



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case NO: 12456/2024

REPORTABLE: ~~YES~~ / NO

OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

In the matter between:

BELINDA BATE OBEN

Applicant

and

**STANDING COMMITTEE FOR
REFUGEE AFFAIRS**

First Respondent

**REFUGEE STATUS DETERMINATION OFFICER
DURBAN REFUGEE RECEPTION OFFICE**

Second Respondent

**CHIEF IMMIGRATION OFFICER,
DEPARTMENT OF HOME AFFAIRS**

Third Respondent

THE MINISTER OF HOME AFFAIRS

Fourth Respondent

Coram: Honourable Madam Justice Slingers

Date of hearing: 20 August 2025

Date of judgment: 26 August 2025

ORDER

- (i) Condonation for the late bringing of the review application is refused;
 - (ii) The application is dismissed with costs, which costs shall be on scale B.
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JUDGMENT

SLINGERS, J

[1] During May 2024, the applicant instituted an application wherein she sought the following relief

- (i) condonation, to the extent necessary, for the delay in instituting the application;
- (ii) reviewing, correcting and setting aside the first respondent's decision on 12 October 2021 to uphold the second respondent's decision to reject the applicant's application for asylum as manifestly unfounded in terms of section 23(3)(b) of the Refugees Act, Act 130 of 1998, as amended;
- (iii) reviewing, correcting and setting aside the second respondent's decision on 4 March 2019 to reject the applicant's application for asylum or refugee status as manifestly unfounded in terms of section 24(3)(b) of the Refugees Act;
- (iv) an order substituting or varying the decision of the first and second respondents or correcting the defect resulting from those decisions;

- (v) alternatively, granting an order remitting the application for reconsideration before a Refugee Status Determination Officer at the Cape Town Refugee Reception Office;
- (vi) interdicting the third respondent from removing or causing the applicant to be removed from the country pending the final determination of this matter;
- (vii) an order granting the applicant leave to approach the Court for an order granting asylum or refugee status to her for all purposes of enjoying international refugee protection should the respondents fail to comply with the Court orders; and
- (viii) costs of the application.

[2] The applicant originates from the Republic of Cameroon and is currently in possession of an asylum seeker visa. As foreshadowed by the relief sought, the applicant's asylum application was rejected as manifestly unfounded in terms of section 24(3)(b) of the Refugees Act by the second respondent, which decision was upheld by the first respondent.

[3] Consequently, the applicant instituted review proceedings in terms of section 6 of the Promotion of Administrative Justice Act, Act 3 of 2000 (**'PAJA'**) to set aside the decisions of both the first and the second respondents.

[4] In her founding affidavit, the applicant alleges the following:

- (i) she was born in Buea where she grew up and studied in Mamfe and Kumba;
- (ii) she did not complete her secondary school because of the civil war in her area;
- (iii) while attending secondary school she learnt how to sew and became self-employed after dropping out from school;
- (iv) she arrived in South Africa on 16 December 2019 and reported to the Durban Refugee Reception Officer (**'RRO'**) and applied for asylum;
- (v) she was interviewed by Ndabetha Mchuni, the Refugee Status Determination Officer (**'RSDO'**) who asked her why she left Cameroon. The applicant reported that she left because of ongoing genocide

which was and is still happening. She explained that there is mass sexual violence against Southern Cameroonian women and girls and that the violence between the government forces and the armed separatist groups continued;

- (vi) her life was threatened as a result of her membership of the Kembong Youth Movement, a youth league for the Ambazonia Separatist Movement which was against the present government regime;
- (vii) she created the impression that she was detained and claimed that she was a victim of sexual violence;
- (viii) the RSDO did not record the true facts of her story as she stated them which resulted in the commission of an error of fact and an error of law;
- (ix) her asylum seeker permit expired on 4 May 2020 and in 2021 she applied for an extension using an online application process. This resulted in her being requested to report to the Cape Town RRO on 17 November 2021;
- (x) on 17 November 2021, the applicant attended at the RRO and was referred to the immigration officer where she was served with a notification of deportation in terms of section 7(1)(g), read with section 34(1)(a) of the Immigration Act and regulation 32(2) of the Immigration Regulations; and
- (xi) the applicant was arrested, detained and charged with being in the country illegally. She appeared before the Cape Town Magistrate's Court. The applicant alleges that the magistrate *'threw the matter out of court'*. The applicant was legally represented during these proceedings by Sebogodi Attorneys Inc.

