

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 11106/2024

In the matter between:

Z M DOGISO

APPLICANT

and

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE DIRECTOR GENERAL: DEPARTMENT OF
HOME AFFAIRS**

SECOND RESPONDENT

**THE REFUGEE STATUS DETERMINATION
OFFICER**

THIRD RESPONDENT

**THE STANDING COMMITTEE FOR REFUGEE
AFFAIRS**

FOURTH RESPONDENT

**THE REFUGEE APPEALS AUTHORITY OF
SOUTH AFRICA**

FIFTH RESPONDENT

CASE NO: 15223/2024

In the matter between:

S M ABIYO

APPLICANT

and

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE DIRECTOR GENERAL: DEPARTMENT OF
HOME AFFAIRS**

SECOND RESPONDENT

THE REFUGEE RECEPTION CENTRE - DURBAN

THIRD RESPONDENT

CASE NO:15224/2024

In the matter between:

T J HAWANDO

APPLICANT

and

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE DIRECTOR GENERAL: THE DEPARTMENT OF
HOME AFFAIRS**

SECOND RESPONDENT

THE REFUGEE RECEPTION CENTRE – DURBAN

THIRD RESPONDENT

CASE NO. D15226/2024

G M EYAKO

APPLICANT

and

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE DIRECTOR GENERAL: DEPARTMENT OF
HOME AFFAIRS**

SECOND RESPONDENT

THE REFUGEE RECEPTION CENTRE - DURBAN **THIRD RESPONDENT**

CASE NO. D15311/2024

M T KUMALO

APPLICANT

and

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE DIRECTOR GENERAL: DEPARTMENT OF
HOME AFFAIRS**

SECOND RESPONDENT

THE REFUGEE RECEPTION CENTRE - DURBAN **THIRD RESPONDENT**

CASE NO. D15485/2024

A L ACHIKO

APPLICANT

and

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE DIRECTOR GENERAL: DEPARTMENT
OF HOME AFFAIRS**

SECOND RESPONDENT

**THE REFUGEE STATUS DETERMINATION
OFFICER**

THIRD RESPONDENT

**THE STANDING COMMITTEE FOR REFUGEE
AFFAIRS**

FOURTH RESPONDENT

**THE REFUGEE APPEALS AUTHORITY OF
SOUTH AFRICA**

FIFTH RESPONDENT

CASE NO. D15526/2024

S K AHMED

APPLICANT

and

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE DIRECTOR GENERAL: DEPARTMENT OF
HOME AFFAIRS**

SECOND RESPONDENT

THE REFUGEE RECEPTION CENTRE - DURBAN **THIRD RESPONDENT**

JUDGMENT

P WALLIS AJ

[1] In the motion court on 17 April 2025, seven matters (five for first appearance and two adjourned matters) cited the Minister of Home Affairs together with various functionaries and Boards in that government department as respondents. In all of those applications, the applicants claimed to be refugees from Ethiopia.

[2] Even taking into account that the week of 7 to 11 April was recess with limited rolls, in the period between 7 April 2025 and 23 April 2025 thirty six similar matters appeared on the rolls. An analysis of the rolls which are easily obtainable online for the year 2025 reflects that the Minister of Home Affairs had been the respondent approximately two hundred and fifty times by the middle of April 2025. Some of these matters may be of a different form but the surnames of each of the vast majority of the applicants appear to be Ethiopian in origin.

[3] Each individual application, taken at face value, tells a story of hardship, pain and suffering that lies far beyond the comprehension of a motion court judge sitting in Durban. However, considered collectively, the procedural irregularities and the evidential anomalies (particularly taking into account the standard form affidavits) give rise to a grave concern that only limited reliance (if any) can be placed upon the founding affidavits.

[4] Mark Twain is reported to have said that history does not repeat itself but it rhymes. These applications are by no means the first set of similar applications to arrive, as if by conveyor belt, in bulk on the motion court rolls of this court¹ or on the motion court rolls of other divisions.²

¹ *Cele v The South African Social Security Agency and 22 Related Cases* 2008 (7) BCLR 734 (D); *Sibiya v Director General: Home Affairs and Others* [2009] 3 All SA 68 (KNP)

² *Lembore and Others v Minister of Home Affairs and Others* [2024] 2 All SA 113 (GJ); *Bakala v The Minister of Home Affairs*, unreported case 2024-064194 (GPJ)

[5] In all of those matters the respondent is a government department (either Social Welfare or Home Affairs). These particular refugee matters have other similarities to the rote practice recorded in the judgments referred to above.

[6] As far as I can ascertain, two firms of attorneys represent the majority of these types of applicants, and two counsel move the overwhelming majority of the applications. As I will set out, the affidavits are in largely standard form and in respect of one category of affidavits there are substantial concerns about the independence of the commissioners of oaths. None of the affidavits make out a case for the entirety of the relief that is sought. In many respects, the relief sought is either legally incompetent or a gross overreach in the manner in which it is framed.

