Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1) **NOT** REPORTABLE
(2) **NOT** OF INTEREST TO OTHER JUDGES

CASE NO: 2024-064194

In the matter between:

M[...] B[...] Applicant

and

THE MINISTER OF HOME AFFAIRS First Respondent

THE DIRECTOR-GENERAL, DEPARTMENT OF HOME AFFAIRS Second Respondent

AND 18 RELATED MATTERS : CASE NUMBERS 2024-064192; 2024-061122; 2024-064846; 2024-064849; 2024-060899; 2024-064198; 2024-063961; 2024-060965; 2024-063989; 2024-061133; 2024-065459; 2024-065461; 2024-065465; 2024-065467; 2024-064468; 2024-065471; 2024-065474; 2024-065475

This judgment was handed down electronically by circulation to the parties legal representatives by email, and uploading on Caselines. The date and time for hand-down is deemed to be 10h00 on 24 June 2024

JUDGMENT

MARCUS AJ

INTRODUCTION

[1] When the urgent roll was published on Friday 14 June 2024 (for the week of 17-21 June 2024) it contained 51 matters. In 21 of those matters, either the Minister or the Department of Home Affairs was cited as a respondent. Nineteen of the matters concerned applications by asylum seekers who are currently in detention at the Lindela Holding Facility in Krugersdorp ("Lindela"). They approached court urgently essentially seeking orders interdicting their deportation from South Africa pending the final determination of their asylum applications.

[2] These 19 applications are spearheaded by three firms of attorneys. Save for differences in personal details, the notices of motion and founding affidavits in each cluster of cases are otherwise virtually identical. The applications all have one common feature : they all say that the applicants are being detained at Lindela, and they are at risk of imminent deportation.

[3] By way of example, in the application of M[...] B[...] v the Minister of Home Affairs, in which the applicant is represented by Maladzhi and Sibuyi Attorneys, the relief sought is the following:

> *"1. Condoning Applicant's non-compliance with the rules relating to service and time periods and dealing with this matter as one of urgency in terms of rule 6(12) of the Uniform Rules of Court.*
>
> *2. Directing the Respondents to take all necessary steps within 5 days of granting of this order to afford the Applicant a hearing in terms of section 21 of the Refugees Act 130 of 1998, read together with regulation 8 of the Refugee Act thereto, to show good cause for his illegal entry and stay in the Republic of South Africa.*
>
> *3. Interdicting and restraining the First and Second Respondents from deporting the Applicant until such time that the Applicant's Status in the*

Republic of South Africa has been fully and finally determined in terms of the Refugees Act 130 of 1998 and until such time that the Applicant has fully exhausted his review or appeal process in terms of Chapter 4 of the Refugees Act and the Promotion of Administrative Act of 2000.

4. Directing that in the event that the Respondents fail to comply with paragraph 2 above the applicant is to be released from detention forthwith.

5. In the event the applicant show good cause to the Respondents, the First and Second respondent are directed, upon submission by the Applicant, of his asylum application, to accept the Applicant's asylum application, and to issue him with a temporary asylum seeker in accordance with section 22 of the Refugee Act, pending finalisation of his claim, including the exhaustion of his right of review or appeal in terms of the time period as afforded to him in terms of Chapter 3 of the Refugees Act and the Promotion of Administrative Justice Act 3 of 2000.

6. The Respondents are jointly and severally directed to pay the costs of this application on attorney and client scale.

7. Final and/or alternative relief."

I have reproduced the notice of motion verbatim.

[4] In the application of A[...] Z[...] v The Minister of Home Affairs, in which the applicant is represented by Tony Okorie Attorneys Inc, the relief sought is in the following terms:

"1. Dispensing so far as need be, with the forms and service provided for in the Uniform Rules of Courts, and disposing of this application at such time and place and in such manner and according to such procedure as this Court deems fit in terms of Rule 6(12) of the rule of this Court.

2. The Respondents are directed to afford the Applicant the opportunity to show good cause at the Reception Refugee Office within 5 days and apply for his asylum permit.

3. The Respondents are directed to immediately release the Applicant from the Lindela Holding Facility after good cause has been shown by the Applicant.

4. To the extent necessary, permitting the Applicant to bring this application without exhausting any applicable internal remedies provided for in section 8 of the Immigration Act 13 of 2002.

5. To the extent necessary, reviewing and setting aside any decision of the Magistrate's Court to extend a warrant of detention, if any, issued or extended in terms of section 34(1)(d) of the Immigration Act read with Regulation 28(4) of the Regulation thereto.

6. The Respondents are directed to issue the Applicant with a temporary asylum seeker permit in terms of section 22 of the Refugee Act 130 of 1998 pending finalisation of all process regarding this application.

7. Interdicting the Respondents from deporting the Applicant unless and until their status under the Refugee Act 130 of 1998 has been lawfully and finally determined.

8. The Respondents are directed to pay costs of this application jointly and severally, one paying the other to be absolved.

9. Granting such further or alternative relief as the Court deems just."

I have again reproduced the notice of motion verbatim.

[5] In the application of *D[...] W[...] v the Minister of Home Affairs*, in which the applicant is represented by Buthelezi NF Attorneys Inc, the relief sought is cast as follows:

"1. Dispensing, so far as need be, with the forms and service provided for in the Uniform Rules of Court and disposing of this application at such time and place and in such manner and according to such procedure as the court deems fit in terms of Rule 6(12) of the Uniform Rules.

2. Subject to the applicant approaching the Refugee Office as contemplated in paragraph 5 below, the first and second respondents are interdicted from deporting the applicant unless and until his status under the Refugees Act 130 of 1998, alternatively under Refugees Act 130 of 1998 as amended by the Refugees Amendment Act 11 of 2017, as being lawfully and finally determined.

3. It is declared that in terms of section 2 of the Refugees Act 130 of 1998 (Act) the Applicant may not be deported until he has had an opportunity of showing good cause as contemplated in Regulation 8(3) of the Refugees

Amendment Act 11 of 2017, if such good cause has been shown, until his application for asylum has been finally determined in terms of the Act.

4. The respondents are directed to the extent necessary, to take all reasonable steps, within 14 days from the date of this order per paragraph 3 above, failing which the applicant must be released from detention forthwith.

5. The Applicant is directed to approach the offices of the Respondent after having shown good cause in terms of in regulation 8(3) per paragraph 3 above, to apply for an asylum permit in terms of section 21(1) of the Refugees Act and be issued with a temporary asylum seeker's permit in terms of section 22 of the Refugees Act forthwith.

6. The respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved on a scale as between attorney and client.

7. Granting the applicant further and/or alternative relief."

Again, I have reproduced the notice of motion verbatim.

[6] The virtually identical nature of the affidavits by the respective attorneys involved raises concerns. It calls to mind the observations of Wallis AJ (as he then was) in *C[...] v South African Social Security Agency and 22 related cases.*[1] That case concerned multiple applications for social security. The court observed:

> *"The matters in question emanated from four firms of attorneys and they in turn appeared to be instructed by two agencies that assist persons applying for social assistance grants, who encounter problems in the administration of these grants. (I will refer compendiously to social assistance grants as including all forms of grants provided for in the Social Assistance Act 2004 (the 2004 Act) or its predecessor, the Social Assistance Act 59 of 1992 (the 1992 Act)). On enquiry I was informed from the bar that these agencies charge a fee for their services, although I was not told either the amount of the fee or the basis upon which it is calculated, or how people so impoverished that they qualify for social assistance grants can afford to pay fees. As appears later in this judgment the legal costs of these matters are substantial and, when multiplied by the number of cases involved, enormous."*[2]

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1 2009 (5) SA 105 (D).

