IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

Case No: 17216/2023

In the matter between:

DE SAUDE SADAT DARBANDI	First Applicant
IMMIGRATION ATTORNEYS INCORPORATED	
LAURIE ANTONIE SUTHERLAND-MACLEOD	Second Applicant
CHRISTOPHER CLAASSEN	Third Applicant
ALBERTO ESPEL ALONSO	Fourth Applicant
HONG LIANG CHEN	Fifth Applicant
HONG YING CHEN	Sixth Applicant
TANJA BIERMAN	Seventh Applicant
SIMBA MILIMO PHIRI	Eighth Applicant
and	
THE ACTING PROVINCIAL MANAGER,	First Respondent
WESTERN CAPE DEPARTMENT OF HOME AFFAIRS	
THE DISTRICT DIRECTOR, CAPE TOWN	Second Respondent
DEPARTMENT HOME AFFAIRS	
THE MINISTER OF HOME AFFAIRS	Third Respondent
THE DIRECTOR GENERAL OF THE	Fourth Respondent

DEPARTMENT OF HOME AFFAIRS

JUDGMENT DELIVERED ELECTRONICALLY:
THURSDAY, 6 MARCH 2025

NZIWENI, J

Introduction

[1] The issue which is at the heart of the dispute in this application, involves access to services rendered by the Department of Home Affairs ("the Department"). These proceedings centre around the screening process implemented by the Department when individuals seek to file applications in terms of the Citizenship Act, Act 88 of 1995 and/ or Births and Deaths Registration Act, Act 51 of 1992 (the Statutes"). The applicants are aggrieved by the screening process employed by the Department. They perceive the screening process as an impediment to their access to a public service.

[2] The current litigation finds its genesis in alleged problems associated with the submission of application forms at the Cape Town branch of the Department. However, the critical inquiry that arises in this context is the entitlement of the Department's officials in Cape Town ("the screeners") to refuse to accept applications they perceive to be defective.

[3] It is common ground between the parties that the individuals who wish to submit applications in terms of the Statutes are frequently turned away without their applications being accepted and transferred to the appropriate decision-making

authority within the Department, situated in Pretoria. The applicants characterise the failure by the screeners to allow them [applicants] to submit applications as a form of gatekeeping. Furthermore, the applicants contend that the Cape Town offices of the Department engage in a pervasive practice of "gate keeping."

[4] The applicants argue that the screeners who refuse to accept applications are not legally authorised to make any decisions on these applications, with respect to the illegalities. Consequently, the applicants seek an order declaring the conduct of the screeners to be inconsistent with the Constitution of the Republic of South Africa and/ or *ultra vires* the Statutes as well as unlawful.

[5] The application is strenuously opposed by all the respondents. The Department refers to the process as a 'screening' of applications prior to their acceptance, capturing and dispatching to the Pretoria hub. The Department maintains that the screeners in Cape Town perform a bureaucratic or administrative function of screening applications in terms of checklists.

The parties

[6] The first applicant is a law firm that specialises in immigration law; the second to eight applicants bring the application in their own names and interests. In addition, the second to eight applicants are clients of the first applicant. According to the founding affidavit, the second to eight applicants have been affected by what they refer to as a "gatekeeping conduct" of the Department's employees.

[7] The first respondent is the Acting Provincial Manager, Western Cape, the second respondent is the District Director, Cape Town. The third respondent is the Minister of Home Affairs.

[8] In essence, the applicants are also seeking a *mandamus* order that would compel the respondents to accept the applications of the second to eight applicants at the offices of the Department in Cape Town and to take the requisite steps to transfer the applications to the appointed adjudicators within the Department [in Pretoria], to decide whether to grant or reject the application.

[9] The events giving rise to the instant motion have been explained in detail in the founding affidavit and supporting affidavits of the applicants. In this judgment I will give a brief summary of certain critical background facts in order to establish the context in which I must decide the matter. The context of the dispute can be succinctly summarised as follows.

The background

[10] The starting point, of course, is that it is commonly acknowledged ground in this matter that the authorities who are vested with the powers related to the status of persons in South Africa are located in Pretoria. According to the applicants, the role of officials in Cape Town are clerical in nature. This [role] includes accepting of applications, the provision of receipt and reference numbers, and thereafter, transferring the applications to the officials in Pretoria.

