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**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case number: **2015/2018**

In the matter between:

THABISO ERNEST RAMOLEBO

Applicant

and

THE MINISTER OF HOME AFFAIRS

1st Respondent

THE DIRECTOR-GENERAL OF HOME AFFAIRS

2nd Respondent

CORAM:

DAFFUE, J

HEARD ON:

5 SEPTEMBER 2019

JUDGMENT BY:

DAFFUE, J

DELIVERED ON:

19 SEPTEMBER 2019

I INTRODUCTION

- [1] The applicant, Mr Thabiso Ernest Ramolebo, seeks a name change in order to be known in future as Senzo Mavumegwane. He provided detailed reasons in the application to this court why his forename and surname should be amended by the Director General of the Department of Home Affairs in accordance with the provisions of s 26 of the Births and Deaths Registration Act (“the Act”).¹ More will be said about this later.
- [2] The application is opposed and after hearing argument on behalf of the parties on 5 September 2019, I reserved judgment.

II THE PARTIES

- [3] As mentioned, the applicant is Mr Thabiso Ernest Ramolebo. He is married in accordance with customary law and the couple have four children. Applicant’s father and mother as well as his customary wife support his application. Adv JS Rautenbach appeared for the applicant on instructions of Hill McHardy & Herbst Inc.

¹ 51 of 1992

- [4] The Minister of Home Affairs is cited as the first respondent and the Director General of the said Department as the second respondent. Both parties oppose the application. An answering affidavit has been deposed to on their behalf by Ms Nosimanga Jane Limo who describes herself as an Assistant Manager and Civil Head. It transpired during argument that Ms Limo is attached to the Botshabelo office of the Department of Home Affairs. A resolution was also handed up from the bar indicating that she was authorised to sign documents and affidavits on behalf of the Department as from 21 August 2018, the day she deposed to the answering affidavit. Adv ND Khokho appeared for the respondents on instructions of the State Attorney.

III THE RELIEF SOUGHT

- [5] Applicant seeks the following relief as is evident from the notice of motion:
- “1. That the 2nd Respondent be ordered to within 30 days of date of this order, authorize the alteration of the Applicant’s name and surname in terms of Section 27 of Act 51 of 1992 to the following:
“SENZO MAVUMEGWANE”;
 2. That the Respondents pay the costs of the application in case of them opposing the application;
 3. Any further and/or alternative legal relief.”
- [6] Mr Rautenbach acknowledged in his heads of argument that the reference to s 27 is wrong and that s 26 is the applicable section. During oral argument he conceded that this court cannot on the papers as they stand and in the manner in which the application was brought, direct the Director General to alter applicant’s

forename and surname as requested in the notice of motion. He eventually submitted that the court should merely direct the Director General to consider the applicant's application in accordance with the provisions of s 26 of the Act.

- [7] Mr Khokho submitted that the application should be dismissed with costs, although he conceded that the court might consider directing the Director General to consider applicant's application for a name change in accordance with the provisions of s 26 within a certain timeframe.

IV THE ORDER OF 17 MAY 2018

- [8] The matter came before me on 17 May 2018 in the unopposed motion court. I was not prepared to grant the application, firstly because it was not served on the Director General, but more importantly, as I was concerned about the rights of creditors and other third parties such as applicant's employer and his wife (on the basis that he was indeed married). I granted the following orders:

- "1. The matter is postponed to 12 July 2018.
2. Applicant is granted leave to supplement his papers specifically in respect of:
 - 2.1 the applicant's credit records with reference to the names, addresses and account numbers of creditors must be provided;
 - 2.2 his wife's names together with a supporting affidavit of her;
 - 2.3 the names and Identity numbers of his children;
 - 2.4 any immovable or movable property owned by him;
 - 2.5 his employer's name and address together with a supporting affidavit of the employer.

3. The application papers and this order shall be served on the Director General of the Department of Home Affairs forthwith in terms of the rules of court.”

[9] As evident from my order, I postponed the matter to 12 July 2018 whereafter it was postponed a few times and eventually placed on the opposed roll of 5 September 2019.

