IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-097427, 2023-097292, 2023-097111, 2023-097076, 2023-100081, and 2023-100526

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: NO

29 JULY 2024 [redacted]___
DATE SIGNATURE

In the matter between:

DEGEFA SUGEBO LEMBORE	First Applicant
TEKETEL TUMIRE HAJISO	Second Applicant
ADEN AHMED OSMAN	Third Applicant
ABI OSMAN YUSUF	Fourth Applicant
TEMESGEN MATIWOS	Fifth Applicant
THOMAS GODISO	Sixth Applicant
and	
MINISTER OF HOME AFFAIRS	First Respondent
DIRECTOR GENERAL: HOME AFFAIRS	Second Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Third Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Fourth Respondent

HEAD: BOKSBURG CORRECTIONAL SERVICE CENTRE, BENONI Fifth Respondent

HEAD: MODDERBEE CORRECTIONAL SERVICE CENTRE, BENONI Sixth Respondent

Coram: Mlambo JP, Twala J and Collis J

Delivered: This Judgment was handed down electronically by circulation to the parties' legal representatives by email and by uploading to Caselines. The date and time for hand down is deemed to be 10:00 am on 29 July 2024.

Summary: *Costs de bonis propriis – when appropriate – use of identical affidavits in multiple matters – abuse of court – legal practitioners' ethical duty to their clients, courts and the public – affidavit must contain personal facts that are correct and truthful – attorney and counsel deliberately misled court through use of identical affidavits – costs order de bonis propriis justified – matter referred for further investigation*

ORDER

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1. Mr Manamela and Mr Vobi are ordered to pay the costs of the main application *de bonis propriis* on scale A.
2. The Registrar of this Court is directed to send a copy of this Judgment to the Legal Practice Council, the Minister of Justice and Constitutional Development and to the National Director of Public Prosecutions.

JUDGMENT (ON COSTS)

MLAMBO, JP (Twala and Collis JJ)

Introduction

[1] On 8 February 2024, this Court handed down judgment in the main matter, *Lembore and Others v Minister of Home Affairs and Others*.[1] The order granted contained the following:

> "5. The issue of costs in the main matter is postponed and will be dealt with after the parties have filed their representations on the issues mentioned in paragraphs 92 to 94."

[2] This was included in the order due to this Court's concern that its processes were being abused when six identical applications were placed on the urgent roll as individual matters when in fact it appeared to be one application replicated six times. What was of particular concern as set out in those paragraphs was that all six applicants evinced identical backgrounds, barring certain information such as their countries of origin and when they entered South Africa or when and where they were arrested. Further that they were all instituted by the same firm of attorneys, Manamela MA Attorneys and contained the same grammatical errors. This gave the inescapable impression that one application was used as a template, and then copied and pasted onto the others.

[3] Although both sets of legal representatives were invited to submit written argument within 14 days from the date of Judgment on why a punitive costs order should not be granted against the applicants and/or their legal representatives, the applicants applied for leave to appeal on 26 February 2024, putting this process on hold. That application was dismissed on 21 May 2024,[2] but neither they and/or the respondents subsequently filed any representations.

[4] As will be shown below, this is not the first time that courts have had to deal with abuses of their processes in relation to identical affidavits, nor is it the first time that applications involving asylum seekers appear to be given little to no regard by the attorneys and counsel handling them.

[1] [2024] ZAGPJHC 102; [2024] 2 All SA 113 (GJ).
[2] *Lembore and Others v Minister of Home Affairs And Others* [2024] ZAGPJHC 502.

The "cottage industry" of using identical affidavits in multiple applications before courts

[5] The abuse of the court process is something this Court has inherent power to guard against.[3] By enquiring into what is an alarming practice of using identical affidavits save for personal details like names, this Court was not engaging in anything novel. Indeed, some years back, a similar practice that was plaguing the divisions of the High Court was brought to an end with regards to sequestration applications.

[6] In *Mthimkhulu v Rampersad (BOE Bank Ltd, Intervening Creditor)*,[4] the Pietermaritzburg High Court put an end to the "cottage industry" of friendly sequestrations that effectively had the exact same averments, bar personal details like names. It set out certain requirements that must be met in the application, barring which, oral evidence would be led to establish the veracity of the allegations. The abusive process was found to have begun after steep increases in interest rates, which saw an increase in what the Court described as applications for "so-called "friendly" sequestrations" being brought before it. It is necessary to quote in full the nature of the practice as described by the Court:

> "Indeed, among certain attorneys it has become quite a cottage industry. The majority of applications are sparked off by the imminent sale of the respondents' property by the Bank. The respondent hurries off to an attorney who is well known for his expertise in these matters and is briefed on the requirements for a friendly sequestration. He duly finds a "creditor" to whom he purportedly is indebted by virtue of an unsecured oral loan in an insignificant amount. He then supposedly writes a letter to his "creditor" which could just as well be headed "Letter in terms of section 8(g) of the Insolvency Act" in which with suitable expressions of dismay and apology, he confesses to be unable to repay the so-called loan. It is not uncommon to find in different applications that the section 8(g) letter contains precisely the same wording which makes one suspect that the attorney specialising in these matters has these letters on a word processor. An application for the sequestration of the debtor is then drafted in which the friendly creditor makes the necessary allegations and in particular expresses his concern for the interests of the body of creditors if the property under attachment were to be sold by public auction. A value of the property on the open market is then given and duly supported by a valuer who also puts up an affidavit. It is also a feature of these applications that the same valuer is employed in each of them. Invariably the application is then moved as a matter of urgency on the afternoon of the day before the sale of the property. If a provisional order is granted, one has the curious phenomenon that the respondent who has

[3] *Nzuza and Others v National Director of Public Prosecutions and Others* [2024] ZAGPPHC 335 at para 44; *Maughan v Zuma and Others* [2023] ZAKZPHC 59; [2023] 3 All SA 484 (KZP); 2023 (5) SA 467 (KZP); 2023 (2) SACR 435 (KZP) at para 72.
[4] [2000] 3 All SA 512 (N).

> co-operated so admirably up until that date cannot be served with the court order for a variety of reasons including that he is evading service, is now living elsewhere, is away on business, etc. The result is that the return date is extended for a number of times until the genuine creditors have lost interest in the respondent and the rule is then discharged. Alternatively, the provisional order is confirmed, the friendly creditor makes no effort to have a trustee appointed or to prove his claim, no creditor takes steps to prove a claim because of a fear of contribution, the debtor waits for the dust to settle and with his old creditors off his back carries on business as normal."[5]

[7] The same practice regarding applications for voluntary surrender was put to an end in *In the Ex Parte application of: Arntzen*.[6] This practice appeared to rear its head again, this time in the Eastern Cape Division where attorneys representing asylum seekers similarly appeared to use a single affidavit in multiple matters, save for certain personal information like the applicant's name and country of origin.

[8] In *Tekalign v Minister of Home Affairs and Others*,[7] Goosen J, as he then was, faced a situation where there were a large number of applications that were launched to challenge the refusal of the granting of refugee status. In those matters, the pattern which was observed was that applications would be placed on the motion roll only to be removed a few days before hearing for supplementation. These applications were also characterised by lengthy delays that did not include explanations and they too, like the sequestration matters were on standard text affidavits of an overall poor quality.

[9] In the specific matters before Goosen J, all three founding affidavits made the same averments as to why they were entitled to refugee status, they had the same narrative and repeated the same grammatical errors despite the applicants being represented by two firms of attorneys and originating from different countries. The learned Judge saw this as an opportunity to request the registrar to provide him with all the files launched by the attorneys in the matters before him.