[7] Notwithstanding the defects which I will particularise below, the State Attorney (representing the Minister and other functionaries) adopts a largely reactive approach which seldom in my experience results in an appearance. Rather the bulk of the relief (even if unjustified) is consented to and, thereafter there is either consent to scale A costs, or the applicants' counsel is tasked simply with making representations on costs on an unopposed basis.

[8] I am aware that different judges in this division have raised different concerns regarding the standard form application papers. Many of the concerns overlap with what I set out below in this judgment. Indeed, when I raised the matters set out in this judgment with counsel appearing it was apparent that many of the issues were not being raised for the first time. In that context it is immensely concerning that the affidavits continued to be placed before court without any supplementation and that consent orders continued to be moved.

Competing interests

[9] Almost two decades ago the Constitutional Court in *Union of Refugee Women and Others v Director, Private Security Industry Regulation Authority and Others*³ had cause to recognise expressly the vulnerability of refugees. That court noted:

"[28] Refugees are unquestionably a vulnerable group in our society and their plight calls for compassion. As pointed out by the applicants, the fact that persons such as the applicants are refugees is normally due to events over which they have no control. They have been forced to flee their homes as a result of persecution, human rights violations and conflict. Very often they, or those close to them, have been victims of violence on the basis of very personal attributes such as ethnicity or religion. Added to those experiences is the further trauma associated with displacement to a foreign country."

[10] The Constitutional Court went on to note that South Africa's history had required many South Africans to seek refuge outside the borders of this country. The same court more recently reflected upon the noble aims and underpinnings of the Refugees Act⁴ in the matter of *Ruta v Minister of Home Affairs*.⁵

[11] Unquestionably a court should not be eager to place impediments in the way of legitimate applications instituted for the benefit of a vulnerable group such as refugees merely because it may be more convenient to do so. However, the volume of near identical applications must also be viewed within the holistic boundaries of the wider justice system.

[12] Regrettably, the resources of the judiciary are not infinite. It might fairly be commented that the demands upon the judiciary arising in both the criminal

³ 2007 (4) SA 395 (CC)

⁴ Act 130 of 1998

⁵ 2019 (2) SA 329 (CC) at [24] – [26]

law sphere and in the broader civil sphere exceed the human capacity to meet those demands. This is not a comment upon any of the individuals who in my experience tirelessly seek to discharge their duties for the benefit of litigants. However, the motion court roll in this division has capacity to accommodate only a fixed number of matters per day. For every matter that is placed upon a particular roll there are any number of others that must be placed upon the roll on a later date.

[13] In the motion court on 17 April 2025 adjournment dates for even the most straightforward matters were available not earlier than 18 August. This delay of four months (irrespective of the nature of the matter) has a concomitant delaying effect on opposed applications and on trials (since interlocutory matters such as discovery are dealt with in the same court). As an integrated system the delays incentivise practitioners and litigants to circumvent or take advantage of those system level constraints. This has led to practitioners contending for “semi-urgency” (a roll that does not exist in this division) where what is really contended is simply that the matter deserves a set down within the periods contemplated in the Uniform rules. Conversely, recalcitrant debtors are incentivised to advance inevitably unsustainable defences merely in order to “buy time”. These behaviours have the effect of increasing pressure upon the urgent roll and the opposed motion rolls. Those simple examples reflect that bulk litigation of the form concerned in this judgment impacts not just upon the right of access to court of the applicants but also upon the rights of access to court of other litigants. If the applications ought not properly to be advanced on the roll then they should be removed in order to facilitate other matters being heard earlier than they otherwise would be.

[14] Ultimately, I adopt the position that while refugees are a vulnerable group deserving of protection (and while that protection may in appropriate circumstances include the relaxation of court rules, procedures and evidential requirements) the system of justice as a whole, and all the participants in it,

are best served by a proper application of the traditional rules and procedures of this court.

[15] Against that background, I turn now to consider the specific applications that served before me on 17 April 2025. It is appropriate to conduct that consideration by reference to specific firms of attorneys. This is because of the template nature of the applications and because specific deficiencies are more prevalent in the applications produced by each of the different firms.

Roy Singh Attorneys

[16] The applications instituted where the applicants' attorneys are Roy Singh Attorneys are of two forms. Most prevalent before me were applications where it was alleged that the applicants have been prevented from applying for an asylum visa at the refugee office in Moore Road, Durban. The second category of applications (cases 015485/2024 and 011106/2024) seek review relief to set aside decisions rejecting applications for refugee status.

[17] I deal first with the general deficiencies that are common to both categories of application.

Commissioning of affidavits

[18] Of all the affidavits that I have seen where the application emanates from the offices of Roy Singh Attorneys, there are only two commissioners that are involved in the application. These are Mr Sandeep Singh and Ms Xolile Ngcobo. Both of these commissioners hold out that they are practising attorneys situated at 555 Lilian Ngoyi Road, Morningside, Durban.

