

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 14238/21

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

Date: 7 May 2025 E van der Schyff

In the matter between:

LAWYERS FOR HUMAN RIGHTS

Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

DIRECTOR GENERAL OF HOME AFFAIRS

Second Respondent

In re:

PHINDILE PHILILE MAZIBUKO

First Applicant

LAWYERS FOR HUMAN RIGHTS

Second Applicant

LEGALWISE SOUTH AFRICA (PTY) LTD

Third Applicant

CHILDREN'S INSTITUTE

Amicus Curiae

and

MINISTER OF HOME AFFAIRS

First Respondent

DIRECTOR GENERAL OF HOME AFFAIRS

Second Respondent

JUDGMENT

Van der Schyff J

Introduction

- [1] This is an application for leave to appeal against the judgment and order handed down on 20 March 2025. The applicant in this application for leave to appeal, the Lawyers for Human Rights (LHR), raised three grounds of appeal.
- [2] *Brevitatis causa*, the issues as set out in the judgment dated 20 March 2025 are not repeated herein but referred to with the assumption that this judgment and the judgment dated 20 March 2025 will be read conjunctively.
- [3] The principles that underpin the consideration of an application for leave to appeal are trite.¹ Both parties reiterated those principles in their respective heads of argument. It is not necessary to repeat the same in the judgment.

The challenge to the court's authority

- [4] The LHR contends that the court granted an extension of the suspension order after its expiry and in the absence of jurisdiction in the judgment of 20 March 2025. The issue of the court's authority to deal with the extension application has been dealt with in the judgment.

¹ *MEC for Health, Eastern Cape v Mkhitha and Another* (1221/2015) [2016] ZASCA 176 (25 November 2016) paras [16] and [17], *Ramakatsa and Others v African National Congress* (724/2019) [2021] ZASCA 31 (31 March 2021) para [10].

- [5] The facts of this case are unique and have been set out in the judgment. It need not be repeated here. It is significant that the LHR does not take issue with the factual background as set out in the judgment. The matter is distinguishable. It is common cause that the court had the necessary authority to consider the interim extension application. For the reasons set out in the judgment, and in the particular factual context of this matter, the LHR's contention that the court's authority to grant the order evaporated while the court was already seized with the matter does not hold water.
- [6] I pause to reiterate that it is not for a court that granted a particular order to declare or consider that order a nullity. The court was not faced with a collateral challenge as to the validity of an order granted by a lower court. Where a party to the proceedings in which an order was granted takes issue with the court's authority to have granted an order, it should challenge the order on appeal. In this matter, no appeal has been instituted against the order dated 16 January 2025. LHR's contradictory position was only raised in the heads of argument later filed. When the extension application was heard on 12 March 2025, the order dated 16 January 2025 stood firm.
- [7] I hold the view that another court would not, in the peculiar and particular factual context of this matter as set out in the judgment of 20 March 2025, where the granting of the order dated 16 January 2025, to which all parties agreed, was not challenged on appeal, come to a different conclusion. As a result, leave to appeal is not granted on the first ground of appeal.

The remaining grounds of appeal

- [8] After considering the second and third grounds of appeal, I am not of the view that another court would come to a different conclusion. The judgment and order of 20 March 2025 were granted after I considered all the points raised by the respective parties. The fact that a particular issue was not addressed in the judgment does not mean that it was not considered.

- [9] In light of the fact that no individual is prevented from approaching the court challenging a decision taken by the respondents to block that individual's identity document, the interest of justice is not impugned or offended by the orders granted. As a result, leave to appeal is not granted on the second and third grounds of appeal.

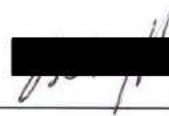
Costs

- [10] I am of the view that the Biowatch principle applies. The state respondents are thus obliged to pay the applicant's legal costs even though the application for leave to appeal stands to be dismissed. Both parties employed more than one counsel.

ORDER

In the result, the following order is granted:

- 1. The application for leave to appeal is dismissed.**
- 2. The Respondents in the application for leave to appeal, jointly and severally, the one to pay the other to be absolved, are to pay the Applicant's (Lawyers for Human Rights') costs, including the costs of two counsel, on scale B.**



E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicant:

Adv. J. Bhima

With:

Adv. C. Makhajane

Instructed by:

Bowman Gilfillan Inc.

For the respondents:

Adv. A.T. Ncongwane SC

With:

Adv. B. Ledwaba

And:

Adv. N. Rasalanavho

Instructed by:

State Attorney

Date of the hearing:

5 May 2025

Date of judgment:

7 May 2025