

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

Case Number: 041357/2023

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
9 December 2025	
DATE	SIGNATURE

In the matter between:

FATUMA ABUBAKER MOHAMED

Applicant

and

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

First Respondent

THE MINISTER OF HOME AFFAIRS

Second Respondent

**THE DIRECTOR - GENERAL OF
HOME AFFAIRS**

Third Respondent

JUDGMENT

WANLESS J

Introduction

- [1] In this matter one Fatuma Abubaker Mohamed, an adult female (*"the Applicant"*) has instituted a review application in terms of subsection 6(1) of the Promotion of Administrative Justice Act 30 of 2000 (*"the Act"*) to review and set aside a decision made on 25 September 2019 whereby the Applicant was declared a prohibited person in terms of subsection 25(1) of the Refugees Act 130 of 1998 (*"the Refugees Act"*).
- [2] The First Respondent is the Chairperson, Standing Committee for Refugee Affairs; the Second Respondent is the Minister of Home Affairs and the Third Respondent is the Director – General of Home Affairs. For ease of reference, all three respondents will simply be referred to as *"the Respondents"*.
- [3] It was always the intention of this Court to deliver a written judgment in this matter. In light of, *inter alia*, the onerous workload under which this Court has been placed and the lack of administrative assistance, this has simply not been possible without incurring further delays in the handing down thereof. In the premises, this judgment is being delivered *ex tempore*. Once transcribed, it will be *"converted"*, or more correctly *"transformed"*, into a written judgment and provided to the parties. In this manner, the time in which the judgment is delivered, will not be compromised. For the purposes of the time limits as prescribed in terms of the provisions of subrule 49(1)(b) the date shall be the date upon which the written judgment is uploaded onto Caselines. This Court is indebted to the transcription services of this Division who generally provide transcripts of judgments emanating from this Court

within a short period of time following the delivery thereof on an *ex tempore* basis.

The facts

- [4] The Applicant's review application is directed against the decision of the Refugee Status Determination Officer ("*the RSDO*") handed down on 5 December 2018 and the decision of the Standing Committee for Refugee Affairs ("*the SCRA*") handed down on 25 September 2019.
- [5] This application was served on the Respondents on the 17th of May 2023, which is a period in excess of 180 days as prescribed by subsection 7(1) of the Act.
- [6] The Applicant is an Ethiopian citizen and was issued with a temporary permit after first arriving in the Republic of South Africa in October 2018 together with her children. Prior to the Respondent's decision of the 25th of September 2018 the Applicant approached Lawyers for Human Rights seeking assistance for her children to form part of her asylum application. The Lawyers for Human Rights addressed a letter dated 2 July 2019 requesting the Respondents to join the Applicant's children under her "*asylum file*" in terms of the provisions of subsection 3(1)(c) of the Refugees Act. The aforesaid letter from the Lawyers for Human Right was never responded to by the Respondents.

The Applicant's case

- [7] The Applicant relies upon the following grounds of review as a basis for setting aside the RSDO's decision, namely:

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7.1 the RSDO's failure to properly exercise his discretion, in terms of subsection 24(1) of the Refugees Act, renders his decision procedurally unfair in terms of subsection 6(2) of the Act;

7.2 the RSDO's failure to grant the Applicant a hearing resulted in non-compliance with subsection 24(2) of the Refugees Act;

7.3 the RSDO's decision was not rationally connected to the information that was before him; and

7.4 the RSDO's decision was unlawful in that it violated section 2 of the Refugees Act.

[8] It was submitted, on behalf of the Applicant, that the crux of this application is the miscommunication that occurred between the Applicant and the Home Affairs Official/Interpreter, during her interview for refugee status with the RSDO.

[9] In her Founding Affidavit the Applicant avers that during the interview with the Home Affairs Official, her daughter attempted to interpret and/or correct what the interpreter was conveying to the interviewer but she was blatantly ignored. The Applicant's daughter deposed to an affidavit setting out the events which took place at the RSDO interview.

[10] It was further submitted that the reasons why the Applicant came to the Republic of South Africa in order to apply for

refugee status as set out in her Founding Affidavit, are not reflected and/or differ materially with the facts captured by the RSDO. In the premises, the decision of the RSDO was ¹based on irrelevant facts.

[11] Also, it was submitted by the Applicant's Counsel that the Respondents, in their Answering Affidavit, have failed to deal with the contents of the Applicant's Founding Affidavit at all, *alternatively*, have failed to do so in sufficient detail. Arising therefrom, it is submitted on behalf of the Applicant that this Court should accept the version as placed before this Court by the Applicant and grant to the Applicant the relief sought.

The Respondents' case.

