



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2115/2021

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE: 28 November 2023

In the matter between:

Mpumelelo Dlamini

Applicant

And

The DG Department of Home Affairs

1 st Respondent

The Minister of Home Affairs

2nd Respondent

REASONS FOR JUDGMENT

BOTHA AJ

1

Introduction

On 31 October 2023 I heard argument on behalf of both parties and an *ex tempore* judgment was given whereby the application was dismissed with costs. I will now give short and concise reasons for my judgment.

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The Applicant brought an application against the Respondents wherein he applied for the following relief:-

2.1 The Applicant qualifies to be issued with a valid spousal permit that indicates that he is married to TN Biyela;

2.2 That the spousal permit issued on 14 April 2014 is invalid; (This prayer is moot as the permit expired in 2016)

2.3 The Identity document issued to him in 2002 was erroneously issued.

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The background can be summarised as follows:-

3.1 The Applicant is a Swazi National. He entered South Africa in 1994 on strength of a study permit.

3.2 Before the first democratic elections in April 1994 he applied for a South African Identity Document (ID) in order to vote in the said elections. He was issued with a temporary ID. In 2002 he was issued with a permanent ID which he used in South Africa from that time up to this day.

3.3 He married a South African citizen, Me TM Biyela and three children were born from the union.

3.4 During the registration process of their second child in November 2011 it came to light that the Applicant's ID was under investigation.

3.5 He obtained legal advice that he should surrender his South African ID and use his eSwatini documents to apply for a spousal permit and after four years apply for permanent residence.

3.6 He applied for a spousal permit which was issued albeit with errors. He did not surrender his South African ID. The expiry date of the spousal permit was 13 April 2016.

3.7 The Applicant continued to use the South African ID during the course of his daily life- more specific for financial transactions with banks etc.

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From the Respondent's answering affidavit another picture emerges.

4.1 The Applicant knew very well that he obtained the South African ID by means of false information and fraudulent misrepresentation on his part:-

(a) He stated on the application that he was born in South Africa;

(b) The town of his birth was stated as Ngodini; and

(c) That he was resident at his address in South Africa (at the time in 1994) from 15

October 1980 well knowing that he only entered South Africa in 1994 and that he was a Swazi national.

4.2 The Applicant knew from at least 2011 that his ID was under investigation, yet he continue to used it and therefor misrepresent his status.

4.3 On 10 April 2001 at the Oshoek borderpost, the Applicant was found to be an illegal foreigner and a removal warrant was executed and thus the Applicant was deported. It is unclear when and how the Applicant managed to re-enter the Republic of South Africa.

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It needs mentioning that the Applicant filed a replying affidavit in response to the allegations in the answering affidavit . This was done one year later without applying for condonation and therefor I had no regard to it.

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Regulatory framework

6.2 This application is governed by the Aliens Control Act 96 of 1991 which has been repealed by the Immigration Act 13 of 2002. Sec 48 of the Immigration Act states in broad strokes that no illegal foreigner shall be exempt from a provision of the Act and allowed to sojourn in South Africa on grounds that the person was not informed that he or she could not enter or sojourn or that the person was allowed to remain in the Republic through error or misrepresentation, or because his or her being an illegal foreigner was undiscovered.

6.2 In terms of Regulation 3(7) of the Immigration Act, Regulation 2014, the Director General shall withdraw any visa or permanent residence permit and where applicable, lay criminal charges where it appears to the Director General that a visa or permanent

residence permit was obtained through error, misrepresentation or fraud.

6.3 Regulation 26(4) prescribes the procedure to be followed by a person in the shoes of the Applicant in order to be rehabilitated by the Director General to be granted a status to reside in South Africa.

6.4 Sec 49 (14) of the Immigration Act makes it a criminal offence if any person, for the purpose of entering, or remaining in, or departing from..... commits any fraudulent act or makes any false representation to that end.

6.5 In terms of Sec 29(1)(f), any person found in possession of a fraudulent permit, visa, passport or ID , is a prohibited person, not eligible for entry into, residence in and not allowed to apply for a visa. If already in possession of a valid visa, but becomes a prohibited person, that visa is withdrawn.

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In summary:-

7.1 The Applicant is a Swazi national;

7.2 He entered South Africa in 1994 on strength of a study permit;

7.3 He applied in 1994 for a South African ID, well knowing he is not a South African citizen and by supplying false information to back up his application;

7.4 He married a South African citizen and three children were born out of the marriage;

7.5 He was deported back to eSwatini in 2001;

7.6 It is nor clear how he re entered the Republic;

7.7 In February 2002 he accepted another South African ID well knowing it contained false information and more specific that he was born in the RSA;

7.8 In 2016 the spousal permit expired;

7.9 This application was launched to somehow circumvent the provisions of the Immigration Act.

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Therefor the application was dismissed with costs

GB BOTHA

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 31 October 2023

Judgment delivered: 31 October 2023

Reasons delivered: 28 November 2023

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