

SA prisons: hotbed for spread of TB inside and outside...

Landmark case of Lee's contagion might 'open the floodgates to a slew of damage claims'

RUTH HOPKINS

WE CANNOT control the spread of tuberculosis in SA – with one of the highest incidences of TB in the world – without controlling it in our prisons.

Given the high turnover rate in awaiting trial detention, the risk for the general population is considerable. Prisons are a hotbed for TB and reducing the epidemic will mean wives, children and others will not be infected when inmates return to society.

On Tuesday, the Constitutional Court might hold the SA state accountable for failing to control the spread of the disease in prisons.

This outcome will be significant, not only for Dudley Lee, a former inmate who contracted TB in Pollsmoor prison and who is suing the Department of Correctional Services for failing to address the spread of TB, but also for the entire population.

In 1999, Lee was arrested for fraud, money laundering and possession of forged money. He was admitted to the awaiting trial section of Pollsmoor prison in relative health, as he had a pre-existing heart condition.

Upon arrival, there was no medical screening for TB. Lee was diagnosed with TB in 2003, several months before he was acquitted of all charges. It was impossible to establish when exactly Lee contracted the disease, as it could have happened at any point. According to his testimony before the Western Cape High Court: "Prisoners going to Cape Town court were stuffed into vans like sardines. Cells were jam-packed and overcrowded."

Conditions were abominable; the communal cells were overcrowded, poorly ventilated and dark, with many sleeping on the floor for lack of beds, and the air was thick with the smoke of cigarettes and dagga.

Inmates were provided very brief opportunities to exercise in the fresh air. Although he was never involved himself, Lee also observed gang violence and rape taking place.

The serious shortage of medical staff formed the biggest problem for TB-infected inmates. There was no entrance screening for TB or other diseases when Lee arrived.

After 4pm every day, there was just one nurse responsible for all the 3 000 prisoners in Pollsmoor. Access to doctors was patchy. Many prisoners missed their chance to see a physician, because warders would fail to collect inmates for their weekly check.

Sputum tests were not sent to the lab. According to Lee, he had to "beg, bully and bribe" to get his medication. Medics did not provide the medicine because they were absent or gangs would confiscate the meds from prisoners and smoke or barter it.

After his release, Lee sued the minister for negligence before the Western Cape High Court, which held that the department was liable for the damage suffered by Lee as a result of TB, as the department had violated its own legal regulations (among others, standing orders in the field of health care for and accommodation of inmates, and the constitution).

The Supreme Court of Appeal (SCA), however, overturned that decision. It admitted that the state was negligent



INFECTED: Dudley Lee got TB in Pollsmoor Prison.

PICTURE: MICHAEL WALKER

in fighting TB in Pollsmoor; but claimed that Lee could not prove where and how he had contracted the bacteria.

It was not clear, according to the SCA, that the correct implementation of the regulations would have "altogether eliminated the risk of Lee's contagion". Therefore the state was not liable.

Now the Constitutional Court will have the final word. If it finds in favour of Lee, he will have a successful claim for

damages against the state. The Department of Correctional Service fears this might open the floodgates to a slew of damage claims by (former) inmates.

TB is the main cause of death in prisons, according to the annual report of the inspecting judge for prisons.

His lawyer Jonathan Cohen, who is joined by amici curiae of the court, the Wits Justice Project, the Centre for Applied Legal Studies and the Treatment Action Campaign, represented by Section 27, claims the department was well aware of the severity of the problem. The prison authorities knew Lee had contracted the disease.

Moreover, they had been informed through various channels of the severity of the TB epidemic in Pollsmoor; yet they took no steps to address the problem. To the contrary, doctors and nurses who spoke out about prison conditions and the spread of the drug-resistant forms of TB were suspended.

This attitude is baffling, considering the simple cost-effective measures the government could have taken.

According to a study published in the South African Medical Journal in 2011, there is a 90 percent risk of TB transmission in Pollsmoor – adherence to department health regulations could have reduced the spread of TB by up to 50 percent using accepted SA norms, and by up to 94 percent using internationally accepted norms. Increasing ventilation in the cells, allowing sunlight in the cells, improved case finding, decreased lock-up time and providing more opportunity for daily exercise would reduce the spread of TB substantially.

A recent visit to Pollsmoor prison reveals that little has changed, despite the parlia-

mentary portfolio committee on correctional services, and others urging the government to take action.