[19] When two of the matters first appeared before me on 7 April 2025, there were certain indicators that the commissioning of the affidavits required

additional scrutiny. Consequently, after raising concerns with counsel regarding the nature of the premises at which the commissioning was said to have been performed, as well as certain public representations by the commissioners (which are dealt with below) I issued an order returnable on 17 April, that included the following provisions:

"5. The applicant is directed to deliver a supplementary affidavit explaining whether the commissioner of oaths and attorney of record shares premises and whether the commissioner of oaths is registered with the LPC under Roy Singh Attorneys, on or before 15 April 2025.

6. The applicant shall further deliver a new confirmatory affidavit by Luvo Spablwe Mtolo, setting out his details and a full explanation of what transpired on 11 November 2025, on or before 15 April 2025."

[20] In hindsight, the order might have been more amplified but in the context of the exchange with counsel, I am satisfied that it was clear what the concerns were.

[21] Two affidavits were furnished consequent upon that order. The first affidavit, in the name of Mr Rajesh Singh (who I understand to be the attorney practising under the name and style Roy Singh Attorneys), reflects that the articles of Luvo Spablwe Mtolo ("Mtolo") were terminated on 31 March 2025 forthwith because he was ostensibly directing clients to different attorneys. The contents of this affidavit will become somewhat more relevant below. A letter attached to that affidavit reflects that the sole proprietor of Roy Singh Attorneys is Mr Rajesh Singh. The supplementary affidavit for Ms Ngcobo reflects that she is a professional assistant for RS Attorneys Inc practising at 555 Windermere Road (the previous name of Lilian Ngoyi Road).

[22] No affidavit was furnished in the name of Mr Sandeep Singh.

[23] The LPC records reflect:

- (a) Both Mr Sandeep Singh (Partner/Director) and Ms Xolile Ngcobo (Associate) are registered at the firm RS Attorneys Inc
- (b) Also registered as a Partner/Director at the same firm is Mr Rajesh Singh

[24] This is in contrast to the publicly accessible LinkedIn profiles of both Mr Sandeep Singh and Ms Xolile Ngcobo. Both of these individuals reflect in their LinkedIn profiles that they are attorneys practising at Roy Singh Attorneys.

[25] Additionally, public records in respect of the property situated at 555 Lilian Ngoyi Avenue establish that:

- (a) the property has the appearance of a residential property – it is situated in a largely residential area where various light commercial operations also take place – and none of the available Google street view photographs reflect any branding on the outside of the property;
- (b) a Google search of the property does not yield any associated businesses;
- (c) because of the age of the property, proposed alterations to the property must include publication and consideration of proposed building plans by the South African Heritage Resources Agency. The plan for this property dated 2022 reflects a residential property (including bedrooms, lounges, balconies and so forth) and reflects that the owner of the property is Trada Investments (Pty) Ltd (“Trada Investments”);
- (d) CIPC records reflect that the director of Trada Investments is Ms Ashikka Singh; and finally
- (e) in seeking Amafa approval (which for these purposes plays the same role as SAHRA but for the province of KwaZulu-Natal), on Thursday 28 September 2023 Mr Rajesh Singh represented Trada Investments.

[26] The effects of the facts set out above, coupled with the persistent use of the same commissioners of oaths, gives rise to a substantial concern that the commissioners are not independent of the applicants' attorneys.

[27] This was the concern that I originally raised in the Motion Court when I granted the original Orders. Perhaps there is a different explanation for the facts above (I accept that in this province 'Singh' is a relatively common name not necessarily denoting a close familial connection) but then I would have expected full affidavits to be furnished rather than terse ones.

[28] Reflecting upon the purpose behind commissioning of affidavits in applications, it seems to me to be akin to a form of delegation of responsibility. In trial proceedings (or indeed in divorce proceedings in the motion court) it is the Court's function to administer an oath to tell the truth and to satisfy itself that the party giving evidence is who that party says they are. Given the manner in which affidavits are prepared it is administratively necessary that those two functions are performed by an independent third party.

[29] Regulation 7(1) of the regulations governing the administering of an oath or affirmation⁶, which regulations were promulgated pursuant to the Justices of the Peace and Commissioners of Oaths Act⁷, provides:

"A commissioner of oaths shall not administer an oath or affirmation relating to a matter in which he has an interest."

[30] In contrast to certain of the other regulations, the contents of regulation 7(1) are peremptory and not merely directory.⁸

⁶ GNR 1258 of 21 July 1972

⁷ No. 16 of 1963

⁸ *Royal Hotel, Dundee and Others v Liquor Licensing Board*, Area No. 26 1966 (2) SA 661 (N)

[31] Self-evidently, it is inappropriate (and indeed impermissible) for an attorney to commission an affidavit where they are also the attorney for the party.⁹

[32] The relevant authorities, and their underpinnings, are collected in the judgment of *Pickering J* in the matter of *Radue Weir Holdings Ltd t/a Wiers Cash and Carry v Galleus Investments CC t/a Bargain Wholesalers*.¹⁰

[33] In *Radue Holdings*, *Pickering J* was dealing with whether it was permissible for an attorney who practised "in association with" the applicant's attorney to commission an affidavit. In reaching the conclusion that it was impermissible for an attorney acting in association with the applicant's attorney to commission an affidavit, *Pickering J* held:

