

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

(1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☒ / No ☐

Date: 23 June 2026

Case no 2025-00045

In the matter between:

ANGEL MUDAU

Applicant

and

**DIRECTOR GENERAL,
DEPARTMENT OF HOME AFFAIRS**

First Respondent

MINISTER OF HOME AFFAIRS

Second Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] In this opposed review application, the applicant seeks to review and set aside a decision of the first and second respondents, collectively the respondents, to mark his identity document (number 8[...] – own emphasis) for deletion from the National Population Register. He further seeks an order directing the respondents to reinstate that identity number within ten days of service of any order made by this court.

[2] The respondents oppose the application on the primary ground that the identity number 8[...] was never validly assigned to the applicant, and that the decision to mark it for deletion pertained only to another person – a female also named Angel Mudau – with whom the number is associated in the respondents' records. Instead, in their records, he was assigned the identity number 8[...]1. That being the case, it is their case that they did not owe a duty of procedural fairness to the applicant, that there is no reviewable administrative action affecting him, and that the application falls to be dismissed.

[3] For reasons set out below, the respondents' primary argument cannot be sustained on these facts. The decision to mark the identity number for deletion had a direct, external, and materially adverse effect on the applicant. The respondents owed him an opportunity to make his representations before taking that decision. On that ground, and that ground only, the decision falls to be reviewed and set aside. However, the exceptional circumstances required to justify an order of substitution (i.e. directing the respondents to reinstate the number) have not been established, and the appropriate remedy is to remit the matter to the respondents for a fresh decision in accordance with the principles of administrative justice. The reasons for coming to this conclusion are set out below. Before turning to the merits, I deal with a point in limine that was argued at the hearing.

Point in limine

[4] The applicant raised a point in limine that the respondents' answering affidavit was defectively commissioned, as it bears only a signature below the deponent's, without the commissioner's full name, designation, or area of appointment, as required by Regulation 4(2) of the Regulations promulgated under the Justices of the Peace and Commissioners of Oaths Act.¹

[5] The respondents oppose the point on two grounds: first, that the applicant condoned the defect by filing a full replying affidavit engaging the merit. And second,

¹ 16 of 1963.

relying on *Trans-African Insurance Co Ltd v Maluleka*,² that technical objections to imperfect procedural steps should not be entertained in the absence of prejudice.

[6] I agree. The applicant suffered no prejudice. He filed a comprehensive reply addressing the merits in full. The defect is technical and does not cast doubt on whether the deponent appeared before the commissioner or understood the contents of the affidavit. The point in limine is dismissed, and the answering affidavit is accepted.

Background

[7] The applicant is a South African male who, according to some records, was born on 25 August 1985 in Tshitungulwane, in the magisterial district of Vuwani. One such record is his birth registration document of 28 December 1998. Upon registration, the Department of Home Affairs ("the DHA") assigned him identity number 8[...]1. As will be explained below, an identity number encodes a person's date of birth, sex, and citizenship status: the first six digits represent the date of birth, the next four digits indicate sex (0001–4999 for females; 5000–9999 for males), and the final digits indicate citizenship. Identity number 8[...]1 is therefore consistent with a male person born on 25 August 1985.

[8] On 18 July 2003, the applicant applied for his identity card. The applicant's case, which has not been adequately addressed by the respondents, is that, at the time of processing his application, the DHA made an administrative error: it assigned him the identity number of another person, Angel Mudau, a female born on 6 October 1986, instead of his own. He says this is why he subsequently had to apply for a sex rectification. The respondents deny that any such application for sex rectification was made by him, stating that they have no supporting documents on record. On their version, the identity document the applicant relies upon was issued without any supporting documentation and is therefore of doubtful lawfulness.

[9] The respondents' records reflect the applicant's assigned identity number as 8[...]1, as indicated above, which correctly encodes his stated date of birth and sex.

² 1956 (2) SA 273 (A) at 278E–G.

This is also reflected in the notice of birth document and is supported by an affidavit from the applicant's father. There is, however, a discrepancy in the records: the first application for an identity card in the respondents' records lists a date of birth of 25 August 1986, rather than the applicant's stated date of birth of 25 August 1985. This discrepancy has not been satisfactorily explained and is one of several unresolved factual questions that will require ventilation in the process that follows remittal.

[10] The applicant further alleges, but only in his replying affidavit, that identity number 8[...]1, which the respondents say is his correct number, was assigned to a Nigerian national who was subsequently deported from South Africa for lack of lawful documentation. This allegation was raised only in the replying affidavit, and the respondents therefore had no opportunity to respond to it.³ This is yet another matter that could not be resolved on the papers before this court and which must be ventilated in the remitted process.