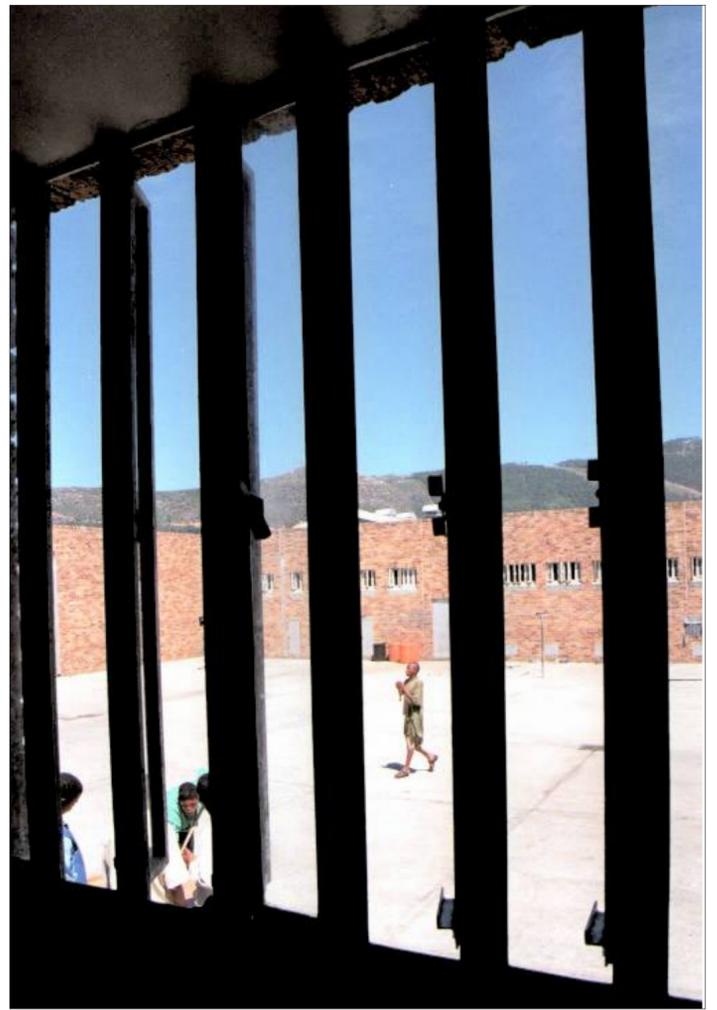
The Wits Justice Project learned that there is a disturbing shortage of medical staff, who are on call only once a week, and the conditions described by Lee continue to be the norm.

A positive outcome of the upcoming case before the Constitutional Court will not only address the detrimental sequence of events that disabled an innocently incarcerated man. It will set a hopeful and equitable precedent for the 160 000 prisoners in SA, who should have recourse to redress when their constitutional rights are violated.

This human rights approach to prisoners might fall on deaf ears, as criminals do not enjoy a great deal of sympathy in SA. The government and the Department of Correctional Services should develop an effective and law-abiding approach to the spread of TB in prisons.

Prison walls are porous. What goes on inside, will come out.

Ruth Hopkins is a journalist with the Wits Justice Project, which investigates miscarriages of justice.



POLLSMOOR PRISON: Overcrowding and bad conditions lead to the spread of diseases.

PICTURE: BRENTON GEACH

Sushi king Kenny coy over wine farm

HENRIËTTE GELDENHUYS

FLAMBOYANT former convict-turned-millionaire Kenny "Sushi King" Kunene says he never lies to his friends on Twitter, suggesting that he is indeed a partner in the purchase of the Quoin Rock grape farm near Cape Agulhas – for R13 million.

But he says he "knows nothing" about the sale of the controversial 194-hectare Quoin Rock Winery in Stellenbosch, which sold a week ago for R85m.

But Quoin Rock liquidator Cloete Murray says both the estate and the Agulhas farm were bought by K2012019517 (South Africa) (Pty) Ltd.

The Stellenbosch property was bought by public tender after a failed auction in December which led to an exposé concerning Auction Alliance's business practices.

The grape farm was sold in December.

This week Murray said he knew nothing of Kunene's involvement. "His name is not on any of the documents."

Questions were raised after Kunene tweeted: "Thanx2 all who wished me well, I became the highest bidder@dauction n got the farm. God is great."

Asked to comment, Kunene said he didn't buy or bid on Quoin Rock Stellenbosch. But he added: "I never lie to my friends on Twitter."

He added he had "too many businesses all over Africa, and you'll never find my name on these".

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