[11] The first applicant [law firm of attorneys] alleges that each and every time it takes clients to file applications at the Cape Town office, officials at that office have irregularly and arbitrarily been refusing to accept the applications and [from the Department's perspective] it is as if no application was ever filed. To buttress this contention, the first applicant emphasises that when the acceptance of the applications is refused, there is no written justification provided. However, when verbal reasons are given, they are frequently informal and difficult to comprehend. Therefore, this Court is called upon to declare the impugned practice by the Department's employees unlawful and unconstitutional alternatively *ultra vires*.

[12] At the heart of the applicants' argument is the contention that the applicants are not attempting to obstruct the Department's front office officials from "screening", which involves scrutinising of applications and offering advice thereon. There is no suggestion that they [the Cape Town officials] cannot peruse the applications. The applicants contend that they accept that officials may review applications and verify them against the checklist, to ensure compliance. However, it is the applicants' contention that the officials' main task is to give advice if an application is deficient.

[13] As previously noted the applicants contend that the problem arises when the screening process becomes gatekeeping, meaning that the officials not only provide advice, but also make the decision to refuse such applications .

[14] As previously mentioned, the applicants assert that this litigation concerns those applications that are rejected by the Department's Cape Town officials without

being placed before the competent person to make a determination regarding the applications. The founding affidavit further asserts that after the rejection of an application, there is no reference number provided, no transmission to other officials within the Department, no decision to be made, or formal outcomes following the rejection. Accordingly, the applicants submitted that an inevitable corollary of this is that there is no course, scope, or avenue open to the applicants for appeal or review.

[15] The applicants seek to prevent the Department from continuing with the practice, which they consider as an unlawful practice by the personnel at the Cape Town branch of the Department. On that premise, it is submitted in the founding affidavit that this litigation is not concerned with the decisions made on the merits by lawful-empowered officials who provide formal outcomes, even if such decisions are flawed or open to review.

[16] In order to gain a more comprehensive understanding of the reasons the applicants sought redress from this Court, it is both necessary and expedient to provide a detailed account of the allegations made by the second to eighth applicants at this juncture.

The tension between the second to the eight applicants and the Department

[17] The second applicant alleges that she was denied the opportunity to file her application to register her birth. She was informed that this was due to the fact that only individuals with a South African parent could apply.

[18] In respect of the third applicant, according to his submission, he is both a Namibian and a South African citizen by birth. When he went to file an application for an issuance of a certificate confirming his South African citizenship, he was turned away by an official who claimed that he was an illegal foreigner.

[19] When the fourth applicant went to file an application for naturalisation as a citizen, it is alleged that he was told that he would not be able to file his application unless he provided an additional verification of his permanent residence permit. This is in spite of the fact that a copy of his permit was included in his application, and an original verification of the permit obtained from the Department.

The fourth respondent also alleges that he was asked to provide a fingerprint clearance from the South African Police Service. The applicants contend that the Statutes do not include this specific form.

[20] The fifth and sixth applicants were prohibited from submitting citizenship applications. The reason given to them by the officials in Cape Town was that their parents wrongfully and fraudulently obtained permanent residence and/or citizenship. They were informed that they were illegal foreigners and refused help.

[21] The seventh respondent submitted an application for the late registration of her birth. She was informed that her application would not be forwarded to Pretoria up until she provided a DNA test that verified her relationship with her South African father and

a form signed by her father. According to the applicants none of the requirements were in terms of any legislation.

[22] It is alleged that the eighth applicant, was also prohibited from submitting his citizenship application because an official told him that an investigation was underway against him, which rendered his application ineligible for acceptance. It is alleged that he was not given the details of the investigation. It is also alleged that to this date he has not been able to apply for citizenship.

Applicant's submissions

[23] The Applicants contend that gatekeeping does not create any significant administrative benefit for the Department. According to the applicants, the Director General of the department ("DG") presumes that the Department officials consistently behave in compliance with his expectations. The applicants argue that the DG has developed a version of gatekeeping which has no basis in reality. In these circumstances, the applicants argue that gatekeeping permits incompetent officials to prevent persons from accessing vital civic services granted under, inter alia, the Statutes.

