



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

CASE NO: 10310/2014

In the matter between:

BRENT DERECK JOHNSON

1st Applicant

LOUISE HENRIKSON EGEDAL-JOHNSON

2nd Applicant

SAMUEL BARRY EGEDAL-JOHNSON

3rd Applicant

And

THE MINISTER OF HOME AFFAIRS

1st Respondent

THE DIRECTOR-GENERAL, HOME AFFAIRS

2nd Respondent

MILLICENT MOTSI

3rd Respondent

MARTIN JANSEN

4th Respondent

CASE NO: 10452/2014

In the matter between:

CHEREN THERESE DELORIE

1st Applicant

DAVID ROSS HENDERSON

2nd Applicant

DYLAN JOURDAN HENDERSON

3rd Applicant

LOGAN JED HENDERSON

4th Applicant

And

THE MINISTER OF HOME AFFAIRS

1st Respondent

THE DIRECTOR-GENERAL OF HOME AFFAIRS

2nd Respondent

JUDGMENT DELIVERED ON 30 JUNE 2014

YEKISO, J

[1] On 12 June 2014 and 17 June 2014, two separate applications were launched in this court by Brent Dereck Johnson, Louise Henrikson Egedal-Johnson and Samuel Barry Egedal-Johnson as the first, second and the third applicant in one such application (“the Johnson application”) and Cherene Therese Delorie, David Ross Henderson, Dylan Jourdan Henderson and Logan Jed Henderson as the first, second, third and the fourth applicant in the other application (“the Delorie application”).

[2] The respondents in these applications are the Minister of Home Affairs, the Director-General of Home Affairs, Millicent Motsi and Martin Jansen, cited as the first, second, third and the fourth respondent in the Johnson application, and the Minister of Home Affairs and the Director General of Home Affairs, cited as the first and the second respondent in the Delorie application.

[3] In the Johnson application, in which the applicants sought leave to be heard as a matter of urgency, the following relief is sought under Part A of the notice of motion, namely: that it be ordered that, pending the final outcome of the application for the relief sought in Part B of the notice of motion, the Immigration Department Directive 9, 2014 issued on 24 May 2014 under the hand of the second respondent’s delegee in that application, shall be inoperative; that the second applicant’s declaration of undesirability on 28 May 2014 by the third and the fourth respondent be suspended; that the second applicant in the Johnson application be permitted forthwith to enter and remain in the

Republic of South Africa with the third applicant, subject to reasonable terms and conditions.

[4] Under Part B of the notice of motion in the Johnson application, and on a date to be determined by the registrar, the applicants seek an order that: the first respondent's decision to bring Regulation 27 of the 2014 Regulations to the Immigration Act, 13 of 2002 ("the Immigration Act"), into operation on 26 May 2014 be declared inconsistent with the Constitution of the Republic of South Africa, 1996 ("the Constitution") and accordingly invalid, and that it be reviewed and set aside; the second respondent's decision of 24 May 2014 to issue the aforementioned Immigration Directive 9 of 2014 to the second applicant be declared inconsistent with the Constitution and accordingly invalid, and that it be reviewed and set aside; the third and fourth respondent's decision of 28 May 2014 which declared the second applicants to be "undesirable" in terms of the Immigration Act be declared inconsistent with the Constitution and accordingly invalid, and, similarly, that it be reviewed and set aside; the first respondent, and any other respondent who oppose the application, be ordered to pay the costs of the application.

[5] In the Delorie application the following relief is sought as against the first and the second respondent in that application, namely, an order condoning non-compliance with the Uniform Rules of this Court relating to service and time periods, and directing that the matter be heard as one of urgency in terms of rule 6(12) of the Uniform Rules; that pending the final resolution of the relief sought in Part B of the notice of motion, an order directing that the enforcement of Directive 9 of 2014 issued by the Deputy

Director-General of the Department of Home Affairs on 24 May 2014, is suspended; an order directing that the determination, made by the departmental officials on 28 May 2014, that the second applicant in the Delori application is an “undesirable person” in terms of section 30(1)(h) of the Immigration Act and the regulations promulgated thereunder, is suspended.