[10] What emerged from the analysis was that none of the matters dealt with the delay from the decision of the Refugee Appeal Board denying their applications for refugee status nor for the subsequent reviews in the high court. Secondly, that none of the applicants were able to communicate in English, yet all their affidavits were

[5] Id at 514B-H.
[6] [2012] ZAKZPHC 66; 2013 (1) SA 49 (KZP).
[7] [2018] ZAECPEHC 23; [2018] 3 All SA 291 (ECP).

deposed to in English with no proof of translation by a proficient interpreter. The conclusion drawn was that it was highly unlikely that asylum seekers fleeing from different countries would have almost verbatim experiences. The learned Judge put it as follows:

> "The probability that three persons each seeking to be granted asylum status on the basis of political persecution in their home country would experience precisely the same incidence of persecution is so remote that it can be discounted entirely. The circumstances in which a person is compelled to flee his or her home country and seek asylum in another country is a fact-specific aspect of applications of this nature. This is not to say that there is no scope for patterns of political persecution and for individual asylum seekers to share similar experiences. But the state of events which trigger the flight to exile is unlikely to be precisely the same or to follow the same sequence and to be based on precisely the same conditions. This is particularly so when the asylum seekers hail from different countries separated geographically by huge distances and by different periods in time. Yet in each of the cases before me the applicants swore under oath that the content of the affidavit, and therefore the narrative described, was true and correct."[8]

[11] The three applications were dismissed as a result and the judgment was sent to the various regulatory bodies for the attorneys and counsel involved, the State Attorney, Minister of Home Affairs and the National Prosecuting Authority, for possible investigation.

[12] That matter was followed by the decision in *Megabo v Minister of Home Affairs and Others*.[9] This was one of the pending cases identified in Goosen J's analysis above, and it too was dismissed. Beyond being based on the standard form affidavit identified above, the reason for dismissing it ultimately impelled the Court to take the view that it lacked *bona fides*. There, Roberson J said:

> "What principally concerned me in this application was the aspect of bona fides. The applicant wants to be released so that he can pursue his review application. Even though the judgment of Goosen J, as he himself said, did not dispose of pending applications, I believed I was entitled to consider whether or not the applicant's review application is bona fide. I am in respectful agreement with Goosen J that *the identically worded affidavits in so many matters suggest that they are not trustworthy and that there has been a calculated attempt to mislead a court*. While the affidavits were not drafted by the applicants themselves it is unlikely they did not know what was being presented to the court on their behalf. They were the ones

[8] Id at para 11.
[9] [2019] ZAECGHC 108.

wanting to stay in South Africa and not to be returned to their home countries. If they had factual support for their applications for asylum other than that given in the identical affidavits, one would have imagined their founding affidavits would have been drawn differently."[10] (Emphasis adde

[10] Id at para 25.

[13] Returning to the present matter, the following table sets out the similarities between all six applicants' founding affidavits:[11]

<table>
<tr><th>Section of FA</th><th colspan="6">Observations</th></tr>
<tr><td>Introduction</td><td colspan="6">All have three verbatim paragraphs that only change the case number of their criminal cases. Matiwos has a fourth paragraph explaining the incorrect spelling of his name.</td></tr>
<tr><td>Parties</td><td colspan="6">Although all six paragraphs have the exact same wording, this is not of concern, as the respondents' details would be the same in each matter. What is of concern is that Lembore, Osman and Yusuf have chronological numbering of 2.1 to 2.6, while Hajiso, Matiwos and Godiso have the exact same numbering error, such that it reads: 2.1; 2.2; 1.1; 1.2; 1.3; and 1.4.</td></tr>
<tr><td>Jurisdiction</td><td colspan="6">This is similar to the paragraphs containing the parties in that all six paragraphs are exactly the same, but while Lembore, Osman and Yusuf have chronological numbering of 3.1; 3.1.1 and 3.1.2, Hajiso, Matiwos and Godiso, continuing from the previous numbering error have 2.1; 2.1.1 and 2.1.2.</td></tr>
<tr><td>Nature of the application</td><td colspan="6">These all have the exact same wording with the numbering following on from the pattern above, i.e. for Lembore, Osman and Yusuf it is para 4, while for Hajiso, Matiwos and Godiso it is para 3.</td></tr>
<tr><td rowspan="2">Factual background</td><td colspan="6">The applicants from Ethiopia had the exact same experience, while those from Somalia also had the exact same experience, down to the number of words used to explain it. Put simply, there is no difference in the words used.</td></tr>
<tr><td>LEMBORE</td><td>HAJISO</td><td>OSMAN</td><td>YUSUF</td><td>MATIWOS</td><td>GODISO</td></tr>
</table>

[11] Although the notice of motions are exactly the same in each matter, this is not too much of a concern *per se*, as more than one party can seek the exact same relief.

	- Lived in Tigray, Ethiopia - Was persecuted for political and religious beliefs - Was a member of opposition party (Ethiopian People's Revolutionary Party) - He and family were attacked by members of the ruling party with his family being torched alit and killed - He managed to escape then made the decision to seek refuge in any other country	- Lived in Tigray, Ethiopia - Was persecuted for political and religious beliefs - Was a member of opposition party (Ethiopian People's Revolutionary Party) - He and family were attacked by members of the ruling party with his family being torched alit and killed - He managed to escape then made the decision to seek refuge in any other country	- Lived in Mogadishu, Somalia - Was forced to relocate from residence to other places due to bombing of buildings, telecommunication towers, wells, torturing and killings of civilians by the Al-Shabab and Al-Qaeda members. - Ultimately fled to SA after having lived in fear for their life	- Lived in Mogadishu, Somalia - Was forced to relocate from residence to other places due to bombing of buildings, telecommunication towers, wells, torturing and killings of civilians by the Al-Shabab and Al-Qaeda members. - Ultimately fled to SA after having lived in fear for their life	- Lived in Tigray, Ethiopia - Was persecuted for political and religious beliefs - Was a member of opposition party (Ethiopian People's Revolutionary Party) - He and family were attacked by members of the ruling party with his family being torched alit and killed - He managed to escape then made the decision to seek refuge in any other country	- Lived in Tigray, Ethiopia - Was persecuted for political and religious beliefs - Was a member of opposition party (Ethiopian People's Revolutionary Party) - He and family were attacked by members of the ruling party with his family being torched alit and killed - He managed to escape then made the decision to seek refuge in any other country
	Following these paragraphs, they all have the exact same paragraph stating that they have taken advice from their attorneys and would not divulge the full details of their asylum claims due to their confidential nature in terms of section 21(5) of the Refugees Act. This is followed by the exact same paragraph stating that the grounds on which					

