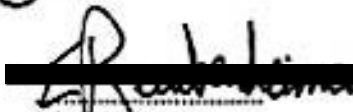


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION JOHANNESBURG

CASE NO:2025-082129

(1)	REPORTABLE: YES / ☒ NO
(2)	OF INTEREST TO OTHER JUDGES: YES / ☒ NO
(3)	REVIEWED: ☒ YES / ☐ NO
29 July 2025 DATE	 SIGNATURE

In the matter between:

UMER HAZAN

Applicant

And

MINISTER OF HOME AFFAIRS

1st Respondent

DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS

2nd Respondent

MINISTER OF CORRECTIONAL SERVICES

3rd Respondent

NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES

4th RespondentHEAD OF JOHANNESBURG CORRECTIONAL SERVICES
CENTRE5th Respondent

JUDGMENT

Raubenheimer AJ:

Order

[1] In this matter I make the following order:

1. The application is dismissed with costs on scale A.

[2] The reasons for the order follow below.

Introduction

[3] The applicant approached the court on an urgent basis for the following relief:

5.2 directing the Respondents to take all necessary steps within 5 days of granting of this order to assist the Applicant to submit his application for asylum in the Republic of South Africa in terms of section 21 of the Refugees Act 130 of 1998.

5.3 interdicting and restraining the 6th Respondent from continuing with the criminal legal proceedings instituted against the Applicant relating to his unlawful entry and stay in the Republic in contravention of the immigration Act of the Republic of South Africa under case number 3/5715/2024, pending the final determination of the Applicant status in terms of the Refugee Act 130 of 1998.

5.4 interdicting and restraining the 1st and 2nd Respondent from deporting the applicant until such time that the Applicant status and stay in the Republic has been fully and finally determined in terms of Refugees Act 130 of 1998 and until such time that the Applicant has fully exhausted his review or appeal process in terms of chapter 4 of the Refugees Act and the promotion of Administrative Justice Act 3 of 2000. a duly registered trade union, represents 32 of its members who were employed by the third respondent.

- [4] The respondents gave notice of opposition but only the first, second and sixth respondents filed answering affidavits.

Factual matrix

- [5] The applicant entered the Republic of South Africa on 2 November 2024, not through an official port of entry, from Ethiopia from where he fled due to fear of persecution and threats to his life due to his political convictions and affiliations.
- [6] Upon arrival in South Africa he obtained shelter from people sympathetic to the cause of Ethiopian refugees. Shortly after his arrival he presented himself at the Pretoria Refugee Reception Centre with the purpose of submitting his application to be granted asylum status. He, however, had to wait in a long queue in the scorching sun and was not assisted by the time the offices of the centre closed. After this single attempt he did not again present himself at the centre.
- [7] He decided to follow a different strategy by attempting to obtain financial assistance from fellow countrymen so that he could employ the services of an attorney to assist him with an application for refugee status.
- [8] Before he could secure funding he was arrested on 19 December 2024, about a month and a half after his arrival. He was charged criminally for contravening the Immigration

Act¹ by not entering South Africa at a port of entry.

[9] The applicant contends that at his appearance in the Randburg Magistrates Court on 14 January 2025 he informed the presiding magistrate of his intention to apply for asylum and was referred by the magistrate to the Department of Home Affairs.

[10] The applicant's attorneys directed correspondence to the Department of Home Affairs indicating that their client is desirous of applying for refugee status. The Department contends that the correspondence was not forwarded to an e-mail address of a Department dealing with refugee matters. It, however, conceded in open court that they are aware of their obligations in terms of the relevant legislation and are willing to assist the applicant to lodge his application and will make the necessary resources available to him as required in terms of the Refugees Act² and the Refugees Amendment Act³ to apply for refugee status.

[11] The applicant is currently in detention at the Johannesburg Correctional Centre awaiting his criminal trial for the contravention of the Immigration Act.

Contentions by the applicant

[12] The applicant contends that he should not be held in detention as it infringes his right to freedom of movement and should he be released from incarceration as an awaiting trial inmate. He further contends that he should not be prosecuted for his illegal entry into and stay in the Republic until final determination of his refugee status in the Republic.

[13] There is an obligation on the first respondent to assist him with his application for refugee status as soon as he makes his intention to apply for refugee status known, so the applicant contends. The applicant avers that as he informed the police officers when

¹ Act 13 of 2002

² Act 130 of 1998

³ Act 11 of 2017

he was arrested of his intention to apply for refugee status he was from then on a person seeking refugee status and consequently he could no longer be prosecuted for his unlawful entry into the country until his application for refugee status has been finalised. Hence his application against the National Director of Public Prosecutions.