V THE APPLICATION PAPERS

[10] A full set of application papers were filed, including the supplementary affidavit filed upon the order of 17 May 2018. Save for the name change which applicant believes he is entitled to, it appears from the replying affidavit to which he attached a copy of the baptism log as annexure “A”, that his date of birth is indeed 18 November 1969 and not 20 November 1969 as is reflected in the identity number allocated to him, to wit [...]. He stated that he was also entitled to an amendment of his identity number, but his counsel made it clear that no such relief was sought. Counsel correctly took this stance, bearing in mind the respondents’ submission that applicant tries to create a totally “new person” with a new forename, a new surname as well as a new identity number. It is apparent that the fifth and sixth digits of his identity number would have to be changed from 20 to 18 if the identity number is to be amended.

VI REASONS FOR THE AMENDMENT

[11] Applicant explained in detail why he wants to be known as Senzo Mavumegwane in future. His version is not disputed by respondents, but as will be indicated later the respondents are of the view that applicant is not entitled to the amendments for a number of reasons. Applicant relies on the following background:

11.1 His grandfather was known as Sentso Ernest Mafomekoane. This is a “Sothofied” spelling of the isiZulu names Senzo Mavumegwane.

11.2 Applicant is the son of Tabelo Benedict Motamolane and Maleshoana Cecilia Ramolebo according to the baptism log, annexure “A” to the replying affidavit. In terms thereof applicant was born on 18 [...] 1969 and baptised on 20 [...] 1969. The names of his mother and father on this document correspond with the papers.

11.3 Applicant’s parents divorced in 1978 and as he and his siblings remained under the custody of their mother, their surnames were changed to reflect that of the mother, to wit Ramolebo.

11.4 During 2007 his parents reunited and they as a family started to research the history of their names and surnames. They established that the origin of his grandfather’s surname, Mafomekoane, a “Sothofied” version, is the isiZulu surname, Mavumegwane.

11.5 Applicant’s father used the surname Motamolane in order to honour his father’s first name, to wit Motamolane.

11.6 Applicant established that the Mavumegwanes were traditionally soldiers of the great King of the Zulu people, King Shaka. Therefore he wants to ensure that the family name does not “die.” He is not interested to make use of the “Sothofied” spelling of the surname, but insist on the isiZulu spelling, Mavumegwane.

11.7 The applicant has filed supporting affidavits from his father as well as his father’s sister, Ms Mohatla Magdalena Lesupi. He has also attached to the supplementary affidavit confirmatory affidavits of his wife, Ms Moithumi Albertina Banyane and Adv Charlie Naidoo of the Legal Department of Mangaung Metropolitan Municipality in which department applicant is currently employed.

VII COMPLIANCE WITH THE ORDER OF 17 MAY 2018

[12] In compliance with my order of 17 May 2018 applicant filed a supplementary affidavit to which he attached the birth certificates of his and his wife’s four children who are 19, 14, 11 & 7 years old respectively. He has also provided the court with his credit record and the names, addresses and account numbers of creditors.

[13] I am satisfied that applicant substantially complied with the order.

VIII THE BASIS OF RESPONDENTS’ OPPOSITION

- [14] It is confirmed that the Department of Home Affairs at its Botshabelo office received three applications from applicant, one to change his surname as indicated in the papers in accordance with s 26 of the Act, the second to change his forename to Senzo in terms of s 24 of the Act, and the third to change his date of birth from 20 [...] 1969 to 19 [...] 1969 in terms of s 7(2) of the Act.
- [15] On receipt of the applications several enquiries were directed to him in order to substantiate the applications, but according to respondents' deponent, applicant did not comply to her satisfaction.
- [16] The opposition is based on any of the following grounds:
- 16.1 Applicant is attempting to create a new person with a new surname, a new forename as well as a new date of birth which will result in a new identity number.
- 16.2 The effect of the application and in the event of it being granted, would be to give birth to a new born by the name of Mavumengwane Senzo and eliminate the existing person by the name of Ramolebo Thabiso Ernest. I highlighted the "n" in the surname. This is a crucial aspect. Respondents' deponent throughout her affidavit refers to the wrong surname and it is perhaps no wonder that the surname, Mavumegwane cannot be traced in the Department of Home Affairs' records.
- 16.3 According to the respondents' deponent the effect of granting the application would be to create havoc and

difficulty within the respondent's management systems with regard to identifying, monitoring and regulating its Births and Deaths Register and it would also create difficulty for other law enforcement agencies in their bid to combat crimes.