[24] The founding affidavit asserted that the refusal to accept the documents is distinct from refusal on the merits, as it prevents applicants from receiving the services provided for in the Statutes. Therefore, the applicants contend that in the event that

an application is rejected, it cannot be evaluated to ascertain whether it should be approved or rejected.

[25] Only by complying with the demands of the official present on the day can applicants ensure that their applications are taken in by the Department and brought to the attention of the Department's proper adjudicators and potentially granted.

[26] The applicants advance the argument that the unknown government officials [the department employees] who handled the applications filed in terms of the Statutes were at all times acting within the course and scope of their duties to the respondents.

[27] According to the applicants, various applications are lodged with the respondents in terms of the Statutes. The applicant further alleges that the officials delegated with the decision-making powers are located in Pretoria. It is the applicants' assertion that they were never provided with any evidence that the officials in Cape Town are authorised to make final decisions on applications under the Statutes.

[28] According to the applicants' argument, the officials in question lack competence and are unable to decide what constitutes a meritorious application. They insist on documents which are not prescribed by law, they are unreasonable, superfluous or simply impossible to provide. It is asserted in the founding affidavit that some of the applicants were turned away many times by the said officials before they accepted their applications. As a consequence of such gatekeeping, there is significant and

prejudicial delays in the finalisation of claims to South African citizenship. Consequently, it is argued that gatekeeping puts the applicants at the discretion of local officials who do not read the application, do not comprehend the facts, lack legal expertise, and impose flawed and/or meaningless requirements on applicants.

[29] The applicants further assert that the gatekeeping renders the application process arbitrary, unpredictable and capricious, as one cannot foresee which officials will demand what document before an application will be accepted.

[30] The applicants contend that gatekeeping also increases the risk of corruption, as Department officials may exploit the prospect of gatekeeping to extract bribes from desperate applicants.

[31] The applicants contend that the parties are confronted with requests for extraneous documents that are both manifestly unnecessary and unlawful in terms of the provisions of the Statutes.

The Respondents' submission

[32] First, the respondents addressed the applicant's contentions by clarifying what they consider to be a misconception on the applicants' part regarding the role of the Cape Town officials and the character and extent of their clerical responsibilities. According to the respondents, Cape Town officials are not gatekeepers, rather they are frontline officers who are performing their duties pursuant to the Statutes. The

respondents further submit that the Cape Town officials' duties entail screening of the applications.

[33] The respondents also state that the official also have other functions that include attending to the queues and interviewing the potential applicants in terms of *Batho Pele* policy principles.

[34] These functions are referred to as 'walkabouts' by the respondents. According to the respondents, these walkabouts entail asking individual applicants as to what assistance they require, to ascertain if they are queuing in the correct line, and prior to handing in the forms check if the applicant is in possession of the required documents. The respondents refute the existence of gatekeeping in the Western Cape. It is argued that the screening of applications prior to their posting is a reasonable and rational practice that is intended to conserve time and resources for both the Department and the applicants. It is further asserted that the contention by the applicants that the official's insistence on compliance with the checklist is unlawful, is incorrect.

[35] It is contended on respondents' behalf that if proper screening of applications prior to posting is not done, the officials at the hub in Pretoria will be overwhelmed with incomplete forms. It is also asserted on respondents' behalf that the Department processes vast volumes of matters which involve members of the public. If the public is allowed to abuse the system by insisting that their non-compliant applications be

taken in, that would result in undesirable outcomes for both the applicants and the Department.

[36] According to the respondents, the officials involved in the screening do not decide the merits of the application. Therefore, to some extent, their clerical functions involve ensuring that the items in the checklist to be submitted with the application forms are in order.

[37] It is asserted that the applicants fail to comprehend and distinguish between the different roles that the Department's officials fulfil their duties in terms of the Statutes. According to the respondents, there are three main processes involved in the different offices of the Department for the purposes of an application, which are:

- Firstly, all applications are screened by officials at the point of first contact to ensure that the forms are accompanied by the necessary documents as set out in the relevant checklist for the application.
- Secondly, all applications are captured onto the system for record and reference purposes.
- Thirdly, after the completion of the screening and capturing process, the applications are posted to Pretoria for consideration and decision making on the merits.

