant's allegations. The second respondent's attitude is, to say the least, perplexing. Not only has he omitted to specify which programmes envisaged by section 41 are in place but more importantly, he fails to deal in any meaningful way with the proposals submitted by the applicant. It is apparent from the applicant's papers that in seeking the relief envisaged by section 41, he was actuated by the unfortunate reality of inmates lazing about, smoking dagga and becoming involved in gangsterism during their incarceration.

[10] The solution to the dilemma faced by the applicant and, I am sure, many other inmates, may, given the inaction of the second respondent to the complaints lodged by the applicant, not adequately be served by merely making an order in the terms sought by the applicant. In order to give substance to the orders I propose to make I deem it necessary that a copy of this judgment be forwarded, not only

to each of the respondents but to the Inspector Judge of the Judicial Inspectorate established in terms of section 85 of the Act.

[11] In the result therefore the following orders will issue:-

1. The second and third respondents and those falling under their command are ordered to comply with the order made by Erasmus J under case no. 2310/2005;
2. The second respondent is ordered to ensure compliance with the provisions of section 18 of the Correctional Services Act relating to the provision of reading material for the prison library;
3. The second respondent is ordered to comply with the provisions of section 41 of the Correctional Services Act No 111 of 1998, in respect of the provisioning and access to a range of programmes and activities as is practicable, so as to meet the educational and training needs of inmates at the prison;
4. There will be no order as to costs.

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D. CHETTY
JUDGE OF THE HIGH COURT

Obo the Applicant: **In Person**

Obo the Respondents: **Adv Boswell**
(instructed by Dullabh & Co: Mr Wolmarans)