2 At para 2.

[7] Wallis AJ further observed, in relation to the cases before him, that the attorneys in question *"appear to have established a mini-industry in cases of this type"*.[3] The applications before me, like those that served before Wallis AJ, appeared to have been "*run off on a computer using a standard word-processing programme*".[4] I have reproduced the notices of motion verbatim, not because I am concerned with grammatical imperfections, especially In cases concerning individual liberty but because the attorneys involved have simply replicated them in the various cases they have initiated.

[8] The problem of what might be termed conveyor-belt litigation has reared its head in the precise context of detained asylum seekers and has been pertinently addressed by a Full Bench of this Division in *L[...] and others v Minister of Home Affairs and others.*[5] In that case, Mlambo JP (Twala J and Collis J concurring) made the following pertinent observations :

> *"[93] ... Each separate application are similar and evince identical backgrounds save for certain specifics such as the dates when they left their countries of origin, when they entered South Africa, when and where they were arrested. Lastly on this point, the same grammatical errors appear in each application giving the inescapable impression that one application was drafted and that cutting and pasting resulted in the other applications. In fact, a quick glance at the A[...] papers in this court evince the same factual matrix as we have in the application before us. It appears that these matters are the product of template processes. This raises the question whether this conduct doesn't amount to a serious abuse of the court process, especially that they are issued on the urgent roll of this court.*
>
> *[94] Our view is that the six applications initially issued were essentially one application. As pointed out above the allegations in each application are the same. The applications were also issued by the same lawyers. The inescapable impression is that one application was prepared which was then followed by cutting and pasting from that first version to produce six different applications. The issues raised in each of these applications are the same hence the subsequent consolidation of the applications. This is an issue that*

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3 At para 8.

4 At para 14.

5 [2024] 2 All SA 113 (GJ).

we feel should be considered further. We have therefore decided to suspend making an order as to costs and direct that the parties file further affidavits addressing this matter. The applicants are directed to file an affidavit to explain why a finding shouldn't be made that their conduct amounted to an abuse of the judicial process and further why a punitive order as to costs shouldn't be made against them and/or their lawyers. The applicants and/or their lawyers are to file these further representations within 14 days from the date of this judgment and the respondents must file their representations within 14 days thereafter."

[9] In light of these (and other) concerns I called these matters on Tuesday 18 June. Counsel for the three firms of attorneys were present. There was no appearance on behalf of the Department of Home Affairs which has, thus far, not put up any answering affidavits, let alone any notices of opposition. I stood the matter down until Wednesday 19 June in order to allow counsel for the three firms of attorneys to address me on various concerns arising in the applications and to ascertain the attitude of the respondents. I also specifically requested counsel to deal with the Full Court's judgment in *L[...]* (supra) as well as the subsequent judgment of Wilson J in *S[...] v Minister of Home Affairs and others.*[6]

[10] I drew specific attention to the fact that there appears to have been no endeavour by the respective firms of attorneys to draw attention to the virtually identical nature of these cases. Where Practice Notes were filed, there is no reference to any of the other virtually identical matters initiated by the same firm of attorneys. This ought to have been done to ensure practical and expeditious resolution of such matters on an urgent basis.

URGENCY

[11] All of the cases with which I am concerned involve a deprivation of liberty. That makes them inherently urgent.

CHALLENGING DETENTION

[12] The underlying cause of action in the present cases is the *interdictum de homine libero exhibendo*. All of the applicants are currently detained at Lindela. The

6 [2024] ZAGPJHC 414 (2 May 2024).

interdictum de homine libero exhibendo has a substantial pedigree in the South African common law (even in the face of concerted attempts by the apartheid regime to dilute it or indeed eliminate it altogether). In a case decided under the State of Emergency, the principle was described thus:

> *"The interdict de homine libero exhibendo is an institution of the common law which establishes as a right the freedom of any person from unlawful arrest, imprisonment or other bodily restraint whether by a public official, such as a member of the South African Police Force, or at the instance of any public authority, such as a Minister of State, in the exercise of their statutory powers of arrest and detention, or by anyone else, whether or not exercising statutory powers. Freedom from detention is thus one of the ordinary rights of a person. The consequence is that arrests or detention causing as it does a deprivation of personal liberty, is in itself prima facie an infringement of a right of the person detained, a wrong and an injury. The interdict requires that the detainee must be given an opportunity to ask the court for his release, and provide that the court must order his release unless the person who is detaining him shows that there is lawful cause for his detention."*[7]

[13] In the context of powers of detention under the Refugees Act and in light of section 12(1)(b) of the Constitution which guarantees the right to freedom, including the right not to be detained without trial, the Supreme Court of Appeal has stated:

> *"Once it is established that a person has been detained, the burden justifying the detention rests on the detaining authority. In Principal Immigration Officer and Minister of Interior v N[...], Sir John Wessels stated:*
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> > *'Apart from any legislative enactment, there is an inherent right in every subject, and in every stranger in the Union, to sue out a writ of habeas corpus. This right is given not only by English law, but also by the Roman-Dutch law. Prima facie therefore every person arrested by warrant of the Minister, or by any other person, is entitled to ask the Court for his release, and this Court is bound to grant it unless there is some lawful cause for his detention.'*

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7 *Swart v Minister of Law and Order* 1987 (4) SA 452 (C) at 455 F-H, per Rose-Innes J.

> *In English law the remedy is known as habeas corpus but in Roman-Dutch law it is referred to as the interdictum de homine libero exhibendo. Both terms are used in our law."*[8]

[14] All legal systems which purport to respect individual liberty have mechanisms for ensuring that persons are not unlawfully detained. In the absence of such protection, *"the uncontrolled and arbitrary exercise of ... power might lead to serious abuses"*.[9] The unlawful deprivation of liberty *"is a threat to the very foundation of a society based on law and order"*.[10]

[15] Given the importance of the right to individual liberty, an applicant seeking release from detention need do no more than allege that he or she is being unlawfully detained by the respondent. The onus then shifts to the respondent to justify the detention.[11] Unsurprisingly, this position is now constitutionally entrenched. The Constitutional Court has put the matter thus:

> *"The Constitution enshrines the right to freedom and security of the person, including the right not to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom. Accordingly, it was sufficient in this case for the applicant simply to plead that he was unlawfully detained. This he did. The respondents then bore the burden to justify the deprivation of liberty, whatever form it may have taken.*
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> *This is not something new in our law. It has long been firmly established in our common law that every interference with physical liberty is prima facie unlawful. Thus once the claimant establishes that an interference has occurred, the burden falls upon the person causing that interference to establish a ground of justification. In Minister van Wet en Orde v Matshoba, the Supreme Court of Appeal again affirmed that principle, and then went on to consider exactly what must be averred by an applicant complaining of unlawful detention. In the absence of any significant South African authority Grosskopf JA found that the law concerning the rei vindicatio a useful analogy. The simple averment of the plaintiff's ownership and the fact that his or her property is held by the defendant was sufficient in such cases. This led that court to conclude that,*

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8 *Arse v Minister of Home Affairs and others* 2012 (4) SA 544 (SCA) at para 5.