"It seems clear to me that by entering into an association the attorneys have established some sort of formal relationship with each other in consequence whereof their respective officers are to some extent connected. In my view, the fact that the ambit of such relationship might differ widely from case to case is not of importance in the context of this case. What is of importance is that the attorneys, by entering into such association, have obviously agreed that some mutual benefit in relation to the conduct of their practices be derived by each from their association. Were this not so no purpose would be served thereby. By reason of that association it can therefore ordinarily be expected that each is concerned to some extent with the interests of the other. That being so, it cannot be said, in my view, that the office of the one attorney is entirely independent of the office of the other or that the one attorney is completely impartial and unbiased in relation to the affairs of the other. *Prima facie*, therefore, the requirement of complete independence is lacking. In these circumstances an attorney practising in association with another attorney has an interest such as would preclude him or her from functioning as a commissioner of oaths in respect of an affidavit drafted by the other attorney."

⁹ *Papenfus v Transvaal Board for the Development of Peri-Urban Areas* 1969 (2) SA 66 (T) at 69 H – 70 A

¹⁰ [1997] 2 All SA 165 (E)

[34] That conclusion appears to me self-evidently to be correct. I would however go further. There is no evidence before me that indicates, even *prima facie*, that there is a pecuniary relationship or a formal "association" between the firm employing the commissioners and the applicants' attorneys. An enquiry into whether that is the case is beyond the ambit of this judgment and the investigative powers of the court. However, it appears to me clear that the relationship itself, even if it falls short of a formal commercial relationship, is so connected and intertwined as to lead necessarily to the inference that the commissioner is not independent of the applicant's attorney. I would hold on these facts that, even in the absence of a pecuniary interest, the commissioning in this instance is inconsistent with the peremptory requirements in regulation 7(1).

[35] An affidavit commissioned in contravention of regulation 7(1) is not admissible as evidence. The effect then is that the relief claimed in the notices of motion cannot be justified because there is no evidence to support it.

Interpretation of Evidence

[36] Each of the applications submitted by the offices of Roy Singh Attorneys is accompanied by a standard form confirmatory affidavit in the name of Cosmos Gebre Michael ("Mr Michael"). Those affidavits (excluding the identification portion and the undertaking to give truthful evidence) read as follows:

"2.

2.1 I hereby wish to confirm that I am a sworn in court interpreter and fully am aware of my responsibility as an interpreter to ensure that I interpret the information accurately and correctly.

2.2 I hereby confirm that I was present on the [insert date] to interpret for the applicant and the attorney on record at the attorney's office address 24 Beachgrove, Durban, Roy Singh Attorney.

2.3 I confirm that I interpreted from English to Amharic and Amharic to English.

3. I have attached my certificate of being an interpreter marked as 'CGM01'."

[37] The first point to be made is that the "certificate" said to be attached is not a certificate at all. Instead, it is a registration as a foreign interpreter on the provincial database of the Department of Justice. The document includes the following provision:

"Your attention is drawn to the department prescripts and internal control measures in as far as it relates to the services rendered. The terms and conditions of this offer are subject to a positive verification of your qualifications and should the verifications outcome be negative the offer will be retracted with immediate effect."

[38] No evidence is introduced of the conditions being satisfied. Nor does the standard form affidavit in fact confirm that the founding affidavit was translated before being signed.

[39] These difficulties are substantially compounded in those matters where a review is sought of a refusal of refugee status. In almost every one of those that served before me they contained a standard form allegation that a ground of prejudice was that, during the interview process for determination of refugee status, a reviewable irregularity occurred described as follows:

"My English is very poor and I had to use the services of an interpreter. The interpreter used to assist me during my interview spoke Amharic and my mother tongue is [insert other language here]. I was clearly disadvantaged during my interview."

[40] It will be immediately apparent that there is a direct contradiction between the prejudice alleged in review (being translation from Amharic) and the affidavit attached in support of the interpretation which contends that the court should be satisfied that translation was into Amharic for the deponent to understand.

[41] In short, I cannot be satisfied that:

- (a) the interpreter is in fact a sworn translator as contemplated in Uniform rule 59(1);
- (b) the interpreter is in fact competent to interpret as contemplated in Uniform rule 61(1);

- (c) the interpretation took place between English and a language which the deponent (in those cases where the deponent specifically alleges he or she does not speak Amharic) understands; or generally
- (d) the interpretation was such that the founding affidavit can be relied upon as an accurate representation of the evidence of the applicant.

Confirmatory affidavits

[42] Aside from the largely generic affidavit by Mr Michael in respect of interpretation, two of the applications before me (which relate to an allegation that the applicants were refused an opportunity to apply for a visa in the first instance) were said to be supported by a confirmatory affidavit in the name of Mtolo. As already indicated, Mtolo has apparently been dismissed summarily for directing clients to a firm other than that by which he was employed. This necessarily gives pause in relying upon the affidavit.

[43] The affidavit was however, also of an entirely generic nature. Indeed, it so generic and so little care has been taken in its drafting that it merely reads:

- "1. The facts deposed to herein are within my personal knowledge and belief, save where the contrary is expressly stated.
2. That is all I wish to state."

