

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

Case Number: 079602/24

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED: NO

DATE: 22/10/24

SIGNATURE

In the matter between:

M[...] M[...] obo

O M[...] & Z M[...]

(Various other matters)

Applicants

and

THE DIRECTOR GENERAL: THE DEPARTMENT

OF HOME AFFAIRS

First Respondent

THE MINISTER OF HOME AFFAIRS

Second Respondent

Summary: Unopposed application seeking to compel the Department of Home Affairs to allow the various applicants to apply for registration of birth on behalf of minor children. This judgment deals with various other matters where the applicants are seeking the same or similar relief. The applicants claim that their motions are justiciable under the common law *mandamus* remedy. The applicants have failed to establish the requirements of the remedy. No clear

right to be allowed to apply was established. No statutory duty was established to compel the Department to allow the applicants to apply.

Held: (1) The applications are dismissed.

JUDGMENT

MOSHOANA, J

Introduction

- [1] On 14 October 2024, this Court beaoning an unopposed motion Court encountered the matter of *M[...] M[...] obo O M[...] & Z M[...] v The Director General of Department of Home Affairs*. This Court raised several concerns with the application as it stood before it. Counsel for the applicant persisted with the application and sought to be indulged in order to make written submissions with regard to the application. Having been so indulged various other similar matters emerged before this Court in that unopposed motion week. Owing to the known concerns raised in the first matter, the same counsel sought a similar indulgence for the other applications.
- [2] Accordingly, this judgment shall be determining four other similar applications; namely; (a) *Mpho Vutshilo Ndou obo AMJ Ndou v Director General of Home Affairs and Another* (Case number 081363/24); (b) *Tshianeo Makhari Muvhango obo A Muvhango v Director General of Home Affairs and Another* (Case number 082127/24); (c) *Lungisani Reason Ndou obo U Ratshilumela v The Director General of Home Affairs* (Case number 079590/24); (d) *Shepherd Ndou obo Thapelo Ndou v The Director General of Home Affairs and Another* (Case number 083524/24). Other applications which were meant to be covered by this judgment became opposed and withdrawn in the interim. Counsel was indulged until 21 October 2024. Indeed, on the day, multiple similar submissions were submitted for consideration in preparation of this judgment.

[3] In all these applications a relief fashioned in the terms set out below was sought. Albeit in some applications the notice of motion was tweaked, but in the main the relief is to be allowed to make an application.

- (i) Compel the Respondents *to allow* the Applicant to make an application for the registration of birth on behalf of his child;
- (ii) Ordering the Respondents to pay costs of this application jointly and severally liable the one paying the other absolved;
- (iii) That the Applicant be granted further and/or alternative relief that this Court is willing to grant under the circumstances.

Pertinent background facts to the present application

[4] An interesting tale about the applications involved in the present judgment is that they were all launched by the same legal firm; to wit; Suwela Attorneys Inc situated in Centurion. A further interesting tale is that they all seek to impugn the Home Affairs offices in far-flung and rural areas of Limpopo. In all of them a similar allegation is made that for a period of four years (2021, 2022, 2023 and 2024) the applicants were turned back by unnamed officials or members of the Department of Home Affairs.

[5] The nub of all these applications was pleaded, without fail, on the following lines:

- i. I visited the office of the Department of Home Affairs located at Musina Limpopo Province numerous times after the birth of my child and another numerous times latest in 2021, 2022, 2023 and 2024 with an intention to register a birth and/or apply for a Birth Certificate of my child;
- ii. I was turned back by the officials or members of the Department. I was told that I cannot apply, and I was refused an opportunity (*sic*)

make an application for the Birth Certificate of my children since the mother is not in possession of valid South African Identity document and as a result, I was told that I cannot assist my children to apply for birth certificate.

- iii. As a result of the conduct or refusal of the officials of Home Affairs my children have suffered serious prejudice due to violation of his Constitutional rights by the Department. The conduct of the Department is unlawful and unjustifiable considering that my children were born in South Africa at Messina Hospital, Musina, Limpopo and I am a South African citizen with a South African identity document.

- [6] Prior to the launching of all these applications, a letter of demand would be issued by the said legal firm. When no response is received all the applications were launched around July 2024. When no opposition is received, the applications would be enrolled on the unopposed motion roll.

