IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

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

SIGNATURE DATE: 21 January 2025

Case No. 2025-432

LAMEEZ LAGARDIEN	First Applicant
DAVID QUIRKE	Second Applicant
JOHN STEPHEN CLIFFORD	Third Applicant
and	
MINISTER FOR HOME AFFAIRS	First Respondent
DIRECTOR-GENERAL: DEPARTMENT FOR HOME AFFAIRS	Second Respondent
ALL IMMIGRATION OFFICERS ON DUTY AT OR TAMBO INTERNATIONAL AIRPORT	Third Respondents

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JUDGMENT

WILSON J:

1 The second and third applicants, Mr. Quirke and Mr. Clifford, are Irish nationals. They each applied to the South African Embassy in Dublin for a

multiple entry visa under section 11 (2) of the Immigration Act 13 of 2002. The Embassy issued visas to both Mr. Quirke and Mr. Clifford on 30 October 2024. The visas were set to expire on 1 February 2025. Mr. Clifford and Mr. Quirke travelled to, and were permitted to enter, South Africa on 7 November 2024. The purpose of their visit was to train South Africans working at the Gqeberha seaport in the construction of large cranes used to load and offload shipping containers.

2 Mr. Quirke and Mr. Clifford left South Africa on 19 December 2024, to return to Ireland for the Christmas holidays. On 4 January 2025, the two men flew back to Johannesburg, but immigration officials at the OR Tambo International Airport refused to clear them for entry into South Africa. They were held at the airport pending deportation to the Republic of Ireland.

3 On the morning of Sunday 5 January 2025, the first applicant, Ms. Lagardien, acting on behalf of Mr. Quirke and Mr. Clifford, applied to me for an order releasing both men from detention. Exercising my well-known common law powers to enquire into the lawfulness of the detention of any person within my jurisdiction (see, for example, *Principal Immigration Officer v Narayansamy*, 1916 TPD 274 at 276, *Ganyile v Minister of Police* 1962 (1) SA 647 (E) at 654 and *Arse v Minister of Home Affairs* 2012 (4) SA 544 (SCA) at paragraphs 5 and 10), I ordered that Mr. Quirke and Mr. Clifford be released to present themselves in my urgent court at 10am on Monday 6 January 2025.

4 On that day, Mr. Nelani, who appeared for the respondents, was unable to dispute that Mr. Quirke and Mr. Clifford had, on the face of it, each arrived in South Africa on a valid multiple entry visa, which they had used at least once

before to enter the country lawfully. Mr. Nelani nonetheless assured me that his instructions were that the visas were “fraudulent”, and were as a result not valid for travel. Mr. Nelani was unable, however, to present any evidence of this.

5 At that stage, Mr. Quirke and Mr. Clifford were scheduled to leave South Africa on or shortly before 31 January 2025. Accordingly, I postponed their application to 20 January 2025 in order to allow the respondents to file an answering affidavit. I ordered that Mr. Quirke and Mr. Clifford be released from detention, that they not be deported, and that their visas be treated as valid pending that date.

6 On 14 January 2025, the first respondent, the Minister, deposed to an affidavit in opposition to the application. His affidavit did not really address the fact that Mr. Quirke and Mr. Clifford both arrived at the airport with valid multiple entry visas that would have allowed them to remain in South Africa until 1 February 2025. It was instead alleged that two other visas, purporting to extend the multiple entry visas issued in Dublin, had been fraudulently issued to the two men. It was the inauthenticity of these visas that led to Mr. Quirke’s and Mr. Clifford’s detention, and to the decision to deport them.

7 Attached to the Minister’s affidavit was a letter from the South African Embassy in Dublin. That letter confirmed the validity of the visas issued on 30 October 2024. However, the letter alleged that the extensions to these visas were not issued in Dublin and are “fake”.

8 The Minister also alleged that Mr. Quirke and Mr. Clifford were never detained by the respondents, but were rather placed in the custody of the airline that

conveyed them to South Africa. This strikes me as far-fetched, and Mr. Nelani conceded that, had Mr. Quirke and Mr. Clifford attempted to leave the airport, immigration officials would have prevented them from doing so. That concession having been made, there is no serious dispute that Mr. Quirke and Mr Clifford were in fact detained by the respondents at the airport.