[38] The respondents maintain that the checklists that officials in Cape Town offices utilise to screen applications should be viewed within the context of paragraph (f) of

section 23 of the Citizenship Act. As such, the officials are not acting *ultra vires* in insisting that applications be compliant with the Checklist items and /or requirements. Similarly, the checklist for registration of births and deaths are in terms of section 32 (1) of the Registration Act. According to the respondents, these regulations and checklists are designed to assist applicants and officials of the Department to facilitate applications.

[39] The respondents assert that, despite the fact that the checklist was not adhered to, they accepted, captured, and posted the applications of all other applicants to Pretoria, with the exception of Mr. Classen's application. This was a result of the pressure exerted by the first applicant.

[40] The Department is refusing to discontinue the practice because it believes that it is a legitimate and necessary screening process.

[41] Therefore, the question that must be resolved in this case is straightforward. Whether the refusal to submit applications to the Pretoria centre that are perceived as non-complainant is gatekeeping, and as a result, unconstitutional and unlawful.

The law

[42] The principle of fair administrative action is a fundamental structural feature of the South African Constitution (" the Constitution") and is expressly guaranteed under section 33. Section 33 played a vital role in the development of the Promotion of

Administrative Justice Act, Act 3 of 2000 ("PAJA"). Section 33 (1) of the Constitution guarantees the following right:

> "Everyone has the right to administrative action that is lawful, reasonable, and procedurally fair."

[43] Pursuant to the provisions of section 33 of the Constitution, procedural fairness is the cornerstone of our administrative law. PAJA affords members of the public that are affected by administrative decisions the right to be informed that a decision is to be taken, to be given written reasons for decisions and to have decisions reviewed in court. PAJA also specifies the manner in which legal powers of the administrators must be exercised.

Evaluation

[44] The Department is an administrative authority that is responsible for number of governmental and public functions. Conversely, the Constitution vests a responsibility to the courts to protect rights that are enshrined in our Constitution and to scrutinise government policies and procedures to ensure that they are predicated on Constitutional values.

[45] The courts provide the public with a means to hold to hold the government accountable for its policy decisions. Therefore, members of the public are entitled to approach a court and seek redress if they feel aggrieved by a policy of government. I am, however, mindful that the court must accord significant measure of deference to

governmental policy choices. In other words, if the decision of the Department is fair, lawful and involves proper considerations deference should be accorded.

The aim of screening

[46] It is undeniable that the Department receives an overwhelming number of applications in terms of the Statutes. As a result, the Department is compelled d to draft solutions to mitigate and alleviate the burden of the substantial volume of applications that are received at the Pretoria hub. This, amongst other things, is to ensure that the service rendered is sustainable. Thus, the screeners mitigate the burden by limiting the number of applications that may be presented to the Pretoria hub.

[47] The screeners are necessary and perform a valuable, sensitive, and extremely important service to the Department and members of the public. Screening is intended to enhance the quality of services and increase efficiency, among other objectives.

[48] Due to the early elimination involved in the screening process, significant time and costs are saved and not expended on a defective application. This does not imply, however, that the screening process should be a mechanism that creates a barrier to the accessibility of public services system.

[49] The aim of the screening process is to verify whether an application satisfies all the checklist requirements prior to its submission to the Pretoria hub. Similarly, it

entails making sure that members of the public have access to the services offered by the Department's Pretoria hub. Thus, it is imperative that the screening should be administered by skilled officials.

[50] As such, the screening function is an initial stage that is not intended to be an assessment exercise or to make findings of fact or law. Consequently, it is a matter of common sense that at the screening stage the threshold is low.

[51] Screening necessitates the responsible exercise of authority and fairness. This is due to the fact that the officials who serve as screeners are clothed with immense power that if exercised wrongly, may immensely prejudice an individual. As such, it is in the public interest that the Department's screeners should be honest, accurate, objective, impartial and free from undue influence and abuse of power. The officials conduct should at all material times instill public confidence in the screening process. To do otherwise would be a patent misuse of official power and authority granted to the official.

