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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2023-054197

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates: NO

In the matter between:

LORRAINE MASILELA

Applicant

and

THE MINISTER OF HOME AFFAIRS

1st Respondent

THE DIRECTOR-GENERAL OF HOME AFFAIRS

2nd Respondent

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email as per email address indicated in the practice notes. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or her Secretary. The date of this Order is deemed to be 3 December 2025

JUDGMENT

Reid J

Introduction

[1] This is an application for review in terms of section 33 of the Constitution of the Republic of South Africa, 1996, read with the *Promotion of Administrative Justice Act* 3 of 2000 (“PAJA”). The applicant, Ms Lorraine Masilela, seeks to review and set aside the respondents’ failure to make a decision regarding the lawfulness and validity of her permanent residence exemption status, their failure to finalise investigations into her status as an “illegal foreigner”, and their failure to return her Zimbabwean passport and permanent residence identity document. She also seeks a declaration that her permanent residence exemption status is valid and authentic, and an order for the withdrawal of the deportation order issued against her.

[2] The application is opposed by the respondents, who raised several preliminary issues, including an unreasonable delay in bringing the application, failure to exhaust internal remedies, and the alleged fraudulent nature of the applicant’s permanent residence documents.

Background

[3] The applicant, a Zimbabwean national, entered South Africa in April 1992 as a minor on her father’s passport. She was issued with a

permanent residence exemption certificate on 29 November 1996 under reference number 704/96 MMA(D) in terms of section 23(a) and 28(2) of the repealed *Aliens Control Act* 96 of 1991. This exemption was endorsed in her passport and later formed the basis for the issuing of a permanent residence identity document on 7 March 2012.

[4] The applicant is employed at Standard Bank on a full time basis as a project manager. She was employed as such from 1 December 2015 and currently earns a gross income of R56,000 per month.

[5] The applicant resides in Gauteng and has resided at the same address for approximately 12 years. This property is held in her personal name. The property is bonded with Standard Bank South Africa, to the value of approximately R1.8 Million. The applicant and her husband also share a second property to the value of R650,000 in Brakpan, Gauteng, which is also bonded with Standard Bank South Africa.

[6] The applicant has no interests in Zimbabwe. She has several banking accounts in South Africa. The applicant owns a 2012 Mercedes Benz motor vehicle of which the value is approximately R473,000. The vehicle is financed by SBVA, a division of Standard Bank Ltd.

[7] The applicant obtained her first and initial Zimbabwean passport under passport number A[...]. This passport was issued by the Registrar

General in Bulawayo, Zimbabwe on 18 December 2000 and was valid until 17 December 2010. The second passport of the applicant was issued on 14 August 2020 and is valid until 13 August 2030 and was issued by the Registrar General in Harare.

[8] The applicant was issued with a permanent residence exemption certificate on 29 November 1996 by the respondents' office in Mmabatho under ref number 704/96/MMA(D). Such was issued as it appears from stated exemption certificate in terms of section 23(a) and section 28(2) of the repealed *Aliens Control Act* 96 of 1991. This is the same permanent residence status as it appears from the exemption certificate that was endorsed into the applicant's first passport in terms of Section 53(3) of the *Immigration Act* 13 of 2002.

[9] The applicant was in possession of a lawful permanent residence identity document with identity number 8[...] based on her lawful and legitimate permanent residence status granted to her by the respondents. On 7 March 2012 the applicant was issued with a permanent residence identity document by the respondents' head offices and under the authority of the 2nd respondent. With these documents, she travelled between South Africa (where she works and resides) and Zimbabwe (where she visits family).

[10] On 18 April 2022, when entering South Africa, the applicant was issued

with a Notice by Immigration Officer to personally appear before the Director-General of the respondents and such was issued in terms of section 7(1)(g) read with section 33(4)(c), Regulation 32(2) of the Act. She was to appear at the respondents offices on 19 May 2022 to verify her permanent residence status. The applicant's permanent residence identity document and 2 passports referred to above, were confiscated by the respondents. The applicant received a form described as "Receipt of Items Seized in terms of section 7(1)(d) read with section 33(5)(c), Regulation 32(5) of the Act."

[11] The applicant has never qualified or applied for South African citizenship in terms of the *South African Citizenship Act* 88 of 1995 /17 of 2010 ("the amended Act"). She does not have a criminal record and has never been charged with any contravention in terms of immigration. The applicant has a clearance certificate from the South African Police Service (SAPS) that she does not have any criminal matters against or pending against her.

[12] The applicant has obtained permanent residence status and her permanent residence identity document and received permanent residence status and certificate as far back as 1996, some 26 years ago, and has travelled with such extensively over approximate 26 years. The documentation has never before been placed under investigation, in dispute or under scrutiny.

