

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 43210/2019

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>6/3/2025</u> 	
DATE	SIGNATURE

In the matter between:

JACQUES NGENDAKURIYO

Applicant

And

THE MINISTER OF HOME AFFAIRS

First Respondent

THE DIRECTOR GENERAL, DEPT. OF HOME AFFAIRS

Second Respondent

THE REFUGEE STATUS DETERMINATION OFFICER

Third Respondent

THE STANDING COMMITTEE FOR REFUGEE AFFAIRS

Fourth Respondent

JUDGMENT

MAHOMED J

- [1] This is an application to review the decisions of the Respondents who rejected the Applicant's application for asylum. The Applicant applied in terms of s24(3)(b) of the Refugee Act 130 Of 1998 and seeks relief in terms of section 6 of the Promotion of Administrative Justice Act 3 of 2000, when he argued, in the main, that the interview procedure was unfair, and that the Respondent relied on irrelevant considerations. The Respondent opposed the application and submitted that the Applicant failed to meet the requirements of section 3(a) and (b) of the Refugee Act.
- [2] Mr. Ndungu for the Applicant contended that his client was denied protection in terms of the *audi alterum* principle when the authorities interviewed him. The Applicant alleged, inter alia, that he was never afforded sufficient time to put his application forward, he was never presented with information adverse to him to be able to challenge it, he was verbally abused by the Refugee Status Determination Officer (RSDO), the officer was biased and unreasonable when he rejected the application and only after having made his decision, he invited the Applicant to bring any further information he might have to support a change in his decision.
- [3] Mr. Ndungu reminded the court that the Applicant was abducted and taken in for military training, when he escaped from the training camp and made his way to the Republic of South Africa, he feared for his safety and does not believe he will be safe again in Rwanda. He addressed the court on the accepted principles of *refoulement* and argued that even if there was a perception that the person would be persecuted in any country if he returns, he cannot be sent or forced to go to the country.
- [4] The respondents argued that the application is fraudulent, they contended that there is no conscription for military service in Rwanda and submitted that the Applicant's version on forced military training camp must be rejected. Advocate Sibeko for the respondents argued that the RSDO researched the policy of the Rwandan government and noted that the Applicant was misleading and fraudulent when he put forward his reasons for seeking asylum. Counsel contended that this version is well known to the authorities and must be rejected. Furthermore, counsel pointed out inconsistencies in the Applicant's responses in

the application form he completed and noted that the errors were commonly known, from other applications. She submitted that the applicant was counselled or coached by other asylum applicants who may have been successful in the past.

- [5] Ms Sibeko on behalf of the respondents argued that the Applicant's version is not corroborated, and the Respondents cannot simply accept his version, and grant him asylum, contending that anyone can enter the country and follow the same tactics. She submitted that the Respondent's decision was justified and lawful and further contended that the Applicant was afforded an opportunity to challenge the issue of conscription for military service and invited him to make written representations within two weeks of its rejection letter, in regard to his claims of conscription, she argued that fact remains unchallenged. It was contended that the Applicant's fear of persecution is unfounded, it must be rejected and argued that the officer in charge is a senior officer who was fully competent to reject the application on the same day. He could make his decision on the facts before him, he has dealt with similar applications many times before.
- [6] Counsel for the Respondents further argued as the Applicant has not submitted any further representations regarding Rwanda's military service policy, in terms of the rule in *Plascon Evans*, the Respondent's version must be accepted. It was further, contended that a review is unnecessary, as the Applicant failed to demonstrate that the conduct of the officer in charge was contrary to the provisions of the enabling Act.
- [7] In reply counsel for the Applicant submitted that the inconsistencies are minor and nothing much turns on the main issue, his client was never "presented" with information, the officer merely "explained" the reasons for rejection of the application. It was argued that if the information were presented to the Applicant, he would have had an opportunity to process the adverse facts and researched around the decision taken. The applicant would have been in a stronger position to present this complete version. Mr Ndungu further contended that the document the Applicant presented on the atrocities committed by the Rwandan Government on its people was rejected out of hand, the third Respondent failed to see the substance of the application, as the violence the people are subjected

to induces real fears and that his client has indeed suffered. He argued further argued that, in any event, the third Respondent was already functus when the Applicant returned with the new information, the department had already made its decision. Mr Ndungu submitted that there were gross irregularities in the interview process and on this ground alone the application must succeed.

