

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

CASE NO.: 2024-092802

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 4 November 2024

E van der Schyff

In the matter between:

Frank Buyanga Sadiqi

Applicant

and

Harmony International and African Visa

t/a Harmony International

First Respondent

Adegoko Taiwu Ogunlade

Second Respondent

The State of South Africa

Third Respondent

The Department of Home Affairs

Fourth Respondent

Minister of Home Affairs

Fifth Respondent

Director General of Home Affairs

Sixth Respondent

National Prosecuting Authority

Seventh Respondent

National Director of Public Prosecutions

Eighth Respondent

Head of the Directorate for Priority
Crimes Investigations

Ninth Respondent

Director of the Priority Crimes Litigation Unit

Tenth Respondent

Department of Justice and Constitutional
Development

Eleventh Respondent

Minister of Justice

Twelfth Respondent

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicant approached the urgent court for relief. This application is somewhat unique in that the applicant is an inmate at Johannesburg Med. A Correctional Centre, Remand Detention Facility. The Registrar of the Urgent Court issued two requisitions to secure the applicant's presence in court; both were seemingly ignored. This ostensible disregard for the court process led to the applicant not appearing in court and needs to be addressed. The issue is further dealt with below.
- [2] The applicant acts in person, and this exacerbates the conundrum caused by his non-appearance. Curiously, he is, to some extent, assisted by Maman Attorneys, and m[...]@gmail.com was the chosen address for accepting the service of papers filed in this application. In communication directed to the Registrar's Office, it was made clear that the firm only provided Mr. Sadiqi with legal assistance to secure his presence in court and that they are not attorneys of record. This firm also engaged in email communication with my registrar when Mr. Sadiqi's presence could not be secured.

[3] It needs to be stated at this point already that it is the hovering presence of a firm of attorneys who are in the position to represent Mr. Sadiqi, who has full knowledge of the facts of the case, at whose email address papers were to be served in this application, who ostensibly retained contact with him and who, for unknown reasons, was not able to appear in court and argue his case, even on a *pro bono* basis if money was the issue, that prompted me to deal with this matter in the way that I do, despite Mr. Sadiqi's absence in court. In addition, it must be emphasized that Mr. Sadiqi's decision to approach the Gauteng Division of the High Court in Pretoria for the relief sought, and not the High Court in Johannesburg, contributed significantly to the difficulty of obtaining his presence in court. This aspect is also addressed further below.

[4] For the reasons below, I considered the application as it stands on the papers.

Comprehensive background

[5] This application is typified in the notice of motion as an urgent interlocutory application.

[6] The applicant seeks the following relief:

- i. The first and second respondents are to furnish the applicant with all records, immigration files, and communications, including but not limited to Permanent Residence Permit No G[...] and all other visas or immigration matters related to him from 1 January 2010 to 2024, within three hours of an order being granted;
- ii. The state respondents (third to twelfth respondents) are to take all reasonable steps to investigate the legitimacy, criminal conduct, and criminal activities of the first and second respondents and investigate all criminal allegations leveled against the first and second respondents in the founding affidavit.

- [7] The notice of motion is dated 20 October 2024. The respondents were directed to notify the applicant of their intention to oppose by 11:00 on 21 October 2024 and file answering affidavits by 23 October 2024. The application was served by email on the respective respondents. The email was sent on 21 October 2024 at 10:39, although the founding affidavit was only signed and commissioned on 22 October 2024. The timelines were truncated to a great extent.
- [8] Mr. Sadiqi informs the court that he is a South African resident and 'dual nationality holder' of the United Kingdom and Zimbabwe.' He claims that he needs the documents he seeks from the first and second respondent for preparation for his ongoing criminal trial., and avers these documentation and immigration records are crucial to his innocence and to show the criminal court that any misrepresentations made in his ID application were made by the first and second respondents. The date of his last appearance was on 30 October 2024.
- [9] The background set out in the founding application that highlights the interaction between Mr. Sadiqi and the first and second respondents since January 2010 need not be repeated in this judgment. Mr. Sadiqi was arrested on 29 November 2022 and charged with different counts of fraud and contravention of the Immigration Act in the Randburg Regional Court. He informed the relevant authorities about the first and second respondents' services. He claims that the first and second respondents denied having assisted him but that his partner could access his electronic communications and retrieve an exchange of emails between them. He instituted an urgent court application against the first and second respondents, and a settlement agreement was reached. The first and second respondents agreed to provide the available records to Mr. Sadiqi. Due to subsequent development, the first and second respondents ostensibly reneged on the agreement.
- [10] Mr. Sadiqi submits that the application is urgent because he has been charged with crimes and has been detained since November 2022 due to the misconduct of the first and second respondents. The first and second respondents' failure to

provide him with the records he seeks impacts his right to a fair trial as he is not able to prepare sufficiently for the trial

