



**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

**Reportable
CASE NO: 2025-097342**

In the matter between:

HASANA MAHAMAD ALI

Applicant

And

MINISTER OF HOME AFFAIRS

First Respondent

DIRECTOR GENERAL: DEPARTMENT OF

HOME AFFAIRS

Second Respondent

Neutral citation: Hasana Mahamad Ali v Minister of Home Affairs & 1 Other
(Case No: 2025-097342) [2026] ZAWCHC... (11 August 2026)

Coram: MTHIMUNYE AJ

Heard: 27 July 2026

Delivered: Electronically on 11 August 2026

Summary:

Interdictory relief precluding arrest, detention or deportation pending the applicant being given a date to be received by Cape Town Refugee Reception office to make an application for renewal of his refugee status and to remain in the Republic of South Africa until applicant's application has been finally determined on the merits- Final cessation – Voluntary repatriation.

ORDER

1. The First and Second Respondents, and any officials acting under their authority, are interdicted and restrained from:
 - 1.1. arresting or detaining the Applicant for the purpose of deportation or removal;
 - 1.2. deporting or removing the Applicant from the Republic; or
 - 1.3. directing or ordering the Applicant to depart from the Republic, solely by reason of his present immigration or refugee-status documentation, pending compliance with paragraphs 2 to 4 below.
2. Within 10 court days of this order, the Second Respondent shall provide the Applicant's attorneys with a written appointment for the Applicant to attend at the Cape Town Refugee Reception Office.
3. On the allocated date:

- 3.1. the Applicant shall attend at the Cape Town Refugee Reception Office, provide such information and documentation as may reasonably be required, and cooperate with the lawful administrative process;
- 3.2. the Respondents shall receive and assist the Applicant and shall lawfully consider and determine the appropriate process under the Refugees Act 130 of 1998 for the regularisation and determination of his position, including, where applicable:
 - 3.2.1. the extension or renewal of his existing documentation;
 - 3.2.2. the re-evaluation of his refugee status;
 - 3.2.3. any cessation or withdrawal process;
 - 3.2.4. the lodging and determination of an asylum application; or
 - 3.2.5. any other process lawfully applicable under the Refugees Act.
4. The protection granted in paragraph 1 shall remain operative until:
 - 4.1. the process contemplated in paragraph 3 has been lawfully and finally determined; and
 - 4.2. any adverse decision has been communicated to the Applicant in writing, together with adequate reasons; and
 - 4.3. the period for lodging any internal review or appeal available under the Refugees Act has expired without such remedy being exercised;

or, if such remedy is exercised timeously, until it has been finally determined.

5. Either party may approach this Court on the same papers, duly supplemented where necessary, for directions or further relief arising from the implementation of this order.
6. The First and Second Respondents shall pay the costs of the application, jointly and severally, the one paying the other to be absolved.

JUDGMENT

Mthimunye AJ:

Introduction

[1] This is an opposed application in terms of which the applicant, a Somali national, seeks interim relief to interdict the respondents from initiating any process to detain and/or deport and/or order the applicant to deport from the Republic of South Africa, until the applicant has had an opportunity to attend the Cape Town Refugee Reception Office (“CTRRO”) in order to re-apply for asylum in terms of section 24 of the Refugee Act 130 of 1998 (“Refugee Act”), and until his application has been finally determined on its own merits. In the event that the respondents persist with opposing the application, the applicant additionally seeks that costs be awarded against the respondent if his application is successful.

Factual Background

[2] The applicant is an asylum seeker who left Somalia due to political persecutions. He arrived first arrived in South Africa 2009, an on application to the Department of Home Affairs was granted refugee status on 12 May 2009 until 12 May 2011. During 2013 he voluntarily returned to Somalia but returned to South Africa during 2015. He alleges that he returned due to the perilous conditions in Somalia. He and his family were threatened by the Al-Shabab political party to join them in their fight against the Somalian government or risk being killed.

[3] During 2015 he re-applied for asylum to be formally recognized as a refugee, and his status was lawfully recognized by the Department of Home Affairs for the period from 2 November 2015 until 2 November 2019.

[4] During 2019, 2020, 2021 and 2022 he unsuccessfully attempted to renew his refugee status but was turned away by the Gqeberha Refugee Office at each visit. The Refugee Reception Office in Cape Town at that time was no longer dealing with refugee status matters. The Cape Town Refugee Reception Office opened during 2023, resulting in the applicant once again attending their Refugee Reception Office where he was refused entry due to not being in possession of a court order or authorization from an immigration officer (Form 23).