[6] The further leg of the order sought in the Delorie application is an order that the applicants must, within five (5) days of any order that this court may give, submit an application to the Department of Home Affairs for the first respondent or his delegee to waive (in terms of section 30(2) of the Immigration Act) the ground of undesirability in terms of section 30(1)(h) of the Immigration Act in the case of the second applicant; and/or the second respondent or his delegee to review and reconsider the determination that the second respondent is an undesirable person in terms of section 8 (4) of the Immigration Act; and that the first and second respondents must consider such applications within a reasonable period.

[7] The last leg of the order sought under paragraph A of the notice of motion in the Delorie application is an order directing that the second applicant be permitted to forthwith enter, remain and work in the Republic of South Africa, and to travel in and out of the Republic, subject to reasonable terms and conditions pending the final resolution of the relief sought in Part B of the notice of motion; and/or until the final determination of the applications referred to in paragraph [3.1] of the notice of motion in the Delorie application, any proceedings reviewing the refusal of such applications, whichever event shall last occur.

[8] Under Part B of the notice of motion in the Delorie application, and on a date to be determined by the registrar, the applicants will seek an order in the following terms: an order declaring that Regulation 27(1) and 27(3) of the Regulations promulgated under the Immigration Act, are unconstitutional, unlawful and invalid; an order reviewing, correcting and setting aside the decision of the first respondent to bring Regulation 27(1) and 27(3) into operation on 26 May 2014; an order declaring that Directive 9 of 2014, issued by the Deputy Director-General of the Department of Home Affairs on 24 May 2014, is unconstitutional, unlawful and invalid; an order reviewing, correcting and setting aside the decision of the Deputy Director- General to issue the Directive; an order reviewing, correcting and setting aside the determination by officials of the Department of Home Affairs, made on 28 May 2014, that the second applicant is an “undesirable person” in terms of section 30(1)(h) of the Immigration Act.

[9] In opposing the relief sought it is contended on behalf of the respondents in both the Johnson and the Delorie applications that both applications ought to be dismissed in view of the fact that the declarations as undesirable persons in the instance of Egedal-Johnson in the Johnson application and Henderson in the Delorie application were self-created; that the refusal of admission into the Republic of Egedal-Johnson and Henderson are as a consequence of their own conduct; that they are authors of the circumstances giving rise to the alleged urgency and that they cannot be allowed to rely on their self-created urgency in launching these proceedings.

[10] The relief sought in both the Johnson and the Delorie applications is further opposed on the basis that this court lacks jurisdiction to adjudicate on both these matters. In advancing this contention, it is contended on behalf of the respondents that Immigration Regulation 27 which the applicants seek to challenge as being unconstitutional, as well as the enabling legislation, in the form of the Immigration Act, on the basis of which the Immigration Regulations sought to be challenged were promulgated, constitute executive acts by the President-in-Cabinet and the Minister of Home Affairs. It is thus contended that both the President-in-Cabinet and the Minister of Home Affairs have their principal offices in Tshwane; that, in view thereof, this court lacks jurisdiction not only to adjudicate on the interim relief sought, but also on all those issues which constitute the basis for the relief sought in Part B of the parties' respective notices of motion.

[11] Because the relief sought in both applications is the same and the identity of the issues are substantially similar, both applications were heard together before me on Tuesday, 24 June 2014. After hearing argument by the parties involved, I reserved judgment. What follows is my judgment on the issues in dispute and the respective forms of relief sought in both applications.

FACTUAL BACKGROUND: LOUISE HENRIKSON EGEDAL-JOHNSON

[12] Louise Henrikson Egedal-Johnson, the second applicant in the Johnson application, is a Danish citizen. She has, on several occasions since 30 June 2001, been issued with temporary resident's permit culminating on 28 February 2012 when she was issued with a relative's permit, permitting her to live with the first applicant in

the Johnson application. She was married to the first applicant in the Johnson application on 12 December 2009 in South Africa. It appears that there is one child born of the marriage, Samuel Barry Egedal-Johnson, born on 19 August 2011 and cited as the third applicant in the Johnson application.

