CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 07/10

[2011] ZACC 9

In the matter between:

MINISTER FOR CORRECTIONAL SERVICES	First Applicant
COMMISSIONER OF CORRECTIONAL SERVICES	Second Applicant

and

PAUL FRANCIOUS VAN VUREN	First Respondent
CHAIRPERSON, NATIONAL COUNCIL FOR CORRECTIONAL SERVICES	Second Respondent

In re:

PAUL FRANCIOUS VAN VUREN	First Applicant

and

MINISTER FOR CORRECTIONAL SERVICES	First Respondent
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Second Respondent
COMMISSIONER OF CORRECTIONAL SERVICES	Third Respondent
CHAIRPERSON, NATIONAL COUNCIL FOR CORRECTIONAL SERVICES	Fourth Respondent
CHAIRPERSON, CSPB PRETORIA CENTRAL CC	Fifth Respondent
CHAIRPERSON, CMC PRETORIA CENTRAL CC	Sixth Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Seventh Respondent

Decided on : 31 March 2011

JUDGMENT

THE COURT:

[1] This is an urgent application[1] for an order (a) that Mr Van Vuren or any offender, who was serving a sentence of life imprisonment before 1 October 2004, shall not be considered by the Minister for Correctional Services (Minister) for placement on parole unless the National Council for Correctional Services (NCCS) has made a recommendation to the Minister regarding his or her placement on parole and (b) varying the order in paragraph 78(g) of the judgment handed down by this Court in *Van Vuren v Minister for Correctional Services and Others*[2] (main judgment), by inserting the words "acting on the recommendation of the [NCCS]" after the words "Minister for Correctional Services".[3]

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[1] Rule 12 of the Rules of this Court makes provision for urgent applications. It provides that:

> "(1) In urgent applications, the Chief Justice may dispense with the forms and service provided for in these rules and may give directions for the matter to be dealt with at such time and in such manner and in accordance with such procedure, which shall as far as is practicable be in accordance with these rules, as may be appropriate.
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> (2) An application in terms of subrule (1) shall on notice of motion be accompanied by an affidavit setting forth explicitly the circumstances that justify a departure from the ordinary procedures."

[2] [2010] ZACC 17; 2010 (12) BCLR 1233 (CC). The judgment was delivered on 30 September 2010.

[3] The relief sought in terms of the notice of motion reads:

> "1. That the application be heard as a matter of urgency in terms of rule 12 of the Rules of the Constitutional Court and that the forms and service provided for in such rules be dispensed with;

[2] The order sought to be varied reads:

> "The Case Management Committee, to the extent that it is statutorily authorised to do so, the Correctional Supervision and Parole Board and the Minister for Correctional Services are ordered to consider the applicant for release and placement under community corrections, with immediate effect."[4]

[3] The Minister and the Commissioner of Correctional Services (Commissioner) are the first and second applicants respectively. They were parties in the main application. Mr Van Vuren, the first respondent, was the applicant in the main application. The Chairperson of the NCCS, the second respondent, was the fourth respondent in the main application.

[4] The insertion the applicants seek would, if the order is varied, result in that order reading:

> 2. That it is declared that the First Respondent, or any other offender who was serving a sentence of life imprisonment before 1 October 2004, shall not be considered by the Minister of Correctional Services (the First Applicant) for placement under day parole or parole unless the National Council for Correctional Services (the Second Respondent) has made a recommendation to the Minister regarding his or her placement on parole;
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> 3. That paragraph [78](g) of the order made in the application under case no. CCT07/10 is varied to read as follows:
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> > *'(g) The Case Management Committee, to the extent that it is statutorily authorised to do so, the Correctional Supervision and Parole Board and the Minister for Correctional Services, acting on the recommendation of the National Council for Correctional Services, are ordered to consider the applicant for release and placement under community corrections, with immediate effect.'*
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> 4. Further and/or alternative relief."

[4] Above n 2 at para 78(g).

> "The Case Management Committee, to the extent that it is statutorily authorised to do so, the Correctional Supervision and Parole Board and the Minister for Correctional Services, acting on the recommendation of the National Council for Correctional Services, are ordered to consider the applicant for release and placement under community corrections, with immediate effect."

[5] According to the applicants, the NCCS understands the main judgment as meaning that the NCCS no longer has jurisdiction to consider, for purposes of making a recommendation to the Minister, the placement of offenders who were sentenced to life incarceration on parole. The applicants submit[5] that, absent a recommendation by the NCCS, any decision by the Minister for the placement of such an offender on parole would be *ultra vires* and would constitute reviewable administrative action. They argue that a recommendation by the NCCS is a jurisdictional fact for administrative action by the Minister. Put differently, the applicants understood the main judgment to mean that the Correctional Services Act, 1959[6] required that any consideration by the Minister should be preceded by and based on a positive recommendation by the National Advisory Council for Correctional Services.