9 Per Bale J in *In re: Cakijana and Tobela* (1908) 29 NLR 193 at 202.

10 Per Rumpff CJ in *Wood v Ondangwa Tribal Authority* 1975 (2) SA 294 (A) at 310G.

11 *Minister van Wet en Orde v Matshoba* 1990 (1) SA 280 (A) at 286C.

> *since the common law right to personal freedom was far more fundamental than ownership, it must be sufficient for a plaintiff who is in detention simply to plead that he or she is being held by the defendant. The onus of justifying the detention then rests on the defendant. There can be no doubt that this reasoning applies with equal, if not greater, force under the Constitution."*[12]

[16] The founding affidavits in the present applications certainly allege that each of the applicants is being detained and that they fear imminent deportation.

THE REFUGEE CONTEXT

[17] The subject of the present applications concerns the rights of refugees. In the cases before me, most of the various applicants admit to having entered South Africa unlawfully. They did so, it is alleged, in order to escape persecution in their country of origin. All of the applicants assert their entitlement to apply for refugee status.

[18] Some 17 years ago, the Constitutional Court was at pains to stress the vulnerability of refugees. It did so in *Union of Refugee Women and others v Director, Private Security Industry Regulatory Authority and others.*[13] The court stated:

> *"Refugees are unquestionably a vulnerable group in our society and their plight calls for compassion. As pointed out by the applicants, the fact that persons such as the applicants are refugees is normally due to events over which they have no control. They have been forced to flee their homes as a result of persecution, human rights violations and conflict. Very often they, or those close to them, have been victims of violence on the basis of very personal attributes such as ethnicity or religion. Added to these experiences is the further trauma associated with displacement to a foreign country."*[14]

[19] The court took the opportunity to locate the rights of refugees in the history of South Africa. It observed:

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12 *Zealand v Minister of Justice and Constitutional Development and Ano* 2008 (4) SA 458 (CC) at paras 24 – 25.

13 2007 (4) SA 395 (CC).

14 At para 28.

> *"In South Africa, the reception afforded to refugees has particular significance in the light of our history. It is worth mentioning that Hathaway lists apartheid as one of the 'causes of flight' which have resulted in the large numbers of refugees in Africa. During the liberation struggle many of those who now find themselves among our country's leaders were refugees themselves, forced to seek protection from neighbouring states and abroad."*[15]

[20] Justice Sachs, concurring, spoke of the need to "*send out a strong message that an irrational prejudice and hostility to non-nationals is not acceptable under any circumstances."*[16]

[21] Since these pronouncements, similar sentiments have been regularly repeated.

The comments of Cameron J in *R[...] v Minister of Home Affairs*[17] on behalf of a unanimous court referred to section 2 of the Refugees Act as *"remarkable"* and as a "*powerful decree"*. Section 2 of the Refugees Act provides:

> *"Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where – (a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or (b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disruption public order in either part or whole of that country."*

[22] Commenting on this provision, Justice Cameron stated:

> *"This is a remarkable provision. Perhaps it is unprecedented in the history of our country's enactments. It places the prohibition it enacts above any contrary provision of the Refugees Act itself – but also places its provisions above anything in any other statute or legal provision. That is a powerful decree. Practically it does two things. It enacts a prohibition. But it also expresses a principle, that of non-refoulement, the concept that one fleeing persecution or*

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15 At para 30.

16 At para 143.

17 2019 (2) SA 329 (CC).

threats to his or her life, physical safety or freedom should not be made to return to the country inflicting it.

It is a noble principle – one our country, for deep-going reasons springing from persecution of its own people, has emphatically embraced. The provenance of section 2 of the Refugees Act lies in the Universal Declaration of Human Rights (Universal Declaration), which guarantees the right to seek and to enjoy in other countries asylum from persecution. The year in which the Universal Declaration was adopted is of anguished significance to our country, for in 1948 the apartheid government came to power. Its mission was to formalise and systematise, with often vindictive cruelty, existing racial subordination, humiliation and exclusion. From then, as apartheid became more vicious and obdurate, our country began to produce a rich flood of its own refugees from persecution, impelled to take shelter in all parts of the world, but especially in other parts of Africa. That history looms tellingly over any understanding we seek to reach of the Refugees Act.

The principle of protecting refugees from persecution was elaborated three years after the Universal Declaration, in Art. 33 of the Convention Relating to the Status of Refugees of 1951 (1951 Convention). This gave substance to Art. 14 of the Universal Declaration. The 1951 Convention defined 'refugees' while codifying non-refoulement. South Africa as a constitutional democracy became a state party to the 1951 Convention and its 1967 Protocol when it acceded to both of them on 12 January 1996 – which it did without reservation. In doing so, South Africa embraced the principle of non-refoulement as it was developed since 1951. The principle has been a cornerstone of the international law regime on refugees. It has also become a deeply-lodged part of customary international law and is considered part of international human rights law."[18]

[23] The Constitutional Court's endorsement of South Africa's international legal obligations flowing from its accession to various treaties is of obvious significance. Recent events in South Africa have evidenced an apparently steadfast commitment by the government to honour its treaty obligations. This commitment applies to all treaty obligations, including those concerned with refugees.

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[18] At paras 24 – 26.

[24] The Refugees Act underwent various amendments with effect from 1 January 2020. The effect of these amendments on the approach previously articulated by the Constitutional Court necessitated a fresh look by the Constitutional Court in *A[...] v Minister of Home Affairs and Ano.*[19] It is not necessary for purposes of the present judgment to consider the amendments to the Act in any detail (although the constitutionality of these amendments may well be open to doubt). In *A[...]*, the Constitutional Court held that the amendments to the Act and regulations did not render earlier judgments to be obsolete. On the contrary, the court reiterated certain principles previously laid down by Cameron J in *R[...]*, referred to above. The court observed:

> *"In a nutshell, this court in R[...] highlighted that our country adopted Art. 33 of the 1951 Convention, which guarantees the right to seek and enjoy in other countries asylum from persecution. It also clarified that Parliament decided to enforce the Convention in the country through s 2 of the Refugees Act. Section 2 captures the fundamental principle of non-refoulement. As this court reasoned, the 1951 Convention protects both what it calls 'de facto refugees' (those who have not yet had their refugee status confirmed under domestic law) or asylum seekers, and 'de jure refugees' (those whose status has been determined as refugees). The protection applies as long as the claim to refugee status has not been finally rejected after a proper procedure. This means that the right to seek asylum should be made available to every illegal foreigner who evinces an intention to apply for asylum, and a proper determination procedure should be embarked upon and completed. The shield of non-refoulement may only be lifted after that process has been completed."*[20]

The court noted that section 2 of the Refugees Act had not been amended. It reiterated the observation of Cameron J that this provision was remarkable and unprecedented.[21]

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19 2022 (2) SA 321 (CC).

20 At para 42.

21 At para 44.

[25] The Constitutional Court again considered the legislative amendments in *A[...] v Minister of Home Affairs and others.*[22] The Court endorsed the non-refoulment principle laid down in *R[...].*[23]

[26] Accordingly South Africa is under both domestic and international legal obligations to protect the rights of refugees. This does not mean that those seeking asylum in South Africa cannot be detained, if circumstances justify such detention (and ultimate deportation).