[13] Since her marriage to the first applicant in the Johnson application, she had since 2012 been permitted to remain in the Republic on a relative's permit. The first such permit was issued on 28 February 2012 and was due to expire on 27 February 2014. She applied for its renewal on 10 February 2014. As at 28 May 2014 her renewal application had not as yet been adjudicated upon. In the meantime the relative's permit issued to her on 28 February 2012 expired on 27 February 2014. On 28 May 2014 she left South Africa from Cape Town International Airport together with her husband. On going through passport control she was declared an undesirable person and was issued with a form declaring her as undesirable person on the basis that she had overstayed her permit by a period of 90 days. On their return to Cape Town she was refused entry at the Cape Town International Airport and subsequently detained on the basis that she had been declared an undesirable person. She was subsequently deported to her country, Denmark, together with the parties' child, the third applicant in the Johnson application.

FACTUAL BACKGROUND: DAVID ROSS HENDERSON

[14] David Ross Henderson is cited as the second applicant in the Delorie application. He is a Zimbabwean citizen but has been permanently resident and domiciled in Cape Town since about 2005. He held a valid work permit which allowed

him to remain and work in the country and to freely live and re-enter. He was joined by his wife, the first applicant in the Delorie application, during 2007. At the stage he was joined by the first applicant, the latter had been a Zimbabwean national and had travelled under a Zimbabwean passport. She had, under those circumstances, lawfully entered the country as his spouse. The first applicant subsequently established her status as a South African citizen. There are two children born of the marriage, Dylan Jourdan Henderson and Logan Jed Henderson, the third and the fourth applicant in the Delorie application, respectively. Both the children born of the marriage, the third and the fourth applicant, were born in Cape Town and are thus South African citizens.

[15] The first applicant states in her founding affidavit that her husband, the second applicant in the Delorie application, was issued with a work permit which lapsed on 21 April 2014. She states that he was unable to apply for an extension of that permit before it expired. She explains that in terms of the then applicable legal regime with regards to issuing of work permits, it meant that her husband had to leave South Africa to regularise his status and obtain a fresh work permit. As he needed to travel on a business trip to Nigeria at the time, he had arranged to preface that trip with a stop in Harare, Zimbabwe, to regularise his work permit.

[16] On 28 May 2014 the second applicant travelled from Oliver Tambo International Airport to Harare, Zimbabwe. At passport control, the officials of the Department of Home Affairs issued him with a declaration as an “undesirable person”, ostensibly in accordance with the provisions of section 30(1)(h) of the Immigration Act, on the basis

that he had overstayed his previous permit for a period slightly in excess of thirty (30) days, that is from 21 April 2014 to 28 May 2014.

[17] On Monday, 2 June 2014, and whilst in Harare, the second applicant approach the South African High Commission in Harare for assistance but was advised that because he was designated as an undesirable person no assistance could be rendered to him. He could thus not apply for any type of permit and could not re-enter the Republic, ostensibly even in transit for his onward trip to Nigeria. Having completed his business out of the country, the second applicant is thus unable to re-enter South Africa.

LEGAL REGIME BEFORE 26 MAY 2014

[18] Before the departure of those parties declared as undesirable persons on 28 May 2014, the legal regime relating to declaration of persons as “undesirable persons” had fundamentally changed. This was in the form of an addition of sub-paragraph (h) in section 30(1) of the Immigration Act, which added a further ground on which a foreigner could be declared an “undesirable person”. Once sub-section (h) had come into operation, any person who overstayed the prescribed number of times could be declared undesirable by the Director-General.

[19] Further, the Immigration Regulations published in Government Gazette no 37679 of 22 May 2014, also came into operation on 26 May 2014. Regulation 27(3) thereof provides as follows:

“(3) A person who overstays after the expiry of his or her visa as contemplated in section 30(1)(h) of the Act may –

- (a) in the case of a person who overstays for a period not exceeding 30 days, be declared undesirable for a period of 12 months;
- (b) in the case of a person who overstays for the second time within a period of 24 months, be declared undesirable for a period of 2 years; and
- (c) in the case of a person who overstays for more than 30 days, be declared undesirable for a period of 5 years.”

