

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-074862

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED. ✓
17/10/2025 DATE	
[Redacted Signature] SIGNATURE	

In the matter between:

DR MICHEL NDAYI MBUYA

Applicant

and

**THE CHAIRPERSON OF THE STANDING COMMITTEE
FOR REFUGEE AFFAIRS**

First Respondent

THE MINISTER OF HOME AFFAIRS

Second Respondent

THE DIRECTOR-GENERAL OF HOME AFFAIRS

Third Respondent

JUDGMENT

MABESELE J:

[1] The applicant seeks an order declaring the two decisions taken by the first respondent to withdraw his refugee status to be unlawful and set aside, and that he be declared to be a refugee indefinitely as decided by the first respondent on 4 June 2014. The first decision to withdraw his refugee status was taken on 22 September 2022. The second decision was taken on 17 March 2023. The application is opposed by the first respondent only.

[2] The applicant first applied for condonation for late filing of the supplementary affidavit. The first respondent, too, made an application for late filing of the answering affidavit. The reasons advanced by both parties are persuasive and have merit, thereby justify granting of condonation.

[3] The applicant is a specialist doctor. He is registered as a public service practitioner with the Health Professional Council of South Africa (HPCSA). He originates from the Democratic Republic of Congo (DCR). He entered South Africa in 2006 and applied for asylum status in 2007. The asylum status was granted the same year and the applicant continued to renew his refugee status. He was assured by the first respondent that he would remain a refugee indefinitely.

[4] During 2012 while the applicant was awaiting the outcome of his certification application to remain a refugee indefinitely, he and numerous other doctors were targeted by and fell victim to a scam in which a certain Jose, claiming to be an immigration consultant working for DHA approached them and offered his service to apply for permanent residency on their behalf through his urgency. The applicant and other doctors agreed to make use of the services of Jose. Jose informed the applicant

that his passport from DRC would have to be renewed because the application for permanent residency would have to be submitted with other relevant documents. Subsequently, the applicant received a renewed DRC passport, issued on 27 March 2013, and permanent residence permit from Joose. Jose suggested that the applicant travel to Mozambique to confirm the validity of the permanent residence permit. The applicant did so and had no problems with customs officers on either side of the border.

[5] On 26 January 2018 the applicant applied for permanent residence under section 27(d) of the Immigration Act. On 20 April 2018 the application was denied. The reason being that the applicant was in position of a passport from DRC. DHA considered the renewal of his DRC passport to be 're-availment' in terms of the Refugees Act, and, requested the first respondent to consider withdrawing the applicant's refugee status. On 29 May 2019 the first respondent gave notice to the applicant of its intention to withdraw his refugee status. The applicant was given 30 days to make representations. On 4 June 2019 the applicant made representations, requesting clarity for the withdrawal of his refugee status. The first respondent confirmed receipt of representations on 11 June 2019. On 22 September 2022, the first respondent withdrew the applicant's refugee status. On 7 July 2023 the applicant's attorneys received correspondence from the first respondent in which it gave clarity on its notice which was sent to the applicant on 19 May 2019.

[6] Subsequent to the first respondent giving clarity to the applicant's attorneys, the former again expressed an intention to withdraw the applicant's refugee status again. It gave the applicant 30 days to make representations. The first respondent claimed

to do so in terms of Section 6(2) (e) (ii) of PAJA. Representations were made on 06 March 2023. On 17 March 2023 the first respondent withdrew the applicant's refugee status.

[7] The applicant argued that the first decision to withdraw his refugee status is unlawful in that, his submissions were not considered. Additionally, having taken the decision, the first respondent was *functus officio*. As a result, the first respondent had no authority to re-visit the decision which gave rise to the second decision to be taken.

[8] The first respondent admits to have taken decision to withdraw the applicant's refugee status without considering the applicant's written representations that were made on 4 June 2019 which sought clarity regarding notice sent to him, on 29 March 2019, to withdraw his refugee status. In terms of the notice, the withdrawal of the applicant's refugee status was based on Section 5(1)(e) instead of Section 5(1) (a). The decision was mainly based on the information at the first respondent's disposal that the applicant re-availed himself of the protection of the DRC by obtaining a DRC passport and failure by the applicant to make representations. This decision was communicated to the applicant. Having realized that it had not considered that applicant's letter, dated 04 June 2019, the first respondent withdrew its decision, gave clarity to the applicant which was sought per the letter dated 4 June 2019, and invited the applicant to make written submissions. Subsequent to the submissions been made and considered, the first respondent notified the applicant of its decision, on 17 March 2023, to withdraw his refugee status.

[9] It is also admitted that the applicant was certified as a refugee indefinitely. However, upon considering the written submissions made by the applicant on 6 March 2023, his refugee status was withdrawn.

[10] The issue for determination in this application is whether the withdrawal decision are lawful, reasonable and procedurally fair administrative actions.

[11] It is common cause that the first defective decision was taken without considering the applicant's request for clarity regarding notice sent to him on 29 March 2019, to withdraw his refugee status. The decision was communicated to the applicant. Once such decision was communicated to the applicant, the first respondent was *functus officio* and has no power to set aside its decision, save to apply formally for a court to set aside the defective decision, so that the court can properly consider its effects on those subject to it (MEC for Health, Eastern Cape and Another V Kirland Investments (PTY) Ltd t/a Eye and Lazer Institute 2014(3) SA 481(CC)).

[12] Since the first respondent had set aside its own decision of 22 September 2022, its action is unlawful. Additionally, the applicant had already appealed against the decision, to the Refugee Appeal Board. For this reason, alone, the first respondent had no power to again invite the applicant to make written submissions and make a second decision. Regard should be had that, on 6 February 2023, DHA's Director: litigation, advised the chairperson of the first respondent to withdraw the letter which constitutes the first withdrawal decision and to drop the first invitation for representations and leave the applicant as an indefinite refugee. The Chairperson was advised that the past mistakes that were made in the applicant's matter puts the first

respondent in a 'weak position to litigate and will make the court more sympathetic to the applicant and make an adverse finding against the Department and possible punitive costs. For all these reasons the order should be granted in favour of the applicant.

[13] In the result, the following order is made:

13.1 Condonation for late filing of the supplementary affidavit of the applicant is granted.

13.2 Condonation for late filing of answering affidavit of the first respondent is granted.

13.3 The First Respondent's decision to withdraw the Applicant's Refugee Status in terms of section 36 of the Refugees Act 130 of 1998, dated 22 September 2022 and delivered to the Applicant on the same date, is declared to be unlawful and unconstitutional and is reviewed and set aside.

13.4 The First Respondent's decision to withdraw the Applicant's Refugee Status in terms of section 36 of the Refugees Act 130 of 1998, dated 17 March 2023 and delivered to the Applicant on the same date, is declared to be unlawful and unconstitutional and is reviewed and set aside.

13.5 In terms of the letter issued by the First Respondent on 4 June 2024 with reference numbers DBR/008293/06 and SCRA 702/12, the Applicant is certified to remain a refugee indefinitely in terms of section 27(c) of the Refugees Act 130 of 1998.

13.6 The First Respondent is ordered to pay the costs of the application on the attorney and own client scale.


MIMABESELE
(Judge of the Gauteng Local Division)

Date of hearing : 14 October 2025

Date of judgment : 17 October 2025

Appearances

On behalf of the Applicant : Adv. Harding-Moerdyk
Instructed by : Gumede Attorneys Inc.

On behalf of the respondents : Adv. N. Matidza
Instructed by : State Attorney