[27] In *L[...]* (supra), the Full Court summarised the position as follows:

> *"[91] Accordingly, the law may be restated as follows –*
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> *91.1 It is an offence in terms of s 9(1) and 49(1) not to enter South Africa at a port of entry and to stay in the country in contravention of the Immigration Act.*
>
> *91.2 It is not unlawful to arrest and detain any person who has contravened the Immigration Act regarding entry and stay in South Africa.*
>
> *91.3 The arrest and detention of persons who have contravened the Immigration Act does not violate the non-refoulment protection in s 2 of the Refugees Act.*
>
> *91.4 The mere expression of an intention to apply for asylum does not entitle any person to be released from detention where such person is detained for contravening the Immigration Act.*
>
> *91.5 It is unlawful and therefore a violation of the non-refoulment principle to deport persons who contravened the Immigration Act, if they express an intention to apply for asylum.*
>
> *91.6 Persons detained for contravening the Immigration Act and who express a desire to apply for asylum must first show good cause for their illegal entry and stay in South Africa.*
>
> *91.7 Upon the first appearance of a person arrested for contravening sections 9 and 49 of the Immigration Act, who expresses an intention to apply for asylum, the magistrate must require such*

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22 2023 (5) SA 382 (CC).

23 At paras 29 – 32.

to show good cause in line with s 21(1B) and regulation 8(4) read with regulation 8(3).

91.8 At any stage of a person's detention and who evinces an intention to apply for asylum, the Department of Home Affairs must assist such a person by facilitating their interview to show good cause.

91.9 Any foreign national convicted and sentenced for transgressing sections 9 and 49 of the Immigration Act is liable to be deported in terms of s 34 unless he at that stage expresses an intention to apply for asylum. In that event such person must be assisted to attend an interview to show good cause.

91.10 Upon the successful showing of good cause, the detained person must be assisted to apply for asylum and a temporary asylum transit visa must be issued to such a person.

91.11 Upon the issuing of a temporary asylum transit visa such a person is entitled to be released and must apply for asylum within the prescribed timeframes."

[28] The judgment of Wilson J in *S[...]* is particularly helpful and serves to elucidate several of the issues which have arisen in the cases before me. Wilson J was faced with three applicants. All were asylum seekers. All were arrested and detained under the Immigration Act for being present in South Africa without a valid visa. All served a short prison sentence before being sent to Lindela for purposes of deportation. Despite several endeavours, the Department of Home Affairs never put up affidavits contesting the legality of the threatened deportation. Dealing with the genesis of the legislation and case law, Wilson J observed:

"[7] Until fairly recently, the rule was that South Africa does not place asylum seekers in detention. If an asylum seeker was arrested for being unlawfully in the country, they had only to indicate that they wished to apply for asylum, having not yet been given an opportunity to do so. At that point they had to be released immediately, and afforded the opportunity to apply for asylum under the Refugees Act. The theory underlying this rule was that arrest and detention as an illegal foreigner under the Immigration Act could not survive an asylum seeker's

intimation that they wished to apply for asylum, since the entitlement to asylum must be dealt with under the Refugees Act, which does not authorise the detention of those seeking refugee status. ...

[8] It is easy to see why this was the approach. Asylum seekers are not always able to apply for refugee status at the time they enter South Africa. It has to be assumed that any genuine asylum seeker is in fear for their safety, often without official documents from their country of origin, frequently in the process of fleeing persecution without being able to make arrangements for their arrival at their country of final destination, and hardly trusting of official authority of any sort. For these reasons, an asylum seeker will often cross the border clandestinely. Once in South Africa, they are confronted with a severely limited number of refugee reception offices (five by my count), and they often face barriers of access to those offices of the nature each of the applicants has experienced in this case. The commitment not to detain those who wish to apply for asylum was a humane recognition of the fact that detention for the purposes of deportation, or in response to the contravention of immigration rules, should only follow once it has been established that an application for asylum is genuinely without merit."

[29] The Learned Judge then deals with the amendments to the Refugees Act and the approach of the Constitutional Court in *A[...]* and *A[...]*. Dealing with *A[...]*, Wilson J observed:

"[12] The problem, the court reasoned, was that the aspirant asylum seeker would be 'allowed to remain at large on their mere say-so that they intend to seek asylum. That person would remain undocumented and there would be absolutely no means of checking whether they indeed promptly applied for asylum. There would be nothing to stop them from making the same claim to the next immigration officer who encounters them, thus repeatedly preventing their detention'...

[13] The Constitutional Court's apparent fear that asylum seekers may secure their freedom through multiple acts of bad faith is not borne out in the cases before me. The applicants have already tried to apply for asylum at least once. They have been prevented from doing so by administrative obstacles that strike me as both irrational and unlawful.

...

[14] Having been denied the right to demonstrate their entitlement to asylum, the applicants were arrested, and their detention was extended while the respondents sat back and took no steps whatsoever to facilitate a good cause interview."

[30] Wilson J then considered the proper approach in applications for an asylum seeker's release. He stated:

"[18] If the respondents approach to this case is part of a wider pattern of behaviour, then it seems to me that potentially large numbers of asylum seekers may be refouled, in breach of the Refugees Act and international law, while they wait in detention for a good cause interview that never takes place.

[19] In these circumstances, it is in my view incumbent upon a court faced with an application for an asylum seeker's release to take positive steps to establish whether there is a lawful basis for the applicant's detention, and whether there is a risk of refoulment if the asylum seeker is being held pending deportation.

[20] Given that the law as it currently stands requires that the respondents be afforded an opportunity to organise a good cause interview, a two-stage approach seems appropriate.

[21] The first stage is to establish whether a good cause interview has taken place. There are three possibilities. The first is that there has been a good cause interview, at which an immigration officer has determined whether good cause has been shown. In that event, the court is bound by the outcome of the interview, unless a review of the immigration officer's decision is properly before it. If good cause has been shown, detention must end. If it has not been shown, detention will continue, assuming it is consistent with the rules governing detention under the Immigration Act.

[22] The second possibility is that there has been no good cause interview, despite the immigration authorities having had a reasonable period in which to organise one. In that event, release must follow on the decision in A[...].

[23] The third possibility is that there has been no good cause interview, but the immigration authorities have not yet had a reasonable opportunity

to organise one. In that event, a court's oversight moves to the second stage.

[24] The second stage is to postpone the application for release for a reasonable but definite period, during which the immigration authorities are afforded an opportunity to organise a good cause interview."

[31] It is thus clear that those who are detained and express a desire to apply for asylum must be given the opportunity to do so. Moreover, such persons are entitled to assistance from the Department.

THE ATTITUDE OF THE DEPARTMENT OF HOME AFFAIRS

[32] As indicated above, I stood all the matters down in order to ascertain the attitude of the Department of Home Affairs. In none of the cases has the Department filed an answering affidavit, let alone a notice of opposition. Ms Lerato Luthuli, from the office of the State Attorney in Johannesburg, addressed me on the problems that she has encountered. The office of the State Attorney does not have a particular attorney dedicated to dealing with the Department of Home Affairs. Matters are dealt with on a system of rotation. It so happens that Ms Luthuli was the attorney required to deal with the present cases. Ms Luthuli indicated that she had instructions to settle several of the cases before me and that appropriate orders had been agreed upon. In relation to the other matters, however, she was simply unable to obtain instructions.

[33] Quite where the problem lies is difficult to ascertain. I accept that Ms Luthuli has done her best in the present case. It needs to be stressed, however, that the Department itself cannot be permitted to be a vehicle for potentially unlawful detention and ultimate deportation. The Department is under both statutory and constitutional duties to ensure that those seeking refuge in South Africa are treated lawfully.