[20] Furthermore, on 24 May 2014, the Deputy Director-General of the Department of Home Affairs issued Directive 9/2014 which would operate from 26 May 2014. On the basis of this Directive all persons who overstayed their permits would be treated as undesirable and that, in the case of all such persons, this status would subsist for a period of 12 months.

[21] It is on the basis of the factual background set out in paragraphs [12] to [17] of this judgment and the legal regime set out in paragraphs [18] to [20] above that I have to make a determination if the applicants, in both the applications, have made out a case for the relief sought in Part A of the parties’ respective notices of motion. All those several forms of relief set out in Part B of the parties’ respective notices of motion are issues that have to be determined at the judicial review stage of these proceedings. All that I am required to determine at this stage of the proceedings is whether the applicants, in both instances, have made out a case for the interdictory relief pending the adjudication, by way of judicial review, of those several forms of relief set out in Part

B of the parties' respective notices of motion. But first, I need to determine those grounds of opposition based on lack of urgency and lack of jurisdiction .

URGENCY

[22] In the Delorie application the main ground of urgency advanced is the fact that the second applicant is separated from his wife and children. It is contended on behalf of the applicants in the Delorie application that this is a serious matter which fundamentally violates the second applicant's dignity and that of his wife and children. In relying on this ground as the basis of urgency, reliance is place in *Dawood, Shalabi & Thomas v Minister of Home Affairs* 2000 (3) SA 936 (CC) para 51 at p968 where the Constitutional Court made the following observation:

"Enforced separation places strain on any relationship. That strain may be particularly grave where spouses are indigent and not in a position to afford international travel, or where there are children born of the marriage. Indeed, it may well be that the enforced separation of the couple could destroy the marriage relationship altogether. Although these provisions do not deprive spouses entirely of the rights to marry and form a family, they nevertheless constitute a significant limitation of the right."

[23] It is further contended on behalf of the applicants in the Delorie application that the family is dependent on the second applicant's income, which is in turn dependent on his ability to be in the country. She goes on to state what steps were taken after her husband was declared an undesirable person, these being that on 2 June 2014 the second applicant approached the High Commission in Zimbabwe with a view to being assisted, but could not be assisted in view of his "undesirable person" status; that she

approached the department's offices in Cape Town but could not be assisted as the department was in the process of establishing a new office which would only be operative after 20 June 2014; that she arranged to meet an immigration attorney on 5 June 2014, but could not meet the required deposit whereafter an appointment was arranged for a consultation on Thursday, 12 June 2014. It was on 12 June 2014 that the first applicant in the Delorie application was fortuitously referred to her current legal representatives. Once she had consulted with her current legal representatives the proceedings in the Delorie application were issued on Tuesday, 17 June 2014. The first applicant further states in her founding affidavit that during the currency of the previous legal regime, a matter of renewal of a work permit was a mere formality, hence the second applicant was lulled in a false sense of security when, although his work permit had expired on 21 April 2014, he nonetheless believed that he could have it renewed in Harare en route his business trip to Nigeria.

[24] The reasons for urgency advanced in the Johnson application is based on the fact that the child born of the marriage between the first and the second applicant is so young, just little over two and half years old. He cannot be separated from his mother as she was forced to take him with her to Denmark. It is thus contended on behalf of the applicants in the Johnson application that the three applicants' family as well as the first and the second applicant's marriage have thus effectively been broken up as a consequence of the second applicant having been declared an undesirable person in circumstances where, in the past, she could live and enter the country purely on the basis of proof of acknowledgement of her application to have her visa renewed.

[25] As has already been pointed out, the main thrust of the respondents' opposition, in as far as the urgency aspect is concerned, is based on a contention that the applicants, in all instances, are the creators of their own misery. The perception that the applicants are the creators of their own misery may well be so. But, in my view, what also has to be borne in mind is the fact that the declarations of undesirability occurred shortly after the commencement of the provisions of section 30(1)(h) of the Immigration Act and the regulations promulgated thereunder. In my view, therefore, the relief sought by the applicants in both applications, due regard had to the underlying circumstances under which the permit violations occurred, is not the kind of relief that can be attained by way of an action in due course. The applications are, therefore, urgent.