- [14] His application against the Department of Home Affairs is to interdict the department from deporting him to Ethiopia and to order the department to assist him with his refugee status application.

Submissions by the first, second and sixth respondents

- [15] There is currently no order from the Department of Home Affairs for the deportation against the applicant in terms of section 49(1)(b) of the Immigration Act. The Department of Home Affairs confirmed in open court that the deportation of the applicant is currently not under consideration as the Department is awaiting the outcome of his criminal trial.
- [16] As the applicant's application for refugee status has not yet finally been rejected he is consequently not at risk of being deported and is in any case protected by the principle of non-refoulement against deportation.

Discussion

- [17] The Refugees Act and Amended Refugees Act provides for two distinct processes for applying for asylum namely on entry through an authorised port of entry and claiming to be an asylum seeker. Such person will be granted an asylum transit visa which will be valid for 5 days to allow the asylum seeker to travel to the nearest Refugee Reception Office to apply for asylum.⁴
- [18] The second process is where a person is excluded from refugee status due to entry other than through a designated port of entry or where the person failed to report to a

⁴ Sect 23 Immigration Act

Refugee Reception Office within 5 days after entering into the Republic⁵ due to compelling reasons.⁶

[19] The applicant is entitled to lodge an application to be granted refugee status irrespective of being illegally in the Republic.⁷ He has not been deprived of such an opportunity.

[20] The applicant is entitled to an opportunity to be interviewed by an immigration officer and to provide valid reasons for not being in possession of an asylum transit visum.⁸ Before being permitted to submit an application for asylum he must be afforded an opportunity to show good cause for his illegal entry and stay in the Republic.⁹

[21] Only after he has cleared the above obstacles will he be entitled to be issued with an asylum seeker permit. He will then be entitled to remain in the Republic temporarily pending the finalisation of his refugee status.¹⁰

[22] The mere expression of an intention to seek asylum does not entitle the applicant to be released from detention.¹¹ Neither does the failure of the immigration official to facilitate the applicant's asylum application render the detention unlawful.¹²

[23] The applicant entered the Republic other than through a designated port of entry. He did not present himself at a Refugee Reception Office within 5 days after entering the Republic. After attending at a Refugee Reception Office and having had to wait for a day in the sun he decided not to return and by the time he was arrested he had not made any effort to present him to an immigration officer except to try and obtain funding to instruct a lawyer. He only evinced his intention to apply for asylum after being arrested and his attorney only after his appearance in court attempted to contact the Department

⁵ Sect 21 Immigration Act

⁶ Sect 4(1) Refugees Act

⁷ *Ruta v Minister of Home Affairs* [2018] ZACC 52; 2019 (2) SA 329 (CC); 2019 (3) BCLR 383 (CC) at paras 14-16. *Abore v Minister of Home Affairs* [2021] ZACC 50; 2022 (4) BCLR 387 (CC); 2022 (2) SA 321 (CC) at para 9.

⁸ Sect 21(1B) Refugees Act

⁹ Regulation 8(3) of the Regulations in terms of the Refugees Act

¹⁰ *Ashebo v Minister of Home Affairs and Others* (CCT 250/22) [2023] ZACC 16; 2023 (5) SA 382 (CC); 2024 (2) BCLR 217 (CC) (12 June 2023)

¹¹ *Ashebo* (n10 above)

¹² *Ashebo* (n10 above)

of Home Affairs.

[24] Even in his founding affidavit the applicant is scant with the information pertaining his entry into the Republic and his attendance at a Refugee Reception Centre.

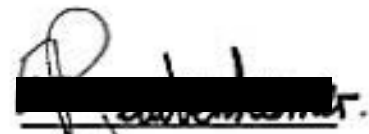
[25] The applicant is not entitled to be released from detention or to have his criminal trial halted due to his mere evincing of an intention to apply for asylum. His application against the third to sixth respondents must consequently fail.

[26] The first and second respondents never refused to assist the applicant and indicated that to be amenable to facilitate the interviews required for the applicants' asylum application. His application against the first and second respondents must likewise fail.

Conclusion

[27] Based on the above I concluded that the applicant has not shown the application to be urgent and has not shown that he is entitled to the relief sought in the Notice of Motion.

[28] I therefore granted the order appearing in Par 1.



E Raubenheimer

**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 29 JULY 2025

COUNSEL FOR THE PLAINTIFFS:

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INSTRUCTED BY:

A.J Masiye Attorneys

COUNSEL FOR THE RESPONDENT:

Adv JMT Tlokana

INSTRUCTED BY:

State Attorney South Africa

DATE OF ARGUMENT: 12 June 2025

REASONS REQUESTED: 23 June 2025

DATE OF JUDGMENT: 29 July 2025