[44] Obviously the affidavit is entirely devoid of content. Quite how a prospective attorney could ever depose to an affidavit that is so meaningless is unclear.

[45] The lack of attention to detail recurs even in respect of a confirmatory affidavit said to be deposed to by a lay person under Case No. D15226/2024 which is in precisely the same terms.

[46] This court has recently had cause¹¹ to decry the practice of brief confirmatory affidavits to regularise hearsay evidence. With reference to the

¹¹ *Nombela Investments CC v Ezemvelo KZN Wildlife* (AR 36/2024P) [2025] ZAKZPHC 15 (21 February 2025) at [25]

Supreme Court of Appeal decision,¹² wherein the practice was described as “slovenly” and to the further criticism by the same court in *Drift Supersand (Pty) Ltd v Mogale City Local Municipality and Another*¹³, the court in *Nombela* declared that conduct to be “entirely unsatisfactory”.

[47] The case is even worse where so little care is taken that the confirmatory affidavit fails, on its own terms, to provide the confirmation which it has intended to provide.

Identification of deponent

[48] As indicated above, one of the functions of a commissioner of oaths is to confirm the identity of the deponent. This function is reinforced by the usual averments as to place of employment and the place of residence. A usual manner for a commissioner of oaths to satisfy themselves as to the identity of the deponent is to have regard to a formal identification document issued by the country of citizenship of the deponent.

[49] I recognise that this may not be possible in all instances given the various circumstances in which legitimate refugees are forced to flee their countries of origin. However, save in one instance where a permit previously issued by the Department of Home Affairs was attached, no identification documentation was attached to any of the founding affidavits. In a perpetuation of the slovenly approach to the preparation of application papers, one affidavit in fact alleges that the court should have regard “the said temporary permit marked annexure ‘B’ hereto” whereas annexure “B” is in fact a confirmatory affidavit of the aforesaid interpreter.

[50] In circumstances where there are considerable concerns regarding the manner in which the affidavits were commissioned and interpreted it appears to me incumbent upon an applicant for relief of this form to take as many steps

¹² *Eskom Holdings Soc Ltd v Masinda* 2019 (5) SA 386 (SCA) at 387 I to 388 B

¹³ [2017] 4 All SA 624 (SCA) at [31]

as may in the circumstances be possible to satisfy the court of the identity (indeed the existence) of the applicant. Given the myriad of circumstances that may arise in legitimate refugee applications, I do not believe that it is appropriate to set out the minimum parameters by which that may be done.

[51] Allied to that concern is a reservation as to whether, in circumstances where affidavits are prepared some time before set down, the factual situation that pertains at the date of hearing is different to that which is alleged in the founding affidavit. It is entirely conceivable that the applicant's position may have changed whether because representatives of the Department have attended to the matter, because of deportation or detainment on other grounds, or (for example) that the applicant may have become deceased or entitled to an alternate form of visa. In my view, it would be a salient practice for supplementary affidavits to be filed shortly before hearing to confirm the factual position in respect of each applicant together with any further information relating to engagements that the applicants may have had with the Department of Home Affairs.

News articles: hearsay evidence

[52] Each of the applications attaches an article from a news service (and in one instance an entity known as the Ethiopian Policy Institute) with reporting in narrative form on various aspects of the political situation in Ethiopia. No real attempt is made to link the contents of the article to the specific facts alleged in the founding affidavit.

[53] In some instances the articles predate by a considerable margin the events which are said to have given rise to the refugee status. In others, the articles appear (at least *prima facie*) to contradict the founding affidavit by suggesting that order had been restored prior to the events which are alleged to have given rise to refugee status. Still other articles relate to areas of Ethiopia that are different from those from whence the applicants come or even

allege that the political affiliations to which the applicants say they belong are the perpetrators rather than the victims of civil and political violence.

[54] In one application (Case No. 015485/2024), the article which is attached is dated 25 March 2025 in circumstances where it is attached to a founding affidavit purportedly deposed to on 10 December 2024. I note that the article has what appear to be signatures of the deponent on it. It is entirely unclear how this came to be and it calls for an explanation.

[55] Much more importantly it is unclear for what purpose these documents are attached. They seem to me to be hearsay and are in many instances arguably opinion. No attempt whatsoever is made to justify the inclusion of these into the evidential record in either of those forms. No case is made for the reliability of the reporting, and it is unclear why this seemingly random collection of articles is advanced as evidence at all rather than reference being made (if it is justified) to the records of recognised humanitarian or international political organisations.

[56] Ultimately, if it had been relevant to these proceedings, I would have concluded that the various articles were of no probative value.

Applications to enable application for asylum seekers permit

[57] The first form of application (in this instance Case Nos. D15526/2024 and D15226/2024) seeks relief that may be described as designed to compel the various functionaries of the Department of Home Affairs to enable an application for an asylum seekers permit.

[58] The founding affidavit in each of those applications follows the same template. First, the applicant is identified, whereafter the parties and the purpose of the applications are identified. Then, in comparatively short and generalised detail, allegations are made regarding murder, rape and harassment of family members and members of the village of origin.