The first and second respondent's contentions

- [11] The first and second respondents took issue with the application being issued, while the notice of motion and founding affidavit were unsigned. They inform the court that the unsigned notice of motion and founding affidavit were unilaterally removed by the applicant (or his assumed legal representatives) and replaced by the signed versions currently uploaded to the CaseLine's file. They submit that these proceedings are unnecessary since various avenues exist to secure evidence before a trial court.

The state respondents

- [12] The state respondents filed a notice in terms of Rule 6(5)(d) and an answering affidavit. From this affidavit, it is evident that the Johannesburg High Court considered and dismissed Mr. Sadiqi's bail appeals.
- [13] They oppose the application on the grounds that it is not urgent, that no case is made out for a mandamus, and on the basis that the first and second respondents have already been charged as a result of the criminal complaints laid by Mr. Sadiqi.
- [14] Since the answering affidavit was filed late, and the late filing thereof condoned, Mr. Sadiqi is not able to reply to the position as set out therein that relates to numerous other charges and pending matters against him both in South Africa and abroad.

Discussion

- [15] This application should not have been enrolled on the urgent court roll, and the truncation of timelines is not justified. Mr. Sadiqi does not explain why the

mechanisms to secure evidence before a trial court provided for in the Criminal Procedure Act 51 of 1977 were not utilised. Having regard to the history of the matter, no case for urgency was made out. Mr. Sadiqi failed to make out a case that he will not be afforded substantial redress in due course if this application is not granted.

[16] Since Mr. Sadiqi did not overcome the hurdle of urgency, the application stands to be struck from the roll with costs.

Mr. Sadiqi's non-appearance

[17] Two requisitions were issued to secure Mr. Sadiqi's appearance in court, but these were ostensibly blatantly ignored. Irrespective of whether the application is struck from the roll, this court needs to ensure that effect is given to its processes.

[18] The failure to deliver the applicant to the court and the failure to communicate the reasons for this resulted in wasted costs.

[19] As a result, the head of the Johannesburg Medium A Correctional Centre stands to be directed to file an affidavit explaining why the two requisitions issued by the Registrar of this Court were not adhered to and why the Centre should not be ordered to pay the wasted costs occasioned by the applicant's non-appearance.

ORDER

In the result, the following order is granted:

- 1. The application is struck from the roll;**
- 2. Costs are reserved, and the issue of costs only will be determined by Van der Schyff J after receipt of the affidavit referred to in paragraph 3 of this order;**
- 3. The Head of the Johannesburg Medium A Correctional Centre is directed to file an affidavit within 15 days of this order being delivered to him/her, providing reasons why:**

- 3.1. the requisitions issued respectively by the Registrar of the High Court of South Africa Gauteng Division and sent by email to the following recipients on T[...]@dcs.gov.za; z[...]@dcs.gov.za; P[...]@dcs.gov.za and A[...]@dcs.gov.za were ostensibly disregarded and not given effect to, and**
- 3.2. the Johannesburg Medium A Correctional Centre, alternatively the Head of the Johannesburg Medium A Correctional Centre in person, should not be ordered to pay the wasted costs occasioned by the applicant's non-appearance.**
- 4. The Registrar of the Gauteng Division of the High Court of South Africa, Pretoria, is directed to ensure that the judgment is delivered to the Head of the Johannesburg Medium A Correctional Centre within 5 days of this order being granted, and upload proof thereof to the CaseLine's file.**

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant:	No appearance
For the first and second respondents:	RJN Brits
Instructed by:	VR Law
For the third to twelfth respondents:	State Attorney, Pretoria
Date of the hearing:	1 November 2024
Date of judgment:	4 November 2024