[5] As a result of the desperate position, facing the threat of being arrested or deported before his matter has been finally determined on the merits by Home Affairs, the applicant decided to approach this court for the relief as sought in the Notion of Motion.

Applicant's Case

Prima facie right

[6] The applicant avers that he has shown a prima facie entitlement to renew his refugee status by re-applying for asylum. Further that this evidence is substantiated by the fact that he has applied twice in the past and was granted recognition of his refugee status.

Irreparable harm

[7] Applicant avers that he has a well-grounded apprehension that he will suffer irreparable harm if the interim relief is denied. That despite having tried numerous times to renew his refugee status, he has been turned away from the Refugee Reception Office, effectively barring him from applying for asylum. Consequently, he faces a daily risk of being arrested, detained and deported, which would result in permanent separation from his wife and children. Applicant further avers that he is the breadwinner of his family and in the event, he is deported his family will be emotionally and financially traumatized.

[8] He further avers that he was advised that the principle of non-refoulement prohibits a country from returning individuals to a place where they would face persecution, torture or other serious human rights violations. Furthermore, that the principle of non-refoulment protects him from deportation.

No other satisfactory remedy

[9] The applicant avers that there is no other satisfactory remedy available to him, then to approach this Court to order that Home Affairs allow him to apply

for asylum and for the respondents to accept his application and make a determination on the merits of his application.

Balance of Convenience

[10] Applicant avers that the balance of convenience favours him in obtaining the relief sought as there is no prejudice to the respondents. That he will be prejudiced if the relief sought is not granted. Further that the respondents conceded in their papers despite him voluntarily leaving South Africa in 2015 and returning illegally concealed in a container, the Department of Home Affairs reaffirmed his refugee status on two occasions thereafter, in 2015 and 2019. Further if the relief is not granted he risks deportation and persecution in his country of origin, Somalia.

Respondents Case

[11] The respondents concedes that despite being aware of the contradictions in the applicant's founding papers and his affidavit dated 8 October 2015 pertaining to the applicant's voluntary repatriation to Somalia, they still decided to renew the applicant's asylum status and formally recognized his refugee status for the period of 4 November 2015 until 2 November 2019.

[12] The respondent further stated in their answering papers that their system recorded that the applicant had attended the Cape Town Refugee Reception Office on 10 July 2023 to apply for an extension. In support of this contention, they attached a copy of the request, marked "DHA 10". Further that on 14 February 2024 a system generated letter was sent to the applicant to invite the applicant to attend the Cape Town Refugee Reception Office, however the

applicant failed to respond to their invitation. The respondent in substantiation annexed an undated, unaddressed copy of the invitation, marked “DHA 11”.

[13] The respondents further in their papers the provisions of S4(1)(b) and (i) of the Act and extensively deals with the Regulations. Explaining in detail what is required of an applicant to prove that the delay in applying for an extension of his refugee status was not intentional. The respondents further deal with S5(1)(d) of the Act, trying to convince this court that the applicant ceased to qualify for refugee status for purposes of the Act when he voluntary left for Somalia in 2015. In addition to show that the applicant has contravened the Immigration Act by entering the country illegally and supplying false information to the Department of Home Affairs.

Applicant's submissions

[14] The applicant submitted that the purpose of this application was to get judicial protection against being detained, deported or ordered to leave the Republic, until he receives an appointment at the Refugee Reception Office and the statutory process under the Act has been lawfully completed. Further that the relief sought is not an open-ended immunity as submitted by the respondent in their heads of argument. In addition, that judicial protection will end when he has been received by Home Affairs Visa Application Centre and his position in South Africa has been finally determined.

[15] Furthermore, the applicant submitted that the cessation has not been conclusively determined, after the voluntary repatriation as alleged by the respondent, instead it cannot be ignored that after the applicant returned to South Africa, Home Affairs decided to extend his refugee status knowing he had

previously left the country. Furthermore, the respondent has not provided this court with any final cessation decision.

[16] Applicant admits that there is a discrepancy between his Founding affidavit and the affidavit dated 8 October 2015 but submitted that the reason for the inconsistency was that only after his interview at Home Affairs when he was given the dates of his departure from South Africa, could he remember and explain when he returned, “within a few weeks”. Applicant submitted that this argument by the respondents cannot succeed as there was no voluntary repatriation by the applicant, and this aspect still remains to be determined by Home Affairs when dealing with the merits of this application.