[11] The respondents have on record the details of the female Angel Mudau, whose birth was also registered late. The identity number assigned to her was 8[...]2, and this is reflected in the notice of birth form. The respondents submit that she was issued an identity document bearing this identity number in August 2003.

[12] On the records supplied, there is another application form for a first identity document on 27 February 2006. Inexplicably, the identity number recorded on this form is 8[...], a male-coded number, despite her having previously been assigned and issued an identity document bearing the female-coded number 8[...]2.

[13] Around March 2006, the respondents aver that a sex amendment was recorded on the female Angel Mudau's record, changing the sex indicators from female to male. This resulted in the number 8[...]. Part of the respondents' record contains an identity document with the name "Angel Mudau", the identity number 8[...] and a picture of a man (presumably the applicant). The applicant disputes this account. On his version, identity number 8[...] was originally assigned to him, and was incorrectly allocated to the female Angel Mudau at the time of her February

³ *Tittys Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd* 1974 (4) SA 362 (T) at 368H.

2006 application. This dispute cannot be resolved on the papers and is a central question for the remitted process.

[14] There were no supporting documents for this sex amendment, which raises questions about its lawfulness. Two days later, on 8 March 2006, an identity book was issued bearing the number 8[...]. This is the identity document the applicant relies upon. The respondents indicate that they do not possess any supporting documentation for any application by the applicant that preceded the issuance of that document.

[15] This sequence of events raises several concerns. What is clear, however, is that the applicant has possessed and extensively used an identity document bearing identity number 8[...] from 2006 onward. His matric certificate, tertiary qualifications, vehicle registration, and other documents all reflect this identity number. The deletion of this number therefore had real and concrete consequences for his daily life.

[16] At no stage prior to the marking of his identity number for deletion was the applicant informed that any investigation was underway, given an opportunity to make representations, or provided with reasons for the decision. He learned of the deletion only when it was deployed against him during a bail hearing.

[17] As for the female Angel Mudau: following the deletion of 8[...], she subsequently applied to have her correct identity number reinstated. The respondents restored her original number, 8[...]2.

Legal framework

The applicable constitutional provision is section 33 of the Constitution, which guarantees everyone the right to administrative action that is lawful, reasonable, and procedurally fair, and the right to written reasons for administrative action that adversely affects one's rights. Section 20 provides that no citizen may be deprived of citizenship. While citizenship per se is not directly in issue here, the deletion of an identity number carries consequences that effectively exclude a person from civic life and thereby engages the rights protected by the Constitution more broadly

[18] In South Africa, individuals are registered on the National Population Register at birth, and registration is mandatory within 30 days. The Births and Deaths Registration Act⁴ was enacted to regulate the registration of births and deaths. Section 9 provides that a child born alive shall be registered in the prescribed manner, within 30 days of birth.

[19] Section 27A provides that for the alteration of the sex description, which would lead to a new identity number, such an alteration shall be recorded and the person so concerned shall be entitled to an amended birth certificate. Importantly, the section requires supporting documentation. The absence of such documentation in this case is a central concern.

[20] When a South African citizen turns 16, they may apply for an identity card. The Identification Act⁵ regulates the maintenance of the National Population Register and the issuing of identity cards. Section 5 tasks the Director General with compiling and maintaining the population register and assigning an identity number to every person whose particulars are included therein.

[21] Section 7(2) of the Identification Act provides that the identity number shall consist of a reproduction in codes of the particulars of the person to whom it has been assigned: the person's date of birth (first six digits), the person's sex (females 0001–4999; males 5000–9999), and whether the person is a South African citizen.

[22] Regulation 69 of the Regulations on the Registration of Births and Deaths authorises and compels the Director General to cancel a birth registration, birth certificate, and any other documents, including an identity document, if it becomes apparent that a birth certificate was issued erroneously. However, even where such power exists, the principles of administrative justice require that it be exercised procedurally fairly

⁴ 51 of 1992.

⁵ 68 of 1997.

[23] This is confirmed by *PPM v Minister of Home Affairs*⁶, where the court, in the context of placing a marker against an identity document, held that such a process must be preceded by a fair administrative process. The affected person must be informed of any investigation, be provided an opportunity to put their case, be informed of the decision and the reasons for it, and be provided with an internal remedy. A mere suspicion that an identity document was fraudulently obtained does not justify blocking it. The blocking of an identity document in the absence of such a process constitutes unjust and irregular administrative action that infringes the constitutionally entrenched right to procedurally fair administrative action and is subject to review. By analogy, this is also the case where an identity number is removed.