- 16.4 The applicant failed to provide the Botshabelo branch of the Department of Home Affairs (where the deponent works) with a birth certificate, a baptismal certificate or any other document as proof of his date of birth of 19 [...] 1969 (or 18 [...] 1969 for that matter.)
- 16.5 In order to change applicant's surname from Ramolebo to Mavumengwane the Department needed a consent letter from a person using the surname Mavumengwane as well as a certified copy of that person's identity document which applicant failed to provide.
- 16.6 In terms of the Identification Act 16 of 1997(sic)² a person can only change his surname to either his or her biological mother or father's surname and no one else, unless it is through authorised legal acquisition. Mavumengwane is neither the surname of applicant's father nor his mother.
- 16.7 The deponent, who has been handling applicant's application all along, certified that there is no person in the whole of the Republic of South Africa bearing and

² It is Act 68 of 1997

registered under the surname Mavumengwane. I emphasise again that right through the affidavit of the respondents' deponent, references are incorrectly made to the wrong spelling of Mavumegwane insofar as the deponent refers to Mavumengwane.

16.8 Neither applicant's wife, nor his four children use his current surname, Ramolebo and, what is more confusing is that he only attempts to change his surname and not those of his wife and children.

16.9 The relief sought by the applicant is in law irregular, unlawful and impossible.

16.10 Having perused the register of deaths in South Africa starting from 1800 until date hereof, no deceased person carrying the surname Mavumengwane (again wrongly spelled) has been registered to be dead and the same applies to births registered during the same period. Therefore, during a period of 218 years no person carrying the surname of Mavumengwane was born or passed on according to the records of the Department of Home Affairs and therefore it is alleged that the surname does not exist or has never existed.

16.11 The application is opposed in order to prevent illegal immigrants entering the country, using and adopting surnames of people without any links to the people carrying the said surname, and in any event, applicant failed to

establish the background and any relationship between him and the holder of the particular surname.

IX THE RELEVANT LEGISLATION

[17] The Director General may supplement or rectify any particulars of any person in any document submitted or preserved in terms of the Act or included in the population register which are not correctly reflected.³

[18] The Director General may alter the forename of a person in accordance with an application in the prescribed manner.⁴

[19] Section 26 of the Act and regulation 18 issued in terms of the Act need to be quoted in full to put the reader in the picture as the dispute relates to the interpretation and application thereof. Section 26 reads as follows:

"26 Assumption of another surname

(1) Subject to the provisions of this Act or any other law, no person shall assume or describe himself or herself by or pass under any surname other than that under which he or she has been included in the population register, unless the Director-General has authorized him or her to assume that other surname: Provided that this subsection shall not apply when-

(a) a woman after her marriage assumes the surname of the man with whom she concluded such marriage or after

³ S 7(2) of the Act

⁴ S 24 of the Act

having assumed his surname, resumes a surname which she bore at any prior time;

- (b) a married or divorced woman or a widow resumes a surname which she bore at any prior time; and
- (c) a woman, whether married or divorced, or a widow adds to the surname which she assumed after the marriage, any surname which she bore at any prior time.