[59] Then a series of allegations is made about alleged attendances at the Refugee Reception Centre where it is alleged that an unknown security guard declared the offices were full and that the applicant should come back some number of months later. The final visit in each instance alleges that the applicant was told that they could not be seen without a court order.

[60] The notices of motion in the two matters identified above are in somewhat different form but each seek a direction that the Department shall facilitate the application for a refugee permit within thirty days of the grant of the order, and further relief in terms of which the Department and its officials are interdicted and restrained from arresting, detaining or deporting the applicant in relation to charges arising from immigration status or continued presence in the Republic.

[61] In respect of Case No. D15526/2024, that interdictory relief reads: "That the respondents and any other immigration authority or law enforcement agency are hereby interdicted, and restrained from causing or effecting the arrest, detention and/or deportation of the applicant in relation to any charge arising from her immigration status or continued presence in the Republic of South Africa."

[62] Not only is the wrong pronoun regularly used in these interdicts but the interdict reads as an interdict in perpetuity and entirely unrelated to the application for an asylum seekers visa. Such an interdict is not justified.

[63] In any event, no case is made out for interdictory relief in this or any other of the applications. Indeed, the application does not even purport to justify that particular relief in accordance with the usual requirements of interdictory relief.

[64] More importantly however, the allegations that assistance is being refused by the Refugee Centre requires further analysis. I have some difficulty in relying thereon.

[65] Firstly, the person who is said to have denied access to the centre is a security guard rather than an official of the Department. Secondly, no official is identified as having made the statement (indeed nor is the name of the security guard provided). Moreover no time of attendance is provided. It is an unfortunately common occurrence that those seeking the services of the Department of Home Affairs are required to queue from early in the morning in order that they can fall within the daily capacity of the Department to handle matters. If the applicants are simply attending within the last few minutes of the operating hours of the Refugee Centre, then it may well be that no proper attempt has been by the applicants to apply. Particularly in circumstances where the applicants allege a limited knowledge of English (and no knowledge of other South African national languages) it may also be that there was a misunderstanding between the security guard and the applicant where the only message sought to be conveyed by the security guard was that it was unlikely that the applicant would be attended to on that day due to the time of arrival.

[66] I accept that these propositions are largely speculative but they are invited by the generalised nature of the founding affidavits. Indeed, even where the applicant was alleged, on the last occasion, to be accompanied by Mtolo (then training to be a candidate attorney) the details provided are unacceptably vague. It seems clear that the purpose of having a candidate attorney accompany the applicant to the Refugee Centre is to lend credence to the proposition that there is in effect a blanket refusal to assist applicants. If that is the intention, then one would fully anticipate that the candidate attorney would, at a minimum: take photographs, seek to speak to an official (and identify them in an affidavit), and record the time and date of attendance in a file note. Ideally, the candidate attorney would also hand deliver some form of correspondence from a firm of attorneys dealing with such an allegedly systematic problem demanding a change in the conduct of the Refugee Centre. None of that is recorded as having been done in any affidavit.

[67] There is a further reason why I am sceptical that the approach of the Refugee Centre is as alleged. As already indicated, there have been no more than approximately five applications of this form on the roll in this court per day through 2025. If there is indeed a blanket prohibition on applications in the absence of a court order, then the Refugee Centre would be largely empty rather than overcrowded with applicants. It is not.

[68] In short, it seems to me that an applicant contending that he or she has been refused help must provide rather more specific details of the person who affected that refusal, and the circumstances thereof.

[69] Aside from being required to satisfy the court there is an additional benefit from the provision of such detail. That is to facilitate the Department in the conduct of any investigation into the alleged systemic failure to assist refugees.

[70] Ultimately, I conclude that taking into account the overwhelming deficiencies in the affidavits and the overreach in the notice of application when coupled with the generalised and non-specific allegations (no matter how much sympathy one might have for a vulnerable group), it cannot be said that the application papers make out a case for the relief sought.

Review applications

[71] The second category of relief sought on behalf of the applicants by attorneys Roy Singh may be characterised as an administrative law review. In those matters, the application for refugee status has been refused. It is unclear whether the applicants have pursued internal appeals. I say this is unclear because in the two matters that served before me, one alleged that a copy of the rejection notice was attached (it was not) and the other alleged that the applicant had no copy of the rejection notice and reasons would be advanced later in the affidavit why that was the case (no reasons were advanced).

[72] Both reviews were also well outside the one hundred and eighty days contemplated in the Promotion of Administrative Justice Act. One decision was made in 2016 and the other in 2018. No real case is made in either of the affidavits for an extension of the period or for an explanation of what has taken place since the date of rejection. In one of the applications (D15485/2024) broad allegations are made about non-attendance during the COVID period but these allegations are largely non-specific.

[73] As to the merits: little attempt is made to set out a *prima facie* case for review. Both of these matters appear to rely primarily upon an allegation that the interpretation services were limited to Amharic interpretation rather than the specific Ethiopian language spoken by the individual applicant. Firstly, it is unclear from these papers whether Amharic is sufficiently similar to those languages that the applicant could be understood. More critically however, and as already pointed out, the interpretation of the founding affidavit is alleged to have been from English to Amharic and Amharic to English. These allegations are inconsistent.