[17] The applicant submitted that the respondent, in their heads of argument in dealing with his credibility heavily relies on the discrepancies in his affidavits as to when he left South Africa for Somalia. He submitted that the credibility issues are not relevant for this court to decide, as all that he is seeking from this court at this point is for him to be granted an appointment by Home Affairs in order to apply for an extension of his refugee status. Furthermore, that the historic delay referred to by the respondent in their heads of argument does not undermine the present protection he is seeking. Similarly, the delay issue raised by the respondent is a factor which can be taken into consideration when Home Affairs determines his application for the extension of his refugee status. Further the applicant submitted that the principle of non-refoulement remains applicable to him until he has submitted his application and due process has been taken by Home Affairs either to reject or extend his refugee status, as was stated in the Constitutional cases of *Ruta* [supra] and *Scalabrini* [supra].

[18] The applicant further submitted that the principle of non-refoulement in Section 2 of the Act, which the respondent wants to rely on must be viewed in

context with the current status of foreign nationals in South Africa, as if does not inherently provide absolute protection to the applicant from being detained, arrested, or deported prior to receiving an outcome from the immigration office. Furthermore, Section 2 of the Act does not provide for an appointment with the Refugee Reception Office, which is what he is seeking in his Notice of Motion.

[19] The applicant further submitted that the relief sought by him does not aim to permissively interfere with the executive or administrative functions of Home Affairs, but instead the order sought will ensure that a proper process will be followed in allowing him to apply to extend his refugee status. Home affairs will then be exercising their executive and administrative authority to decide whether to refuse or grant him refugee status without external interference. Thus, according to the applicant the Outa principle relied upon by the respondents does not support the respondent's argument in their heads of argument that the granting of the relief sought by him would violate the separation of powers, resulting in undermining the Department of its exclusive administrative authority to evaluate the applicant's status under the governing statutory framework, without the interference of the court. In conclusion the applicant submitted that a proper case has been made out for the relief sought in his notice of motion and that costs should be awarded in favour of the applicant.

Respondents' submissions

[20] Respondents vehemently submitted that the mere fact that the applicant faces the risk of being, arrested, detained and deported, cannot be seen as irreparable harm. That the applicant does not meet the requirements for an interdict to be granted, as his refugee status expired in 2023. Furthermore, the situation of irreparable harm relied on by the applicant is self-created in that the

applicant waited two years since 2023 to approach Home Affairs in an attempt to extend his refugee status in the country.

[21] Furthermore, the applicant's submissions that he fears to go back to Somalia as he might be persecuted falls to be rejected as being implausible as the applicant in 2015 voluntary went back to Somalia.

[22] The respondent further submitted that although the applicant is an asylum seeker who may attend the refugee office, he has no basis to seek the relief sought. Furthermore, the applicant will not be suffering any imminent harm if the relief sought is not granted.

[23] The respondent submitted that the applicant lacks a clear right to prescribe to the Department how to manage its internal administrative procedures or to secure open-ended judicial immunity from immigration enforcement, given that the applicant's previous refugee status ceased upon his voluntary repatriation to Somalia.

[24] According to the respondents, if this court were to allow the applicant to apply for refugee status in terms of Section 24 of the Act, this will amount to the court dictating to the Department of Home Affairs how it should manage its procedures. Respondents further submitted that the Ota principle for non-refoulement provides an absolute bar against arbitrary deportations.

[25] It was further submitted that there is an alternative remedy available to the applicant, in that Section 2 of the Act provides sufficient remedies against any deportation of the refugees, until their applications have been finally determined. In conclusion the respondents submitted that the applicant has

failed to establish the requirements for a final interdict to be granted and that his application should be dismissed with costs.

[26] I pause to point out that the application before this court is an order for interim interdictory relief and not final relief. I now turn to deal with requirements for an interim interdict.

Requirements for an interim interdict.

[27] As laid down in *Setlogelo v Setlogelo*¹ and refined in *Webster v Mitchell*² the applicant must show:

- (a) A prima facie right, though open to some doubt,
- (b) Reasonable apprehension of irreparable harm if relief not granted;
- (c) A balance of convenience favouring them.
- (d) No adequate alternative remedy.