[13] The applicant married her Zimbabwean spouse on 29 April 2015. He has been issued a VFS Receipt for Critical Skills Permit on 16 September 2022. They have 2 children who were born in South Africa.

[14] On 18 April 2022, while departing South Africa, the applicant was served with a notice to appear before the Director-General to verify her permanent residence status. Her passport and permanent residence identity document were confiscated. On 26 April 2022 she was served with an order to depart South Africa by 18 May 2022, failing which she would be arrested and deported.

[15] The applicant's attorneys made several attempts to engage the respondents, including requests for reasons and access to information under PAJA. The first respondent, in a letter dated 21 September 2022, asserted that the applicant's permanent residence identity document was fraudulent and that section 8 of the *Immigration Act* 13 of 2002 (Immigration Act) was not applicable as the matter was described as one of a "straight arrest". Section 8 of the Immigration Act deals with review and appeal procedure in the framework of that Act.

Issues for Determination

[16] The key issues for determination are:

16.1. Whether the applicant's application was brought after an

unreasonable delay.

- 16.2. Whether the applicant failed to exhaust internal remedies.
- 16.3. Whether the respondents' failure to provide reasons and afford the applicant her rights under section 8 of the Immigration Act renders the administrative action procedurally unfair.
- 16.4. Whether the applicant's permanent residence documents should be regarded as fraudulent for the purposes of this application.
- 16.5. Whether the court should grant the relief sought, including a substitution order.

Unreasonable Delay

[17] The respondents contend that the application was brought after an unreasonable delay of 16 months, contrary to section 7(1) of PAJA, which requires that review proceedings be instituted without unreasonable delay and not later than 180 days after the date of the administrative action.

[18] The applicant, however, argues that the delay was due to the respondents' failure to provide reasons and failure to respond to her attorneys' correspondence. She also points out that the respondents themselves were responsible for significant delays in filing their answering affidavit, which was filed 11 months out of time.

[19] In *Madikizela-Mandela v Executors, Estate Late Mandela and*

Others 2018 (4) SA 86 (SCA), the court emphasised that the determination of unreasonableness involves a factual inquiry and a discretionary one. In the *Madikizela-Mandela* matter, review proceedings were instituted in 2014 seeking an order declaring the Minister's decision of 16 November 1997 (to donate property) as *null and void*, alternatively, reviewing and setting aside that decision and ancillary relief. The Supreme Court of Appeal found that the appeal should be dismissed on the basis of the excessive undue delay, coupled with the potential for severe resultant prejudice to be suffered by the respondents, and the lack of an acceptable explanation for the unreasonable delay.

[20] The applicant's explanation, coupled with the respondents' own conduct, justifies the delay in this case. The interests of justice require that the matter be heard on its merits. This point *in limine* therefore fails.

Failure to Exhaust Internal Remedies

[21] The respondents argue that the applicant failed to exhaust internal remedies under section 8 of the Immigration Act. However, the respondents themselves admitted in their correspondence that they did not afford the applicant her rights to be heard under section 8, claiming it was unnecessary as the matter was a "straight arrest" and remains under investigation.

[22] In *Koyabe and Others v Minister for Home Affairs and Others* 2010 (4) SA 327 (CC) at para 44 the Constitutional Court held that the duty to exhaust internal remedies is not absolute where the administrator has failed to inform the affected person of their rights. The duty to exhaust internal remedies is not an absolute duty and a party, such as the applicant, cannot be forced to make use of an internal process that would be ineffective.

[23] This point *in limine* can therefore not be upheld.

Procedural Fairness and the Right to Reasons

[24] The applicant was not informed of her right to request a review or appeal under section 8 of the Immigration Act. She was also not provided with written reasons for the decision to declare her an “illegal foreigner” and to confiscate her documents, when her identification documents were confiscated.

[25] In *Bengwenyama Minerals (Pty) Ltd and Others v Genorah Resources (Pty) Ltd and Others* 2011 (4) SA 113 (CC) the Constitutional Court held in paragraph [73] that a person affected by a decision:

“should be informed by the department of the application and its consequences, and it should be given an opportunity to make representations in regard thereto.”

[26] The first respondent's letter of 21 September 2022, which merely asserted that the applicant's documents were fraudulent without providing detailed reasons, does not satisfy the requirement of procedural fairness under PAJA and section 33 of the Constitution.

[27] The respondents' failure to comply with section 8 of the Immigration Act and section 3(2)(b) of PAJA, which requires adequate notice of the right to request reasons and the duty to provide such detailed reasons, falls short in rendering the respondent's administrative action procedurally fair.

Fraud Allegations

[28] The respondents allege that the applicant's permanent residence exemption certificate is fraudulent because the reference number 704/96 MMA does not correspond with the register of exemptions for the Mmabatho office, which they claim is 337/96. This is the basis on which the respondents claim that the applicant's documents were obtained fraudulently.