- (2) At the request of any person, in the prescribed manner, the Director-General may, if he or she is satisfied that there is a **good and sufficient reason** as may be prescribed for that person's assumption of another surname, authorize the person to assume a surname other than his or her surname as included in the population register, and the Director-General shall include the substitutive surname in the population register in the prescribed manner.” (emphasis added)

[20] Rule 18 reads as follows:

“18 Assumption of another surname

- (1) An application for assumption of another surname referred to in section 26 of the Act by a person of age must be made on Form DHA-462 or DHA-196 illustrated in [Annexure 10](#) and [Annexure 11](#), as the case may be.
- (2) The reasons referred to in section 26(2) of the Act must relate to-
 - (a) a change in the marital status of a woman;
 - (b) assumption by a person of his or her biological father's surname, where the father has recently acknowledged paternity in terms of [regulation 13](#) or [14](#); or
 - (c) protection of a person in terms of the Witness Protection Act, 1998 ([Act 112 of 1998](#)).
- (3) An application contemplated in subregulation (1) must be accompanied by-

- (a) a certified copy of the identity document or birth certificate of the applicant;
 - (b) a certified copy of the identity document or valid passport of the biological mother or father or both parents of the child, as the case may be;
 - (c) where applicable, a certified copy of the marriage certificate of the parents;
 - (d) where applicable, a certified copy of the death certificate of any deceased parent;
 - (e) where applicable, a letter issued by the Director: Witness Protection; and
 - (f) proof of payment of the applicable fee.
- (4) Upon approval of an application contemplated in subregulation (1), any alteration of a forename, surname or assumption of another surname made in terms of section 24, 25 or 26 of the Act must be made-
- (a) by entering the altered forename or surname or assumed surname of the minor in the birth register; and
 - (b) if the particulars of the person have been included in the national population register, by including the altered forename, surname or assumed surname in the national population register, without erasing the previous forename, surname or assumed surname.
- (5) The assumption of another surname contemplated in subregulation (2)(a), (b) or (d) shall not have the effect of changing a person's identity number."

[21] The Bill of Rights must be considered insofar as applicant's insistence on a name change relates directly to his cultural and linguistic background. Section 30 of the Constitution stipulates: "Everyone has the right to use the language and to participate in the cultural life of their choice" subject to the condition contained in the section. Section 31(1), paraphrased appropriately, specifies as follows:

“Persons belonging to a cultural ... or linguistic community may not be denied the right, with other members of that community – (a) to enjoy their culture ,.... and use their language; and (b) to form, join and maintain cultural.... and linguistic associations.....”

- [22] Section 39 of the Constitution should also be kept in mind in interpreting the Act in order to “promote the spirit, purport and objects of the Bill of Rights.”

X AUTHORITIES

- [23] The only reported judgment on the issue is one by Bozalek J in *Wile v MEC, Department of Home Affairs, Gauteng*⁵ and I quote extensively:

“[46] It will be seen that regulation 18(2) purports to limit the permissible reasons for the assumption of another surname to only three categories (one of which, a woman’s marital status, is already covered by the provisions of section 26(1). It was on this basis that the defendants’ Counsel submitted that the relief sought by the first plaintiff was incompetent inasmuch as her reasons for assuming another surname could not be entertained by the Director-General.

[47] In my view, to the extent that regulation 18 seeks to establish a closed list of reasons for the assumption of another surname, it is *ultra vires* in that it misconceives the meaning and scope of section 26(2) of the Act, as does the defendants’ argument based on this interpretation of the regulation.

[48] Section 26(2), in providing that a surname may be changed if the Director-General is satisfied “*that there is a good and sufficient reason*” is cast in wide terms. This is understandable since, apart from the reasons listed in regulation 18, one can readily conceive of many other reasons why a person might, legitimately, wish to change his or

⁵ [2016] 3 All SA 945 (WCC)

her surname. By way of example, that person's existing surname may cause him or her embarrassment because of its meaning or associations, or it may be unpronounceable to all but a few persons. It would be strange indeed if, no matter how compelling a reason a person had for the change of a surname, he or she was precluded from doing so because that reason was not included in the three categories prescribed in regulation 18.