Analysis

- [7] A *mandamus* is a form of an interdict. In instances, as the present ones, a final relief is sought, an applicant must demonstrate (i) a clear right; (ii) an injury actually committed or reasonably apprehended; and (iii) the absence of similar protection by any other ordinary remedy. A *mandamus* is a Court order that compels a public authority to perform a public or statutory duty. The statutory provisions that regulates notification and registration of births are set out in section 9 of the Birth and Deaths Registration Act, 1992 (Births Act) read with regulations 5 and 7. It is unnecessary for the purposes of this judgment to regurgitate the relevant provisions.
- [8] Child trafficking is becoming rife in South Africa. Where this Court were to compel the officials of the Department of Home Affairs to issue official documents like a birth certificate under dubious circumstances, this Court would be enabling child trafficking because armed with official documents like a birth certificate, children are easily trafficked. It was for this reason that this Court was concerned in dispensing with an order compelling the Department of

Home Affairs to allow a party to apply for a birth certificate even in the circumstances where the statutory provisions are demonstrably not met.

- [9] In order to give notice of birth a prescribed form must be completed. In all the applications, no allegation is made that a prescribed form had been completed. Clearly, in the absence of a completed prescribed form an official of the Department of Home Affairs cannot be compelled by a Court to allow an applicant to give notice of birth. In the vaguest form of pleading, the deponents do not specify the date on which the offices of the Department were visited. No names of the official or an office number is provided. All the vague visits were with an intention to register a birth or apply for a birth certificate. Nowhere do the deponents allege and prove that they uplifted and or requested the prescribed forms from any of the officials encountered.
- [10] The deponents simply allege that they were turned back by unnamed officials and also told by the unnamed officials that they cannot apply. None of the applicants allege that they logged any form of complaint against those officials. Most if not all government departments are governed by the *Batho Pele* (People first) principle. In terms of section 9(2) of the Births Act, a notice of birth shall be given under the surname of the father of the child. In terms of regulation 5(1) of the applicable Regulations, a notice of birth of a child who is older than one year must be made by the biological parents of the child. On the pleaded cases, the unnamed officials provided reasons of telling the deponents that they cannot apply.
- [11] As indicated above, a *mandamus* is a form of an interdict. An interdict restraining the exercise of statutory powers happens only in a rare instance where allegations of *mala fide* are made¹. The relief sought by the applicants is one where the Department is to be ordered to allow the applicants to make applications. As pointed out above, all what the applicants are required to do is to complete the prescribed form and deposit it with the relevant officials of the

¹ See *Gool v Minister of Justice and another* 1955 (2) SA 682 (CPD)

Department of Home Affairs. The applicants do not require a Court order to do that. It is not the statutory duty of the Department to allow parties to apply. Once an application is deposited, only then does a statutory duty emerge. In all these applications there is no applications on the prescribed forms that were deposited with the Department.

[12] Counsel for the applicants placed reliance on the judgment of the learned Wallis J, as he then was in *Thusi v Minister of Home Affairs and Another an 71 Others (Thusi)*². Sadly, the *Thusi* judgment is distinguishable from all the applications before me. First and foremost, the judgment involved a review application, seeking to review a failure to take a decision. In all the applications, there is no pending decision to be made by the Department. Therefore, in *casu*, the ground as set out in section 6(2)(g) of the *PAJA* was not raised. It is incapable of being raised because the applicants did not launch an application contemplated in section 6(1) read with 7(1) of the *PAJA*.

[13] Section 165 of the Constitution enjoins a Court of law to make orders that are effective and binding. The duty of a Court is to deal with concrete disputes. An order to allow a party to give notice of birth or apply for a birth certificate is an ineffective order. Such an order has no practical effect at all. The law allows a party to give notice on the prescribed form. What will be the effect of an order allowing a party to do what the law allows him or her to do. As indicated above, what the applicants required is to report the alleged outlandish behaviour by the unnamed officials to the highest office instead of bringing these frivolous and vexatious applications. This Court takes a view that all these applications constitute an abuse of legal process. The applications are ill-conceived and actually dead on arrival³. If the applications were opposed, this Court would not hesitate to adopt the approach taken by the full Court of this Division on the aspect of costs⁴. Regard being had to all the applications, they are similar in many respects and actually amount to a copy and paste.

² 2011 (2) SA 561 (KZP).

³ See *Public Protector of South Africa v Chairperson of the Section 194(1) Committee and Others* (627/2023) [2024] 131 (1 October 2024).

⁴ See *Lembore and others v Minister of Home Affairs* (2023-097427) [2024] GPJ 29 July 2024.

Conclusions

[14] For all the above reasons, the applications involved herein are doomed to fail. It does not follow that if the application is unopposed, such ought to be granted automatically. The applicants dismally failed to allege and prove the legal requirements of a *mandamus* interdict. There is no iota of evidence to demonstrate that the Department has failed in any of its statutory duties.

[15] For all the above reasons, I make the following order:

1. The applications mentioned in this judgment are dismissed.

GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 22 October 2024.

APPEARANCES:

For the Applicants:	Ms N Magwa
Instructed by:	Suwela Attorneys Inc, Centurion
For the Respondents:	No appearance
Date of the hearing:	14 and 18 October 2024
Date of judgment:	22 October 2024