

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 017733/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>03/09/2026</u>	
DATE	SIGNATURE

In the matter between:

SINDISO NTUTA

Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

**DIRECTOR GENERAL OF THE
DEPARTMENT OF HOME AFFAIRS**

Second Respondent

JUDGMENT

TEBEILE AJ:

Introduction

[1] This is an application for default judgment following the striking out of the respondents' defence. The applicant seeks an order declaring him to be a permanent resident of the Republic of South Africa.

[2] On 23 July 2026 this Court ordered the applicant to file heads of argument in terms of which the applicant must inter alia make submissions on the implications of paragraphs 9-11 of the particulars of claim to the relief sought by the applicant. Paragraphs 9-11 of the particulars of claim aver as follows:

“9. On or around 24 November 2019, the first defendant further conveyed to the plaintiff that he was not entitled to be issued with an identity card because he was a prohibited person in terms of section 29(1)(f) read with section 48 of the Immigration Act, 13 of 2002 by virtue of the fact that he had been in possession of a fraudulent visa, passport, permanent residence permit or identification document.

10. The plaintiff had been in possession of an unlawfully-obtained South African identity document ('the ID'), which he obtained in 2006.

11. Though in possession of the ID, the plaintiff had never used it, and was not found in possession of it.”

[3] On 31 July 2026, the applicant complied with the aforesaid order of 23 July 2026.

The parties

[4] The applicant is Sindiso Ntuta, a Zimbabwean national who was issued with a permanent residence permit on 27 November 2015.

[5] The first respondent is the Minister of Home Affairs. The second respondent is the Director General for the Department of Home Affairs.

Factual background

[6] The applicant is a Zimbabwean national who was issued with a permanent residence permit on 27 November 2015. However, the respondents have refused to recognise his permanent resident status and have refused to issue him with an Identity Document (ID). The basis for this refusal is that the applicant had been in possession of a fraudulently obtained South African ID between 2006 and 2010 and that the applicant has been declared to be a prohibited person. The applicant surrendered this

document during the amnesty offered under the Documentation of Zimbabweans Project on 1 December 2010.

[7] The respondents' defence was struck out on 13 May 2024 for failing to comply with a court order compelling discovery. As a result, the allegations in the applicant's founding affidavit stand to be accepted as undisputed.

Applicant's submissions

[8] The applicant argues that because he surrendered the fraudulent ID during the amnesty, and because he never used it, he should not be considered a prohibited person.

[9] The applicant submits that the respondents have issued him with a permanent residence permit but wrongfully refuse to recognise it by withholding an ID.¹

[10] It was further submitted that the applicant consistently held valid temporary permits/visas from 2004–2016, none of which were revoked.² The applicant contends that at the time of his 2014 permanent residence application, he had already received amnesty for the fraudulent ID and held a valid temporary permit, making his 2015 permanent residence permit lawfully issued and still valid.³

[11] It was submitted that the respondents' view that the applicant is a "prohibited person" is flawed because the applicant cannot be so declared without being found with the fraudulent document, and the only reason the respondents know about it is because he voluntarily surrendered it under amnesty.⁴ It was submitted by the applicant that the fraudulent ID was never used and caused no prejudice to the respondents. The applicant contends that his permanent residence permit was properly issued and that he is entitled to the declaration sought. He further contends that he has made out a proper case for the relief sought in the notice of motion.

¹ Para 3.1 of the applicant's Heads of Argument (CaseLines 15-4). See also paras 16-18 of the Founding Affidavit (CaseLines 10-11).

² Para 3.2 of the applicant's Heads of Argument (CaseLines 15-4).

³ Paras 3.3-3.4 of the applicant's Heads of Argument (CaseLines 15-4).

⁴ Para 3.5.1 of the applicant's Heads of Argument (CaseLines 15-5).

Legal principles and analysis of the applicant's case

[12] Having invited the applicant to file written submissions on the implications of paragraphs 9-11 of the particulars of claim on the applicant's case or relief sought, I now turn to deal with that issue.

