



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

CASE NO: 2026/186100

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

[24 August 2026]

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SIGNATURE
ACTING JUDGE G NEL

In the matter between:

DEMEKE ABAYINE SABICHO

First Applicant

FIKADU WOLDE HANDEBO

Second Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

**THE DIRECTOR GENERAL DEPARTMENT
OF HOME AFFAIRS**

Second Respondent

REFUGEE RECEPTION OFFICER

Third Respondent

**THE DIRECTOR OF THE NATIONAL PROSECUTING
AUTHORITY**

Fourth Respondent

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J U D G M E N T

Introduction

- [1] In this Application, the Applicants, Demeke Abayine Sabicho and Wondimu Wolde sought, inter alia, the following relief in the Urgent Court:
- [2.1] A declaration that the Applicants may not be arrested, detained for purposes of deportation, removed, deported, extradited, or otherwise returned to their country of origin, pending the final determination of their applications for asylum lodged in terms of Section 21 of the Refugees Act, Number 130 of 1998 (as amended) (“the Refugees Act”);
- [2.2] An order directing the First to Fourth Respondents to take all reasonable steps to give effect to the declaratory order sought in paragraph [2.1] above;
- [2.3] An order directing the First to Fourth Respondents to issue temporary asylum seeker permits in terms of Section 22 of the Refugees Act to the Applicants, pending the final determination of their applications for asylum status;
- [2.4] An order declaring that the criminal proceedings in the Randburg Magistrates Court, under case numbers 03/5718/24 and 03/571/24, relating to the Applicants unlawful presence in the Republic of South Africa are suspended or stayed in terms of Section 21 of the Refugees Act, pending the finalisation of the Applicants’ applications for asylum status;
- [2.5] Alternatively to the relief set out in [2.4] above, interdicting the Fifth Respondent from continuing with the criminal proceedings against the Applicants in the Randburg Magistrates Court under the case numbers referred to above, pending the finalisation of the Applicants’ applications for asylum seekers’ status; and

- [2.6] An order directing the Respondents to pay the costs of the Application as between attorney and client on Scale B.
- [3] After hearing the submissions of counsel for the Applicants and the Respondents, I made an Order that the Application is struck from the Roll for lack of urgency, and that the Applicants, jointly and severally, were to pay the Respondent's costs on Scale B.
- [4] It is an unfortunate result of urgent proceedings that the Presiding Judge in the Urgent Court does not have the luxury of writing extensive judgments at leisure, but is required to make an Order without delay, and, when applicable, provide any reasons for such Order as soon as possible thereafter.

RELEVANT FACTUAL MATRIX

- [5] The Applicants are adult male Ethiopian citizens, currently residing in Cosmos City, Randburg, Johannesburg.
- [6] The Applicants allege that they are not fluent in the English language and have required an interpreter at the criminal proceedings in the Randburg Magistrates Court.
- [7] There is no explanation provided as to whether the Affidavits on which the Applicants rely were translated for them or explained to them by any particular person, but this is not an issue that became necessary to consider during the hearing of the Application.
- [8] Although this aspect is somewhat vague, it appears that the Applicants left Ethiopia at the beginning of 2024.
- [9] The applicant's stated that they were being persecuted in Ethiopia, that they feared for their life, liberty, and physical safety, and had no reasonable or viable

alternative other than to seek international protection in the Republic of South Africa.

- [10] It is not clear whether the Applicants approached the Department of Home Affairs upon their arrival in South Africa, as this aspect was not set out in any detail, and was not only vague, but was also contradicted by what was set out in the Respondents' Second Replying Affidavit.
- [11] The Applicants were arrested on 19 November 2024 by the South African Police Services and were charged with contraventions of Section 49(1) of the Immigration Act, Number 13 of 2002, as amended ("the Immigration Act").
- [12] The Applicants may have attended at the Department of Home Affairs prior to, and subsequent to their arrest, but as already set out, this aspect was not dealt with in any detail.
- [13] The Applicants then formally applied for asylum at the Tshwane Refugee Centre on 24 July 2025. It is alleged that the Applicants visited the Tshwane Refugee Centre "*several times*", but no details or dates were provided in respect of such visits.
- [14] At the time of their arrest, the Applicants advised the arresting officers that they were seeking asylum status in the Republic of South Africa, and that they had visited the Tshwane Refugee Reception Office for the purpose of applying for asylum seekers permits but were not assisted due to the backlog of pending applications.
- [15] Both Applicants are currently out on bail and are attending the criminal proceedings at the Randburg Magistrates Court of their own volition.
- [16] The Applicants state that they fear that if found guilty of the contravention of Section 49(1) of the Immigration Act, the Applicants may be deported to Ethiopia.