9 It appears to be common cause that both the valid original visas, and the allegedly “fake” extensions, were inserted into Mr. Quirke’s and Mr. Clifford’s passports. It appears that the decision to detain and deport the two men was taken on the basis that the extensions were “fake”, but without having any regard to the fact that the original visas were valid, and would remain valid until 1 February 2025.

10 In their replying affidavit, Mr. Quirke and Mr. Clifford allege that the extension visas had been obtained for them by those responsible for the training project in which they were participating. They say that they had no reason to believe that they were inauthentic, but they accept that, equally, they have no basis on which to contest the Minister’s version that the visas are “fake”. Beyond that, neither party deals in any detail with how the extension visas were obtained. Indeed, neither party placed the extension visas before me.

11 Perhaps accepting that discretion is the better part of valour, and fearful of prosecution for relying on the apparently “fake” visa extensions, Mr. Quirke and Mr. Clifford have now decided to leave South Africa, and to take up the issue of their immigration status from there. The respondents apparently permitted the two men to exit South Africa under their own steam on 19 January 2025.

12 For these reasons, by the time the matter was called before me on 20 January 2025, Mr. Quirke and Mr. Clifford had left the jurisdiction, and the merits of their application had become moot. Mr. Nelani and Mr. Simpson, who appeared for the applicants, presented me with an agreed draft order. The draft had two clauses. The first clause stated that "The application is withdrawn". The second clause provided for the applicants to pay the respondents' costs on the party and party scale.

13 An order that an "application is withdrawn" is neither competent nor proper. Courts do not order litigants to withdraw applications. The withdrawal of an application is a unilateral act which may or may not be accompanied by a tender for costs.

14 This was, in substance, what Mr. Simpson told me the applicants wished to do: withdraw the application and tender the respondents' costs. Ultimately, however, Mr. Simpson said that he was content to leave the question of costs in my discretion. For his part, Mr. Nelani pressed for a costs order on two bases: first that the applicants had previously agreed to pay costs, and second that the application should never have been brought, given the invalidity of the extension visas.

15 I reject the first submission. It is well established that courts are not bound by extra-curial agreements to pay costs, and that costs remain in the discretion of the court hearing the matter. While a court will normally give effect to a contract to pay costs freely entered into, it may, in the exercise of its discretion, and having regard to the nature of the litigation before it, decide to award costs on a scale other than the scale agreed between the parties, or to award no

costs at all (*Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA), paragraphs 25 and 26).

16 The decisions of the Supreme Court of Appeal and the Constitutional Court in *Road Accident Fund v Taylor* 2023 (5) SA 147 (SCA) ("*Taylor*") and *Mafisa v Road Accident Fund* 2024 (4) SA 426 (CC) ("*Mafisa*") do not alter this position, since they address only the question of whether a court is entitled to interfere with the terms of an agreement settling the "merits" of a dispute (see *Mafisa*, paragraph 42 and *Taylor*, paragraph 51). Neither *Mafisa* nor *Taylor* fetter a court's discretion to award costs as it sees fit, even if the parties have agreed that a particular costs order should be made.

17 Still, a court's costs discretion must be exercised judiciously, with the position generally being that costs should follow the result. Where a court decides that costs should not follow the result, it should give reasons for that conclusion.

18 I do not think it is just or fair to order costs against Mr. Quirke and Mr. Clifford merely for questioning the basis of their detention, in circumstances where they both arrived in South Africa in possession of a valid multiple entry visa, and it has not been established that they had any notion that the visa extensions in their passports might have been inauthentic. Indeed, on the facts of this case, it seems absurd to suggest that the two men would have knowingly allowed inauthentic visas to be put into their passports in circumstances where everyone accepts that they each had a perfectly valid multiple entry visa that would have allowed them entry to South Africa when they presented themselves at the immigration kiosk.

19 Accordingly I order that –

19.1 The interim interdict contained in paragraph 3 of this court's order dated 6 January 2025 is discharged.

19.2 Each party will pay their own costs.

S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 21 January 2025.

HEARD ON:	6 and 20 January 2025
DECIDED ON:	21 January 2025
For the Applicants:	J Simpson Instructed by Simpson Inc
For the Respondents:	S Nelani Instructed by the State Attorney

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