[13] The applicant's own pleadings reveal a fundamental obstacle to the relief he seeks. In paragraphs 9 to 11 of the particulars of claim, the applicant expressly make certain admissions. He admits that on or around 24 November 2019, the first respondent conveyed to the applicant that he was not entitled to be issued with an ID because he was a prohibited person by virtue of the fact that he had been in possession of a fraudulent visa, passport, permanent residence permit or ID.⁵ It was admitted that the applicant had been in possession of an unlawfully-obtained South African ID obtained in 2006⁶ and that although in possession of the ID, the applicant had never used it, and was not found in possession of it.⁷

[14] It is trite that the decision to declare the applicant a prohibited person is an administrative action in terms of Promotion of Administrative Justice Act ("PAJA").⁸ The applicant has not alleged that the decision declaring him a prohibited person has ever been reviewed, set aside, or declared invalid. In my view, this is a material omission. In determining whether a decision to declare a person a prohibited person is an administrative action, in *Klemenc v Head of Immigration Inspectorate and Others*⁹ this Court held that:

- "14. The most important question before me is whether the prohibition can be regarded as administrative action.
15. There must be a decision to declare a person prohibited.
16. That decision is taken by an organ of state, exercising a public power performing a public function in terms of any legislation...
17. In this instance the decision is taken in terms of Section 29(1)(f) and 29(2) of the Immigration Act.

⁵ Para 9 of the particulars of claim.

⁶ Para 10 of the particulars of claim.

⁷ Para 11 of the particulars of claim.

⁸ Act 3 of 2000.

⁹ [2024] ZAGPPHC 381.

18. The Respondents were exercising a public power in terms of legislation.
19. There is no other conclusion that I can draw that the actions of the Respondents are administrative action and not *ex lege*.¹⁰

[15] In *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others*,¹¹ the Supreme Court of Appeal established that an unlawful administrative action remains valid and has legal consequences until it is set aside by a competent court. The Constitutional Court reaffirmed this principle in *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd*,¹² holding that invalid administrative action may not simply be ignored and may continue to have legal consequences until properly set aside.¹³

[16] The principle is that an administrative action, even if allegedly flawed, is binding and must be complied with until a court sets it aside. The Court in *Oudekraal* stated:

“For those reasons it is clear, in our view, that the Administrator’s permission was unlawful and invalid at the outset. Whether he thereafter also exceeded his powers in granting extensions for the lodgement of the general plan thus takes the matter no further. But the question that arises is what consequences follow from the conclusion that the Administrator acted unlawfully. Is the permission that was granted by the Administrator simply to be disregarded as if it had never existed? In other words, was the Cape Metropolitan Council entitled to disregard the Administrator’s approval and all its consequences merely because it believed that they were invalid provided that its belief was correct? In our view it was not. Until the Administrator’s approval (and thus also the consequences of the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognized that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside.”¹⁴

¹⁰ Id at paras 14-19.

¹¹ 2004 (6) SA 222 (SCA).

¹² 2014 (3) SA 481 (CC).

¹³ Id at para 101.

¹⁴ *Oudekraal* above n 11 at para 26.

[17] Section 29(1)(f) of the Immigration Act¹⁵ deems certain persons to be prohibited persons by operation of law. In the present case, the applicant admits that he was in possession of a fraudulent ID, which falls squarely within the ambit of section 29(1)(f). The remedy for a person who has been declared a prohibited person is to apply to the second respondent to declare that they are not prohibited under section 29(2) of the Immigration Act, and if aggrieved by the second respondent's decision, to bring a review application to the High Court. The court in *Ndebele and Another v Director General Home Affairs and Others*,¹⁶ stated that:

“[19] Section 29(1) of the Immigration Act is a section that deems certain people to be prohibited persons by operation of law. It does not require a separate decision to be made by any official before the person concerned is prohibited. Their prohibition status arises by operation of law when they fall into one of the categories of persons listed as prohibited under the section.

[20] This means three things:

[20.1] First, where a person is notified that they are a prohibited person under section 29(1) of the Immigration Act, their remedy is to apply to the Director General to declare that they are not prohibited under section 29(2);

[20.2] Second, because the section 29(2) decision by the Director General is a decision of first instance, it is not appealable under section 8(6) of the Immigration Act to the Minister;

[20.3] Third, the remedy for a person aggrieved by the Director General's refusal to declare him/her not prohibited under section 29(2) is to bring a review application in the High Court.