[52] In the context of this case, the screeners are intended to act as an intermediary between an applicant and the Pretoria hub to prevent and curtail unnecessary delays. Accordingly, this necessitates a process of screening through numerous applications. In doing so, the officials are, in effect, the principal screeners determining what applications should or should not advance.

[53] Therefore, as mentioned previously they wield considerable authority, insofar as it pertains to the determination whether, or not applications of persons would be accepted, processed and reach their intended destination [Pretoria hub] for a decision.

Does the practice by the Department officials amount to gatekeeping or screening?

[54] The Department refutes the assertion that the screening process conducted by its officials in Cape Town constitutes gatekeeping.

[55] The phrase "gatekeeper" signifies access control. It is evident that there are several forms of gatekeeping, particularly in the public sector. However, there is a distinction between gatekeeping and the screening. While gatekeeping may be distinct from the screening process, it does, however, contain elements of screening. In my view, the definitions of 'gatekeeping' and 'screening' are supplementary and not mutually exclusive.

[56] This Court should exercise caution in prioritising semantics and labels over substance.

[57] The applicants state that the problem arises when screening is conducted by the officials in Cape Town and is transformed into gatekeeping. Thus, of greater concern in this matter is when the Department screening officials do not merely offer

advice but take the decision to refuse to accept applications on the basis that an applicant does not meet the screening criteria. It is, however, significant to note that it is not denied by the respondents that the Cape Town screening officials do refuse to take forms from applicants that are viewed to be non-complaint with the Statutes or Regulations.

[58] For instance, the respondents admit that they have screening processes that are done in terms of the Statutes or Regulations in order to ensure that the applications submitted by individuals to the Cape Town office meet all the checklist requirements before they are accepted and dispatched to the Pretoria hub.

[59] According to the applicants' argument, the officials at the Department offices who refuse to accept applications serve as extra-legal "gatekeepers." Additionally, the applicants assert that the Department's officials often demand documents that are simply not necessary and on the checklist.

[60] In essence, this implies that the screening mechanism implemented by the Department may have an effect of limiting the access to the services offered by the Department. That then means that the applicants' submission that the screening done by the Department can easily turn to gatekeeping by simply declining to accept their application, is well founded.

[61] Therefore, it seems apparent to me that the Department's officials in the Cape Town offices are engaging in gatekeeping by declining to accept applications that they consider to be defective. The argument before this Court proceeded on the footing that the question to be asked is whether the practice by the respondents' gatekeepers is unlawful.

Do the screening officials of the Department in Cape Town have the power to refuse to accept an application and to determine the question of law?

[62] As mentioned earlier, the Department has implemented a mechanism for dealing with the influx of applications. Central to this mechanism is procedural fairness and administrative efficiency. In the present case, of course, the applicants have been at pains to point out that they do not have a problem with the screening of the applications, but as long as the process does lead to the refusal to accept applications that the officials deem to be defective.

[63] The officials of the Department do not constitute the decision-making body. That is the role of the Pretoria hub. It is the Pretoria hub that is charged with the duty of deciding issues related to the Statutes. The fact that the officials of the Department in Cape Town do screening does not change that. It appears from the affidavit of the DG that the task of the officials is to deal with the intake of applications and to screen them for proper disposition.

[64] At the same time, the screening process is not intended to make a preliminary decision as to whether an application proceeds to the Pretoria hub or not. Similarly,

the screening process is not to weigh the prospects of the application. Thus, while the screening process may help with early identification of defective applications, the screeners do not have the final word as to whether an application should be accepted for submission to the Pretoria hub.

[65] This conclusion is further bolstered by the affidavits in this matter, which demonstrates that the Department officials responsible for screening in Cape Town lack certain levels of expertise to make decisions regarding the applications, including questions of statutory interpretation. As such, in the performance of their screening functions, officials do not have a wide latitude in the execution of their filtering responsibilities. Inter *alia*, though the screening officials have the power to screen, they do not have the power to refuse to accept an application.