Prima facie right

[28] On the papers, it is common cause that the applicant is an asylum seeker entitled to approach Cape Town Refugee Reception Office. Furthermore, that the constitutional principle of non-refoulement may only be lifted after a proper determination of an applicant's application for asylum. As was stated in the Constitutional Case of *Ruta v Minister of Home Affairs*³:

“All asylum seekers are protected by the principle of non-refoulement, and the protection applies as long as the claim of refugee status has not been finally

¹ *Setlogelo v Setlogelo* 1914 (4) AD 21

² *Webster v Mitchell* 1948 (1) SA 1186 (W)

³ *Ruta v Minister of Home Affairs* 2019 (2) SA 329 (CC)

rejected after a proper procedure. The shield of non-refoulement may only be lifted after a proper determination of the asylum application has been completed. Delay of unlawful presence does not itself extinguish an asylum claim. A person who evinces an intention to seek asylum must be allowed into the Refugee Act process and may not be summarily removed under the Immigration Act.”

[29] This non-refoulement principle has been reaffirmed in *Abore v Minister of Home Affairs*⁴, where a person has indicated his intention to apply for asylum, he must not be deported before his status has been lawfully determined.

[30] Whereas, in *Scalabrini Centre v Minister of Home Affairs*⁵, the Constitutional Court rejected the argument that an asylum seeker loses protection through procedural default. Instead, the court confirmed that the statutory processes must protect asylum seekers against removal and deportation until their claims or applications have been lawfully and finally determined on the merits.

[31] In the most recent Constitutional case, *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs & Others*⁶, it was held that procedural barriers which disqualify applicants from refugee status before substantive assessment directly implicate non-refoulement, as all asylum seekers are protected while their claims have not been finally rejected after appropriate merits-based procedure.

[32] The respondent’s assertion that the applicant does not have a clear right because the applicant illegally entered the Republic, delayed in renewing his

⁴ *Abore v Minister of Home Affairs* [2021] ZACC 50

⁵ *Scalabrini Centre v Minister of Home Affairs* [2023] ZACC 45

⁶ *Scalabrini Centre of Cape Town and Another v Minister of Home Affairs & Others* [2026] ZACC 30

refugee status and that the applicant wants to secure open-ended judicial immunity from immigration enforcement, because applicant's previous refugee status ceased to exist when he voluntarily repatriated to Somalia is fundamentally flawed and fails to stand against the principle of non-refoulement as illustrated in the case of *Ruta* [supra], *Abore* [supra] and *Scalabrini* [supra]. The applicant has indicated his intention to the Department of Home Affairs to apply for asylum, therefore according to *Abore* [supra], he has a clear right not to be deported, arrested or detained before his status is lawfully determined.

[33] I am inclined to agree with the applicant that at this stage of this matter the credibility and the cessation factors raised by the respondent in defence is not relevant for this court to decide, in determining whether the applicant has a clear right or not, as the merits of the applicant's claim or application has to be determined by the department of the respondents. The respondents have correctly pointed out that this court cannot interfere in their executive and administrative procedures in determining to grant or reject the applicant's application. Thus, they are obligated to exercise their executive powers and duties to take reasonable measures in ensuring that an asylum seeker is processed and receive assistance in making the necessary application, which outcome is ultimately to be determined by Home Affairs and not by this court.

[34] The application before this court is not to interfere in the respondents executive and administrative procedures or authority, but rather to safeguard applicant's right to be afforded an opportunity to make the necessary appointment for him to attend the Cape Town Refugee Reception Office; and pending that determination the applicant not to be deported or detained until a final determination on the merits has been made. The *prima facie* right requirement is accordingly satisfied.

Irreparable Harm

[35] The applicant clearly sets out in his papers that he had visited the office of Home Affairs about 5 times with no success. It is common cause that he has been to his country of origin in Somalia and subsequently returned to South Africa. The applicant states in his replying papers that while in Somalia, he was coerced by a political party Al-Shabaab to join their political fight against the Somali government, with the threat of death. He further submitted that if he were not granted interim relief, he is subject to daily risk of being arrested and deported. This will not only affect his safety but will also have an emotional and financial impact on his family who are dependent on him.