	they will apply for asylum are irrelevant to the determination of whether they should be released from detention and be allowed to apply for asylum because refugee centres were still closed as a result of the Covid-19 pandemic.
	This paragraph is followed by yet another verbatim one, stating that they all do not remember the precise date they escaped their countries and that they passed through Kenya, Zambia, Malawi and Zimbabwe, from where they entered into South Africa. This is despite the fact that it is physically impossible, without taking a flight, to pass from Ethiopia or Somalia and into those countries without first passing Tanzania or Uganda and the Democratic Republic of the Congo.
	The next paragraph states that once in South Africa, they all spoke to their fellow countrymen who advised them to approach Refugee Reception Offices, but they could not because the centres were closed due to the Covid-19 pandemic.
	The Court is then told by the Ethiopian applicants (Lembore, Hajiso, Matiwos and Godiso) that they were given a place to stay by their fellow Ethiopians, except in the case of Lembore and Matiwos, they were not allowed to leave their place of residence. Meanwhile, the Somalian applicants (Osman and Yusuf) during November 2022 and September 2023 tried to approach the Pretoria Refugees Centre to apply for asylum but they were turned away on each occasion without any assistance. The three stories here (Lembore and Matiwos; Hajiso and Godiso; Osman and Yusuf) are given using the exact same wording. Following this, the Court is told that they were arrested, where they all explained in broken English their intention to apply for asylum and their struggles in doing so, as follows: Lembore and Hajiso – were not allowed to leave their place of residence; while the remaining four tried in vain to get assisted at the Desmond Tutu Refugee Centre.
	They all conclude using the exact same words to the effect that instead of being assisted, they were arrested and told that they were not refugees, but rather economic migrants despite them informing the arresting officers that they

	had fled due to “political affiliation, bombing and killing of civilians.” It must be noted that this is the first-time bombing is mentioned in relation to the Ethiopian applicants, and the first time political affiliation is mentioned for the Somalian applicants. Initially, the Ethiopians fled from torturing and killing of their families due to political affiliation while the Somalians fled from terrorist bombing of infrastructure.
Legislation, Interdict and Costs	The remainder of all six affidavits is exactly the same, save for where it was deposed to. In all of them, they set out the same principles from the same cases, rely on the same grounds for an interdict and all ask for costs on an attorney and client scale. All the headings are the same, all the paragraph lengths are the same, and all the numbering is the same when accounting for the explanation provided above.

[14] The analysis of the six applications above clearly confirms that what was placed before this Court was a single affidavit, reproduced six times with minor changes. The inescapable conclusion is that none of the affidavits contain personal information relating to the applicants' individual experiences, nor can they be regarded as truthful. In fact, the founding affidavit in *Ashebo*,[12] a matter similarly launched by Manamela MA Attorneys when it was in this Division before making its way to the Constitutional Court, is similar to the ones before us in all material ways, almost using the exact same words in some areas, and repeating verbatim what was included in the ones *in casu*. There is therefore no other conclusion than those reached in the sequestration matters and in the Eastern Cape Division above, than to find that this is an abuse of this Court's process. Further that Manamela MA Attomeys has found for itself a cottage industry of exploiting vulnerable asylum seekers, who likely do not understand what they are deposing to.

[15] Much like Goosen J, I found it necessary to analyse all the cases launched by Manamela MA Attorneys that have been filed in this Division. According to Court Online records, there were 66 matters enrolled by Manamela MA Attorneys between 28 July 2022 and 23 April 2024.[13] Of these, 58 had the Minister of Home Affairs as a respondent and they can further be divided into two categories: reviews against the decisions to reject asylum applications and applications to be released from detention having evinced an intention to apply for asylum.

[16] The reviews against decisions rejecting asylum applications use the following standard template affidavit (all *sic* where bolded):

> *"Para 1: Introduction*
> The deponent makes oath and states that:
> 1.1. I am an adult [gender], national of [Country] seeking refuge in the **Republic of South Africa person**[14] and refugee from [Country].
> Alternatively:
> 1.2. I am an adult [gender] person and refugee from [Country] **person**[15] residing at [address].

[12] *Ashebo v Minister of Home Affairs and Others*, unreported judgment of the Gauteng Division, Pretoria, Case No 018478-2022 (07 September 2022).
[13] The breakdown is as follows: 9 matters dealing with judicial review for the failure to renew temporary asylum seeker permits; 25 matters dealing with release from detention having evinced an intention to apply for asylum; 8 matters that do not relate to home affairs; 1 removed matter; 1 matter involving a child and 22 matters in which the Court Online/Caselines file is empty. While some of these have been concluded, there are pending matters which this judgment does not attempt to deal with.
[14] Placement of the word "person" is clearly incorrect, indicating a copy and paste from another document.
[15] id.

1.3. The contents of this affidavit are to the best of my knowledge both true and correct, and are within my personal knowledge unless the contrary is clear from the context.
1.4. Wherever in this affidavit I make submissions in law, unless otherwise indicated, such are made on the basis of advice given me by my legal representatives, which advice I verily believe to be correct.

Para 2: Parties
These include the details of the respondents who are the same, so no issue could be taken as it is merely stating who they are and their addresses. As this is unlikely to change, there is no suspicion raised in the verbatim use.

Para 3: Jurisdiction
3.1. This Honourable Court has jurisdiction to entertain the matter as the principal office of business of the Respondents lies within the territorial jurisdiction of this Court.
3.2. The review application brought **under the case number[16]** […] by me was issued in this Honourable Court and **therefore Court[17]** has the necessary jurisdiction to entertain this urgent application.
Alternatively this paragraph is included:
3.3. **The cause of arose within[18]** the territorial jurisdiction of this Court.

Para 4: Purpose of this application
4.1. I am seeking an order dispensing the forms and service in the Uniform Rules **of this Court forms[19]** and Practice Manual, so far as needs be, that this application be enrolled and heard on an urgent basis **in term[20]** of Rule 6(12)(a) of the Uniform Rules of this Court.
4.2. Directing the [Respondents] to re-issue me with a temporary asylum seeker permit in accordance with Section 22 of the **Refugee Act**,[21] pending the **finalization[22]** of my Judicial Review Application under case number […] (hereinafter referred to as "the review application").
4.3. Interdicting the [Respondents] from arresting, prosecuting, deporting and/or taking any further steps against me unless my Review Application has been lawfully and finally determined **under the case number[23]**: […].
4.4. The Respondents to pay the costs of this application, jointly and severally, the one paying the other to be absolved on a scale as between attorney and client.
4.5. Granting the Applicant further and/or alternative relief.

Para 5: Factual background
5.1. I am an adult [gender] refugee from [country]. I was forced to leave [country] in [year], as a result of fear of political persecution and in fear for my life and that of my family, **marked as Annexure [..].[24]** However, I do not intend to set out the full details of my asylum claim, as a result of its confidential nature which is protected in terms of section 21(5) of the

[16] Incorrect use of article.
[17] Missing word.
[18] Id.
[19] Incorrect use of plurals.
[20] Missing plural.
[21] Incorrect citation.
[22] American spelling.
[23] Incorrect use of article.
[24] Sentence construction.

Refugees Act.

5.2. I arrived in the Republic of South Africa in or around [year] and gained entry illegally through the Musina **boarder**[25] gate. I applied for an asylum permit and was granted one with the asylum number: […] which has since expired. I was given a period in which my application for refugee status would be determined.
Alternatively this paragraph is included:
For ease of reference I attach a copy of the expired asylum permit marked as Annexure […].

5.3. I was given a letter in terms of which the Third Respondent stated that my application for an asylum permit had been rejected and that I have a right to appeal the said decision. I thereafter, immediately with the assistance of my countrymen filed my appeal with the Third Respondent in or around [date].

5.3. On [date], I received a letter from the Desmond Tutu Reception office advising me that my appeal had been dismissed and that I will be dealt with in terms of the provisions of the **Immigration 13 of 2002**.[26] See the attached letter marked "Annexure […]".