- [49] The words "*as may be prescribed*" in section 26(2) do not, in my view, limit the phrase "*a good and sufficient reason*". What they convey is merely that, for whatever reason the authorities may have, the Minister may wish to prescribe certain reasons which, all things being equal, will automatically be regarded as "*a good and sufficient reason*" for a person to assume another surname. It is significant that the words "*as may be prescribed*" are permissive and not prescriptive. Had it been the intention of the Legislature that a closed list of "*good and sufficient reason(s)*" could be prescribed by regulation then the words "*good and sufficient*" would arguably have been unnecessary. Furthermore, the word "*may*" would not have been used but rather a peremptory formulation such as "*as prescribed*", or some variation thereof, indicating that only name changes for prescribed reasons could be permitted.
- [50] That the phrase "*as may be prescribed*" is merely permissive is borne out by the signed, Afrikaans version of the Act where the relevant part of section 26(2) is rendered as follows:
- “(2) Op aansoek, op die voorgeskrewe wyse, van ’n persoon kan die Direkteur-Generaal, indien hy of sy oortuig is dat daar ’n gegronde rede is, soos voorgeskryf kan word, vir die persoon se aanname van ’n ander van, die persoon magtig om ’n ander van as sy of haar van soos in die bevolkingsregister opgeneem, aan te neem.” (My underlining.)
- [51] In my view, both the punctuation in the text (in the form of the commas before and after "*soos voorgeskryf kan word*") and the use of the word "*kan*" emphasise that the power to prescribe "*gegronde*

redes” is permissive and is a contra-indication that the Minister enjoys the power to prescribe by regulation a closed list of reasons which, if not applicable to an applicant for a name change, has the result that his or her application must fail.

[52] The narrow interpretation contended for by the defendants would, moreover conduce to the Minister enjoying what borders on legislative powers to definitively determine, at any one time, what constitutes a “*good and sufficient reason*” for a name change, with the result that the Director-General would then have to close his mind to all other applications based on different reasons. Such a narrow interpretation also runs counter to the presumption that remedial statutes should be liberally construed.

[53] For these reasons, I am satisfied that on a proper interpretation of section 26(2) of the Registration Act, there can be no closed list of “*good and sufficient reason(s)*” and to the extent that regulation 18(2) purports to decree otherwise, it is *ultra vires*.

[58]It should be clear, however, that this Court’s recognition of that judgment (the judgment of the German court) does not, in and of itself, entitle the first plaintiff to change her forename or surname in this country without further ado. That must still be the subject of an administrative application to the second defendant.” (footnotes ignored and emphasis added)

[24] The Supreme Court of Appeal recently considered remedial legislation in the form of the Extension of Security of Tenure Act, 62 of 1997 (“ESTA”).⁶ I immediately recognise that the *dicta* in this judgment cannot be applied with equal force in the present matter, but in my view these are instructive. The SCA held that the provisions of ESTA, being remedial legislation, “must be accorded a generous interpretation, in a manner that is consistent with the Constitution.” Religion, cultural belief and the right to be buried where the

⁶ (107/2018) [2019] ZASCA 100 (8 July 2019) at paras 17 – 29 and 17, 27 & 29 in particular

deceased resided during his/her life were duly considered by the SCA. The court, with reference to a judgment of Zondo J,⁷ concluded that the specific circumstances of each case must be considered by striking a balance between the rights of the occupier and those of the land owner and thereby infusing justice and equity in the enquiry.⁸

XI EVALUATION OF THE EVIDENCE AND SUBMISSIONS

[25] Although applicant in one of his three applications to the Department applied for an amendment of his identity number, no relief is sought in this application in that regard. I am of the considered view that respondents' allegation that applicant attempts "to create a new person altogether" is not justified. The dispute before the court is whether applicant is entitled to an alteration of his forename and surname. Regulation 18(5) stipulates that the assumption of another surname shall not have the effect of changing a person's identity number.

[26] The applicant seeks a mandatory interdict in his notice of motion insofar as he requires an order directing the Director General to do a positive act, or put otherwise, to do something he ought to do. A mandatory interdict may serve two purposes, *i.e.* "to compel the performance of a specific statutory duty, and to remedy the effects of unlawful action already taken."⁹ *In casu* the applicant wants the court to compel performance of an alleged statutory duty, *i.e.* to change applicant's

⁷ In *Hattingh & others v Juta* 2013(3) SA 275 (CC) para 63

⁸ At para 29

⁹ Baxter, *Administrative Law*, 690 quoted with approval in *Transnet Bpk v Voorsitter, Nasionale Vervoerkommissie* 1995 (3) SA 844 (TPD) 847F

forename and surname as indicated above. It is emphasized that the relief sought is not in the form of a review of any decision taken by the Director General. Mr Rautenbach correctly conceded during oral argument that applicant is not entitled to a mandatory interdict. In principle that should have been the end of the matter, resulting in a dismissal of the application. However, he submitted that all aspects have been fully canvassed and that the court would be entitled to assist applicant by granting relief in the form of a draft order he presented to the court with my leave after the hearing.