[29] However, the respondents have not provided any sworn testimony from the first respondent or any corroborating evidence, such as a copy of the register itself, to substantiate this allegation. The reference to different referral systems of the respondent does not prove that the applicant's documents are fraudulent. Neither does the second

respondent's reliance on a traveller's record system which is not supported by the relevant extract or a supporting affidavit.

[30] Moreover, the respondents issued the applicant a permanent residence identity document in 2012, which would not have been possible if her underlying permanent residence status was invalid. This supports the applicant's contention that her documents are authentic.

Substituted Order

[31] The applicant seeks a substituted order declaring her permanent residence exemption status valid and authentic in addition to directing the respondents to return her documents and withdraw the deportation order.

[32] In *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited* 2015 (5) SA 245 (CC), the Constitutional Court held that a substituted order may be granted in circumstances where:

- 32.1. The court is in as good a position as the administrator to make the decision;
- 32.2. The decision of the administrator is a foregone conclusion; and
- 32.3. It is in the interests of justice to do so.

[33] In this case, this Court is not in as good a position as the respondents to make a decision in relation to the validity and legality of the applicant's status as immigrant in the country. A thorough investigation is necessary to be conducted by the respondents, with more details as only the reference numbers of the exception certificate, in order to determine the legality of the applicant's status. Correspondence dated 21 September 2023 from the respondents indicate that the case "is still under investigation". There is thus no finality at the moment.

[34] On this basis the investigation on the legality and validity of the applicant's identity and residential status should be referred back to the respondents for determination.

Conclusion

[35] The applicant did not unreasonably delay the launching of the application in the circumstances.

[36] The applicant furthermore made a case for the relief sought that she is not obliged to exhaust internal remedies as she was not informed of her rights under section 8 of the Immigration Act. She was also not able to appeal, since the question of her status was busy being investigated by the respondents. An appeal would thus be seen as premature.

[37] The respondents' reasons for issuing an order of deportation, is of minimal detail only referencing that the applicant has been issued with an incorrect reference number. An investigation should be done by the respondents to establish the manner in which the applicant was issued a residential document with a different reference number from that of the Mmabatho office.

[38] The application is successful as the applicant has made a proper case to be granted a review of the 1st and 2nd respondents' inaction in making decisions and setting aside thereof.

[39] The applicant requests an order that the seized documents should be declared valid and lawful. This Court does not have the power to grant such an order, as it would amount to encroachment of the separation of powers principle. This Court will therefore refrain from making any such order.

[40] In these circumstances, as set out above in paragraph [24], the court can only make an order to review and set aside the inaction of the respondents, and refer the question of the legality of the applicant's status back to the respondents.

Order

The following order is made:

- (i) The 1st and 2nd respondent's inactions, inability, and failure to make a decision and resolve and finalise the lawfulness and validity of the applicant's permanent residence exemption status in accordance with Section 23(a) and 28(2) of the *Repealed Aliens Control Act* 96 of 1991 is reviewed and set aside.
- (ii) The 1st and 2nd respondent's inactions, inability, and failure to resolve and finalise current apparent further investigations pertaining Applicant's order as an illegal foreigner to depart from the Republic in terms of section 7(1)(g); Regulation 30(4) of the *Immigration Act* 13 of 2002 (as amended) (the Act) is reviewed and set aside.
- (iii) The first and second respondents' inaction, inability, and failure to return to the applicant her Zimbabwean passport (number G[...]) and her permanent residence identity document (number 8[...]) is reviewed and set aside.
- (iv) The 1st and 2nd respondents are ordered to return to the applicant her Zimbabwean passport (number G[...]) and her permanent residence identity document (number 8[...]) within 10 days of this order.
- (v) The 1st and 2nd respondents are ordered to conduct a diligent

investigation to determine the legality and validity of the applicants' residential and immigration status in South Africa.

- (vi) The 1st and 2nd respondents are ordered to pay the costs of this application on a party and party scale, scale A, including the costs of two counsel where applicable.

**FMM REID
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

DATE OF ARGUMENT: 6 AUGUST 2025

DATE OF JUDGMENT: 3 DECEMBER 2025

APPEARANCES:

FOR THE APPLICANT:

COUNSEL: ADV S KROEP

**INSTRUCTED BY: BURGERS ATTORNEYS
E-mail: diane@burgersattorneys.com**

FOR THE RESPONDENT:

COUNSEL: ADV. JM MIHLANGA

**INSTRUCTED BY: STATE ATTORNEY PRETORIA
EMAIL: WMotsepe@justice.gov.za
NoNgcobo3@justice.gov.za**