



**HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 46399/2020**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 4 May 2021

SIGNATURE

In the matter between:

**ALEX MASUKA**

Applicant

and

**THE MINISTER OF HOME AFFAIRS**

First Respondent

**THE DIRECTOR GENERAL OF HOME AFFAIRS**

Second Respondent

**THE STANDING COMMITTEE FOR REFUGEE  
AFFAIRS**

Third Respondent

**UNITED NATIONS HIGH COMMISSION FOR  
REFUGEES**

Fourth Respondent

**MINISTER OF POLICE**

Fifth Respondent

**NATIONAL COMMISSIONER OF POLICE**

Sixth Respondent

**THE PROVINCIAL POLICE COMMISSIONER**

|                                                   |                     |
|---------------------------------------------------|---------------------|
| <b>FOR GAUTENG</b>                                | Seventh Respondent  |
| <b>TIEPRO 230 (PTY)</b>                           | Eighth Respondent   |
| <b>FUTURE- FAMILIES</b>                           | Ninth Respondent    |
| <b>CMR CHILD PROTECTION CENTRE</b>                | Tenth Respondent    |
| <b>LEAMOGETWE CHILD AND YOUTH<br/>CARE CENTRE</b> | Eleventh Respondent |
| <b>REKORD EAST</b>                                | Twelfth Respondent  |

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## J U D G M E N T

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*This matter has been heard in open court and otherwise disposed of in the terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically.*

### **DAVIS, J**

#### **[1]    Introduction**

The applicant is acting in person, despite previous offers of pro bono assistance arranged by the court. He is, however, knowledgeable in the processes and directives of this Court, including its electronic platform for hearing of matters. He is a father of twelve. Ten of his children are with him in South Africa, some being minors. He claims to be a refugee from Zambia and is currently encamped outside the offices of the United Nations High Commission for Refugees in South Africa (UNHCR). He is no stranger to this court and this is the sixth application he has launched in this court, all on an urgent basis, spanning over a period of a number of months. Many of his applications have been removed by orders of this court or have

been struck off. Despite this and, because he is clearly a man in need and because there are minor children involved, of which this court is the upper guardian, his current application was entertained, albeit with the reservations set out hereinlater.

[2] The current application

2.1 The current application was preceded by the following:

2.1.1 An order of 2 October 2020 whereby the applicant's then urgent application was removed from the roll.

2.1.2 An order of 16 October 2020 whereby the Minister of Home Affairs had been ordered to file a report regarding the applicant's application, after consultation with the UNHCR, within 7 days. I could not find this report among the papers and the applicant undertook to have it uploaded on Caselines. To date, however, that has not happened.

2.1.3 An order dated 10 November 2020 wherein it was ordered that the applicant be subjected to a psychosocial evaluation by a registered psychiatrist and that the Minister of Home Affairs ensure that the UNHCR and other associated associations comply with undertakings to cover the costs of providing temporary shelter to the applicant's wife and their minor children in the country, and to provide further assistance to the children until finalization of this matter.

2.1.4 An order dated 5 February 2021 removing yet another application from the roll.



- 2.1.5 On 26 March 2021 the applicant launched an application to strike out a defence. The notice of motion, however, dealt with relief related to asylum privileges, here and abroad. As with all of the applicant's urgent applications, there were serious defects relating to the time and manner in which the applicant gave notice (or failed to give notice) to the numerous respondents cited by him. By that time, the applicant had also not subjected himself to the psychosocial evaluation ordered by this court. This was, despite the facts conceded by him to me in open court from the bar, that a social worker sent by the UNHCR had arranged an appointment for him at Louis Pasteur Medical Building here in Pretoria. In open court, he cited to me his deep mistrust of the UNHCR (who he describes as "evil") and the fact that he could not leave his children, as reasons. As a result of the above, Van der Schyff, J delivered a written judgment on 8 April 2021 whereby that application of the applicant was struck off the roll.
- 2.1.6 Undeterred, the applicant sought leave to appeal that order, which was, again by way of a written judgment, refused on 26 April 2021. I understand that Van der Schyff, J has since been "reported" by the applicant to the Judge President. The detail of that "report" is unknown to this court.
- 2.2 The above resulted in the applicant launching the current application, on 29 April 2021, intending for it to be heard at 17h00 on that day as an ex parte application. Having regard to the extensive relief sought by the applicant, I directed that the matter be stood down until proper service had been given to all respondents against whom relief is claimed, before a hearing would be granted.

- 2.3 The applicant appeared before me in open court on Friday morning 30 April 2021. By then he had served, via e-mail, on the counsel who had previously appeared on behalf of the Department of Home Affairs before Van der Schyff, J. At that hearing, as appears from her judgment, the State Attorney had not formally briefed the counsel, apparently because there was no service on the State Attorney. This time round, the applicant claimed in a note uploaded on Caselines, that he was advised that, once service had taken place on “Home Affairs”, copies had been or would be given to the State Attorney and other government departments. Strange and out of the ordinary as this may seem, there is some corroboration to be found in a return email from the counsel, who indicated that the first, second and third respondents would not oppose the application. The State Attorney, who was copied in this email, was, by way of a question: “*Is that not so, Mr Kropman?*”, asked to confirm this. No further responses were forthcoming.
- 2.4 The relief sought by the applicant in the current application is far-reaching, at times vague and non-sensical and at times not even competent in law. Having regard to the history of the matter, except for the dire circumstances of the applicant and the children, the application would have difficulty meeting the thresholds to be crossed for urgent applications. Certainly, the mode of service and the extreme truncated time-periods cannot be condoned or found to be acceptable. A mere reading of the rule nisi, for which the applicant suggested a return date 10 days hence and in respect of which he claimed immediate implementation, illustrates this. It is formulated in the notice of motion as follows:

*“That a rule nisi be issued herewith in terms of which the Respondents are called upon to show cause of ..... why an*

*order in following terms should not be made a final order of the above Honourable Court:*

- 1. That Mr. This protester by a South African national Mr Mcoseleli Mdeze be attended to by UNHCR to avoid him sleeping next us as his issues are unrelated, though appear to be similar claims against against UNHCR in terms of damaging my brains.*
- 2. That, the applicant be accorded an opportunity to seek asylum from the countries that may be willing to protect him or that have camp facilities in order for children to attend school.*
- 3. That Respondents be interdicted from committing any act which is prejudicial to the court application, unlawful use of the South African Police (SAPS), UNHCR Security Guards, calling for UNHCR interviews, issuing of rejection letters from international protection of the Applicant in disregarding the 10/11/2020 Court Order – Judge Msimang or acting in any way which is detrimental to the application for the Applicant to seek asylum from the third countries or any African country that is not a frontier of his home country and it has camp for physical protection.*
- 4. That the Respondents be interdicted from interfering with court administration of justice against the Applicant through its counsel in non filing of answering affidavit, use of authentic medical reports, applications for court order not related or lack substance to the application such as medical evaluation.*



5. *That the Respondents be interdicted from intimidating, threatening, assaulting and/or harassing of the Applicant of the family members through employees, staff members, security guards and/or officials.*
6. *That the Respondents be interdicted from making the life and the future of the Applicant ungovernable by their influence on the laws that govern refugees; conduct which would result in the commencement and/or escalation of violence at any of the Applicant's camp outside UNHCR.*
7. *That the Respondent be ordered to pay the costs, damages and travel expenses of the Applicant's removal from the republic to any country that will be willing to protect him".*

[3] Evaluation and remedies

- 3.1 From my evaluation of the situation, it is clear that the following must happen:
  - 3.1.1 Existing court orders must be complied with.
  - 3.1.2 The applicant's barrage of litigation must be managed. This court has both the obligation and power to manage its own process and to manage cases that come before it. At the same time, it is obvious that this litigation cannot be finalized without participation by the respondents against whom relief is sought.
  - 3.1.3 The rights and protection of the minor children must receive adequate attention.

- 3.2 In respect of the submission to psychosocial evaluation, despite his previous objections and, after having been instructed to comply with this court's prior order by Msimang AJ of 10 November 2020, the applicant undertook to undergo such evaluation within the next 20 days, at the costs of UNHCR as it has previously tendered. The condition he sought to be imposed, namely that the UNHCR must furnish reasons for the evaluation, is refused. The reason for the evaluation is so that an existing court order can be complied with.
- 3.3 In respect of temporary shelter for the children, I have no report or factual evidence before me, save what the applicant related in open Court and even that is not conclusive. He states that the temporary measures sponsored by the UNHCR were some time ago, limited to three months and initially limited to R4000 and later to R 2500 in extent. It was not clear whether these amounts were in total or per month. Be that as it may, the children (some of which were in court) are apparently now again encamped with the applicant outside the offices of the UNHCR. Whether this was as a result of the lapsing of the previous undertakings or as a result of the applicant's conduct, was also not clear. The extent of the unanswered questions regarding the safety, care and protection of the minors in the Court's area of jurisdiction, left a sense of unease.
- 3.4 Both the rights of the applicant and that of the children have Constitutional implications if they are infringed upon. It is therefore necessary and incumbent on this court to fashion an appropriate remedy. This should also include provision for an opportunity for the relevant parties to be heard.



[4] Order:

1. The applicant is ordered to subject himself to psychosocial evaluation by a psychiatrist of his choice, within 20 days from date of this order and to furnish the court with a copy of the psychiatrist's report as soon as it is available.
2. The first respondent is ordered to take all reasonable steps to ensure compliance with the order made by agreement by Msimang AJ on 10 November 2020, which order is, for the sake of clarity and certainty, repeated here:

*“The first respondent is ordered to ensure that the United Nations High Commission for Refugees and other associated organisations comply with the following undertakings tabled in the first respondent's report and to cover the costs for:*

- (i) Temporary shelter for Mr Masuka's wife and children until finalization of this matter*
- (ii) Any form of assistance for the children and*
- (iii) The psychosocial evaluation with a registered psychiatrist”.*

3. Compliance with paragraph 2 above must take place within 10 days from date of service of this order and the first respondent is directed to thereafter file a report at court, setting out the particulars of such compliance.
4. The accommodation to be supplied to the children and their mother shall be adequate in respect of safety and sleeping arrangements for

the total number of children and shall comply with all COVID 19 regulations promulgated in terms of the State of Disaster declaration currently in force and as amended from time to time.

5. The United Nations High Commission for Refugees is requested to furnish this court with a report within one month from date of service on it of this order, reflecting the Commission's stance regarding the status and prospective options of the applicant and his family as refugees.
6. A rule nisi is issued, returnable on 3 August 2021 whereby all interested parties, including the applicant and the respondents, are called upon to furnish reasons, if any why any of the relief claimed by the applicant in this application, should, or should not be granted.
7. The applicant is ordered to see to the service of this order on all the respondents individually which shall include service on the State Attorney itself (and not only on its counsel) and by hand delivery on the offices of the United Nations High Commission for Refugees and to deliver an affidavit detailing how service took place on each of the respondents.
8. All documents delivered, served or compiled must also be uploaded on the electronic Caselines platform created for this case and the applicant must ensure that all the respondents are invited and have access to this platform.



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N DAVIS  
Judge of the High Court  
Gauteng Division, Pretoria

Date of Hearing: 30 April 2021

Judgment delivered: 4 May 2021

APPEARANCES:

For the Applicant: In person

For the Respondents: No appearance.