[34] Section 7(2) of the Constitution imposes an obligation on organs of state to respect, protect, promote and fulfil the rights in the Bill of Rights. The obligation to "respect" rights prohibits organs of state from interfering with or violating any constitutional right unless that interference can be justified in terms of s 36(1) of

the Constitution – the limitations clause.[24] Moreover, s 7(2) places positive obligations on government. It "*entails positive duties on the state to take deliberate, reasonable measures to give effect to all of the fundamental rights contained in the Bill of Rights".*[25]

[35] In addition, the Department, as an organ of state, is required to observe the basic values and principles governing public administration enshrined in s 195 of the Constitution. These values and principles include maintaining a high standard of professional ethics, accountability and the obligation to respond to peoples needs.[26]

[36] Organs of state have particular obligations in litigation. Cameron J in *MEC for Health, Eastern Cape and Ano v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute*[27] stressed that there is "*a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights".*[28]

[37] There is one further matter to which I must draw attention. In virtually all the applications before me, complaints are made concerning the difficulties encountered by the applicants at Lindela, including problems of language barriers and difficulties in accessing legal advice. This is not altogether surprising in light of the report of Justice Theron dated 30 March 2023 concerning her judicial visit to Lindela.[29] Justice Theron identified "*four broad themes"* which she recommended be addressed by the Centre moving forward. She stated:

> *"(a) There was poor communication between the staff and detainees. This includes communication relating to the legal and medical services available. It also includes communication relating to the deportation process itself. During the induction stage detainees are not provided with ample information as to the medical and legal support available. More work*

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24 *Mlungwana v S* 2019 (1) BCLR 88 (CC) at para 42.

25 *Glenister v President of the Republic of South Africa and others* 2011 (3) SA 347 (CC) at para 102 (minority) read with paras 77, 178 and 189 (majority).

26 *Van der Merwe and Ano v Taylor* 2008 (1) SA 1 (CC) at paras 71 – 72; *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) at para 151.

27 2014 (3) SA 481 (CC).

28 At para 82.

29 Justice Theron – 30 March 2023, "*Visit to Lindela Repatriation Centre, Krugersdorp".*

can be done to facilitate communication between detainees and their legal representatives and their families.

(b) Medical screening during the admission process is incomprehensive and in some respects, inappropriate ...

(c) The complaints procedure is unclear. We were not provided with a written complaints policy. We were only provided with a log book which briefly notes certain incidents. We could not identify adequate procedures and/or policies as to how staff should address complaints of violence or sexual assault.

(d) There is no written policy on how the Centre should approach visits from external bodies. We recommend that staff encourage and facilitate visitors to speak with detainees alone during inspections, without the presence of staff where safe and feasible to ensure the accuracy of judicial or similar reports."

[38] Regarding consultations with lawyers, the report states:

> *"Visiting hours for family are between 9:00 and 12:00. These visits can be spontaneous and do not require pre-arrangement. We found this to be at odds with the 48-hour notice required of legal representation before a visit. The explanation provided was that lawyers travelling to see their client may have incidents where their client is no longer at the Centre and so the Centre needs longer to verify the detainee's whereabouts. We did not find this to be an adequate explanation for this discrepancy".*

[39] This report was complied a year ago. I do not know whether Lindela has acted on any of these recommendations. It seems obvious, however, that access to legal representation is of fundamental importance and that minimal obstacles should be placed in the way.

THE POTENTIAL ABUSE OF PROCESS

[40] As in *L[...]*, the various applications spearheaded by the three firms of attorneys bear striking similarities. Unlike *L[...]*, however, the present applications have not yet been opposed. And some have been settled. All counsel were in agreement that the failure by the respective firms of attorneys to draw attention to the similarity between the various cases was unacceptable. In

an already over-burdened urgent roll, this failure is serious. In future, therefore, whenever there are multiple applications turning on essentially the same question of fact or law, this must be pertinently drawn to the attention of the Registrar dealing with urgent allocations.

[41] In *L[...]*, the court rightly considered it appropriate to ascertain whether the attorneys in that case should be precluded from recovering any fees by reason of the unnecessary duplications. In the present case, and despite such duplications, the Department has settled various matters and in those cases has accepted their liability for the costs. It thus seems futile for me to impose on the attorneys the obligation to justify their fees. This should not be understood, however, to detract from the undoubted obligation that attorneys have not to overreach their clients. In circumstances where, for example, the applications are identical in all respects save for one paragraph dealing with the personal circumstances of the applicant, I cannot see any justification for the attorneys charging their own clients a full fee as if their application stood alone. This would be unconscionable. Given the peculiar circumstances of the present matters, however, I can only sound this warning.

DISPOSITION

[42] Of the 19 matters before me, 17 are virtually identical. Two matters, however, are substantively different from the rest. In *I[...] H[...] v Department of Home Affairs* (Case No. 2024-060965), the applicant seeks an order declaring his detention to be unlawful and an order directing the respondents to re-issue him "*with a s 22 permit pending finalisation of an application for judicial review*". He also seeks to interdict his deportation from the country. The applicant states that he is an asylum seeker from Bangladesh. He states that he applied for asylum but was rejected. He learned of the rejection only some two years after entering South Africa. He was arrested on that day because he was not in possession of a valid permit to remain in the country. His application is presently unanswered by the Department. The Supreme Court of Appeal has recently confirmed that a person whose refugee application has been declined is permitted to submit a

subsequent application, as long as there is a valid basis to do so.[30] An appropriate order will thus be granted.

[43] In the case of *Y[...] S[...] v the Minister of Home Affairs* (Case No. 2024-064846), the essential relief sought is an order directing Home Affairs to re-issue the applicant with an asylum seeker permit, coupled with an interdict restraining his deportation. The applicant claims that he made an application for asylum in 2013 and was issued with an asylum seeker permit, but has not been able to renew that permit. He says that his requests have been completely ignored. He identifies the number appearing on his asylum seeker permit. He was arrested in January 2024. He thus requests an opportunity to renew his asylum seeker permit and that he be permitted to remain in South Africa until his status is finally determined. The Supreme Court of Appeal has recently held that the protection afforded by the non-refoulment principle "endures for as long as an asylum seeker has not exhausted all available remedies, including appeals

and judicial review".[31] As with all other matters, there is no response from Home Affairs. An appropriate order will be granted.

[44] Tony Okorie Attorneys had initially set down eight matters on the urgent roll. In an email dated 14 June 2024, addressed to *"Judge Secretaries"*, he advised that *"we have settled"* five specified matters and requested that they be removed from the roll. In oral argument before me, counsel disavowed any settlement in these cases. I accordingly requested Mr Okorie to provide an affidavit to explain the discrepancy between his email and what was stated by counsel. Mr Okorie duly filed an affidavit. He has offered an explanation of sorts, the details of which need not be elaborated upon. In essence, he accepts that the cases had not been settled but requested their removal from the roll. In those five cases, therefore, an order removing them from the roll will be made. Mr Okorie has three other matters on the roll, all of which have been settled and appropriate orders to that effect will be made.

[45] In summary, there are some 19 matters before me. Some have been settled. Some have been withdrawn and in the remainder there has been no opposition.

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30 *Irankunda and Ano v Director of Asylum Seeker Management : Department of Home Affairs and others* [2024] ZASCA 87 (June 2024) at para 65.