[12] The grounds upon which the Respondents base their opposition to the relief sought by the Applicant are the following:

12.1 firstly, subsection 24(1) of the Refugees Act¹ does not place any mandatory or peremptory obligations upon the RSDO to exercise his discretion in favour of seeking additional information. Instead, the subsection provides as follows:

¹ Subsection 24(1) was deleted by subsection 17(a) of the Refugees Amendment Act 33 of 2008, with effect from 1 January 2020.

“Upon receipt of an application for asylum the Refugee Status Determination Officer -

- (a) In order to make a decision, may request any information or clarification he or she deems necessary from an applicant or Refugee Reception Officer;*
- (b) where necessary, may consult with and invite a UNHCR representative to furnish information on specified matters; and*
- (c) may, with the permission of the asylum seeker, provide the UNHCR representative with such information as may be requested.”²*

12.2 similarly the Regulations to the Refugees Act do not place any mandatory obligations upon the RSDO.

“During the interview, the Refugee Status Determination Officer may” –

- (a) require further information, evidence or clarification from the asylum seeker; and*
- (b) require further information, evidence, clarification or corroboration from any other relevant person, body or source.”³*

² *Emphasis added.*

³ *Subregulation 14(5); emphasis added.*

12.3 further, subsection 24(2) of the Refugees Act (as it then was)⁴ does not create a mandatory obligation on the RSDO to grant the Applicant a hearing. It only obliges the RSDO to give due regard to section 33 of the Constitution and to ensure that the Applicant understands the procedure; his or her rights and responsibilities and the evidence presented;

12.4 in this context, it was submitted on behalf of the Respondents, that “*due regard*” for an applicant’s administrative rights does not automatically equate to the right to a hearing. This is so, submits the Respondents’ Counsel, particularly when read with the discretion contained in subsection 24(1) and the fact that the Applicant was provided with an opportunity to provide all necessary information during the status determination interview that preceded the RSDO’s determination;

12.5 also, the contention that the RSDO’s decision bore no rational connection to the information before the RSDO is denied by the Respondents on the basis that:

12.5.1 the RSDO and the following information at his or her disposal:

(a) the contents of the discussions during the Applicant’s

⁴ Subsection 24(2) was substituted by subsection 17(b) of the Refugees Amendment Act with effect from 1 January 2020.

status determination interview (*"the interview notes"*); and

(b) the Applicant's application for asylum status.

12.6 Finally, it was submitted before this Court that the RSDO's decision did not violate section 2 of the Refugees Act for the same reasons as already submitted. Section 2 of the Refugees Act states:

"Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where –

(a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or

(b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing public order in either part or the whole of that country."

12.7 Arising therefrom, it was submitted that where there is no information before the RSDO regarding any alleged persecution or threat to the Applicant's physical safety or

freedom the RSDO cannot be said to have ignored the obligations imposed upon the RSDO in terms of section 2.

[13] As to the Applicant's attack on the decision of the Standing Committee for Refugee Affairs ("*the SCRA*") the Respondents base their opposition upon the following grounds, namely:

13.1 firstly, the SCRA was not under any obligation, in terms of section 26 of the Refugees Act, to request the Applicant's appearance at its deliberations as there is no peremptory requirement that the Applicant be present. Instead, subsection 26(3)(e) only provides the SCRA with a discretion to request an applicant's appearance "*to provide any such other information as it may deem necessary.*";

13.2 secondly, the allegation that the Applicant was not provided with an opportunity to make written submissions to the SCRA is, it was submitted, not true. This is (*it was submitted*) apparent from the SCRA's Notice (*dated 5 September 2018*) advising the Applicant that her unsuccessful asylum application would be reviewed by the SCRA. The Notice provides as follows:

"If you wish to make any representations to or request to appear before the SCRA (as envisaged in (d) above) prior the review, you may do so in writing. Any such representations or request to appear before the SCRA

must reach the SCRA not later than fourteen working days after the date on which you received the attached letter from the RSDO”;

13.3 thirdly, it was submitted that the SCRA's finding was indeed rationally connected to the information provided by the Applicant.

Relief sought.

[14] The relief sought by the Applicant and as set out in the Applicant's Notice of Motion, is (*verbatim*) as follows:

*“1. Condoning the late filing and service of the Judicial Review Application more than 180 days after the date on which the Applicant was informed of the administrative action in terms of section 7(1) of PAJA. **Attached as AN1** are documents to indicating (*sic*) that the applicant visited Lawyers for Human Rights, Wit (*sic*) Law Clinic and Probono for help.*

*2. To review and set aside the Respondents (*sic*) declaration and decision made on the (*sic*) 05 of December 2018, declaring that the Applicant be declared a prohibited person in terms of Section 24(3)(b) of the Refugee (*sic*) Act, 1998 (“Act”);*

*3. To review and set aside the Respondents (*sic*) declaration and decision not to renew the applicant's asylum and asking the applicant to leave the Republic of South Africa on the (*sic*)*

09 of September 2019.

