

IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

Between:

10020

Applicant

and

COLONAL LE ROUX N.O.

Respondent.

P E T I T I O N

TO THE JUDGE PRESIDENT AND OTHER THE HONOURABLE JUDGES OF THE
ABOVE HONOURABLE COURT.

The Petition of 10020 humbly sheweth that -

1. Your Petitioner is a detainee in terms of Proclamation No. 91 dated the 30th day of March 1960 promulgated by virtue of the provisions of Act III of 1953. Your Petitioner is not, ^A in terms of the aforesaid Proclamation, permitted to disclose his identity and respectfully begs leave to refer to himself as "10020" being his prison identity number.
2. The Respondent is Colonal Le Roux, the Superintendant of the Johannesburg Gaol (hereinafter referred to as the "Fort") ^A in his capacity as lawful deputy of the Commissioner of Prisons, duly appointed in terms of the Prisons and Reformatories Act No. 8 of 1959.
3. In the early hours of the morning of the 30th day of March ^{NK} 1960 and without a warrant of arrest your Petitioner was arrested by certain two Police Officers in Johannesburg. Without a Search Warrant the said Police Officers searched your Petitioner's house. Despite a request from your Petitioner the said officers were unable to explain to him why he was being arrested, save for stating that it was in terms of the Public Safety Act. The said officers refused to allow your Petitioner to communicate with his Attorney.

4. At the time of your Petitioner's arrest the provisions of the said Public Safety Act had, to the knowledge of the Police authorities, not been brought into operation, in that the said Emergency had not been proclaimed and accordingly your Petitioner respectfully submits that his arrest was wrongful and unlawful. NK.

5. At 5 p.m. on the 30th day of March 1960 the above Honourable Court granted an Order for your Petitioner's release on the grounds that he was not lawfully detained. The 3rd Respondent in the said application was a certain Colonal Spengler, the Officer in Charge of the Security Branch of the South African Police on the Witwatersrand. NK.

6. In order to obviate the delay which would be occasioned by the necessity of having the said Order served by the Deputy Sheriff, the above Honourable Court ordered the said Colonal Spengler to release your Petitioner forthwith. The said Colonal Spengler further undertook to obtain from the Judge's Registrar, a list of the persons in respect of whom a similar order had been made. NK.

7. Your Petitioner respectfully states that the said Colonal Spengler, acting in fraud of your Petitioner's rights and in contempt of the Order of the above Honourable Court, never intended to release your Petitioner, as will more fully appear from the following - NK.

- a) The said Colonal Spengler did not arrive at Marshall Square where your Petitioner was being detained until approximately 6.45 p.m. Your Petitioner has reason to believe that on leaving the precincts of the Court the said Colonal Spengler proceeded to his office at "The Grays" and to the prejudice of your Petitioner, remained there for a considerable time.

b) That the said Colonal Spengler arrived at Marshall Square and despitethe aforesaid undertaking, he was not in possession of a list of the persons entitled to be released.

c) On the order of the said Colonal Spengler and at approximately 7 p.m. your Petitioner and the other effected persons were taken from their cells and brought into the Charge Uffice at Marshall Square. In the presence of the said Colonal Spengler your Petitioner and the others were informed that they would not be permitted to leave and that as soon as their property had been handed back, they would formally be released and immediately re-arrested.

d) At approximately 9 p.m. the said Colonal Spenglar said "I hereby release you all in terms of the Court Order" and was followed instantaneously by a certain Captain Verster who said "I hereby arrest you in terms of the Public Safety Act".

8. For reasons appearing hereunder your Petitioner has been unable to ascertain whether his second arrest and detention at approximately 9 p.m. was lawful or not.

9. On the 1st day of April 1960 your Petitioner was by virtue of a Warrant of Committal signed to the best of your Petitioner's knowledge, by the said Colonal Spengler, imprisoned in the said Fort and has since that date been detained there. Your Petitioner has never been informed whether any charge would be preferred against him and no reason whatsoever has been given for his detention.