5.4. It was then when I approached and appointed my attorneys of **Record**,[27] Manamela MA Attorneys who:

5.4.1. Lodged the abovementioned review proceedings seeking to review and/or set aside the Respondents' decision to reject my application **for the refugee status**.[28] For ease of reference please see the attached rule 53 and sheriff's returns of service on the Respondents and their attorney of record marked as "Annexure […]"**;** and

5.4.2. Furnished the Respondents with a letter in terms of which:

5.4.2.1. They requested the Respondents to re-issue me with a temporary asylum seeker permit on or before close of business [date];

5.4.2.2. They requested the Respondents to waive grounds **declaring me as undesirable status**[29] in terms of section 30 of the Immigration Act 13 of 2002; and

5.4.2.3. They requested the Respondents to give an undertaking stating that they will refrain from arresting, detaining, prosecuting and deporting me on or before close of business [date]. I attach the letter together with its proof of delivery marked "Annexure […]".

5.5. Although a review application is pending and was issued, **a letter addressed to the Respondents I have to date not received any response from the Respondents to date**,[30] the Respondents have failed to assist in issuing me with a temporary permit so to sojourn in the Republic which has prompted me to institute this urgent application.

*Para 6: Protection, rights of refugees and **just administration**[31]*

6.1. I seek refuge and protection in terms of Section 2 of the **Refugees Act 130 of 2000**[32] which provides as follows:

[25] Spelling.
[26] Incomplete citation.
[27] Random capitalisation.
[28] Incorrect use of article.
[29] Sentence construction.
[30] Id.
[31] Was meant to be "just administrative action".
[32] Incorrect citation of the Refugees Act.

"Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where-

(a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or

(b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country".

6.2. **Further in terms of Section 27 of the Refugee Act provides**:[33]
A refugee-

"(a) is entitled to a formal written recognition of refugee status in the prescribed form;

(b) enjoys full legal protection, which includes the rights set out in Chapter 2 of the Constitution and the right to remain in the Republic in accordance with the provisions of this Act";

6.3. I submit that because of the protections afforded to me under section 2 and 27 of the **Refugee Act**,[34] I cannot be deported as I am an asylum seeker in terms of the law of the Republic of South Africa and should be given the opportunity to present my case properly before the relevant administrative bodies before a decision can be taken regarding my asylum claim.

6.4. I further submit that the Respondents decision not to afford me an opportunity to present my version in support of my asylum claim, constitutes administrative action, or at the very least, exercises of public power, which should be exercised lawfully and reasonably. It is for this reason why I have instructed my attorneys of record to bring **an review application**[35] setting aside the decision made by the Respondents.

Para 7: Requirements for an interim interdict

7.1. I respectfully submit that I have met all the requirements for an interim interdict as follows:

7.1.1. Prima facie right

7.1.1.1. My rights fall within the ambit of the Refugees Act as explained above, in that I am an illegal foreigner who has the desire to be granted **an asylum status**.[36] I have not exhausted all the legal remedies available to me of which I wish to exercise being the review application pending in this Honourable Court.

7.1.1.2. I have further attached the proof of service of the review application and the letter dated [date] as an attempt to resolve the matter out of court. The Constitutional Court has made it mandatory that when one has applied for judicial review, the director general of home affairs must re-issue the permit pending the finalisation of such an

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[33] Sentence construction.
[34] Incorrect citation of Refugees Act.
[35] Incorrect use of article.
[36] Id.

application.

7.1.1.3. I have a prima facie right to be issued with **the temporal permit**[37] in terms of the law.

7.1.2. **Irrepairable**[38] harm

7.1.2.1. I am suffering irreparable harm, in that I am living in constant fear of an arrest, prosecution, detention and deportation as I am not in possession of valid **temporal permit**[39] or lawful documents to be in the **Country**.[40]

7.1.2.2. Not being in possession of an asylum permit has the **effect of a triple jeopardy**[41] in that it will result in my arrest and detention, prosecution and deportation.

7.1.2.3. The consequence of my possible deportation would contradict and defeat the very purpose of why I fled to this country.

7.1.2.4. **If am**[42] deported, I will face death or persecution.

7.1.3. Balance of convenience

7.1.3.1. I submit that the balance of convenience favours the granting of this application since I have issued a **Judicial Review**[43] application. *Prima facie* I have a right to stay in this country until my status has been finally decided.

7.1.4. No other option or alternative remedy

7.1.4.1. It is my respectful submission that I have no other option but to approach this court for an interim interdict pending the judicial review application.

7.1.4.2. It would take only this Honourable Court with its inherent jurisdiction and powers to make an order that will be seen to promote the spirit, purport and objectives of the Bill of Rights.

Para 8: Urgency

8.1. I respectfully submit that this matter is urgent and that it cannot await adjudication in the ordinary course or even comply with the timelines for the hearing of urgent applications for the following reasons:

8.1.1. Since I do not have any refugee permit in my possession, I am subject to an ongoing violation of my constitutional rights to human dignity, health care services, freedom and security of person, freedom of movement and equality. I cannot access health care services and move freely as I am facing imminent arrest due to lack of a Refugee permit.

8.1.2. I have been denied my rights in terms of the Constitution, the Promotion of Administrative Justice Act and the **immigration Act**;[44]

8.1.3. My situation is inherently urgent as I do not have a valid permit while the laws of this country provide other ways of treating me;

8.1.4. I am facing imminent arrest, prosecution, detention and deportation;

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[37] Use of the word “temporal” instead of “temporary”.
[38] Spelling.
[39] Use of the word “temporal” instead of “temporary”.
[40] Inconsistent capitalisation.
[41] Incorrect use of article.
[42] Missing pronoun.
[43] Inconsistent capitalisation.
[44] Capitalisation.

8.1.5. Not being in possession of an asylum permit has the **effect of a triple jeopardy**[45] in that it will result in my arrest and detention, prosecution and deportation;

8.1.6. I am unable to support and provide for myself.

8.1.7. My freedom of movement has been limited as I cannot move freely within the Republic of South Africa.

8.1.8. In the event this Honourable Court holds a view that I delayed to bring this application and/or **I failed to comply with the practice manual of this Court. I request this court**[46] to condone the delay and or non-compliance with the practice manual based on the following reasons:

8.1.8.1. I did not have the means to instruct lawyers to bring this application **on the speedily grounds**,[47] since I am not working as it is difficult to be employed without a valid permit. I had to approach fellow countrymen and friends in order to raise legal fees before I could give instructions to my attorneys of record.

8.1.8.2. I attempted alternative means to resolve the matter before coming to court, including addressing a letter to the Respondents, which they have failed and or refused to respond to. Please see the attached Annexure […].

8.2. In light of the above, I am adversely prejudiced and have no other option but to approach this **honourable court**[48] on an urgent basis. There can be no question of self-created urgency or manifested urgency thereon.

8.3. The prejudice to me should the matter not be heard as one of urgency is immediate and objectively foreseeable.

8.4. Conversely, **the prejudice to the Respondents of the curtailing the time frames**[49] and hearing the application as an urgent application are fair and necessary. Lastly, in the circumstances of this case, the urgency of the matter and the nature of the relief **sough**[50] warrants that my interest be placed ahead of other litigants who can obtain satisfactory redress in the ordinary course.

Para 9: Cost order

9.1. It is my humble submission that the actions or the decision of the Respondents have necessitated these proceedings. It would be in the interests of justice that the Respondents are ordered to pay the costs of this application jointly and severally, the one paying the others to be absolved.

Para 10: Conclusion

WHEREFORE I pray that the Honourable Court grants the relief as set out in the Notice of Motion."

