



**SOUTH GAUTENG HIGH COURT, JOHANNESBURG**

**CASE NO: 38408/12**

**BEFORE: SPILG J on 2 January 2012**

In the matter between:

**IQBAL, ZAHEER**

Applicant

And

**MINISTER OF HOME AFFAIRS**

First Respondent

**THE DIRECTOR-GENERAL DEPARTMENT**

Second Respondent

**OF HOME AFFAIRS**

**BOSASA (Pty) Ltd**

Third Respondent

**t/a LEADING PROSPECTS TRADING**

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**SUMMARY**

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***Foreigner: Immigration Act, Refugees Act and Regulation 2(2)-***

*Pakistani national claiming that he wished to re-apply for asylum seeker permit which was not renewed because, according to his averments, it was unnecessary as he had in the interim married a South African and had obtained an accompanying spouse permit and temporary residence.*

*Reason for court application was that he had been detained and was to be deported as an illegal immigrant since the marriage was bogus according to the wife and in response the applicant contended that he had been duped by his family into the arranged marriage. Basis of prima facie right not to be*

*detained or deported was that of the principle of legality arising from the applicant's declared intention to re-apply for asylum and that he had never waived his right to apply for asylum.*

*Applicant relied on Bula v Minister of Home Affairs and Others 2012(4) SA 560 (SCA) for basis of right and also as basis for contending that the court could not look into the merits, including the bona fides, of seeking asylum.*

**Held:** *The case did not fall within the scope of Bula having regard to the ratio in Ersumo v Minister of Home Affairs and Others 2012(4) SA 581 (SCA) which held that Bula applied to a first encounter by an immigration officer with an illegal foreigner who has not made an application for asylum and left open the question of whether a court can have regard to the merits or the bona fides of seeking asylum where an asylum transit permit had been obtained but not pursued (being the type of situation which arose in Arse v Minister of Home Affairs and Others 2010 (7) BCLR 640 (SCA)).*

**Held further:** *On the facts the applicant when applying for asylum had not relied on any ground entitling him to asylum under section 2 of the Refugees Act, only that he left Pakistan for business. Allegation in court application that he had left Pakistan on grounds of political and religious persecution and threat to life and physical safety rejected for purposes of supporting a prima facie right to the relief sought and that the applicant, on his own version and on the further objective facts revealed, was never deprived of an opportunity to exercise or exhaust his rights including those of review or appeal- Conka v Belgium (2002) 34 EHRR 54 at para 46 applied.*