31 *Irankunda*, supra at para 71

In relation to those matters which have not been settled, I have made orders that are consistent with those that have been settled. Each case requires a separate order. The orders are accordingly set out in the appendix attached to this judgment.

GJ MARCUS AJ
Acting Judge of the High Court

Gauteng Division, Johannesburg

HEARD ON:	18 and 19 June 2024
JUDGMENT DATE:	24 June 2024
FOR THE APPLICANTS:	Adv M Maluleke and Adv A Mafanele Instructed by: Maladzhi and Sibuyi Attorneys Adv T Lipschitz Instructed by: Buthelezi LF Attorneys Adv Nwakodo Instructed by: Tony Okarie Attorneys

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-065449

In the application matter between:

L[...] L[...] M[...] Applicant

and

THE DEPARTMENT OF HOME AFFAIRS Respondent

ORDER

The matter is removed from the roll.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-065467

In the application matter between:

A[...] O[...] Applicant

and

THE DEPARTMENT OF HOME AFFAIRS Respondent

ORDER

The matter is removed from the roll.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-065468

In the application matter between:

A[...] E[...] Applicant

and

THE DEPARTMENT OF HOME AFFAIRS Respondent

ORDER

The matter is removed from the roll.

BY THE COURT

_____
REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-065474

In the application between:

S[...] M[...] Applicant

and

THE DEPARTMENT OF HOME AFFAIRS Respondent

ORDER

The matter is removed from the roll.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-065471

In the application between:

C[...] C[...] U[...] Applicant

and

THE DEPARTMENT OF HOME AFFAIRS Respondent

ORDER

The matter is removed from the roll.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-061122

In the application between:

W[...], D[...] Applicant

and

THE MINISTER OF HOME AFFAIRS First Respondent

THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS Second Respondent

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ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter and by agreement between the parties: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).

2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until he has had the opportunity of showing good cause as contemplated in Section 21(1B) of the Refugee Amendment Act 11 of

2017, read with regulation 8(3) thereto, and if such good cause has been shown until his application for asylum has been finally determined in terms of the Act.

3. The respondents are directed, to the extent necessary, to take all reasonable steps, within 14 days from the date of this order to afford the applicant an opportunity in terms of Section 21(1B) of the Refugee Act 130 of 1998, read with regulation 8(3) thereto, to show good cause, and to allow the whole process of any review or appeal, in the event where good cause is not established, to unfold until finally determined.

4. If good cause is shown, the respondents are directed, upon submission by the applicant of his asylum application, to accept the applicant's asylum application and to issue him with a temporary asylum seeker permit in accordance with Section 22 of the Refugee Act to release him from detention, pending finalisation of his asylum application claim, including the exhaustion of his right of review or appeal in terms of Chapter 3 of the Refugee's Act and the

   Promotion of Administrative Justice Act 3 of 2000 provided that the applicant applies for review or appeal in the periods as afforded by him in terms of Chapter 3 of the Refugee Act and the Promotion of Administrative Justice Act 3 of 2000.

5. In the event that the respondents fail to comply with paragraph 3 of the above order, the respondents must release the applicant from detention forthwith in order to allow him to approach the refugee reception office to apply for good cause and asylum in terms of the Refugee Act 139 of 1998 unless he may be lawfully be detained under the Criminal Procedure Act 51 of 1977.

6. The first and second respondents are to pay the costs of this application, including the costs of 18 and 19 June 2024 on Scale B, jointly and severally, the one paying the other to be absolved.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-063961

In the application matter between:

H[...], P[...] Applicant

and

THE MINISTER OF HOME AFFAIRS First Respondent

THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS Second Respondent

---

ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter and by agreement between the parties: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).

2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until he has had the opportunity of showing good cause as contemplated in Section 21(1B) of the Refugee Amendment Act 11 of

2017, read with regulation 8(3) thereto, and if such good cause has been shown until his application for asylum has been finally determined in terms of the Act.

3. The respondents are directed, to the extent necessary, to take all reasonable steps, within 14 days from the date of this order to afford the applicant an opportunity in terms of Section 21(1B) of the Refugee Act 130 of 1998, read with regulation 8(3) thereto, to show good cause, and to allow the whole process of any review or appeal, in the event where good cause is not established, to unfold until finally determined.

4. If good cause is shown, the respondents are directed, upon submission by the applicant of his asylum application, to accept the applicant's asylum application and to issue him with a temporary asylum seeker permit in accordance with Section 22 of the Refugee Act to release him from detention, pending finalisation of his asylum application claim, including the exhaustion of his right of review or appeal in terms of Chapter 3 of the Refugee's Act and the

   Promotion of Administrative Justice Act 3 of 2000 provided that the applicant applies for review or appeal in the periods as afforded by him in terms of Chapter 3 of the Refugee Act and the Promotion of Administrative Justice Act 3 of 2000.

5. In the event that the respondents fail to comply with paragraph 3 of the above order, the respondents must release the applicant from detention forthwith in order to allow him to approach the refugee reception office to apply for good cause and asylum in terms of the Refugee Act 139 of 1998 unless he may be lawfully be detained under the Criminal Procedure Act 51 of 1977.

6. The first and second respondents are to pay the costs of this application, including the costs of 18 and 19 June 2024 on Scale B, jointly and severally, the one paying the other to be absolved.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-061133

In the application matter between:

M[...] T[...] E[...] Applicant

and

THE MINISTER OF HOME AFFAIRS First Respondent

THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS Second Respondent

---

ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter and by agreement between the parties: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).

2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until he has had the opportunity of showing good cause as contemplated in Section 21(1B) of the Refugee Amendment Act 11 of

2017, read with regulation 8(3) thereto, and if such good cause has been shown until his application for asylum has been finally determined in terms of the Act.

3. The respondents are directed, to the extent necessary, to take all reasonable steps, within 14 days from the date of this order to afford the applicant an opportunity in terms of Section 21(1B) of the Refugee Act 130 of 1998, read with regulation 8(3) thereto, to show good cause, and to allow the whole process of any review or appeal, in the event where good cause is not established, to unfold until finally determined.

4. If good cause is shown, the respondents are directed, upon submission by the applicant of his asylum application, to accept the applicant's asylum application and to issue him with a temporary asylum seeker permit in accordance with Section 22 of the Refugee Act to release him from detention, pending finalisation of his asylum application claim, including the exhaustion of his right of review or appeal in terms of Chapter 3 of the Refugee's Act and the

   Promotion of Administrative Justice Act 3 of 2000 provided that the applicant applies for review or appeal in the periods as afforded by him in terms of Chapter 3 of the Refugee Act and the Promotion of Administrative Justice Act 3 of 2000.

5. In the event that the respondents fail to comply with paragraph 3 of the above order, the respondents must release the applicant from detention forthwith in order to allow him to approach the refugee reception office to apply for good cause and asylum in terms of the Refugee Act 139 of 1998 unless he may be lawfully be detained under the Criminal Procedure Act 51 of 1977.

6. The first and second respondents are to pay the costs of this application, including the costs of 18 and 19 June 2024 on Scale B, jointly and severally, the one paying the other to be absolved.

BY THE COURT

_____

REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-060899

In the application matter between:

A[...] A[...] L[...] Applicant

and

THE MINISTER OF HOME AFFAIRS First Respondent

THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS Second Respondent

---

ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).

2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until he has had the opportunity to show good cause as contemplated in Section 21(1B) of the Refugee Amendment Act 11 of

2017, read with regulation 8(3) thereto, and if such good cause has been shown until his application for asylum has been finally determined in terms of the Act.

