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**REPUBLIC OF SOUTH AFRICA**



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

**CASE NO: 40089/2019**

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

.....  
DATE

.....  
SIGNATURE

In the matter between:

**A, Z**

**First Applicant**

**T, K**

**Second**

**Applicant**

**A, S**

**Third**

**Applicant**

and

**THE MINISTER OF HOME AFFAIRS**

**First Respondent**

**THE DIRECTOR GENERAL,**

**DEPARTMENT OF HOME AFFAIRS**  
**AFRICAN GLOBAL GROUP (PTY) LTD**

**Second Respondent**  
**Third Respondent**

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## **S U M M A R Y**

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- [1] The applicants instituted an urgent application seeking an order declaring their continued detention at Lindela Detention Centre unlawful.
- [2] The applicants are Ethiopian nationals who fled from Ethiopia due to fear of persecution. Prior to their arrest, they had, on several occasions, unsuccessfully attempted to apply for asylum at the Refugee Reception Centre.
- [3] The respondents contended that the application stood to fail on the basis that the applicants had not set out the grounds for their alleged persecution in Ethiopia. Furthermore, the respondents claimed that the applicants, at the time of their arrest, had informed the Immigration Officer that they were in the country for a vacation.
- [4] The applicants contended that they were permitted by section 21(5) of the Refugees Act to keep the grounds of their persecution in Ethiopia confidential.
- [5] The Court found that the respondents failed to discharge their duty by failing to demonstrate that the continued detention of the applicants was justified. Whilst in detention, the applicants' attorneys had sent a letter to the respondents, informing them that the applicants wished to apply for asylum. Therefore, the Court held that even if the version of the respondents – that the applicants said they were on vacation – was to be accepted, the situation in the law relating to the detention changed as soon as the respondents received this letter. Hence the Court held that the regulatory framework of the Refugees Act applies at any time, and specifically, from the point when one indicates their desire to apply for

asylum. Furthermore, the Court found that there is nothing in the legislative framework which requires and confines an asylum seeker to immediately disclose their intention to apply for asylum when he or she is encountered by the immigration authorities.

- [6] On the issue of the applicants' failure to disclose the grounds related to their fear of persecution, the Court found that this point carried no merit. The Court held that processes and documents used in such proceedings are public and this disclosing the jurisdictional facts relevant for a successful asylum application would defeat the protection of non-disclosure envisaged in section 21(5) of the Refugees Act. The Court held that the interrogation and investigation of the application is the responsibility of the Refugee Reception Officer.
- [7] The Court declared the continued detention of the applicants to be unlawful and ordered that they be immediately released. Furthermore, the Court granted the applicants 14 days within which to approach the Refugee Reception Office in order to apply for an asylum seeker permit.