[5] The applicant acknowledges that section 7(1) of PAJA provides that any judicial review proceedings instituted in terms of section 6(1) must be instituted without unreasonable delay and no later than 180 days after the date on which the impugned decision had been taken. However, she submits that the 180 day time period should commence from the day she was released being 19 November 2021. Thus, the period of 180 days expired on 5 August 2022.

[6] In respect of condonation for the late bringing of the review application, the applicant avers that the expulsion order and detention left her distressed which caused her not to seek legal advice immediately.

[7] The applicant states that she was under the impression that the Magistrate's Court had ordered the second respondent to reinstate her asylum seeker permit to allow her to re-present her case. However, she does not set out the factors and/or circumstances which caused this impression.

[8] The applicant reported back to the RRO in May 2022 when she was advised to seek a judicial review of the first respondent's decision. She approached Cape Town's Refugee Law Clinic and Scalabrini Centre for legal assistance but was advised that they do not assist asylum seekers whose application has been rejected by the second respondent and upheld by the first respondent.

[9] The applicant does not set out when she approached Cape Town's Refugee Law Clinic and Scalabrini Centre for legal assistance nor who she spoke with. She states in general terms that:

*'I tried my best to look for pro-bono services but found no help.' And
'I then opted to approach my family, friends, members of the Cameroonian community, and members of the church to raise the legal fees.'*

[10] The applicant does not take the Court into her confidence and disclose when she instructed her attorneys to bring the application, nor does she set out when she obtained the requisite legal fees. The family, friends and members of the Cameroonian community are unnamed and no confirmatory affidavits have been filed in support of this particular averment.

[11] On her own version, the applicant was advised in May 2022 to institute judicial review proceedings. The founding affidavit is deposed to on 23 May 2024, two years later.

[12] Ndabezitha Sobuza, the RSDO officer (**'Sobuza'**) deposed to the answering affidavit on behalf of all the respondents, with Mr Lebea Mashao of the first respondent deposing to a confirmatory affidavit.

[13] During her engagement with the RRO the applicant largely relayed the same reasons for applying for refugee status as those contained in her founding affidavit.

[14] In the eligibility determination form for asylum seekers, the applicant indicated that she is bilingual with her being able to communicate on a basic level in French with English being her preferred language. The applicant also indicated that she was not a member of any organization and that she had not previously been arrested. The contents of the eligibility determination form are not disputed by the applicant.

[15] Sobuza conducted an interview with the applicant on 22 February 2019. During this interview the applicant indicated that she did not require the services of an interpreter. She also stated that she was not active in any organization, nor was she involved in any politics. The applicant furthermore stated that she came to South Africa to look for work as she could not find employment in Cameroon. During her interview with Sobuza, the applicant unequivocally stated that she did not leave the country as a result of war or political crisis and that she was advised to state that she was applying for asylum as a result of the friction between the Francophones and Anglophones. She also stated that she wished to return to her home country and that nothing will happen to her should she return.

[16] The interview with Sobuza was transcribed and duly signed by the applicant. The applicant did not address the signed transcribed notes in her founding affidavit at all. In signing the interview notes, the applicant declared that the contents of the entire eligibility determination form were true and correct.

[17] In accordance with the provisions of section 7 of PAJA, the application should have been brought no later than 180 days after the date on which the applicant was informed of the administrative decision.

[18] Section 9 of PAJA provides that the period of 180 days referenced in section 7 may be extended for a fixed period either by agreement or by a court or tribunal on application and that such application may be granted where the interests of justice so require.

[19] Where an extension of the 180 days is not obtained via agreement or granted upon application, a court would have no authority to review the application¹ and the lawfulness of the decision no longer matters.

[20] A court may grant condonation for the late filing of the review application if it is in the interests of justice to do so.² In determining whether the application for condonation is in the interests of justice, a court will have regard to the facts of the case and whether or not the applicant provided a full and reasonable explanation for the entire duration of the delay.³ A court is also obliged to have regard to the merits of the matter or prospects of success.⁴ However, while the substantive merits of the principal case may be relevant, it is not necessary decisive.⁵ It has been held that the standard to be applied in assessing delay under both PAJA and the principle of legality is whether or not the delay was reasonable.⁶

[21] In *Opposition to Urban Tolling Alliance and Others v SANRAL*⁷ the Supreme Court of Appeal (**'the SCA'**) held that a delay exceeding 180 days is *per se* unreasonable and that the issue of unreasonableness has, in those circumstances, been pre-determined by the legislature.