[21] Accordingly, when a person is notified that they are a prohibited person under section 29(1) of the Immigration Act, their remedy is to apply to the Director General to declare that they are not prohibited under section 29(2). Because section 29(2) is a decision of first instance by the Director General, it is not appealable under section 8(6) of the Immigration Act to the Minister. A person's remedy aggrieved by the decision of the Director General in refusing

¹⁵ Act 13 of 2002.

¹⁶ [2025] ZAGPJHC 825.

to declare them not prohibited, is a review to the High Court.¹⁷ (Own emphasis added and footnotes omitted.)

[18] In the present case, the applicant has not followed this prescribed process. He has not established that the decision declaring him a prohibited person was invalid or that it was set aside. He has not challenged that decision and consequently that decision remains valid until set aside. The fact that he surrendered the fraudulent ID during the amnesty and never used it, while relevant, does not automatically mean that the respondents' decision to classify him as a prohibited person was invalid or that this Court can simply ignore that decision.

[19] This Court in *Adebayo and Another v Minister of Home Affairs and Another*¹⁸ held as follows:

“Section 28 of the Immigration Act 13 of 2002 provides for the withdrawal of a permanent residence permit. The Act provides for certain internal remedies to be utilised when a person is aggrieved by a decision taken under the Act. The papers do not reflect that Mr. Adebayo utilised any of the internal remedies provided in terms of the Act for a reconsideration of the decision to revoke his permanent residence permit. He also did not approach the court with a review application in terms of the Promotion of Administrative Justice Act 3 of 2000 or any other applicable statute, despite identifying the question of whether the DHA's decision to cancel his permanent residency permit is valid, as one of the issues that need to be adjudicated.

Mr. Adebayo did not aver or prove there is no alternative legal remedy available. The requirements for review are statutorily prescribed, and the court cannot allow an applicant to bring a review application under the guise of, e.g., a mandamus. As a result, the application stands to be dismissed.”¹⁹

¹⁷ Id at paras 19-21.

¹⁸ (2024-027220) [2025] ZAGPPHC 34 (20 January 2025).

¹⁹ Id at paras 6-7.

[20] In my view, the applicant's contention that the amnesty washed away all consequences of his possession of the fraudulent ID is a matter that should have been raised in the appropriate proceedings, namely, an application to the first respondent under section 29(2) or a review application before a court of law.

[21] It is further my considered view that this Court, in a default judgment application following the striking out of the respondents' defence, cannot grant the declaration sought without addressing the existing administrative action to declare the applicant a prohibited person.

[22] The striking out of the respondents' defence means that the factual allegations in the applicant's founding affidavit are taken as admitted. However, the applicant must still prove that he is entitled to the relief sought in law. The right to permanent residence is a matter of statutory regulation, and the legal requirements cannot simply be overlooked.

[23] I am mindful that the respondents' defence was struck out, and that this application was unopposed. However, this does not relieve the applicant of the burden of establishing a proper legal basis for the relief sought.

[24] In the absence of a decision to set aside the administrative action to declare the applicant a prohibited person, this Court cannot grant the declaratory order sought by the applicant.

Conclusion

[25] In the circumstances, the applicant has not made out a proper case for the relief sought. The declaration that he is a permanent resident cannot be granted while the decision declaring him a prohibited person remains existent and unchallenged. The application for default judgment is therefore dismissed.

Costs

[26] As to costs, the respondents' defence has been struck out and they have not participated in these proceedings. In the exercise of this Court's discretion, no order as to costs is made.

Order

[27] In the premises, I make the following order:

1. The application for default judgment seeking an order to declare the applicant to be a permanent resident of South Africa is dismissed.
2. There is no order as to costs.



SHADRACK TEBEILE
Acting Judge of the High Court of South Africa
Gauteng Division, Pretoria

Date of hearing: 23 July 2026
Date of judgment: 03 September 2026

Appearances:
For the Applicant: Adv. A Granova instructed by Arlene Duval & Associates
For the Respondents: No appearance