4. *To review and set aside the decision or decisions, why the Respondents have rejected the applicant's application for renewal and to renew and or re-printing of her Asylum permit and to include her children under her file.*

5. *To review and set aside the decision in terms of section 24(3)(b) of the Act, of the Respondents forcing the applicant to go back to her country of origin where her life is exposed to danger and not giving due consideration to section 3(a) – (b), exposing her and her children to the same government and rebel group they ran away from;*

6. *That the Respondents comply with the court order within **30 (thirty days)** from this court order.*

7. *The Respondents to pay the costs of this application; jointly and severally, the one paying the other to be absolved, on an attorney and client scale.*

8. *That this Honourable Court grants the applicant further and/or alternative relief it deems necessary."*

[15] Regrettably, no draft order appears to have been uploaded onto Caselines by the Applicant. Nevertheless, it was common cause between the parties that should this Court review and set aside the various decisions, then it would be just and equitable if this court remitted the matter back to enable the

Respondents to reconsider the Applicant's application for asylum and make a fresh decision.

The law

[16] In the matter of *Tshiyombo v Members of the Refugees Appeal Board and Others*⁵ it was held, *inter alia*, that:

*"The Act contemplates a system in which applications for refugee status are vetted inquisitorially. Refugee reception officers are permitted, indeed expected to ensure that the allegations that an applicant relies on in support of the application are adequately set out, and may carry out such enquiry as they deem necessary in order to verify the information in the application. Refugee status determination officers may request further information and, where appropriate, consult with or seek information from a UNHCR representative."*⁶

[17] In addition to *Tshiyombo* the Respondents also relied upon a decision of the Constitutional Court in the matter of *Gavric v Refugee Status Determination Officer, Cape Town and Others (People against Suppression, Suffering, Oppression and*

⁵ 2016(4) SA 469 (WCC).

⁶ *Emphasis added.*

Poverty as amicus curiae)⁷ where it was held⁸ that:

“While an RSDO exercises a discretion in making a section 3 determination, no such discretion exists in respect of exclusion decisions. Once the mentioned jurisdictional facts are proven, an applicant must be excluded, leaving no room for a balancing test or proportionality enquiry. Whilst a test that takes the risk of persecution into account may be necessary to ensure that an asylum seeker’s life is not placed at risk for a minor offence, the Act builds a “proportionality” inquiry into section 2 and the non-⁹refoulement provisions. However, this enquiry does not occur at the stage when the RSDO decides the asylum application but rather at the stage when the asylum seeker is facing extradition.”⁹

Discussion.

[18] Subsection 7(1) of the Act provides that any proceedings for judicial review in terms of subsection 6(1), which applies to the present matter, must be instituted without unreasonable delay and not later than 180 days after the dates as set out in subsections 7(1)(a) and (b) of the Act. It is common cause that

⁷ 2019 (1) BCLR 1 (CC).

⁸ At page 3.

⁹ *Emphasis added.*

the application in this matter was instituted some time (*approximately four to five years*) after the decision of the SCRA. The Applicant seeks condonation from this Court in respect thereof. Such condonation is opposed by the Respondents.

[19] It is not the intention of this Court to burden this judgment unnecessarily by setting out, in detail, the principles applicable when deciding the issue of condonation, nor the facts upon which the Applicant relies. Suffice it to say, at first blush, the time of the delay and the grounds of opposition put forward on behalf of the Respondents (*"finality of administrative functions; failure of the Applicant to deal fully with the entire period of the delay et cetera"*) would appear to count against the Applicant's application for condonation. However, having regard to, *inter alia*, the grave difficulty faced by the Applicant in obtaining legal representation (*a very real factor regrettably facing so many poor litigants*); the fact that that the Respondents may (*to one degree or another*) be partly responsible for that delay; the nature of the matter (*an application for asylum*); the principle of refoulement and the ultimate decision which this Court has reached (*the prospects of success*), it is the opinion of this Court that, in the exercise of its discretion, the late institution by the Applicant of this review application, should be condoned.

[20] Regarding the merits, subsection 6(2)(e)(iii) of the Act provides that a court has the power to judicially review an administrative action if the action was taken:

- (a) for a reason not authorised by the empowering provision;
- (b) for an ulterior purpose or motive;
- (c) because irrelevant considerations were taken into account or relevant considerations were not considered;
- (d) because of the unauthorised or unwarranted dictates of another person or body;
- (e) in bad faith; or
- (f) arbitrarily or capriciously.