[26] In concluding that the applications are urgent, I have taken into account the children's best interests, which are of paramount importance in every matter that concerns the child over and above the interests of the litigants, including those of the respondents. The children, in the instance of both matters before me, find themselves being caught up in a web of contestation that has manifested between the other applicants and the respondents.

JURISDICTION

[27] The opposition to the relief sought, based on lack of jurisdiction on the part of this court, is based on a contention that the promulgation of the Immigration Regulations, as well as the passing of the amendment to the Immigration Act, in the form of addition of a further sub-paragraph, it being sub-paragraph (h), constitute executive acts by the President-in-Cabinet and the Minister of Home Affairs. It is further

contended that the President-in-Cabinet and the Minister of Home Affairs have their principal offices in Tshwane. In view thereof, so it is contended on behalf of the respondents, these proceedings ought to have been instituted in a court where the principal offices of the President-in-Cabinet and the Minister of Home Affairs are situated.

[28] A matter of a challenge to the validity of the promulgation of Immigration Regulations as well as an amendment to the Immigration Act, are both matters in respect of which the relief is sought in Part B of the parties' respective notices of motion. Those issues, and all those other several issues, set out in Part B of the parties' respective notices of motion are not before me for determination at this stage of the proceedings

[29] Further, the National Executive, as all of us have come to know, has two principal places of business, one in Tshwane and one in Cape Town. When Parliament is in recess, meetings of the National Executive would in all circumstances be held in Tshwane, but that when the parliament is in session, such meetings would be held in Cape Town. The last such meeting of the National Executive was held in Cape Town on Wednesday, 25 June 2014. Accordingly, this court would have jurisdiction on the members of the National Executive by virtue of the provisions of section 21(1) of the Superior Courts Act, 10 of 2013.

[30] It further appears to be accepted between the parties that the declaration of persons as "undesirable persons" constitutes administrative action as contemplated in

section 1 of the Promotion of Administrative Justice Act, 3 of 2000. In the instance of the Johnson application, the administrative action complained of occurred at the Cape Town International Airport and thus within the area of jurisdiction of this court. In the instance of the Delorie application, the administrative action complained of occurred at the OR Tambo International Airport, Johannesburg.

[31] If it is accepted that the declaration of a person as undesirable constitutes administrative action, it therefore would mean that the provisions of the Promotion of Administrative Justice Act do apply. These proceedings have been instituted in the high court. A high court is defined as follows in the Promotion of Administration of Justice Act:

- “(a) ...
- (b) (i) a High Court or another Court of similar status;
- (ii) within whose area of jurisdiction the administrative action occurred or the administrator has his or its principal place of administration or the party whose rights have been affected is domiciled or ordinarily resident or the adverse effects of the administrative action was, is or will be experienced.”

[32] In the instance of the Delorie application, the applicants are all domiciled and ordinarily resident in Rondebosch, Cape Town and thus within the area of jurisdiction of this court. Moreover, the adverse effects of the declaration of undesirability in both instances are felt and experienced in Cape Town. Thus, this court does have jurisdiction to hear this application and to make a determination on the relief sought.

[33] Trollip JA in *Estate Agents' Board v Lek* 1979 (3) SA 1048 (AD) at 1067D-F made the following observation:

“Having due regard to that fact that I think that the court *a quo* had jurisdiction to entertain his appeal, simply on the ground that he was resident within its area of jurisdiction. After all, that was the court immediately at hand and easily accessible to him and to which he would naturally turn for aid in seeking to have the diminution in his legal capacity or personality remedied. In the present context our unitary judicial system of having one Supreme Court (currently one High Court) with different divisions, ... convenience and common sense, are, *inter alia*, valid considerations in determining whether a particular division has jurisdiction to hear and determine the particular cause.”