[17] The affidavit is then signed by the deponent and commissioned by a commissioner of oaths who certified that the deponent signed the above affidavit in their presence; that the deponent knows and understands the contents of the affidavit;

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45 Incorrect use of article.
46 Inconsistent capitalisation.
47 Incorrect use of article.
48 Inconsistent capitalisation.
49 Sentence construction
50 Spelling.

and that they had no objection to taking the prescribed oath which they consider to be binding on their conscience. This verbatim format, with minor additions or subtractions was used in the 8 of the 9 matters identified from Manamela MA Attorneys which were judicial reviews against the failure to renew expired asylum permits.

[18] The urgent applications for release from detention pending an application for asylum use the following standard template affidavit (all *sic* where bolded):

> "*Para 1: Introduction*
> The deponent makes oath and states that:
> 1.1. I am an adult [gender] [country] national and the Applicant in this matter, I am currently held in detention at the [name and city of correctional centre] under **the prison number**[51] […] in respect of the case number: […] and for charge(s) of being illegal in the Country.
> 1.2. The facts or averments contained herein fall within my personal knowledge, unless specifically stated or the context indicates otherwise, and are to my belief both true and correct.
> 1.3. Where I make submissions of a legal nature, I do so on the advice and strength of my legal representatives which advice I verily believe to be true and correct, and where I make submissions on information gathered from others I do so believing same to be true and correct.
>
> *Para 2: Parties*
> These include the details of the respondents who are the same, so no issue could be taken as it is merely stating who they are and their addresses. As this is unlikely to change, there is no suspicion raised in the verbatim use.
>
> *Para 3: Jurisdiction*
> 3.1. This Court has the requisite jurisdiction to adjudicate, determine and pronounce upon the relief sought in this application by virtue of the fact that:
> 3.1.1. The cause of action arose within the area of jurisdiction of this Honourable Court;
> 3.2. Therefore, this Honourable Court has jurisdiction to entertain this matter.
>
> *Para 4: Nature of the application*
> 4.1. In the present application the Applicant seeks the following orders from the above Honourable Court:
> 4.1.1. Dispensing, so far as need be, with the forms and service provided for in the Uniform Rules of Court and disposing of this application at such time and place and in such manner and according to such procedure as this Court deems fit **in terms of the Rule**[52] 6(12) of the Uniform Rules.
> 4.1.2. Subject to the Applicant approaching the Refugee Office as contemplated in Paragraph 5 below, the [Respondents] are interdicted from detaining, prosecuting and deporting the

[51] Incorrect use of article.
[52] Id.

Applicant unless and until his status under the **Refugee Act**,[53] 130 of 1998 alternatively under **Refugee Act[54]** 130 of 1998 as amended by the **Refugee Amendment Act[55]** 11 of 2017, has been lawfully and finally determined.

4.1.3. It is declared that the continuing detention of the Applicant is unlawful.

4.1.4. The Respondents are directed to release the Applicant forthwith.

4.1.5. It is declared that, in terms of Section 2 of the **Refugee Act**,[56] the Applicant is entitled to remain lawfully in the Republic of South Africa up until his application is fully **finalized[57] in terms Refugees Act.[58]**

4.1.6. The First and Second Respondents are directed, upon submission by the Applicant of his asylum application, to accept his asylum application and to issue him with a temporary asylum seeker permit in accordance with Section 22 of the **Refugee Act**,[59] pending finalisation of his claim, including the exhaustion of his right of review or appeal in terms of Chapter 3 of the **Refugee's Act[60]** and the Promotion of Administrative Justice Act 3 of 2000, provided that the Applicant applies for review or appeal in terms of the time periods as afforded to him in terms of Chapter 3 of the **Refugee's Act[61]** and the Promotion of Administrative Justice Act 3 of 2000.

4.1.7. The Respondents to pay the costs of this application, jointly and severally, the one paying the other to be absolved on a scale as between attorney and client.

4.1.8. Granting the applicant further and/or alternative relief.

Para 5: Factual background

5.1. Whilst living in [country] at [city], I was persecuted for my political and religious beliefs. I was a member of the opposition political party and mobilising in the area where we live in [country]. The ruling party was terrorising, persecuting, torturing and killing members of the [opposition political party] the political party to which I belonged to. My family and I were attacked by members of the ruling party, sadly my family was torched alit and killed, and fortunately I managed to escape the brutal ordeal.

Alternatively, when the person is from Somalia:

I was forced to relocate from my residence to other places as a result of the on-going bombing of buildings, telecommunication towers, wells, torturing and killings of civilians by the Al-Shabab and Al-Qaeda members. I ultimately fled to the Republic of South Africa as I feared for the safety of my life.

5.2. I feared for my life and I was living in constant fear for my life at the hands of the ruling party and as a result I made the decision to flea [country] and seek asylum in any country.

Alternatively, when the person is from Somalia:

53 Incorrect citation of the Refugees Act.
54 Id and missing article.
55 Incorrect citation of the Refugees Act.
56 Id.
57 American spelling.
58 Missing words.
59 Incorrect citation of the Refugees Act.
60 Id.
61 Id.

I feared for my life and I was living in constant fear for my life at the hands of the Al-Shabab and Al-Qaeda terrorists and as a result I made the decision to flee Somalia and seek asylum in any country where I ended in the Republic of South Africa.

5.3. With accepted legal advice from my attorney of record, I do not intend to set out the full details of my asylum claim, firstly as a result of its confidential nature which is protected in terms of Section 21 (5) of the Refugees Act and secondly, as a result of same only becoming relevant at the stage when I am afforded an opportunity to apply for asylum, as it is only the Refugee Status Determination Officer, who is empowered to make a decision whether the asylum claimant is entitled to asylum or not, and accordingly, as it has been held in the courts, it is not for this court to make a determination as to the bona fide/prospects of success of the asylum application. Rather all this Honourable Court needs to decide **is the whether we have the right to apply for asylum**.[62]

5.4. As such the grounds which I seek asylum are not relevant/material to this application. If the above Honourable Court finds, that I have the right to apply for asylum, then my continued detention in terms of the Immigration Act becomes unlawful. I am then entitled to be freed and afforded the rights as set out in the Refugees Act being, to be issued with an asylum seeker permit, in order to provide me with an opportunity to make application for asylum (the time period I have sought takes cognisance of the fact the refugee centres are still closed on account of Covid-19 aftermath). Moreover, once application is made in terms of Section 21 (4), I am protected against being deported until the decision of my application for asylum has been fully dealt with.

5.5. I managed to escape [country] in [date], passed through Kenya, Zambia, Malawi and entered Zimbabwe on the [date]. I hitch hiked and walked across Zimbabwe for 6 days and I entered the Republic of South Africa through the Zimbabwe border on the [date]. I did not enter using an official port of entry, I crossed the Limpopo river and walked to the boarder where I managed to jump the border as I was not in possession of a passport and I feared being arrested and being deported back to [country] on arrival in the Republic. I had no knowledge of the procedure for applying for asylum and **was aware[63]** of either the new or old regulations.

Alternatively for the Pakistan nationals:

I managed to escape Pakistan in or around [date]. I entered the Republic of South Africa through the O.R Tambo airport on [date]. I entered South Africa using an official port of entry as I was in possession of a passport and whilst in transit **I feared being and deported[64]** back to Pakistan on arrival. I had no knowledge of the procedure for applying for asylum and **was aware[65]** of either the new or old regulations.