3. The respondents are directed, to the extent necessary, to take all reasonable steps, within 14 days from the date of this order to afford the applicant an opportunity in terms of Section 21(1B) of the Refugee Act 130 of 1998, read with regulation 8(3) thereto, to show good cause, and to allow the whole process of any review or appeal, in the event where good cause is not established, to unfold until finally determined.
4. If good cause is shown, the respondents are directed, upon submission by the applicant of his asylum application, to accept the applicant's asylum application and to issue him with a temporary asylum seeker permit in accordance with Section 22 of the Refugee Act to release him from detention, pending finalisation of his asylum application claim, including the exhaustion of his right of review or appeal in terms of Chapter 3 of the Refugee's Act and the

   Promotion of Administrative Justice Act 3 of 2000 provided that the applicant applies for review or appeal in the periods as afforded by him in terms of Chapter 3 of the Refugee Act and the Promotion of Administrative Justice Act 3 of 2000.
5. In the event that the respondents fail to comply with paragraph 3, the applicant is entitled to approach this Court on the same papers duly supplemented to seek an order for the applicant's immediate release.
6. Costs reserved.

BY THE COURT

_____

REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-060965

In the application matter between:

I[...] H[...] Applicant

and

THE MINISTER OF HOME AFFAIRS First Respondent

THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS Second Respondent

---

ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).

2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until his asylum application has been finally determined, as contemplated in paragraph 5 below.

3. The respondents are to re-issue the applicant with a Section 22 permit and must renew same until such a time as the applicant's asylum application has been finally determined, as contemplated in paragraphs 5 and 6 below.

4. The respondents are to release the applicant from detention forthwith.

5. Prayers 2-3 above are to operate as an interim interdict pending the finalisation of the Judicial Review Application, which was launched under case number 2024-057667 and in the event that the outcome of the Judicial Review is to remit the asylum application back to the respondents, then until the applicant's asylum application had been finally determined in terms of the Refugee Act 130 of 1998.

6. The interim interdict ceases to operate in the event that the applicant does not comply with the time periods for prosecuting the review as set out in Rule 53 of the Uniform Rules of Court unless an extension is agreed to between the parties or granted by the Court.

7. The first and second respondents are to pay the costs of this application, including the costs of 18 June 2024, on an unopposed party and party scale, jointly and severally, the one paying the other to be absolved.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO: 2024-063989

In the application matter between:

R[...] K[...] Applicant

and

THE MINISTER OF HOME AFFAIRS First Respondent

THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS Second Respondent

---

ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).

2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until she has had the opportunity to show good cause as contemplated in Section 21(1B) of the Refugee Amendment Act 11 of

2017, read with regulation 8(3) thereto, and if such good cause has been shown until her application for asylum has been finally determined in terms of the Act.

3. The respondents are directed, to the extent necessary, to take all reasonable steps, within 14 days from the date of this order to afford the applicant an opportunity in terms of Section 21(1B) of the Refugee Act 130 of 1998, read with regulation 8(3) thereto, to show good cause, and to allow the whole process of any review or appeal, in the event where good cause is not established, to unfold until finally determined.
4. If good cause is shown, the respondents are directed, upon submission by the applicant of her asylum application, to accept the applicant's asylum application and to issue her with a temporary asylum seeker permit in accordance with Section 22 of the Refugee Act to release her from detention, pending finalisation of her asylum application claim, including the exhaustion of her right of review or appeal in terms of Chapter 3 of the Refugee's Act and the

   Promotion of Administrative Justice Act 3 of 2000 provided that the applicant applies for review or appeal in the periods as afforded by her in terms of Chapter 3 of the Refugee Act and the Promotion of Administrative Justice Act 3 of 2000.
5. In the event that the respondents fail to comply with paragraph 3, the applicant is entitled to approach this Court on the same papers duly supplemented to seek an order for the applicant's immediate release.
6. Costs reserved.

BY THE COURT

_____

REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

Case No: 2024/065461

In the matter between:

A[...] N[...] Z[...]
LINDELA PRISON NUMBER 202405080002 **APPLICANT**

and
THE MINISTER OF HOME AFFAIRS **1st RESPONDENT**

THE DIRECTOR GENERAL,
DEPARTMENT OF HOME AFFAIRS **2nd RESPONDENT**

LINDELA HOLDING FACILITIES **3rd RESPONDENT**

ORDER

HAVING heard from Counsel, and having read the documents;

IT IS ORDERED BY AGREEMENT BETWEEN PARTIES: -

1. Applicant's non-compliance with the Rules relating to service and periods and dealing with this matter as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court is condoned;
2. The Respondents are interdicted from deporting the Applicant from the Republic until he has exhausted the remedies available to him under the Refugees Act 130 of 1998;
3. The First and Second Respondents are directed to afford the applicant the opportunity within 14 court days to show good cause in terms of Section 21 (1)(b) of the Refugees Act 130 of 1998;

4. The Respondents are ordered to pay the costs of the application on a party-and party scale.

BY THE COURT

_____
REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO. 2024-064849

In the matter between:

A[...] T[...]	APPLICANT
AND	
THE MINISTER OF HOME AFFAIRS	1ST RESPONDENT
THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS	2ND RESPONDENT

ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).

2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until he has had the opportunity to show good cause as contemplated in Section 21(1B) of the Refugee Amendment Act 11 of 2017, read with regulation 8(3) thereto, and if such good cause has been shown until his application for asylum has been finally determined in terms of the Act.

3. The respondents are directed, to the extent necessary, to take all reasonable steps, within 14 days from the date of this order to afford the applicant an opportunity in terms of Section 21(1B) of the Refugee Act 130 of 1998, read with regulation 8(3) thereto, to show good cause, and to allow the whole process of any review or appeal, in the event where good cause is not established, to unfold until finally determined.

4. If good cause is shown, the respondents are directed, upon submission by the applicant of his asylum application, to accept the applicant's asylum application and to issue him with a temporary asylum seeker permit in accordance with Section 22 of the Refugee Act to release him from detention, pending finalisation of his asylum application claim, including the exhaustion of his right of review or appeal in terms of Chapter 3 of the Refugee's Act and the

   Promotion of Administrative Justice Act 3 of 2000 provided that the applicant applies for review or appeal in the periods as afforded by him in terms of Chapter 3 of the Refugee Act and the Promotion of Administrative Justice Act 3 of 2000.

5. In the event that the respondents fail to comply with paragraph 3, the applicant is entitled to approach this Court on the same papers duly supplemented to seek an order for the applicant's immediate release.

6. Costs reserved.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO. 2024/065465

In the application matter between:

A[...] O[...]
LINDELA PRISON NUMBER 202405020157 APPLICANT

and

THE MINISTER OF HOME AFFAIRS 1st RESPONDENT

THE DIRECTOR GENERAL,
DEPARTMENT OF HOME AFFAIRS 2nd RESPONDENT

LINDELA HOLDING FACILITIES 3rd RESPONDENT

ORDER

HAVING heard from Counsel, and having read the documents;

IT IS ORDERED THAT: -

The matter is removed from the roll

BY THE COURT

_____
REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO**. 2024-064198**

In the matter between:

C[...] K[...]	APPLICANT
and	
THE MINISTER OF HOME AFFAIRS	1ST RESPONDENT
THE DIRECTOR GENERAL, **DEPARTMENT OF HOME AFFAIRS**	2ND RESPONDENT

ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).