[21] In the present matter the Applicant relies upon relevant considerations not being considered and the administrative action being taken arbitrarily or capriciously. The grounds therefor have been set out earlier in this judgment.¹⁰ Likewise, the grounds of opposition put forward by the Respondents have been dealt with herein.¹¹

[22] Counsel who appeared on behalf of the Respondents put forward a fairly compelling argument based on the facts and

¹⁰ Paragraphs [8] to [11] *ibid.*

¹¹ Paragraphs [12] and [13] *ibid.*

upon and interpretation of the relevant sections and subsections of the Refugees Act. Nonetheless, as will become apparent later in this judgment and as interesting as the issue of interpretation may be, it is not necessary for this Court to embark upon such an exercise. This is as a result of the fact that, as submitted on behalf of the applicant,¹² this Court agrees that the crux of this matter is the alleged “*miscommunication*” which took place between the Applicant and the RSDO.

[23] In summary, the Applicant avers that the Interpreter did not properly interpret what she was telling the RSDO. As a result thereof, it was incorrectly recorded that she had left Ethiopia with her children and come to the Republic of South Africa in search of a better life. As set out in the Applicant’s Founding Affidavit, it is alleged by the Applicant that, *inter alia*, during 2018 the Applicant, her husband and eldest child (*a son*)¹⁰ were detained (*without trial*) by government soldiers. When released from detention the Applicant fled from Ethiopia with her other children in order to avoid further arrest and persecution.

[24] It is further averred by the Applicant that the failure of the RSDO to properly record (*via the interpreter*) the true reasons for her seeking asylum with her children in this country was

¹² Paragraph [8] *ibid*.

brought to the attention of the SACRA by way of affidavits. The Applicant's version of the events which took place during the interview with the RSDO are confirmed by an affidavit deposed to by the Applicant's daughter who can speak English and who also states that the interpreter spoke in a different dialect to that of the Applicant.

[25] Applicant's Counsel, as noted earlier in this judgment,¹³ submitted that the Respondents, in their Answering Affidavit, had failed to deal with the essential averments in the Applicant's Founding Affidavit either at all, or not in sufficient detail. In this regard, this Court accepts this submission to be correct, particularly when one has regard to the "*crux*" of this matter, as outlined above. As correctly pointed out on behalf of the Applicant the Respondents, whilst undertaking to deal with each paragraph of the Founding Affidavit, simply fail to do so. In fact, only one paragraph thereof is dealt with by the respondents and, when doing so, in broad terms only.

[26] In particular, the Respondents have failed to deal with the crux of this matter on a factual basis. It must follow therefrom that the facts as averred by the Applicant may be accepted by this Court. There is nothing improbable or far-fetched in respect of the Applicant's version (*confirmed by her daughter*) as placed before this Court.

¹³ Paragraph [11] *ibid.*

Conclusion.

[26] Arising from the foregoing, this Court finds that the decision of the RSDO should be reviewed and set aside on the basis that the said administrative action failed to take into account relevant considerations which were not considered, *alternatively*, was taken arbitrarily or capriciously. Having made this finding, it must follow that the action taken by the SCRA must suffer the same fate.

[27] As to the nature of the order to be granted by this Court, it is the opinion of this Court that it would be highly undesirable (*if not practically impossible*) for this Court, based upon the facts placed before it at this stage, to attempt to formulate its own order. Rather, it would be just and equitable if the matter was remitted for reconsideration by the RSDO.

Costs.

[28] It is trite that costs fall within the general discretion of a court and that, unless unusual circumstances exist, an order for costs should normally follow the result. No unusual circumstances have been brought to the attention of this Court. In the premises, this Court finds that the Respondents should pay the costs of this application.

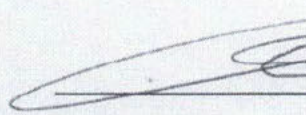
Order

[29] This Court makes the following order:

1. The late filing and service of this application by the Applicant is condoned.
2. All decisions pertaining to the Applicant and made by the Respondents in respect of, *inter alia*, the Applicant being declared a prohibited person; the Applicant's application for asylum and the deportation of the Applicant from the Republic of South Africa are reviewed and set aside.
3. The Respondents are to reconsider the application for asylum made by the Applicant (duly supplemented where necessary), together with any applications by the Applicant's children for asylum, within the Republic of South Africa.
4. The Respondents are to render, in writing, their decision, in relation to paragraph 3 hereof, within SIXTY (60) days of the date of this order.
5. The Respondents are to pay the costs of this application, jointly and severally, the one paying the others to be absolved.

4. The Respondents are to render, in writing, their decision, in relation to paragraph 3 hereof, within SIXTY (60) days of the date of this order.

5. The Respondents are to pay the costs of this application, jointly and severally, the one paying the others to be absolved.



BC WANLESS
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 16 April 2025

Date of *ex tempore* judgment: 16 October 2025

Date of written judgment: 9 December 2025

Appearances

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