[27] Mr Khoko, duly instructed by the State Attorney, made inputs to the proposed order and the relief to be granted is in line with that requested by both parties. I repeat that Mr Khoko initially submitted that the application ought to be dismissed with costs. He argued that applicant did not seek relief in the form of a review of the Director General's decision and that applicant had failed to provide all information required to consider his applications. However, he conceded that insofar as the Director General had not even considered the applications, the court would be entitled to direct him/her to consider these in accordance with the provisions of the Act. He also fully agreed with the judgment by Bozalek J in *Wile*¹⁰ to the effect that an Act takes precedence over the regulations issued in terms thereof.

[28] According to applicant he is a descendant of a soldier of the late King Shaka. He is of Zulu origin and his father's surname has unfortunately been "Sothofied" many years ago. It is evident that

¹⁰ Quoted above

he wants to preserve his isiZulu culture and an important way of doing it would be to change the surname to the original spelling. I am mindful of the fact that, because of his parents' divorce a few years earlier, his surname was changed to his mother's maiden name. Fact of the matter is that applicant's application to this court is supported by his wife and closest relatives, to wit his father and aunt.

[29] Mr Rautenbach argued initially that the applicant had proven the two requisites for the applications to the Department to have been granted, *i.e.* applications in the prescribed form and the existence of "good and sufficient reason" to grant them. Therefore this application should succeed. He changed tack after I explained my difficulty with the relief sought in the notice of motion.

[30] Ms Limo is a junior official in the Department, even if she might be the head of a small office such as Botshabelo. She never averred that the Director General's authority to consider the applications in terms of sections 24 and 26 of the Act had been delegated to her. The resolution handed in from the bar during argument is no proof of a delegation of power pertaining to any of the sections. Ms Limo was merely granted authority to depose to affidavits in support of the respondents' opposition of the application. It is common cause that the Director General did not delegate his/her authority in terms of the applicable provisions of the Act to Ms Limo. Her dismissal of the applications or failure to consider them, whatever is the correct position, is immaterial.

[31] Ms Limo relies on the records of the Department since 1800 in order to support her allegation pertaining to the surname that applicant wants to assume. However, she on all probabilities made her enquiries by using an incorrect spelling of the surname as indicated above. There is no admissible and acceptable evidence in this regard and therefore I have serious doubt as to whether the Department is in possession of detailed and correct information of all births and deaths of members of our indigenous communities during the period mentioned by the deponent.

[32] I am aware of the important constitutional imperative based on the separation of powers doctrine that where the Constitution or valid legislation has entrusted specific powers and functions to a particular branch of Government, courts may not usurp that power or function by making a decision of their preference. Courts may however ensure that public officials exercise their authority within the bounds of the Constitution or valid legislation.¹¹ Therefore, I made it clear from the onset that I cannot direct the Director General to alter applicant's forename and surname. My views as set out herein should also not be construed as prescribing to the Director General or any other court that may eventually have to finally decide the dispute between the parties how to exercise his/her discretion. I merely wish to state the following. Firstly, when I granted my order of 17 May 2018 I obviously had in mind the protection of creditors and other third parties. Secondly, the reasoning of Bozalek J in *Wile* is sound and I am in full agreement therewith. I specifically refer to paragraph [53] quoted above and highlighted. That judgment is the only judgment that I could find on

¹¹ International Trade Administration Commission v SCAW SA 2012(4) SA 618 (CC) paras 91 - 93

s 26 of the Act. Thirdly, I am mindful of the uncertainties and opportunities that might be created to commit fraud or other illegalities if alterations were to be allowed as of right and/or willy-nilly. However, in the final analysis a deserving applicant should be assisted if there is “a good and sufficient reason.” I can think of many examples, but two will do. The common Sepedi surname “Masipa” means great reputation for fairness, but its pronunciation in the Sesotho language may cause embarrassment as it may sound like “masepa” which means excretion. Some surnames from Netherland’s descent are swear-words in the Afrikaans language. A good case may be made out for an appropriate amendment by someone that really feels embarrassed by the surname “inherited”, but as said, that is the domain of the Director General.

