



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED. ✓

DATE: 29/04/2026

SIGNATURE [REDACTED]

Case No: 2026-088313

In the matter between:

Misganu Asfaw

Plaintiff / Applicant / Appellant

and

Minister of Home Affairs
DirectorGeneral of Home Affairs

Defendant / Respondent

REASONS FOR ORDER

The judgment and order are published and distributed electronically.

PA VAN NIEKERK, J

[1] This matter was enrolled on the roll of the Urgent Court for 28 October 2026 and on that date this Court removed the application from the roll, having determined that the matter is not urgent, and made no order on costs. The reasons for that order follows *infra*.

[2] In the notice of motion dated 17 April 2026 which was served at the offices of the State Attorney on 17 April 2026, Applicant claimed the following relief:

- "1. That this application be regarded as urgent and the rules applicable to applications in the normal course be dispensed with as contemplated in Rule 6 (12).
2. That the Respondents release the Applicant from Modderbee Correctional Services where he is detained for the offence of Contravention of Section 49 of the Immigration Act 13 of 2002, on the date of this order.
3. That the First and Second Respondents conduct the interview with the Applicant for a Good Cause in terms of Regulation 8(3) of the Refugees Act and if passed, also assist with application for Asylum, within 7 days of this order.
4. That the Respondents be ordered not to arrest, detain or deport the Applicant until his refugee status has been lawfully and finally determined.
5. That the Respondents be ordered to pay the costs of this application on an Attorney and Client scale C".

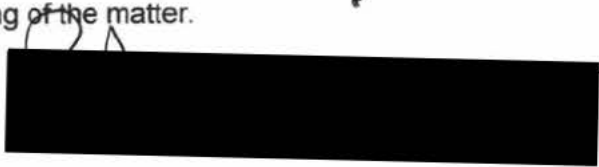
[3] In the founding affidavit the Applicant avers that he is Ethiopian by birth and entered South Africa illegally without any documents during February 2025. No particulars are provided on exactly when, how or where the Applicant so entered South Africa. Applicant further avers that he attempted "*on many occasions*" to go to Home Affairs, Pretoria

Refugee Reception Office, to seek assistance on his asylum application, with no success. He further avers that he was arrested on 28 February 2026 at a shop where he was working, and when he was unable to provide a permit he was then detained and charged with the offence of contravening section 49 of the Immigration Act 13 of 2002. He was brought before a Magistrates Court on 2 March 2026 when the case then postponed to 22 April 2026. No further evidence was produced to explain what transpired at Court on 22 April 2026.

- [4] On 24 April 2026, after the application was served on the offices of the State Attorney, the office of the State Attorney uploaded a copy of correspondence addressed to Applicant's attorney of record, which reads as follows:

- "1. Our letter dated the 23rd April 2026 (sic).
2. We are instructed by our client the Minister of Home Affairs (the First and Second Respondents) to place on record their undertaking to interview the Applicant for good cause within a period of ten (10) working days from his date of Court appearance on the 28th April 2026 (should he remain in custody).
3. In the event that he is released, he is advised to immediately to present(sic) himself to our clients' offices for an interview.
4. In light of the above and that the application is not opposed, kindly confirm that your client will abandon prayer for cost.
5. We await your response".

- [5] The letter *supra* clearly diffuse the alleged urgency of the matter. The necessity for an order in terms of prayer 3 of the notice of motion on an urgent basis falls away by virtue of the undertaking as contained in the aforesaid letter.
- [6] The detention of Applicant is not unlawful. In this regard, see a judgment of this division¹ where it was held that the amendments to the Refugees Act referred to in the *Scalabrini* judgment² confirms that there is no automatic release from detention once an intention to apply for asylum has been evinced. The relief as claimed in prayer 4 of the notice of motion, considering the aforesaid authorities, is therefore incompetent.
- [7] Whereas Respondents are now aware of the Applicant's intention to apply for asylum, section 2 of the Refugees Act prohibits the deportation of Applicant. The relief claimed in this regard in prayer 4 of the notice of motion thus becomes moot.
- [8] In the result, there is no urgency in the matter and the matter was accordingly removed from the roll and no order was made as to costs by virtue of the fact that the Respondents did not instruct counsel to appear at the hearing of the matter.


P A VAN NIEKERK
JUDGE OF THE GAUTENG DIVISION,
PRETORIA

¹ *Lembore and others v Minister of Home Affairs and others* 2024 (5) SA 251 (GJ).

² *Scalabrini Centre of Cape Town and another v Minister of Home Affairs and others* [2025] 3 All SA 287 (WCC).

APPEARANCES

FOR APPLICANT

RESPONDENTS

SV SEKGOTHE

NO APPEARANCE