[5] The parties filed submissions consequent to the directions by the Chief Justice dated 1 February 2011. Para 1 of these directions reads:

> "1. The parties are invited to submit written argument on the following questions:
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> (a) Whether the order granted by this Court on 30 September 2010 requires clarification or amendment, and, if so,
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> (b) What the terms of the amendment order should be?"

[6] 8 of 1959.

[6] Mr Van Vuren contends that, while the NCCS has jurisdiction to consider the placement of an inmate serving a sentence of life incarceration on parole, nowhere in the Correctional Services Act, 1998[7] (New Act) is it stipulated that the Correctional Supervision and Parole Board has to refer an application to the NCCS, that the Minister has to refer the matter to the NCCS for recommendation, or that a recommendation by the NCCS for the release of an inmate is a condition precedent for the release of an inmate. Mr Van Vuren submits that, the Minister, in exercising his or her discretion, in terms of section 78(1)[8] of the New Act, can grant or refuse parole. He argues that it is not compulsory for the NCCS to make a recommendation to the Minister. Mr Van Vuren submits that paragraph 78(g) of the order is unambiguous and that the application for its variation should be dismissed.

[7] Rule 42(1) of the Uniform Rules of Court[9] empowers a court to rescind or vary an order or judgment erroneously sought or granted, in which there is an ambiguity or a patent error or omission, or in which there is a common mistake by the parties.[10] The

[7] 111 of 1998.

[8] It provides that:

> "Having considered the record of the proceedings of the Correctional Supervision and Parole Board and its recommendation in the case of a person sentenced to life incarceration, the [NCCS] may . . . recommend to the Minister to grant parole or day parole and prescribe the conditions of community corrections in terms of section 52."

[9] In terms of rule 29 of the Rules of this Court, rule 42 of the Uniform Rules of Court applies to proceedings in this Court.

[10] Rule 42(1) provides:

> "The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:
>
> (a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

jurisdictional facts in subrule (1) must, however, be established by the party seeking variation before a court may exercise its discretion to set aside the order or to amend it.

[8] A court may clarify its order or judgment to give effect to its true intention which is to be ascertained from the language used without altering the sense and substance of the judgment if, on its proper interpretation, the meaning remains unclear.[11] But once a court has pronounced a final judgment or order, it has, itself, no authority to correct, alter or supplement it. The rationale for this principle is delineated by Ngcobo J in *Zondi v MEC, Traditional and Local Government Affairs*[12] that:

> "In the first place a Judge who has given a final order is *functus officio*. Once a Judge has fully exercised his or her jurisdiction, his or her authority over the subject matter ceases. The other equally important consideration is the public interest in bringing litigation to finality. The parties must be assured that once an order of Court has been made, it is final and they can arrange their affairs in accordance with that order."[13] (Footnotes omitted.)

[9] The main judgment is clear. There can be no doubt that it does not refer to all people sentenced to life incarceration before 1 October 2004. It only applies to those sentenced to life incarceration before the introduction of "the 20-year pre-parole

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(b) an order or judgment in which there is ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties."

[11] *Firestone South Africa (Pty.) Ltd. v Genticuro A.G.* 1977 (4) SA 298 (A.D.) at 307A-E. See also *Thompson v South African Broadcasting Corporation* 2001 (3) SA 746 (SCA) at paras 5-6 and *S v Wells* 1990 (1) SA 816 (AD) at 820C-F.

[12] [2005] ZACC 18; 2006 (3) BCLR 423 (CC); 2006 (3) SA 1 (CC).

[13] Id at para 28. See also *Firestone* above n 11 at 306F-G and *Minister for Justice v Ntuli* [1997] ZACC 7; 1997 (6) BCLR 677 (CC); 1997 (3) SA 772 (CC) at para 29.

minimum" which happened either during March 1994 or April 1995. The judgment undoubtedly excludes the NCCS from the process of parole consideration and there is no basis for the suggestion that the NCCS was intended to be included in that process either explicitly or implicitly. Finally, the notion that the implementation of the order of this Court will amount to unlawful administrative action must be firmly rejected.

[10] This Court would ordinarily have dismissed this application because rule 42(1) had not been properly engaged in the sense that its requirements had not been met. The only reason for this judgment is the difference of opinion between the NCCS on the one hand and the Minister on the other, which seemed to be a stumbling block to parole consideration and to the implementation of the main judgment.

[11] This matter has been decided without hearing oral submissions. Mr Van Vuren, although represented by an attorney, does not ask for costs. Accordingly, it is just and equitable to make no order as to costs.

[12] In the result, the following order is made:

1. The application is dismissed.
2. There is no order as to costs.

Ngcobo CJ, Moseneke DCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Mogoeng J, Mthiyane AJ, Nkabinde J and Yacoob J.

For the Applicants:	Advocate MTK Moerane SC and Advocate TWG Bester instructed by the State Attorney, Pretoria.
For the First Respondent:	Advocate GC Muller SC instructed by Jaco Du Plessis Attorneys.