[36] The principle on non-refoulement prohibits a country from returning individuals to their country of origin, where they would face persecution, torture or serious violation of their human rights. The argument by the respondents that the applicant will be protected by Section 2 of the Act, which makes provisions for the applicant not to be deported arbitrarily holds no water if it is to be taken in the context of the current situation in South Africa pertaining to foreign nationals. This court can take judicial notice of the March and March protests where many undocumented foreign nationals were deported en masse, if found not to be in possession of the necessary documentation similar to the situation of the applicant who is technically standing with one foot in South Africa and the other either in a prison cell or in a detention camp awaiting deportation.

[37] This court further noted from the papers that it is common cause that although the applicant attended an interview at the respondent's office there is no clarity whether an application had been received from the applicant to renew his refugee status or why there has been no final determination on the merits of his application as yet. The Constitutional Court is clear until an applicant's

refugee status has been finally determined, the principle of non-refoulement protects him from deportation. In the premise the relief sought by the applicant that he is not deported or arrested until his refugee status has been finally determined or else he will suffer irreparable harm holds sway. It is thus my considered view that irreparable harm is established.

No other satisfactory remedy

[38] I do not see Section 2 of the Act as a satisfactory remedy given the present circumstances in South Africa. The conduct of the department as stated by the applicant in his papers, illustrates that the applicant had no other satisfactory remedy available to him. He therefore had no option but to approach this court for an order to allow him to apply for asylum. The order should also require the respondents to consider his application and make a final determination on its merits.

Balance of Convenience

[39] The applicant remains at risk of being arrested, detained or deported if his documentation has not been renewed or until the Department of Home affairs makes a final determination on the merits of his application. It is my considered view that the balance of convenience favours the applicant. I further agree with the applicant that the respondents will not suffer any prejudice if they act within their executive and administrative authority in following the proper process by allowing the applicant to visit their offices, in order to apply for recognition of his refugee status. All other defences and factors raised by the respondent can be dealt with by them when they consider the merits of applicant's application.

Conclusion

[40] After considering the oral arguments and having regard to what I have set out above in the exercising of my judicial discretion I regard this case as one where interdictory relief should be granted in favour of the applicant. I am satisfied that the requirements for an interim interdict have been established by the applicant. In the result the relief sought by the applicant in his notice of motion is granted.

Costs

[41] It is trite that costs get awarded to the successful party. Taking into consideration the history of this matter it would not appropriate to award a cost order against the respondents. In exercising my judicial discretion it is my considered view that each party pay their own costs.

Order

[42] It is ordered that:

1. The First and Second Respondents, and any officials acting under their authority, are interdicted and restrained from:
 - 1.1. arresting or detaining the Applicant for the purpose of deportation
or
removal;
 - 1.2. deporting or removing the Applicant from the Republic; or
 - 1.3. directing or ordering the Applicant to depart from the Republic,

solely by reason of his present immigration or refugee-status documentation, pending compliance with paragraphs 2 to 4 below.

2. Within 10 court days of this order, the Second Respondent shall provide the Applicant's attorneys with a written appointment for the Applicant to attend at the Cape Town Refugee Reception Office.
3. On the allocated date:
 - 3.1. the Applicant shall attend at the Cape Town Refugee Reception Office, provide such information and documentation as may reasonably be required, and cooperate with the lawful administrative process;
 - 3.2. the Respondents shall receive and assist the Applicant and shall lawfully consider and determine the appropriate process under the Refugees Act 130 of 1998 for the regularisation and determination of his position, including, where applicable:
 - 3.2.1. the extension or renewal of his existing documentation;
 - 3.2.2. the re-evaluation of his refugee status;
 - 3.2.3. any cessation or withdrawal process;
 - 3.2.4. the lodging and determination of an asylum application; or
 - 3.2.5. any other process lawfully applicable under the Refugees Act.
4. The protection granted in paragraph 1 shall remain operative until:

- 4.1. the process contemplated in paragraph 3 has been lawfully and finally determined; and
 - 4.2. any adverse decision has been communicated to the Applicant in writing, together with adequate reasons; and
 - 4.3. the period for lodging any internal review or appeal available under the Refugees Act has expired without such remedy being exercised; or, if such remedy is exercised timeously, until it has been finally determined.
5. Either party may approach this Court on the same papers, duly supplemented where necessary, for directions or further relief arising from the implementation of this order.
 6. The First and Second Respondents shall pay the costs of the application, jointly and severally, the one paying the other to be absolved.

S MTHIMUNYE

ACTING JUDGE OF THE HIGH COURT

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