[24] The Promotion of Administrative Justice Act⁷ ("PAJA") gives effect to section 33 of the Constitution. Section 1 defines "administrative action" to include any decision of an administrative nature by an organ of state, exercising a public power in terms of an empowering provision, that adversely affects the rights of any person and that has a direct, external legal effect. Section 3(1) of PAJA provides that administrative action that materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair. The minimum requirements of procedural fairness under section 3(2) include adequate notice of the nature and purpose of the proposed action, and a reasonable opportunity to make representations. Section 6(2)(c) provides a ground of review where the action was procedurally unfair.

[25] The respondents argue that there is no reviewable administrative action affecting the applicant. Their case is that identity number 8[...] was never validly assigned to him; the decision to mark it for deletion pertained only to the female Angel Mudau's record; and a decision that affected her record cannot be said to have had a direct, external legal effect on the applicant. Since the number never belonged to him, no duty of procedural fairness arose. This cannot be.

⁶ 2024 (3) SA 469 (GP) at paragraphs 92 to 96.

⁷ 3 of 2000.

[26] To begin with, the argument conflates the merits of the underlying factual dispute over whether 8[...] is the applicant's number with the question of whether the deletion had a direct, external legal effect on the applicant. PAJA requires that the decision materially and adversely affect that person's rights. Here, the applicant held and used an identity document bearing that number possibly for some nineteen years. His matric certificate, qualifications, vehicle registrations, and other documents all reflect it. The deletion had consequences.

[27] Moreover, the respondents cannot claim ignorance of the applicant's connection to this number. He presented himself at a DHA office in July 2003 to apply for his identity card. An identity document bearing the disputed number was physically issued, whether lawfully or not, and bears a photograph of a man. The respondents cannot credibly claim they had no knowledge of anyone who would be adversely affected by their decision.

[28] Lastly, the respondents' argument is circular. They say the applicant had no right to be heard because the number was never his. But whether the number was his is the very question that had to be decided, and fairly so, with the applicant having a say, before any adverse action was taken. The respondents cannot use the outcome of an unfair process to justify the absence of process. As the court held in *PPM*,⁸ a mere suspicion that an identity document was fraudulently obtained does not justify blocking it before a fair process has been followed.

[29] For these reasons, the respondents' argument that there is no reviewable administrative action affecting the applicant is rejected. The decision constitutes administrative action that had a direct, external, and materially adverse legal effect on the applicant. It is subject to review.

[30] It is common cause that the applicant was never notified of any investigation, never invited to make representations, and was never given reasons. The decision was taken without affording him even the minimum procedural fairness required by section 3 of PAJA. The decision falls to be reviewed and set aside on the ground of

⁸ at paragraph 94.

procedural unfairness under section 6(2)(c) of PAJA. This court makes no finding on the merits of the underlying dispute, nor does it determine whose identity number 8[...] is, or whether the decision to delete it was substantively correct. Those questions are left for the remitted process.

[31] This brings me to the remedy. The applicant seeks an order directing the respondents to reinstate identity number 8[...]. The respondents submit that, even if the decision is set aside, the appropriate remedy is remittal.

[32] The Constitutional Court confirmed in *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Ltd*⁹ that, when administrative action is reviewed and set aside, the default position is remittal to the original decision-maker. Substitution is an extraordinary remedy available only in exceptional circumstances. A court must consider whether it is as well placed as the decision-maker, whether the outcome is a foregone conclusion, and whether further delay would cause unjustifiable prejudice. Even where those factors favour substitution, the court must be satisfied that substitution is just and equitable.

[33] There are no exceptional circumstances in this case. The underlying dispute regarding whose identity number 8[...] it truly is cannot be resolved on the papers before the court. There are many unresolved questions, as alluded to above. These are matters that the respondents must properly investigate and answer.

[34] Remittal is therefore appropriate, under section 8(1)(c)(i) of PAJA, to make a decision in line with the requirements of administrative justice.

Costs

[35] The applicant has succeeded in having the impugned decision reviewed and set aside, the central relief sought. Costs shall follow the cause.

⁹ [2015] ZACC 22; 2015 (5) SA 245 (CC) at paragraph 42.

Order

[36] The following order is made:

1. The decision of the first and second respondents to mark identity number 8[...] for deletion on the National Population Register is reviewed and set aside.
2. The matter is remitted to the first respondent to make a fresh decision.
3. The first and second respondents shall pay the applicant's costs jointly and severally, the one paying the other to be absolved.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing: 14 April 2026

Date of judgment: 23 June 2026

For the applicant: L Hulana from Hulana Attorneys

For the respondent: T Modisenyane instructed by the State
Attorney