

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 077702/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
DATE	SIGNATURE
4/3/25	[Redacted Signature]

In the matter between:

ABUDULLAHI MUMIN AHMED

AND ONE ANOTHER

Applicants

and

THE REFUGEE STATUS DETERMINATION OFFICER

AND FIVE OTHERS

Respondents

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 04 March 2025.

Summary: A declaratory relief is not appropriate when the legal position is clear. An appropriate relief to compel a functionary to exercise statutory power is a

mandamus. Where there is no evidence of refusal to exercise a statutory power, a Court is not empowered to issue a *mandamus* since a litigant may approach a functionary to exercise statutory power. Held: (1) The applicants are directed to approach the repository of statutory power for the exercise of the statutory powers. Held: (2) The review application is postponed *sine die* since it is not ripe for a hearing. Held: (3) There is no order as to costs.

JUDGMENT

MOSHOANA, J

Introduction

- [1] The present application served before me unopposed. The notice of motion sought a hybrid order. On the one hand, a PAJA review was sought against the decision of the Refugee Status Determination Officer (RSDO) refusing to grant a refugee status. On the other hand, an order was sought to compel the Refugee Reception Officer (RRO) to exercise statutory powers contemplated in section 22(1) of the Refugees Act.
- [2] On the day of the hearing, counsel for the applicants presented a prepared draft order, which effectively seeks an order to compel the RRO to issue an asylum visa pending the outcome of a review application, which was to be postponed due to lack of ripeness (record in terms of rule 53 not provided as yet). This Court was not satisfied with the prepared draft order and indicated that its judgment shall be reserved for proper consideration of the matter.

Background facts

- [3] Owing to the approach this Court takes at the end, it is not necessary to recount all the facts of the matter. The salient facts of this matter may, for the purpose of this judgment, be stated as follows. The second applicant is a Somalian. In the present application, he is assisted by his son, the first applicant before me. As far back as June 2017, the second applicant applied for asylum status. The

application was refused. Disenchanted by the refusal, he sought an internal appeal/review of the refusal. The appeal/review was also dismissed. An application seeking a judicial review was launched. That review application is not ripe for a hearing, since no records were made available as yet.

The sole issue to be determined.

- [4] Section 22(1) of the Refugees Act, amongst others, provides that the RRO must, pending the outcome of an application in terms of section 21(1), issue to the applicant an asylum seeker permit. This section was a subject of judicial interpretation by the highest Court of the land. A split decision was issued by the Court in the matter of *Saidi and Others v Minister of Home Affairs and Others (Saidi)*¹. The majority judgment in *Saidi* concluded that the outcome contemplated in the section includes an outcome of a PAJA review. As such, it was declared that pending an outcome of the PAJA judicial review, RRO is empowered to extent the asylum permit.
- [5] Thus, the question to be determined is whether this Court is empowered to issue an order for the issuing of a permit pending the finalisation of the PAJA review. Differently put, is this Court empowered to perform, as it were, the statutory function of the RRO in the absence of the RRO having been approached and refused to exercise the statutory power.
- [6] The majority in *Saidi*, had the following to say: -

“[46] I do not propose making a specific order for issuing of extensions of the applicants’ temporary permits. Instead, I propose making declaratory orders in accordance with what I have held. It is *left to the applicants to again approach the RRO and for the RRO to act in accordance with this judgment and the declaratory orders.*”

- [7] A declaratory order, being a discretionary one, it should not issue where the legal position has been clarified since it shall be academic to do so. To my mind, *Saidi*

¹ 2018 (4) SA 333 (CC)

has clarified the legal position, as such, there is no need to clarify that position again.

Evaluation

- [8] As indicated above, the real question to be determined by this Court is whether this Court can order that a temporary permit must issue. The statutory duty to issue permits or extend them is that of the RRO. Such simply implies that the applicants must approach the RRO, armed with the *Saidi* judgment and request the RRO, to exercise his or her statutory powers.
- [9] A *mandamus* is a legal remedy available to compel a functionary to perform its statutory powers. However, before a party may approach a Court for a *mandamus*, there must be evidence that the relevant functionary had refused to exercise the statutory power. In the papers before me, there is no evidence that the RRO was approached by the applicants for the purposes of exercising the statutory power contemplated in section 22(1) of the Refugees Act. In *Saidi*, the RRO was approached and she took a view that she had no power to extend a temporary permit. It was for that reason that the majority judgment, after clarifying that the RRO has those powers, stated that the applicants must approach the RRO again.
- [10] In my view, a Court cannot usurp the statutory function of the RRO. Also, it can only order the RRO to perform the statutory function where there is clear evidence of refusal to exercise the power. In *casu*, an appropriate order to issue is one which directs the applicants to approach the RRO for the exercise of the power contemplated in section 22(1) of the Refugees Act. As such, this Court is not prepared to adopt the draft order presented by the applicants.
- [11] For all the above reason, this Court is prepared to issue the following order.

Order

1. The review application is postponed *sine die*.

2. The applicants are directed to approach the relevant RRO and request him or her to exercise the powers contemplated in section 22(1) of the Refugees Act.
3. There is no order as to costs.



GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Applicants:	Ms A Coetsee
Instructed by:	Brazington & McConnell, Pretoria
Date of the hearing:	03 March 2025
Date of judgment:	04 March 2025