5.6. Upon my arrival in the Republic, I met up with some fellow countrymen, in South Africa. I informed them of the life threatening situation I faced in [country] and my desire or intention to immediately apply for **an asylum[66]** in order to seek refuge in the Republic. I was advised that I need to approach the Refugee Reception Office to apply for asylum but they were closed since the outbreak of COVID-19 in March 2020.

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[62] Id. In all but 2 matters, the plural "we" is used when the tone of the affidavit is singular.

[63] Presumably meant to state that they were "unaware" of the regulations.

[64] Missing word.

[65] Presumably meant to state that they were "unaware" of the regulations.

[66] Incorrect use of article.

Accordingly, I was unable to approach the Refugee Reception Office for the purposes of applying for asylum.

5.7. Although the offices were closed, I, on several occasions visited the [city] Refugees Centre in an attempt to apply for an asylum seeker permit, but each time I visited the [city] Refugee Centre I was turned away without any assistance due to the closure of such offices.

5.8. Due to a State of Disaster in terms of the Disaster Management Act, I needed a place to seek refuge during the lockdown period **so I went seek refuge**[67] with a network of fellow [country] nationals who were willing to offer me sanctuary and a place to stay in [suburb], [city].

5.9. Before the Refugee Reception Office could be opened and accept my application for an asylum seeker permit, I was arrested on the [date] in [city] and charged with the contravention of the **Immigration Laws**[68] of this country. I tried to explain to the arresting officers, in my broken English, that I am seeking asylum in South Africa, that since I arrived in the Republic I have on numerous occasions **attempted visited**[69] the **Tiro Refugee centre**[70] to apply for an asylum seeker permit without any success and that I required an opportunity to make such application. Such request fell on deaf ears.

5.10. Instead of being afforded the opportunity to apply for asylum, I was arrested and prosecuted in terms of the Immigration Act. I have now been advised that the officials should have afforded me an opportunity to apply for asylum instead of prosecuting me in terms of the Immigration Act and have my deportation imminent.

5.11. I informed the immigration and police officers on my arrest and when I was in detention that I fled my country of origin in fear of persecution on account of my political affiliation, bombing and killing of civilians but they told me **that only came**[71] to this country for economic reasons. There was no interpreter of what the arresting officers were telling me, hence at some point I struggle to express myself and to understand what were they saying to me. They gave me papers to sign without understanding what was written there. I am currently detained at the [name] Correctional Services for the purposes of prosecution and conviction thereafter I will face deportation where I will face the possibility of death in my home country.

Para 6: Relevant legislation

6.1. I am advised that, in terms of Section 2 of the Refugees Act, an asylum seeker may not be refused entry (or stay) into the Republic of South Africa, or be expelled or returned to any other country, where upon return to that country, he/she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group.

6.2. Section 21 of the Refugees Act sets out the procedure for applying for asylum and Section 21 (2) empowers the Refugee Reception Officer, as the person to decide on the merits of the application i.e. to accept or reject same.

6.3. Section 21 of the Amendment Act and the new Regulations envisage two scenarios **for an asylum to apply**[72]:-

[67] Missing word.
[68] Capitalisation.
[69] Grammar.
[70] This place does not exist and it is unclear what they meant to cite.
[71] Missing pronoun.
[72] Missing word.

6.3.1. The first is where the asylum seeker enters the Republic through a designated port of entry, and indicates his/her intention of applying for asylum and thereafter submits his/her biometric or other data to the immigration official at the port of entry. The asylum seeker would then be issued with an Asylum Transit permit and would have to report within 5 days to the Refugee Reception Office to apply for asylum. The application must be made in person to the **RDSO**.[73] I did not indicate my intention at the port of entry, because I did not know the procedure to apply for an asylum and I was fearful of being arrested and deported back to my country of origin.

6.3.2. The second route, is where the asylum seeker does not enter the Republic through a designated port of entry, or enters illegally, or enters legally but subsequently has not regularised his/her stay in terms of the Immigration Act. In such case, the asylum seeker would not have an Asylum Transit Permit or a valid visa issued in terms of the Immigration Act. In such cases, s/he must report to the Refugee Reception Office, within 5 days of entry, and submit his/her biometric and other data, to the RRO and then is interviewed by an immigration officer to show good cause for his/her illegal entry. The asylum seeker's application must be made in person to a RSDO. Where an asylum seeker did not enter South Africa through a port of entry, he/she must satisfy the RSDO that there are compelling circumstances for such entry. If an asylum seeker does not report to the RRO within 5 days of his/her entry to the Republic, he/she must have compelling reasons for failing to do so. Finally Regulation 8(3) provides that an asylum seeker must show good cause to the immigration officer before being allowed to apply for asylum.

6.3.3. I have remained in the **republic**[74] without a permit because the offices of the Respondents were closed and to date I have not being assisted until my arrest on [date].

6.4. The Supreme Court of Appeal has decided which decisions have been supported by the Constitutional **court**[75] in the ***RUTA* matter, cited above**[76] that in applying the doctrine of legality has found that the Home Affairs Officials were obliged to comply with the requirements of Section 21 (2) of the Refugees Act and Regulation 2(2) of the Regulations. Whilst there are now new regulations, the principles as elucidated in the SCA decisions referred to above and the RUTA judgment with the Abore judgment, still find application and neither Section 21(1)(a) nor Section 21 extinguishes the rights of an asylum seeker to make an application in person at any Refugee Reception **office**.[77] The RSDO is still the only competent authority who can disqualify an asylum seeker from refugee status and this can only be done once, the asylum seeker has had an opportunity to present his/her claim before a RSDO.

6.5. It has also been decided that a delay or non-compliance with approaching the refugee centre to make application within 5 days of arrival in South Africa, as envisaged by Section 21 (1) of the Refugees Act, does not deprive the Applicants of their right to apply for asylum whilst it may be a factor which the RSDO will consider.

[73] Misspelling of “RSDO”.
[74] Capitalisation.
[75] Id.
[76] The matter is not in fact cited.
[77] Capitalisation.

6.6. The exclusions as set out in Section 4(1)(h) and 4(1)(i) of the Amendment Act are not at the stage applicable to my case as I am yet to make such application and accordingly, the RSDO has not had an opportunity to consider my compelling reasons for not having entered the Republic of South Africa through an official port of entry and for not being able to have attended the Refugee Reception Office within 5 days of entry.

6.7. That being said it is important, that my failure in this regard, was not of my making and there has not been an inordinate delay, given the circumstances. As set out above, I believe **that that**[78] compelling reasons exist for my failing to report to enter South Africa through an official port of entry and my failure to report to the RRO within 5 days from entry into South Africa. I made efforts **to go the RRO**[79] but as set out above, it was closed and it was therefore impossible to comply with the act and the regulations. In any event, the only parties who are entitled to make these decisions is the RSDO and it is for the RSDO to consider whether there are compelling reasons.

6.8. The effect is that in a case such as this, it has been demonstrated that I fall squarely to be treated as an immigrant who has satisfied the requirement of Section 21(2) in that I have made my intention to apply for asylum and meet the jurisdictional factors in terms of section 2 of the **Refugee Act.**[80]

6.9. It is furthermore contented that my continuing detention is unlawful in that, once I expressed my desire to apply for asylum, I am first to be treated in terms of the Refugees Act by affording me an opportunity to make such application. Once that application is finally decided and in that event that no asylum is granted, it is only then that I could have contravened the Immigration Act and be tried as such.