- [17] The Applicants state in the Founding Affidavit that during the criminal proceedings they have consistently informed the Magistrate, through their legal representative, Mr. Manamela, that they had expressed their intention to apply for asylum and were entitled to have their asylum applications accepted, processed, and determined.
- [18] It is recorded in the Founding Affidavit that Mr. Manamela placed on record, during the criminal proceedings, on 29 May 2026, 25 June 2026, and 9 July 2026, that the criminal proceedings could not be conducted fairly because no competent interpreter had been provided to assist the Applicants. This has resulted in the criminal proceedings been postponed on every occasion.
- [19] It appears that on 9 July 2026, Mr. Manamela brought an application, in terms of Section 342A of the Criminal Procedure Act, Number 51 of 1977, submitting that the criminal proceedings had been unreasonably delayed and that the continued postponements infringed the Applicants' constitutional right to a fair trial, as envisaged by Section 35(3) of the Constitution.
- [20] The Magistrate presiding over the criminal proceedings dismissed the application, and the criminal proceedings were postponed to 21 August 2026.
- [21] The Applicants allege that they are likely to be found guilty of the contravention of Section 49(1), and that such finding of guilt would affect their pending applications for asylum, and that they faced a real and imminent risk of arrest, detention, and deportation to Ethiopia before their asylum applications could be fully processed and determined.
- [22] The Application was opposed by the First, Second, Third, and Fourth Respondents, and two Answering Affidavits were filed, one on behalf of the First, Second, and Third Respondents, and the second on behalf of the Fourth Respondent.

- [23] At the hearing of the application, counsel for the Respondents made submissions to the effect that the Application was not urgent, that any urgency was self-created, and that the Application should be dismissed for lack of urgency, and struck from the Roll, with costs.
- [24] Applicants' counsel made substantial and detailed submissions, relating not only to the aspect of urgency, but also the merits of the entire Application.

THE ISSUE OF URGENCY

- [25] In the Founding Affidavit, the Applicants essentially alleged that the Application was urgent, having regard to the pending continuation of the criminal proceedings on 21 August 2026, and that the Applicants had satisfied the requirements of Urgency.
- [26] In the Replying Affidavit the Applicants sought to bolster the aspect of urgency, and it was raised, for the first time, that the date that triggered urgency was 17 June 2026, being the "*last day for processing our application for asylum*".
- [27] The Applicants alleged that they became eligible for temporary asylum seeker permits in terms of section 22 of the Refugees Act on 17 June 2026. There is no explanation as to why the launching of the Urgent Application was delayed from 17 June 2026 until 3 August 2026, if such date was the "trigger event" date.
- [28] In the Replying Affidavit the Applicants version mutated somewhat in that it was stated that on 9 July 2026 the Applicant's attorney, Mr. Manamela, made application in the Randburg Magistrates Court for the criminal proceedings to be halted or suspended pending the determination and finalization of the Applicants asylum status applications.
- [29] I raised this discrepancy with the Applicants' counsel, who informed me that he had attempted to ascertain what had occurred at the various criminal proceedings, and that he was advised that this application was launched on 9 July 2026.

- [30] Despite the contradiction, there was no Confirmatory Affidavit from the Applicants' attorney, and no explanation as to the contradictions between the Founding Affidavit and the Replying Affidavit.
- [31] There was no proper explanation provided as to what had occurred since the arrest of the Applicants in November 2024 and why they appear to have only made application for asylum seeker status on 25 March 2026.
- [32] The Applicants only launched this Application on 3 August 2026, requiring the Respondents to indicate their intention to oppose the relief sought in the Application on 4 August 2026 and to file Answering Affidavits on 5 August 2026. The Application was then set down for hearing on 11 August 2026.
- [33] It is trite that an applicant in an urgent application must, in complying with the requirements of Rule 6(12) of the Uniform Rules of Court explicitly state the reasons that render the application urgent and why the applicant would not obtain substantial redress in due course. It is equally trite that such reasons must be set out in the applicant's founding affidavit.
- [34] An applicant cannot simply sit back when the clock starts ticking but must take reasonable steps to bring an application for urgent relief within a reasonable time.
- [35] An applicant must also show that the time period afforded to respondents to deal with an urgent application are appropriate in relation to the degree of urgency asserted and are as far as practicable in accordance with the Uniform Rules of Court.
- [36] In the matter of *Ex Parte Sibiyi v Old Mutual Life Assurance (SA) Limited and Others*¹, the Court reiterated and broadly outlined the requirements for an urgent application, and stated that in addition to setting out explicitly the circumstances which render the matter urgent with full and proper particularity and setting out the