[74] Aside from the general allegation of prejudice it is unclear what the grounds of review are.

[75] Notwithstanding that no real case is made for review, the applicants seek the setting aside of the decisions rejecting asylum.

[76] By the time that the applications served before me no record had been provided by the Department notwithstanding that the notice of motion called for a record in the customary manner.

[77] As an aside I point out that the formulation of the notice of motion was irregular in that while it sought interdictory relief, that interdictory relief appeared to be sought at the same time as the review rather than in an interim form pending the review.

[78] Ultimately, the review papers were so deficient that, in my view, the court could not be satisfied that there was even a *prima facie* case for a review. It would follow necessarily that no interdictory relief could be granted.

General Approach

[79] There are other examples of the generally inadequate and careless manner in which these applications are advanced. I identify only a few. Affidavits make use of the incorrect pronouns (this appears to be a function of the template form of the affidavit), reference is made to crossing into South Africa at border posts that do not exist or are wrongly described (e.g. Manguzi border post is referred to, as opposed to – presumably - Kosi Bay).

[80] More fundamental errors are also apparent, such as allegations as to family size where the number of alleged members of the family differs from paragraph to paragraph or even from sentence to sentence.

[81] The same lackadaisical attitude occurs when the applications are moved. Almost invariably, counsel seeks to hand up a draft order (most, if not all, of which are to be taken by consent with the State Attorney). Peculiarly, and for reasons I cannot explain, the draft orders handed up on behalf of different applicants represented by different firms and counsel universally describe the Director General as "The Director General: The Department of Affairs". Quite how that error is consistently and continually made is unclear to me.

Withdrawals of Applications

[82] After I had reserved judgment (indeed after the first draft of the judgment had been prepared) my registrar was approached by a representative of Roy Singh Attorneys indicating that the applications under

case numbers 15226/24, 15525/2024, 15526/2024 were withdrawn. I understand that similar withdrawals have been proposed in the motion court on the days following my reservation of judgment.

[83] By that date it must have been apparent that an unfavourable judgment was to be delivered.

[84] The purported withdrawals did not appear to pay any regard to the provisions of Uniform Rule 41(1) which require that after set down a matter may not be withdrawn without the consent of the other party or the leave of the Court.

[85] I accordingly sought submissions as to why the withdrawal was sought.

[86] I was provided with three standard form letters from the State Attorney dated after reservation of judgment. In each the State Attorney consents to the following Order:

- "1. The applicant should approach the nearest Refugee Centre
2. The applicant be given an opportunity to show a good cause
3. Such interview should to be scheduled by the respondents within 60 days
3. No order as to cost."¹⁴

[87] This consent order largely reflects what ought to occur under the Act and without the intervention of a Court. The absence of a costs order also reflects that no case was made justifying a costs order.

[88] The letters are not however a consent to withdraw the application. Rather they are an insistence that an Order be granted in a particular form.

[89] I decline to grant leave to withdraw the applications. They were properly set down and relief was sought before judgment was reserved. I take

¹⁴ I have sought to reflect the same formatting inconsistencies and have not corrected grammar or numbering errors

the proposed consent order into account in the relief that I grant but do not believe that it is appropriate to grant leave to withdraw.

The Ililo applications

[90] Three applications served before me in which the attorneys were Ililo Attorneys. They suffer from many of the same deficiencies set out in respect of the applications already mentioned. In particular, they attach generic journal articles and are vague in their details.

[91] Each of the applications before me contended that the Refugee Centre would not take any further applicants without a court order. I have already dealt with this contention.

[92] As with the previous applications each of the founding affidavits is deposed to before the same commissioner. There is no reason *ex facie* the applications to question this commissioner's impartiality but it does strike me as somewhat unusual that the same commissioner commissions all of the affidavits. Once again, the commissioner provides no details as to how it was that the oath was administered or how it was that the individuals identified themselves.

[93] I do note that in each of these applications, a photocopy (of varying clarity) of a document that is allegedly an Ethiopian identity document is attached. That document however bears a script in Amharic and no translation is available as contemplated in Uniform Rule 60. In short, neither the court nor the commissioner could be satisfied as to identity based on that particular document.

[94] In each instance, the identification document bears the commissioner's stamp but it is unclear for what purpose the stamp is appended. It does not appear *ex facie* the document that it is intended to be a

certification as a true copy and so it is unclear whether the original documents were ever exhibited to the commissioner.

[95] I should note that the provision of these documents in each instance of the applications instituted through Ililo Attorneys, suggests that similar documents ought to be available in at least some of the matters instituted by Roy Singh Attorneys.

[96] All of the applications themselves are structured as reviews pursuant to the Promotion of Administrative Justice Act and in none of those instances was a record provided. The review structure is peculiar both in its content and because the founding affidavit makes allegations to support interdictory relief rather than review relief.