6.10. Furthermore, in terms of Section 22 of the Refugees Act, the Respondents are obliged to issue me with a temporary asylum seekers visa, which should be extended on a continuous basis until the finalisation **of his**[81] asylum application and until the exhaustion **of his**[82] appeal (if any) and in terms of Section 24B of the Refugees Act and or review in terms of the **promotion of Administrative of Justice Act 2 of 2000**.[83]

6.11. To deny me of my basic right to state my case for admission to asylum status is a violation of the Refugees Act, the 1951 UN Convention relating to the Status of Refugees, the 1993 Basic Agreement between the Government of South Africa and the **UNCHR**,[84] the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1967 Protocol relating to the Status of Refugees and a number of international conventions. I therefore submit that I should be allowed to pursue my application for asylum.

6.12. Despite the fact that **Article 31 of 1951 Convention**[85] provides as follows: "The contracting state shall not impose penalties on account of their illegal entry or presence of refugees who coming directly from a territory where their life or freedom was threatened", the Respondents

[78] Repeated use of word.
[79] Missing word.
[80] Incorrect citation of the Refugees Act.
[81] Change of tense.
[82] Id.
[83] Capitalisation and incorrect citation of the Promotion of Administrative Justice Act.
[84] Misspelling of “UNHCR”.
[85] Missing article.

have done just the opposite.

Para 7: Requisites for interdict

7.1. I respectfully submit that I have met all of the requirements for an interim interdict, that is:

i. PRIMA FACIE RIGHT

7.2. I have a prima facie right to apply for asylum under domestic and international law. I am protected against expulsion until my asylum application is finally adjudicated by a RSDO (not an immigration officer) and I have exhausted all internal and external processes, which include appeals and review in terms of PAJA.

7.3. The moment I expressed an intention to apply for asylum, I fell within the ambit of protection of the Refugees Act and the International Conventions of which South Africa is a signatory to. As such, my continued detention and threats of expulsion are unlawful.

7.4. The Respondents' conduct in continuing to detaining and seeking to deport me, infringes my rights as provided in the Refugee Act and Constitution of the Republic of South Africa.

7.5. I am mindful of the fact that a number of administrative decisions might have been taken by the officials of the First and Second Respondents and possibly by magistrates and police regarding my detention. These administrative steps however were taken in terms of the Immigration Act, which ceased to apply once I made known my intention to apply for asylum or perversely, when the attorneys sent a letter in this regard. Accordingly, such administrative decisions are patently incorrect, unconstitutional and in violation of my rights.

ii. **IRREPRABLE**[86] HARM

7.6. My continued unlawful detention is a continuous harm which is being perpetuated for any second I am being detained, which harm cannot be repaired or quantified.

7.7. I will inevitably be deported, unless the Court interferes, deportation may be a death sentence for me or I will be killed.

iii. BALANCE OF CONVENIENCE

7.8. The balance of convenience palpably favours me. In the event that I am released and my application for asylum is unsuccessful, the Respondents will be able to arrest me and deport me should the need arise. The Refugees Act provides remedies for dealing with manifestly unfounded, abusive or fraudulent asylum applications.

7.9. All that I am seeking is an opportunity to enable me to apply for asylum as am legally entitled to do and in so doing it will be the empowered person being the Refugee Reception Officer who will make a decision regarding whether to grant asylum to the Applicant and not the Respondents. The Respondent's conduct **in the continuous unlawfully detention of me**[87] and seeking to deport me, without affording me the opportunity to apply for asylum has the net effect of usurping the decision making power delegated to the Refugee Status Determination Officer.

iv. NO **ALTENATIVE**[88] REMEDIES

7.10. I have exhausted all my remedies in verbally expressing my desire to apply for asylum, sending a formal letter requesting same. At this stage

[86] Spelling.
[87] Id and grammar.
[88] Spelling.

there are no alternative remedies open to me to obtain the relief which I seek.

Para 8: Urgent motivation

8.1. The immediate urgency which has triggered this application is my arrest and detention which occurred on the 20th of September 2022. I have acted as expeditiously as reasonably possible as an unemployed person in raising legal fees to appoint legal representatives and prepare these papers to come before the court.

8.2. The matter is urgent as I cannot be afforded substantial redress. The reasons and circumstances, I claim that I cannot be afforded substantial redress at a hearing in due course are:

8.2.1. I am being subject to on-going violations of my right to human dignity, freedom of movement, to apply for asylum, and the right against arbitrary detention;

8.2.2. Given the unlawfulness of the continuing detention, the detention cannot be justified and one should not have to endure unlawful detention, one second longer than necessary:

8.2.3. Whilst there is **no conviction by the Third Respondent has been secure**[89] or a date set for deportation, it is imminent and I face possible deportation to a country which I have fled;

8.2.4. For every day, I am held in unlawful detention, I am unable to apply for asylum and my delay becomes more significant;

8.2.5. As this application **concern's**[90] my liberty, it is inherently urgent. Furthermore, that this application is a habeas Corpus and/or an interdict ad homino de liberto application to contest the lawfulness of my ongoing detention, there can be no question of self-created urgency or manifested urgency;

8.2.6. The prejudice to me should the matter not be heard on this urgent basis is immediate and objectively foreseeable:

8.2.7. Conversely, the prejudice to the Respondents of curtailing the time periods and hearing the application as an urgent application are not causing harm: and

8.2.8. Lastly, in the circumstances of this case, the urgency of the matter and the nature of the relief urgently sought warrants that my interests be placed ahead of other litigants who can obtain satisfactory redress in the ordinary course.

Para 9: Costs on an attorney scale

9.1. The Respondents are aware about the decisions of the Constitutional Court and the **Four**[91] Supreme Court decisions, which have been dealt with above and which direct the release of a detainee under these circumstances yet they persist with my unlawful detention.

9.2. They have been afforded reasonable opportunity to rectify their unlawfulness when I requested the arresting officers, yet they fail to do so.

9.3. I should not have had to endure the unnecessary costs of approaching this court to direct the Respondents to abide by the law. Moreover, I have already suffered unquantifiable damages due to my continued unlawful detention.

9.4. I submit in the circumstances, that the above Honourable Court should exercise its discretion and mark its disapproval for the Respondent's

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[89] Grammar.

[90] Id.

[91] Capitalisation.

conduct by awarding punitive costs.

Para 10: Conclusion
10.1. I pray that the above Honourable Court, grant me the relief which I seek in the Notice of Motion."

[19] The affidavit is then signed by the deponent and commissioned by a commissioner of oaths who certified that the deponent signed the above affidavit in their presence; that the deponent knows and understands the contents of the affidavit; and that they had no objection to taking the prescribed oath which they consider to be binding on their conscience. This verbatim format was used in the 25 matters identified from Manamela MA Attorneys which were judicial reviews against the refusal to release illegal foreigners from detention.

[20] The purpose of this in-depth analysis was not to provide an English lesson. In a country like ours, it is hardly expected for legal practitioners, the majority of which speak English as their second, third and further language, not to make mistakes while drafting. A court should generally place substance over form if what is attempted to be communicated in an affidavit can be ascertained. What is unacceptable is for these mistakes to be replicated in almost all of a single law firm's applications. What this analysis demonstrates beyond doubt is that no new drafting took place but a cut and paste exercise was employed in all the different matters, only changing personal details.

[21] The ineluctable conclusion is that Manamela MA Attorneys have involved themselves in "cottage industry" conduct and/or practices. It is a clear abuse of the judicial process. This is conduct that cannot be ignored especially by officers of the Court. The Judges in the Eastern Cape were justified in concluding that those applications were not genuine and liable to be struck off. In the matters before us, Manamela MA Attorneys issued 6 applications instead of just one.