[34] In *National Arts Council v The Minister of Arts & Culture* 2006 (1) SA 215 (C) I held that this court has no jurisdiction over the National Arts Council on the basis that the decision that was sought to be impugned was communicated to the National Arts Council from Tshwane; that the offices of the National Council are situated in Johannesburg; that the physical address of the National Arts Council depicted on its letterhead is an address in Johannesburg; and that its postal address is in Newtown, Johannesburg.

[35] In my view, as Trollip AJ observed in *Estate Agents' Board v Lek*, *supra*, convenience and common sense are valid considerations in determining that this court does have jurisdiction to adjudicate on the relief sought. I am thus not persuaded that this court lacks jurisdiction purely on the basis that the National Executive has its

principal offices in Tshwane. In any event, the respondents have admitted in the pleadings that the National Executive does have a principal place of business in Cape Town. This then brings me to a determination whether the applicants have made out a case for the relief sought.

THE REQUIREMENTS FOR AN INTERIM RELIEF

[36] The requirements for an interim interdict, and thus for an interim relief at this stage of the proceedings, are well established in our law. In an application for an interim interdictory relief the applicant must establish a *prima facie* right to the relief sought even if such relief may be open to some doubt; a well-grounded apprehension of irreparable harm if the interim relief is not granted, and the ultimate relief is eventually granted; that the balance of convenience favour the granting of the interim relief; and the absence of any other satisfactory remedy available to the applicant.

[37] It has been held in authorities such as *Olympic Passenger Services (Pty) Limited v Ramlagan* 1957 (2) SA 382 (D) at 383E-F that the requirements referred to should not be considered separately or in isolation but in conjunction with one another in order to determine whether the court should exercise its discretion in favour of the grant of the interim relief sought. At the interim stage, less is required from the applicants than at the final interdict stage. It is sufficient for the applicants to show a *prima facie* case though open to some doubt.

[38] As has already been pointed out elsewhere in this judgment, and in line with the approach adopted by the Constitutional Court in *National Treasury & Others v*

Opposition to Urban Tolling Alliance & Others 2012 (6) SA 223 (CC) at paragraph 44, a need for the applicants to make a *prima facie* case does not require me to decide the prospects of success on the proposed judicial review at the interim stage. All that I need to determine at this stage of the proceedings is that the relief sought is not sought on frivolous grounds.

PRIMA FACIE RIGHTS

[39] Over and above the right to family life and the right to dignity incidental thereto, the *prima facie* right asserted by the applicants is based on the right to challenge the lawfulness of the regulations; the alleged unlawfulness of Directive 9 of 2014: and, ultimately, the alleged unlawfulness of declaring the applicants to be undesirable persons as contemplated in section 30 of the Immigration Act.

[40] The point that is being made on behalf of the applicants in the Johnson application is that Regulation 27, which regulates the declaration of persons as undesirable persons, is *ultra vires* the Immigration Act, in that, whereas the Immigration Act and regulation 27(2) of the regulations promulgated thereunder, is permissive in its provision for the declaration of a person as undesirable, the interpretation and the application of that regulation, in the form of Directive 9 of 2014, appears to be peremptory. It is further contended on behalf of the applicants in the Johnson application that the officials at Cape Town International Airport, who issued the affected person with the declaration of undesirability, did not exercise their discretion properly.

[41] In the instance of the Delorie application it is contended that the decision to declare the second respondent in that application an undesirable person falls to be set aside on several grounds, these being, that the decision is premised on the validity of the regulations and/or directive whose validity is sought to be challenged; that the departmental officials who issued the declaration failed to appreciate that they were required to exercise a discretion; that the officials failed to consider all relevant factors; that the determination of undesirability is not rationally connected to the purpose of section 30(1)(h) of the Immigration Act; that the procedure followed was unfair; and, that the declaration does not accord with the regulations in that it operates in perpetuity.