10. Your Petitioner has been informed by the Respondent in an Official Circular that a visit from legal advisers are permitted once weekly to dispose of such matters as procuring Power of Attorney, signing cheques and discussing purely business matters and no other matters shall be discussed. All

such necessities will only be later in the presence of either the prison Warder or policeman".

11. It has further come to your Petitioner's knowledge that he is not permitted to interview an Attorney or Counsel unless such Attorney or Counsel has received a special permit from the said Colonal Spengler. In fact it has come to your Petitioner's knowledge that a certain Attorney who wishes to see him in connection with certain proceedings of public importance in which your Petitioner was involved, was refused access to him.

12. Because your Petitioner has been denied the opportunity of seeing legal assistance concerning the legality of his detention and other matters, he is unable to make detailed submissions in regard thereto.

13. Your Petitioner, however, submits as follows:-

- a) It is a fundamental right of every person that he be permitted access to our Courts for the purpose of seeking redress and prosecuting claims.
- b) A detained person has the right to seek advice on the validity of his detention and also on the validity of certain rules and regulations relating thereto.
- c) The alleged right of the South African Police to refuse access to your Petitioner of an Attorney or Counsel of your Petitioner's own choosing constitutes a gross interference with the administration of justice and the right to have unfettered access with the Courts of the land.

14. Your Petitioner begs leave to refer to Rule 3 of the Rules promulgated in Government Gazette No. 6416 dated the 11th day of April 1960, in terms of the provisions of sub-Regulation No. 5 of Regulation 4 of the Emergency Regulations set out in

Annexure 6 of Proclamation 91 dated the 30th March 1960. In terms of the aforesaid Rule a detainee is not permitted to see a legal adviser except with the permission of the Officer in Command in the place of detention in consultation with the local police authorities.

15. Your Petitioner respectfully submits that the aforesaid provision is Ultra vires Act 3 of 1953 in terms of which it was promulgated, in that it can operate to prevent a detainee from communicating with any Attorney. Alternatively, your Petitioner submits that in the event of him being permitted to see an Attorney, there is nothing in the said Regulations which prohibit a consultation on matters other than those relating to purely business and domestic affairs.

16. Your Petitioner verily believes that in fact the decision whether an Attorney or other person can be seen is, contrary to the provisions of the said Regulations, being taken by the said Colonel Spengler and not by the Respondent.

17. If so advised, your Petitioner is desirous of instituting action against the said Colonel Spengler for damages arising out of your Petitioner's wrongful and unlawful arrest and detention. Your Petitioner is also desirous of taking steps, if so advised, against the said Colonel Spengler, in connection with the contempt with which he treated the Order of the above Honourable Court referred to above. Your Petitioner is further desirous of testing the validity of certain of the provisions of the said Regulations and in particular the validity of the ruling that your Petitioner is not permitted to discuss the aforesaid with his Attorney and Counsel.

18. Your Petitioner has not been informed how long he will be detained. In the circumstances, your Petitioner fears that certain of his claims will become prescribed by virtue of the provisions of the Police Act. Your Petitioner is further

anxious, as soon as possible, to obtain advice from his Attorney and Counsel of his own choosing, on the validity of his detention and other matters connected therewith, without undue interference by the Police or Gaol authorities.

19. In the circumstances, your Petitioner humbly submits that the matter is one of urgency. Your Petitioner has not been able to obtain the services of Counsel to sign a Certificate of Urgency and begs leave to set this matter down without such Certificate. Your Petitioner further begs leave to affix the necessary Revenue stamps at a later stage in the proceedings.

WHEREFORE your Petitioner prays that it may please the above Honourable Court to grant an Order against the Respondent -

- a) Declaring that your Petitioner is entitled to the services of an Attorney and/or Counsel of his own choosing at all reasonable times.
- b) Declaring that your Petitioner is at all reasonable times entitled to discuss with his Attorney and Counsel all bona fide legal matters including matters relating to the legality of his detention and the conditions under which he is being detained.
- c) Alternative and other relief.
- d) Costs of suit.

AND YOUR PETITIONER as in duty bound will ever humbly pray.

(Signed) 10020.

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