Should the applicants' legal representatives be mulched with personal costs?

[22] This is not a question Courts are often faced with. Costs orders against legal practitioners are rare, and for good reason. A legal practitioner should be free to represent their client in the best way they deem fit, without fearing their opponent, or even a Court for that matter. Fear of an adverse costs order should a case be lost

should not be a constant thorn in their mind when a legal practitioner presents their client's case.

[23] Ordinarily, when a matter is brought to Court, the losing party will be ordered to pay the costs of the winning party who should not be left out of pocket when it is the other party that either brought or failed to defend a claim against the winning party. Whether a legal practitioner wins or loses, they are still entitled to their costs for representing the client. However, in a situation of a cost order *de bonis propriis*, a Court orders a legal practitioner to pay the costs of the matter out of their own pocket. This power is within a Court's ordinary discretion on the awarding of costs,[92] however this type of costs order is only reserved for the most serious of matters, where a Court wants to show its displeasure at the conduct of a legal representative.[93]

[24] This was explained by the Constitutional Court in *South African Liquor Traders Association and Others v Chairperson Gauteng Liquor Board and Others*,[94] as follows:

> "An order of costs *de bonis propriis* is made against attorneys where a court is satisfied that there has been negligence in a serious degree which warrants an order of costs being made as a mark of the court's displeasure. An attorney is an officer of the court and owes a court an appropriate level of professionalism and courtesy."[95] (Footnote omitted.)

[25] In *Multi-links Telecommunications Ltd v Africa Prepaid Services Nigeria Ltd*,[96] this Division elaborated on the principles relating to an order of costs *de bonis propriis* as follows:

> "Costs are ordinarily ordered on the party and party scale. Only in exceptional circumstances and pursuant to a discretion judicially exercised is a party ordered to pay costs on a punitive scale. Even more exceptional is an order that a legal representative should be ordered to pay the costs out of [their] own pocket. It is quite correct, as was submitted, that the obvious policy consideration underlying the court's reluctance to order costs against legal representatives personally, is that attorneys and counsel are expected to pursue their client's rights and interests fearlessly and vigorously without undue regard for their personal convenience. In that context they ought not to be intimidated either by their opponent or even, I may add, by the court. *Legal practitioners must present their case fearlessly and vigorously, but always within the context of set ethical rules that pertain to them,*

[92] *Stainbank v South African Apartheid Museum at Freedom Park and Another* [2011] ZACC 20; 2011 (10) BCLR 1058 (CC) at para 52.
[93] *Mathimbane and Another v Normandien Farms (Pty) Ltd* [2013] ZALCC 4 at para 27.
[94] [2006] ZACC 7; 2009 (1) SA 565 (CC); 2006 (8) BCLR 901 (CC).
[95] Id at para 54.
[96] [2013] ZAGPPHC 261; [2013] 4 All SA 346 (GNP); 2014 (3) SA 265 (GP).

> *and which are aimed at preventing practitioners from becoming parties to a deception of the court. It is in this context that society and the courts and the professions demand absolute personal integrity and scrupulous honesty of each practitioner.*"[97] (Citation omitted and emphasis added.)

[26] The Court went on to explain the circumstances in which an order of costs *de bonis propriis* can be granted against a legal representative as follows:

> "It is true that legal representatives sometimes make errors of law, omit to comply fully with the rules of the court or err in other ways related to the conduct of the proceedings. This is an everyday occurrence. This does not, however, per se ordinarily result in the court showing its displeasure by ordering the particular legal practitioner to pay the costs from his own pocket. Such an order is reserved for conduct which substantially and materially deviates from the standard expected of the legal practitioner, such that their clients, the actual parties to the litigation, cannot be expected to bear the costs, or because the court feels compelled to mark its profound displeasure at the conduct of an attorney in any particular context. Examples are, dishonesty, obstruction of the interest of justice, irresponsible and grossly negligent conduct, litigating in a reckless manner, misleading the court, and gross incompetent and a lack of care."[98]

[27] In *Fourie and Another v Tropical Winter Trading (Pty) Ltd and Another*,[99] the Court showed its displeasure at a situation where "to the knowledge of the attorney, the deponent deliberately omitted to disclose material facts".[100] In this matter, the attorney was the one who deliberately omitted to disclose any factual basis for the relief sought in the notice of motion because the material information placed in the founding affidavit was evidently false, having being(been) used in previous affidavits in other matters. Before ordering costs, the Court concluded that "it appears to me there is more than mere negligence. There was a deliberate and conscious attempt, if not a reckless one, to conceal information and mislead the court".[101]

[28] The use of identical affidavits, not only in this matter, but those recycled in previous matters involving both Manamela MA Attorneys and Mr Vobi were clearly aimed at misleading the Courts. Whilst Mr Vobi is an advocate, he was however involved in all the matters before us and couldn't consciously go on as if nothing was amiss. Their conduct can only be regarded as deliberate and displayed a lack of care for the interests of their clients and those they cited as respondents. There was also no information placed before this Court explaining how the affidavits were

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[97] Id at para 34.
[98] Id at para 35.
[99] [2023] ZAKZPHC 53; [2023] 3 All SA 429 (KZP).
[100] Id at para 97.
[101] Id at para 99.

commissioned in English when on their purported versions, the applicants only spoke "broken English". This conduct is wholly incompatible with the duty the legal representatives have towards this Court and their clients. We must show our displeasure towards this in the strongest manner. In *Ex parte Minister of Home Affairs and Others; In re Lawyers for Human Rights v Minister of Home Affairs and Others,*[102] the Constitutional Court emphasised that–

> "[l]egal practitioners are an integral part of our justice system. They must uphold the rule of law, act diligently and professionally. They owe a high ethical and moral duty to the public in general, but in particular to their clients and to the courts."[103]

[29] This matter has raised serious concerns regarding the integrity and conduct of both Mr Manamela and Mr Vobi. The result is that this matter must be referred to the Legal Practice Council for further investigation. The State Attorney, who has received every one of the matters involving Manamela MA Attorneys must also be taken to task for their negligence in not realising the repeated use of identical affidavits,[104] and in some circumstances even tendering costs without diligently considering the matters before them. This conduct must be brought to the attention of the Minister to consider whether it is necessary to put measures in place that could prevent such abuse. Lastly, the deliberate placing of false information before this Court and subsequently claiming fees for work not actually done must be brought to the attention of the National Director of Public Prosecutions to decide whether any crimes have been committed.

[30] In the circumstances, the following order is made:

Order

1. Mr Manamela and Mr Vobi are ordered to pay the costs of the main application *de bonis propriis* on scale A.
2. The registrar of this Court is directed to send a copy of this Judgment to the Legal Practice Council, the Minister of Justice and Constitutional Development and to the National Director of Public Prosecutions.

[redacted]

[102] [2023] ZACC 34; 2024 (1) BCLR 70 (CC); 2024 (2) SA 58 (CC).
[103] Id at para 103.
[104] In this matter, the respondents did raise the issue.

D MLAMBO

Judge President of the High Court

Gauteng Division

Appearances

For the Applicants:	S I Vobi; A Nase and T Mdingi instructed by Manamela Attorneys, Pretoria
For the First to Third Respondents:	Hephzibah Rajah instructed by State Attorney, Pretoria
Date of judgment:	29 July 2024