Mr Ndungu referred the court to the judgment of the SCA in *Somali Association of South Africa and Others v the Refugee Appeal Board and Others*¹, in which the court stated that the Refugee Status Determination Officers (RSDO) must be *scrupulous in observing a fair procedure*, and must *assist the asylum seeker at the outset and then to gather as much evidence to obtain a full picture on which a decision can be taken*. The court reiterated that the interview process must observe the important principle of *audi alteram partem*.

JUDGMENT

- [8] Counsel for the applicant argued that his client did not know of the case against him, he was not presented with the facts against him. In *Gavric v The Refugee Status Determination Officer, Cape Town, and Others*² the Constitutional Court warned, *"a person can only be said to have a fair and meaningful opportunity to make representations if the person knows the substance of the case against him."*
- [9] Having regard to the conspectus of the evidence before me, I am of the view that the Applicant was not afforded an opportunity to put his complete case before the RSDO, the evidence is that the officer focused on the Applicants forced military conscription as a reason, when in fact the Applicant tried to present his full version on the second attempt, that he was fearful of extreme violence and atrocities perpetrated on the Rwandan citizenry.
- [10] The respondent's failed to observe proper procedures the RSDO did not consider the full facts when it rejected the application on the day. I disagree with the reasons advanced by the Respondent's counsel on the fact that the officer is fully

¹ (585/2020) [2021] ZASCA 124, [2021] 4 All SA 731 (SCA), 2022 (3) SA 166 (SCA) (23 September 2021)

² (CCT 217/16) [2018] ZACC 38, 2019 SA 2 1(CC)

qualified to make the decision, simply because he has been doing this job for a long while and has heard the same version several times before. I am of the view that he must also ensure that he has the full facts before him, he did not do so, when he decided to reject the application. According to the UN Guidelines on Refugees³, states

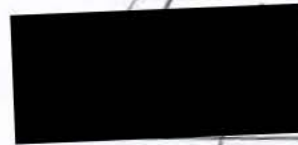
".. the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at this disposal to produce the necessary evidence in support of the application."

- [11] The RSDO is duty bound to ensure that he or she is in possession of all relevant facts relating to the application before a decision is taken. In my view relevant facts must include current research, the facts at hand as well as a meaningful interview, which affords the applicant the opportunity to "present" his case. In casu, the evidence that he was verbally abused from the beginning remains unchallenged, and if correct, the officer could not have complied with the basic procedural requirements to assess the application.
- [12] I am of the view that the Applicant must be given another opportunity before another RDSO, to ensure complete independence and impartiality. The evidence is that the RDSO refused to hear the Applicant and therefore, he is unlikely to have heard the submissions in full, there may well be additional facts for consideration on the next interview.
- [13] Mr Ngundu alerted the court to the fact that the third Respondent simply adopted the findings of the first Respondent, as there was no evidence in its report of any independent thought or any evidence that the decision maker had applied his or her mind and therefore, therefore decision stands to be reviewed.
- [14] Regarding costs the applicant is substantially successful, and I see no reason to deviate from the usual approach that the costs follow the suit.

³ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status par 196

[15] Accordingly, I make the following order:

1. The matter is remitted to the third Respondent, for a rehearing of the Applicant's application for refugee status, within three (3) months of this order.
2. The first and second Respondents are to pay the costs of this application on scale B, the one paying the other to be absolved.



MAHOMED J
JUDGE OF THE HIGH COURT
PRETORIA

Date of hearing: 31 January 2025

Date of Judgment: 06 March 2025

For the Applicant: Mr. K Ndungu instructed by Mr Kimani Ndungu

For the Respondents: Adv. N Sibeko instructed by State Attorney, Pretoria