- [33] Mr Khoko incorrectly referred me to the Identification Act, 16 of 1997. He probably did this insofar as the respondents’ deponent also incorrectly relies on this (wrong) Act for the stance taken that applicant is not entitled to have his forename and surname altered. There is no such Act. The reference should be to the Identification Act, 68 of 1997. I could not find any provision of the sort relied upon by them in this Act. They are confused insofar as the regulations issued in terms of the Births and Deaths Registration Act, 51 of 1992 and regulation 18 in particular apply. Mr Khoko’s reliance on *Amed*¹² is without substance insofar as it does not have any relevance to the present dispute. That case dealt with

¹² *Amed & others v Minister of Home Affairs* 2018(12) BCLR 1451 (CC)

asylum seekers and their right to apply for visas and immigration permits under the Immigration Act.¹³

- [34] In light of the evidence presented to me as well as the concessions during argument I am of the view that it would be fair and in the interest of justice if the application is not dismissed, but the Director General be directed to consider applicant's applications relating to the alteration of his forename and surname in terms of sections 24 and 26 of the Act. I do not agree with Mr Khoko that such order will undermine the powers conferred on the Director General who has obviously not even considered any of applicant's applications, contrary to the explicit wording of s 26(2), but a junior official. I want to emphasise that such order cannot and does not have the effect of prescribing to the Director General how he/she should exercise his/her discretion. The furthest I am prepare to venture is to hold that a flexible approach should be followed and that the rigid provisions of regulation 18 appear to be unconstitutional as found by Bozalek J. This has been conceded by respondents' counsel.

XII CONCLUSION

- [35] I conclude by stating that the manner in which the orders are to be structured is fair to both parties and that an equitable outcome will ensue. The Director General has 60 (sixty) days to consider applicant's new applications in terms of sections 24 and 26 (which I have been informed had been delivered immediately after judgment was reserved.) Reasons should be provided for the

¹³ 13 of 2002

decisions and upon receipt thereof, the matter may be enrolled for further hearing once supplementary affidavits have been filed. If the applications are granted by the Director General, that will be the end of the matter; otherwise applicant will have the right to ask for the review, setting aside and substitution of such decisions.

XIII ORDERS

[36] Consequently the following orders are made:

1. The second respondent shall, within 60 (sixty) days from date of this order, consider the applicant's submissions in terms of sections 24 and 26(2) of the Births and Deaths Registration Act, 51 of 1992 ("the Act") as set out in the completed prescribed application forms as well as in his founding, supplementary and replying affidavits under this case number, for assuming of the forename "*Senzo*" and the surname "*Mavumegwane*";
2. The second respondent shall communicate his/her decision and the reasons for such decision, relating to the applicant's applications in terms of section 24 and 26(2) of the Act, to the legal representatives of the applicant within 5 (five) days from the date of the decision;

3. The parties are granted leave to supplement their respective affidavits within 21 (twenty-one) days from the date on which the decision of the second respondent is communicated to the parties, if required;
4. The applicant is granted leave to enrol the matter accordingly, on the same papers duly supplemented in accordance with paragraph 3 hereof, for supplementary and/or ancillary relief, such relief to include the review, setting aside and substitution of second respondent's decision.
5. Each party to pay their own costs.

J P DAFFUE, J

On behalf of Applicant : Adv JS Rautenbach
 Instructed by : Hill McHardy & Herbst Inc
 BLOEMFONTEIN

On behalf of Respondents : Adv ND Khokho
 Instructed by : State Attorney
 BLOEMFONTEIN