INTERNAL REMEDIES

[42] The notice of undesirability refers to both an internal appeal to the Director-General, in terms of section 8(4) of the Immigration Act, or waiver by the Minister, for good cause, in terms of section 30(2) of the Immigration Act. The applicants in both these matters did not lodge such appeals or applications either at the points of exit in the Republic or in their respective countries. However, at the hearing of an application for a postponement of these proceedings on 18 June 2014, the applicants were invited to lodge these appeals and were assured that such appeals would be considered despite the period within which such appeals had to be lodged had expired.

[43] The affected applicants, in both instances, have accepted such invitation and such appeals have since been lodged with the officials of the department. However, no indication was given at the time the matter was argued before me on Tuesday, 24 June 2014, as regards how long it would take for those appeals to be considered and for the

results to be communicated to the applicants. It is accordingly my view that the relief sought cannot be refused solely on the basis that the applicants have lodged such appeals in view of the relief sought, in both instances, in Part B of the parties' respective notices of motion. There also has been no tender on the part of the respondents for the applicants to return pending the consideration of such internal appeals. To the extent that it is suggested that the applicants do have an alternative remedy in the form of the provisions of section 6(2)(g) read with section 6(3) of the Promotion of Administrative Justice Act, my view is that those options are not capable of a speedy remedy of the nature that the applicants seek in these proceedings.

[44] The applicants are plainly suffering prejudice and have no alternative remedy available to them other than the relief sought in the notice of motion. The affected persons in both instances do not pose a threat to the security of the country and, in fact, no such threat is alleged in the papers. Thus, the return of the affected applicants to the country should pose no threat to any person. Thus, in my view, the balance of convenience plainly favours the granting of the relief sought.

[45] In the course of finalising the preparation of this judgment, I was informed by the legal representatives in the Johnson application that, in the instance of Louise Henrikson Egedal-Johnson, the second applicant in the Johnson application, the Minister has waived her declaration as an undesirable person. In view of such waiver, the relief to suspend the second applicant's declaration as an undesirable person by the third and the fourth respondent on 28 May 2014 is no longer pursued.

[46] Because of the interim nature of the relief I grant on the basis of the orders I give hereunder, I do not deem it appropriate to make any costs order at this stage of the proceedings, rather, leaving it for determination at the conclusion of the hearing of those issues specified in Part B of the parties' respective notices of motion.

[47] In the result, therefore, the following orders are made:

[47.1] **THE JOHNSON APPLICATION**

- 1) It is declared that this matter is one of urgency and condonation for non-compliance with the time periods prescribed by the Uniform Rules of Court is granted.
- 2) Pending the final outcome of the application for the relief sought in Part B of the notice of motion in this application:
 - 2.1. Immigration Department Directive 9 of 2014 issued on 24 May 2014 under the hand of the second respondent's delegee shall be suspended *vis a vis* the second applicant; and
 - 2.2. The second applicant be permitted forthwith to enter and remain in the Republic of South Africa with the third applicant, subject to reasonable terms and conditions, as prescribed by the second respondent.
- 3) There shall be no order as to costs at this stage of the proceedings same being left for determination at the conclusion of those issues specified in Part B of the notice of motion.

[47.2] THE DELORIE APPLICATION

- 1) It is declared that this matter is one of urgency and condonation for non-compliance with the time periods prescribed by the Uniform Rules of Court is granted.
- 2) Pending the outcome of an appeal lodged with the Director-General in terms of section 8(4) of the Immigration Act and/or waiver by the Minister in terms of section 30(4), and, further, pending the final outcome of the application for the relief sought in Part B of the notice of motion in this application, whichever event shall first occur:
 - 2.1. Immigration Department Directive 9 of 2014 issued on 24 May 2014 under the hand of the second respondent's delegee shall be suspended *vis a vis* the second applicant;
 - 2.2. The second applicant's 28 May 2014 declaration of undesirability by the officials of the Department of Home Affairs shall be suspended; and
 - 2.3. The second applicant be permitted forthwith to enter and remain in the Republic of South Africa, subject to reasonable terms and conditions, as prescribed by the second respondent.
- 3) There shall be no order as to costs at this stage of the proceedings same being left for determination at the conclusion of those issues specified in Part B of the notice of motion.

N J Yekiso
High Court Judge