[66] Clearly, in the circumstances where an applicant who is of the opinion that the screening officials have not conducted an accurate evaluation of their application, has no recourse if they refuse to send it to the Pretoria hub. Hence, this Division has its fair share of cases that dealt with the refusal of screeners to dispatch cases they viewed to be non-compliant to the Pretoria hub.

[67] The refusal to accept applications and not refer them to the Pretoria hub notwithstanding the defect, amounts to an assumption by the Department's screening officials of a decision-making role for which they do not have a mandate. The screening officials are not authorised to refuse to dispatch an applicant's application. Particularly, if an applicant maintains that the application is compliant.

[68] There is nothing in the papers of the respondents or the Statutes to indicate that the screening officials, when they conduct the checklist, have a discretion or mandate to refuse to accept an application on grounds that it has failed to comply with the checklist. In essence, the screening officials lack the statutory mandate.

[69] The Department officials, to one degree or another, have the power to evaluate the applications. The checklists and the regulations are guiding tools for them. The Department's Cape Town officials serve a distinct function from the officials at the Pretoria hub. The responsibility of the Cape Town officials does not involve the rejection of an applicant's application. It is evident that their function is to ensure, as far as possible, that the application adheres to the checklist. However, they are not authorised to make a determination regarding the application if it does not comply with the checklist.

[70] Refusal to accept the application would be unfair and violate the rules of natural justice as it *inter alia* does not provide an applicant with an opportunity to respond to the screening officer's concerns. Thus, it is pertinent to note that the screening officials have no discretion with respect to accepting or refusing the applications. Moreover, the negative effect of the refusal to dispatch the application to the Pretoria hub, is that the screening official does not owe the applicants any procedural fairness.

[71] Thus, when the screening officer refuses to accept the application, he deprives the applicant of meaningful participation in the application process and the opportunity to be fully heard. Additionally, the individual is unable to appeal or take the screening

decision on review. In such circumstances, as previously mentioned, the refusal amounts to an extra-legal measure that obstructs access to services. It becomes gatekeeping.

[72] The practical and functional advantages of having a screening body cannot be understated. Notwithstanding that, the officials cannot usurp the power that they do not have.

[73] The courts are not inclined to interfere with the functions of government agencies; however, they may do so if they fail the legality test. Then, the court is required to intervene.

Considered in the context of this case, can it be said that screening is inconsistent with the constitution and ultra vires the Statutes?

[74] So far as the *ultra vires* is concerned, an action of a public official may be unlawful when an official goes beyond his or her delegated authority, enforces requirements that are not established by law, or acts in a manner that is arbitrary or capricious. The screening powers of the officials are limited to the parameters and guidelines as stipulated in their [screeners] checklists.

[75] The checklist was clearly designed to be efficient, as it is intended to conserve time and resources of the Department. The relevant statutes and regulations provide an insight into the mandate given to the Department officials.

[76] The applicants are challenging the authority of the screeners [officials in Cape Town] to refuse to forward their applications to the Pretoria hub if they are of the view that they do not satisfy the checklist criteria.

[77] Certainly, the regulations and statutes do not state that the screening officials may refuse to accept the application, even if an applicant insists that it should be accepted. By necessary implication, when the screening officials enforce requirements that are not stipulated in the regulations or the statute, they are overstepping their authority. Thus, when the screening official refuses to accept an application he or she oversteps his or her authority. Thus, acting *ultra vires*.

[78] The moment a public official acts *ultra vires* that process becomes tainted as it is not transparent and affects procedural fairness that result in exclusionary practices. In *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* (CCT 48/13) [2013] ZACC 42; 2014 (1) SA 604 (CC); 2014 (1) BCLR 1 (CC) (29 November 2013), at paragraph 24, Justice Froneman stated that procedural requirements play a role in ensuring even treatment of bidders, thus, they cannot be ignored. And that the purpose of a fair process is to ensure the best outcome. The Constitutional Court further states through Froneman J the following:

> "If the process leading to the bid's success was compromised, it cannot be known with certainty what course the process might have taken had procedural requirements been properly observed."

[79] Similarly, in the present case, to borrow the words of Froneman J, this means that if the process leading to the refusal to dispatch the application to the Pretoria hub is tainted, it cannot be known with certainty what course the process might have taken had procedural requirements been properly observed.