2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until he has had the opportunity to show good cause as contemplated in Section 21(1B) of the Refugee Amendment Act 11 of 2017, read with regulation 8(3) thereto, and if such good cause has been shown until his application for asylum has been finally determined in terms of the Act.

3. The respondents are directed, to the extent necessary, to take all reasonable steps, within 14 days from the date of this order to afford the applicant an opportunity in terms of Section 21(1B) of the Refugee Act 130 of 1998, read with regulation 8(3) thereto, to show good cause, and to allow the whole process of any review or appeal, in the event where good cause is not established, to unfold until finally determined.

4. If good cause is shown, the respondents are directed, upon submission by the applicant of his asylum application, to accept the applicant's asylum application and to issue him with a temporary asylum seeker permit in accordance with Section 22 of the Refugee Act to release him from detention, pending finalisation of his asylum application claim, including the exhaustion of his right of review or appeal in terms of Chapter 3 of the Refugee's Act and the

   Promotion of Administrative Justice Act 3 of 2000 provided that the applicant applies for review or appeal in the periods as afforded by him in terms of Chapter 3 of the Refugee Act and the Promotion of Administrative Justice Act 3 of 2000.

5. In the event that the respondents fail to comply with paragraph 3, the applicant is entitled to approach this Court on the same papers duly supplemented to seek an order for the applicant's immediate release.

6. Costs reserved.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO. 2024-065475

In the matter between:

E[...] K[...] N[...]
LINDELA PRISON NUMBER 202405310092 APPLICANT

and

THE MINISTER OF HOME AFFAIRS 1st RESPONDENT

THE DIRECTOR GENERAL,
DEPARTMENT OF HOME AFFAIRS 2nd RESPONDENT

LINDELA HOLDING FACILITIES 3rd RESPONDENT

ORDER

HAVING heard from Counsel, and having read the documents;

IT IS ORDERED BY AGREEMENT BETWEEN PARTIES: -

1. Applicant's non-compliance with the Rules relating to service and periods and dealing with this matter as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court is condoned;
2. The Respondents are interdicted from deporting the Applicant from the Republic until he has exhausted the remedies available to him under the Refugees Act 130 of 1998;
3. The First and Second Respondents are directed to afford the applicant the opportunity within 15 court days to show good cause in terms of Section 21 (1)(b) of the Refugees Act 130 of 1998;

4. The Respondents are ordered to pay the costs of the application on a party- and – party scale.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO. 2024-064194

In the application matter between:

M[...] B[...] APPLICANT

and

THE MINISTER OF HOME AFFAIRS 1ST RESPONDENT

THE DIRECTOR GENERAL,
DEPARTMENT OF HOME AFFAIRS 2ND RESPONDENT

ORDER

BY AGREEMENT between the parties, the following order is made:-

1. The forms and service provided for in the Rules of this Court are dispensed with where necessary, and this application is heard on urgent basis in terms of Rule 6 (12) (a);
2. The Respondents are directed to take all reasonable steps necessary within 14 days of granting of this order to afford the Applicant an opportunity in terms of section 21(1b) of the Refugees Act 130 of 1998, read with regulation 8 thereto to show good cause;
3. The Respondents are interdicted and restrained from deporting the Applicant until such time that the Applicant status in the Republic of South Africa has been fully and finally determined in terms of the Refugees Act 130 of 1998 and until such

time that the Applicant has fully exhausted his review or appeal process in terms of chapter 4 of the Refugees Act and the Promotion of Administrative Justice Act 3 of 2000;

4. In the event the Respondents fails to comply with paragraph 2 of the order above the Applicant is to be released from detention forthwith;
5. If good cause is shown the Respondents are directed, upon submission by the applicant of his asylum application, to accept the Applicant asylum seeker application and to issue him with a temporary asylum seeker permit in accordance with section 22 of the Refugee Act, and release the Applicant from detention forthwith;
6. The First and Second Respondents are directed to pay the costs of this Application jointly and severally, on a party and party one paying the other to be absolved.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO. 2024-064192

In the application matter between:

T[...] A[...] APPLICANT

and

THE MINISTER OF HOME AFFAIRS 1ST RESPONDENT

THE DIRECTOR GENERAL,
DEPARTMENT OF HOME AFFAIRS 2ND RESPONDENT

ORDER

HAVING read the documents filed of record, heard counsel and having considered the matter: -

1. The forms and services provided for in the Rules of this Court are dispensed with, where necessary, and this application is heard on an urgent basis in terms of Rule 6(12)(a).
2. It is declared that in terms of Section 2 of the Refugee Act 130 of 1998, the applicant may not be deported until he has had the opportunity to show good cause as contemplated in Section 21(1B) of the Refugee Amendment Act 11 of 2017, read with regulation 8(3) thereto, and if such good cause has been shown until his application for asylum has been finally determined in terms of the Act.

3. The respondents are directed, to the extent necessary, to take all reasonable steps, within 14 days from the date of this order to afford the applicant an opportunity in terms of Section 21(1B) of the Refugee Act 130 of 1998, read with regulation 8(3) thereto, to show good cause, and to allow the whole process of any review or appeal, in the event where good cause is not established, to unfold until finally determined.

4. If good cause is shown, the respondents are directed, upon submission by the applicant of his asylum application, to accept the applicant's asylum application and to issue him with a temporary asylum seeker permit in accordance with Section 22 of the Refugee Act to release him from detention, pending finalisation of his asylum application claim, including the exhaustion of his right of review or appeal in terms of Chapter 3 of the Refugee's Act and the

   Promotion of Administrative Justice Act 3 of 2000 provided that the applicant applies for review or appeal in the periods as afforded by him in terms of Chapter 3 of the Refugee Act and the Promotion of Administrative Justice Act 3 of 2000.

5. In the event that the respondents fail to comply with paragraph 3, the applicant is entitled to approach this Court on the same papers duly supplemented to seek an order for the applicant's immediate release.
6. Costs reserved.

BY THE COURT

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REGISTRAR

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

ON 24 JUNE 2024
BEFORE THE HONOURABLE JUDGE MARCUS AJ

CASE NO. 2024-064846

In the matter between:

Y[...] E[...] S[...]	APPLICANT
and	
THE MINISTER OF HOME AFFAIRS	1ST RESPONDENT
THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS	2ND RESPONDENT

ORDER

HAVING read the documents filed of record, heard counsel for the parties and having considered the matter, the following order is made:-

1. The forms and service provided for in the Rules of this Court are dispensed with where necessary, and this application is heard on urgent basis in terms of Rule 6 (12) (a);
2. The Respondents are directed to release the Applicant from detention forthwith;
3. The Respondents are interdicted and restrained from deporting the Applicant until such time that the Applicant's status in the Republic of South Africa has been fully and finally determined in terms of the Refugees Act 130 of 1998 and until such time that the Applicant has fully exhausted his review or appeal process in terms of chapter 4 of the Refugees Act and the Promotion of Administrative Justice Act 3 of 2000;

4. The Respondents are directed to re-issue the Applicant asylum seeker permit bearing file number **DBNETH0000540413** in terms of section 22 of the Refugee Act 130 of 1998 within 5 days of service of this order upon them;
5. The First and Second Respondents are directed to pay the costs of this Application jointly and severally, on a party and party one paying the other to be absolved.

BY THE COURT

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REGISTRAR