[97] In form, the most peculiar paragraph (aside from the perpetual interdict in the form earlier mentioned) is the provision that reads as follows:
"That the members of the first and second respondents do all that is necessary to take the applicant to the offices of the third respondent to process his asylum application."

[98] This prayer appears to contemplate transport being provided by the Department to the applicant to facilitate the application. This is no small matter in circumstances where each of the applicants allege that they reside in the northern part of KwaZulu-Natal.

[99] By the time that these matters were called before me, the relief claimed had transmogrified (allegedly by consent) to include directions that the applicant be assisted to make their application for asylum together with interdictory relief precluding arrest, detention or deportation pending the outcome of that asylum application. The application was no longer a review at all. Once again, there was no appearance by the State Attorney.

[100] It is clear from the draft order that the typed form contemplated an order for costs to be sought by the applicant (albeit not by consent of the State Attorney). Wisely, by the time these matters were called towards the end of my roll, the order sought did not include an order for costs.

[101] However, for all of the reasons set out above, together with the additional reasons set out in respect of these applications, I am not satisfied that a case is made out on those papers for the relief claimed in the notice of motion or for the relief claimed in the draft order.

Position of the Department of Home Affairs

[102] Regrettably, the State Attorney did not appear with any factual instructions as to the veracity of the allegations made in respect of the conduct of the Department of Home Affairs.

[103] If it is true that a refugee cannot receive assistance from the Department in the absence of a court order, and that they are expressly being turned away without one, then such conduct is to be deprecated. Indeed, such conduct would have to be condemned both because it would be a gross infringement of the rights of the applicants and because it would have the effect of imposing inadequacies in the Department's functioning upon the Court to the detriment of other litigants.

[104] At a practical level, one would also query whether it would be an appropriate value proposition to risk an award of costs in each and every one of these applications rather than simply to employ additional staff to process applications more efficiently.

[105] However, I have already indicated that I have some difficulty in accepting unreservedly the allegations made in respect of the alleged conduct of the Department.

[106] It seems to me to be prudent in the circumstances simply to direct that the State Attorney should submit a copy of this judgment to the Minister for consideration. If the Minister then deems appropriate the necessary enquiries can be made as to the manner of operation of the Refugee Centre in Durban.

Reference to the LPC

[107] I have set out above that I have considerable concerns regarding the manner in which affidavits were allegedly commissioned in the matters instituted by Roy Singh Attorneys. This Court does not have investigative powers. However, the commissioners in each instance alleged that they exercised the power to commission by virtue of the office of an attorney. Therefore it seems to me to be prudent to refer the question of how the affidavits came to be commissioned to the LPC for such investigation as it may deem appropriate.

Orders to be granted

[108] In each and every one of these matters if they were of a purely commercial nature, I would have been minded to dismiss them. I would have done so not only because they do not make a case for the relief claimed, but also because the grossly inadequate manner in which they have prepared and presented would not justify any sympathy.

[109] However, I am cognisant that if the applications are legitimate then the applicants have been done a disservice by those representing them. The factual contentions, if true, are so horrific that it is incumbent upon a court to come to the assistance of the applicants notwithstanding the defects in the applications.

[110] I do not however believe that it is appropriate for the court to come to the assistance of the applicants by simply overlooking the deficiencies in the applications.

[111] For those reasons, I grant the orders set out below.

111.1 The State Attorney is requested to furnish a copy of this judgment to the Minister of Home Affairs for his consideration drawing specific attention to paragraphs 57 – 65, 90 -91 and 102-106

111.2 The Registrar is requested to refer this judgment to the Legal Practice Council and to draw specific attention to paragraphs 18 to 35 above.

111.3 In Case Nos. 15225/2024, 15526/2024, I grant the following Order:

111.3.1 Leave to withdraw is refused;

111.3.2 The Respondents shall schedule an interview for the Applicant within 60 days of the grant of this Order;

111.3.3 There shall be no order as to costs.

111.4 In Case Nos. 11106/2024 15223/2024, 15485/2024, 15224/2024 and 15311/2024, I grant the following order:

111.4.1 The application is adjourned sine die;

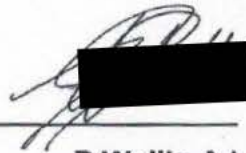
111.4.2 The applicant is granted leave to supplement his papers;

111.4.3 There shall be no costs payable by the Respondents to the Applicant up to the date of this judgment;

111.5 In Case No. 15226/2024, I grant the following order.

111.5.1 The rule nisi is discharged;

111.5.2 There shall be no order as to costs;


P Wallis AJ

Date of hearing: 17 April 2025
Date of judgment: 30 April 2025

Appearances

Case No. 11106/24

Case No. 15485/24

Case No. 15526/24

Case No. 15226/24

Counsel for Applicants: T Holtzhausen

Attorneys of Applicants: Roy Singh Attorneys

Attorneys for the Respondents: State Attorney

Case No. 15223/24

Case No. 15224/24

Case No. 15311/24

Counsel for Applicants: M Sithebe

Attorneys of Applicants: Hellen Ililo Attorneys

Attorneys for the Respondents: State Attorney