[80] In *My Pride Smile Africa (Pty) Ltd and Another v Umzimvubu Local Municipality* (2313/2022) [2023] ZAECMKHC 44 (6 April 2023), at para 24, the following was stated

> "Administrative action which is not in accordance with the law is unlawful . . . Although the Board may develop legislation, it does not have the power to make legislation."

[81] I am thus satisfied that when the screening officer refuses to send an application to the Pretoria hub, he or she acts *ultra vires*.

Rule 16A notice

[82] The provisions of Rule 16A are mandatory. In the circumstances of this case, I am not satisfied that the applicant's post facto attempts to remedy the defect of not complying with the provisions of Rule 16 A is sufficient. This is due to the fact that the applicant wanted to cure the defect when this Court was already seized with judgment. Because of the non-compliance with the provisions of Rule 16 A. I am not going to declare the conduct unconstitutional. In any event, the prayers that the applicants sought were in alternative.

Acceptance of some of the applicants' applications.

[83] The evidence of DG regarding this aspect is mainly hearsay evidence. It is established that hearsay evidence is inadmissible, unless there is an exception to the rule. The DG did not give a reason why the hearsay evidence should be admitted. As such, no leave of this Court was sought for the admission of the hearsay evidence. Consequently, this Court cannot place reliance on the hearsay evidence.

Conclusion

[84] I deem it necessary to propose the following guidelines to the Department to ensure procedural fairness.

Guidelines

- If, after the screening process, an applicant does not meet the criteria specifically in the Statutes or Regulations, and the screener is not to place the application on the list of applications that are to be *dispatched* to the Pretoria hub; the applicant should be advised of the deficiency or deficiencies in the application.

- In the event that an applicant disagrees with the screening results and insists that the application should be forwarded to the Pretoria hub notwithstanding the deficiency or deficiencies, such application should be dispatched to the Pretoria hub, to a specific point that handles applications that are primarily viewed as being non complainant.

- This point may be regarded as a verification point and should be mandatory once the applicant, after an unsuccessful screening process, persists that an application should be dispatched to the hub in Pretoria.

- If the verification point does agree and concludes that the application is deficient, it can require further information and dismiss the application if the required information is not provided within a specified time.

- It is further beyond doubt and unfortunate that an applicant who insists that his or her application should be accepted would have to endure a long and intense application process. The evidence in this matter and various cases stemming from this division, establish several reasons why this procedural step is necessary.

- This stage would entail the reviewing of the screening process. At that particular point of the hub in Pretoria, the official should consider the application perceived to be non-complaint and if the officer at the hub is also not satisfied that the application meets the required criterion; he or she then should issue a formal letter denying the application. All reasons for deficiency or denial shall be stated in writing to the applicant.

- If there is no such point at the Pretoria hub to accept what are perceived by the screening officials to be defective applications, it is highly vital that such point should be established.

- In the event that the applicant disagrees with the outcome, he or she may at least appeal or review the decision.

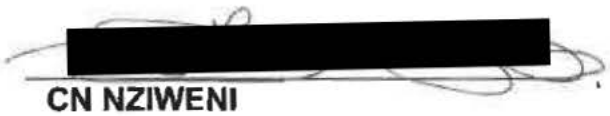
[85] In the result, I make the following order:

Order

a. It is declared that the conduct of officials acting in the course and the scope of their employment duties to the Respondents, who, whilst not being authorised or delegated to do so, refuse to accept or process applications in terms of the South African Citizenship Act 88 of 1995 ("the Citizenship Act" and /or the Births and Deaths Registration Act 51 of 1992 ("the Registration Act") at the offices of the Department of Home Affairs ("the Department"), is ultra vires the Citizenship and / or Registration Act and unlawful.

b. The Respondents are directed to accept the applications of the Second to Eight Applicants at the offices of the Department in Cape Town and to take the necessary steps to transfer such applications to the appointed adjudicators within the Department;

c. The costs of this application are to be paid by the Respondents, jointly and severally, the one paying the others absolved.



CN NZIWENI
JUDGE OF THE HIGH COURT

APPEARANCES

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