[22] A court can only determine the reasonableness of the delay if it has been furnished with the necessary facts.

¹ *Opposition to Urban Tolling Alliance and Others v The South African National Roads Agency Limited and Others* (90/2013) [2013] ZASCA 148; [2013] 4 All SA 639 (SCA) (9 October 2013)

² *Opposition to Urban Tolling Alliance and Others v SANRAL* (90/2013) [2013] ZASCA 148

³ *Camps Bay Ratepayers and Residents Association and another v Hansen and Another* [2010] ZASCA 3

⁴ *Buffalo City Metropolitan Municipality v Asla Construction Pty (Ltd)* 2019 (4) SA 331 (CC)

⁵ *Mulaudzi v Old Mutual Life Assurance Company (South Africa) Limited* 2017 (6) SA 90 (SCA)

⁶ *Buffalo City Metropolitan Municipality v Asla Construction Pty (Ltd)* 2019 (4) SA 331 (CC)

⁷ (90/2013) [2013] ZASCA 148; [2013] 4 All SA 639 (SCA) (9 October 2013)

[23] In the present matter, the application for condonation can, at best, be described as perfunctory. The applicant does not take the court into her confidence and fails to provide the court with information and facts without which the Court is unable to properly engage on the reasonableness of the delay.

[24] The applicant does not disclose when she consulted with her attorneys, when she instructed them to institute the application, when she acquired the necessary funds to institute the review application, what steps and /or actions she took between May 2022 when she was advised to bring a review application and 23 May 2024 when the review application was instituted.

[25] In the circumstances, it cannot be found that the applicant furnished a full and reasonable explanation which covers the entire duration of the delay, as required.

[26] The applicant argued that the condonation application should be granted because she has good prospects of success.

[27] The applicant seeks a substitution, which is the exception rather than the rule. Thus, a court may only substitute the administrative action in exceptional cases.⁸ In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd*⁹ the Constitutional Court held that a court may grant substitution only where exceptional circumstances are present and it would be just and equitable to grant substitution.

[28] In the present matter, the applicant has not made out a case for exceptional circumstances nor has she shown that it would be just and equitable to grant the substitution.

[29] Furthermore, a consideration of the relief sought would show that the applicant seeks final relief. It is clear from the applicant's version and the respondent's version that there is a material dispute of fact in respect of why the first and second respondents declared rejected the application for asylum as manifestly

⁸ See section 8(1)(c)(ii)(aa) of PAJA

⁹ 2015 (5) SA 245 (CC)

unfounded. The applicant submits that the respondents recorded incorrect details and not what she told the RSDO. The first and second respondents submit that the applicant disclosed that she was misled and advised to be dishonest but that after hearing the penalty for dishonesty, she decided to play open cards. This resulted in her reporting that she left Cameroon for South Africa to pursue economic opportunities and that she did not flee her home country to escape political persecution and civil war.

[30] It is trite that resolving factual disputes in applications wherein final relief is sought is resolved by the application of the *Plascon Evans* principle¹⁰. This is the respondents' version together with the facts admitted by the applicant. On the application of this legal principle, the Court would have to accept that the applicant came to South Africa to pursue economic opportunities.

[31] Thus, it cannot be said that the prospects of success favour the applicant.

[32] The applicant contended that the respondents would not suffer any prejudice by the granting of the condonation application. This argument disregards the potential prejudice to the respondent and the public interest in the finality of administrative decisions and the exercise of administrative functions which section 7(1) promotes.¹¹ The granting of unsubstantiated or meritless condonation applications would undermine the very objective of section 7(1) and ignore the importance of finality in administrative decision.

[33] After considering the reasons for the delay, the prospects of success, the period of delay and the prejudice, this Court has not been convinced that the delay was reasonable nor that it would be in the interests of justice to grant the condonation application.

[34] In the circumstances, the Court has no authority to deal with the merits of the impugned decision and the application stands to be dismissed.

¹⁰ *Plascon- Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] (3) SA 623 (A)

¹¹ *Sasol Chevron Holdings Ltd v Commissioner, South African Revenue Services* 2024 (3) SA 321 (CC)

[35] Therefore, I make the following order:

- (iii) Condonation for the late bringing of the review application is refused;
- (iv) The application is dismissed with costs, which costs shall be on scale B.

HM SLINGERS
JUDGE OF THE HIGH COURT