¹ *Ex Parte Sibiyi v Old Mutual Life Assurance (SA) Limited and Others* (025033/2025) [2025] ZAGPPHC 259 (13 March 2025)

reasons why an applicant believes that he or she will not get substantial redress at a hearing in due course, the urgency must also not be self-created.

- [37] In the matter of *Chung Fung Pty Ltd and another v Mayfair Residents Association and Others* ², it was stated that self-created urgency is not constituted by delay alone but also implies a degree of contrivance to jump a queue. It was also stated that an applicant that is fully apprised of its rights and any harm that it may suffer cannot wait until the last possible moment to launch an urgent application, and that such conduct would constitute an abuse.

DISCUSSION

- [38] Having considered all of the allegations in the Affidavits and the submissions made on behalf of the Applicants relating to urgency, I ultimately found that the Application was not urgent, as any potential urgency was clearly self-created.
- [39] As regards the submissions that the Applicants would not be afforded substantial redress at a hearing in due course, I was, and am, of the view that the bringing of the Application in the Urgent Court is in effect premature, as the Application launched in this Urgent Court ought properly to have firstly been launched in the Magistrates Court hearing the criminal proceedings, at the first appearance of the Applicants in the Magistrates Court, when they became entitled to bring such an application.
- [40] Even if the Applicants only subsequently became aware of their entitlement to bring an application of the nature now raised, there is nothing preventing the Applicants from raising such application at the next date for the continuation of the criminal proceedings.

² *Chung Fung Pty Ltd and another v Mayfair Residents Association and Others* (2023/080436) [2023] ZAGPJHC 1162 (13 October 2023)

- [41] There is also no certainty that the criminal proceedings will indeed proceed on 21 August 2026, and there is no certainty that any findings will be made on 21 August 2026, to the effect that the Applicants would be arrested, detained or deported.
- [42] The real “trigger” for an urgent application would be the arrest of the Applicants with an intention to detain and ultimately deport the Applicants.
- [43] There is nothing preventing the Applicants from appealing or, if appropriate, reviewing the findings of the criminal proceedings in the Randburg Magistrates Court.
- [44] There cannot be any merit in the submission that if the Applicants are found guilty in the Magistrates Court of a contravention of the Immigration Act, they would not be able to proceed with their asylum seekers applications. If the criminal proceedings should not have taken place, or should have been stopped, as was submitted to me, an incorrect finding of a Magistrate could not hamper any asylum application.
- [45] The conduct of the Applicants in launching the application only on 3 August 2026, and requiring the Respondents, who are all government functionaries or departments, to file Answering Affidavits by 5 August 2026, is clearly an abuse, as the Respondents were not provided reasonable time periods.
- [46] The failure to have launched the Application timelessly and provide reasonable time periods resulted in Answering Affidavits and a Replying Affidavit having to be prepared during the course of the week of the sitting of the Urgent Court and the Application ultimately being heard on Friday 14 August 2026.

ORDER

[47] In the circumstances, I made an Order, which I repeat below;

[47.1] The Application is struck from the Roll for lack of urgency.

[47.2] The Applicants, jointly and severally, are to pay the costs of the Respondents on scale B.

G NEL
Acting Judge of the High Court,
Gauteng Division,
Johannesburg

DATE OF JUDGMENT: 19 AUGUST 2026
JUDGMENT REISSUED: 24 AUGUST 2026

Appearances

Counsel for the Applicants:

Adv SI Vobi

Instructed by MI Manamela Attorneys

Counsel for Respondents

Adv Siyabonga Tshungu

Instructed by State Attorney