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

In re several matters on the urgent court roll 9 to 12 February 2012

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

..... 18/02/2021
SIGNATURE DATE

CASE NUMBER: 2021/01004

In the matter between:

OBINNA FELIX NWANKWO	**Applicant**
and	
THE MINISTER OF HOME AFFAIRS	**First Respondent**
THE DIRECTOR GENERAL: DEPARTMENT OF HOME AFFAIRS	**Second Respondent**
THE DIRECTOR FOR DEPORTATIONS	
DEPARTMENT OF HOME AFFAIRS	**Third Respondent**
THE CHIEF DIRECTOR ASYLUM SEEKER	**Fourth Respondent**

MANAGEMENT: DEPARTMENT OF HOME AFFAIRS
THE ACTING DIRECTOR LINDELA REPATRIATION
CENTRE **Fifth Respondent**

CASE NUMBER: 2021/0013

In the matter between:

OBINNA EDWIN ANYACHO **First Applicant**

SIMON OKECHUKWU JOHN AGBADOM **Second Applicant**

and

THE DIRECTOR GENERAL: DEPARTMENT
OF HOME AFFAIRS **First Respondent**

THE MINISTER OF HOME AFFAIRS **Second Respondent**

CASE NUMBER: 2021/0014

In the matter between:

UGUCHUKWU RAPHAEL ONWUAKPA **Applicant**

and

THE DIRECTOR GENERAL: DEPARTMENT
OF HOME AFFAIRS **First Respondent**

THE MINISTER OF HOME AFFAIRS **Second Respondent**

Applications for the release from detention of asylum seekers; Application for the release of from detention of applicant for residential permit; Mwale v The Minister of Home Affairs and Another Local Division, Port Elizabeth ZAECPEHC (1982/2020) delivered on 22 September 2020 not followed.

JUDGMENT

DE VILLIERS, AJ:

Introduction

[1] In urgent court several asylum-seeking matters and an immigration matter served before me. I have prepared one judgment as the principles overlap. The applicants all seek release from detention at the Lindela Repatriation Centre where they are being held pending their repatriation to their country of origin, Nigeria. I deal with the immigration matter last. Hence most of the earlier references herein are to the asylum-seeking matters. The state (I refer herein to the respondents as "*the state*") avers that all the applications that served before me are abuses by convicted and sentenced criminals, convicted and sentenced for serious drug related crimes.

[2] Our treatment of *bona fide* refugees would stand at the centre of the judgment visited on us as a humane society. In the cases before me the Rule of Law, and the separation of powers (and the role of the courts) stand central too. Also central in these cases are the principles about pleading and proving a case in motion proceedings. In short, the affidavits are the pleadings and the evidence, and a party must allege the legal basis for the relief claimed (or opposed) and allege and prove the primary facts for such application of the law. Conclusions to be drawn (and facts inferred) from attachments to the affidavits must be addressed in the affidavits themselves. I simply refer to fuller discussions in cases such as *MEC for Health, Gauteng v 3P Consulting (Pty) Ltd* 2012 (2) SA 542 (SCA) para 28 which approved the summary of the law in *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) at 323F-324C and in *Prokureursorde van Transvaal v Kleynhans* 1995 (1) SA 839 (T) at 849B. See too *Genesis Medical Aid Scheme v Registrar, Medical Schemes and Another* 2017 (6) SA 1 (CC) para 171 and *National Director of Public Prosecutions v*

Phillips and Others 2002 (4) SA 60 (W) para 36. Where I refer below to the duty to allege and prove a case, I refer to these principles.

[3] The facts that the applicants need to allege and proof for their release in essence are limited to alleging that they are in detention. Once detention has been established, the state must show that the detention is lawful, or the detainee must be released. See the judgment by the Supreme Court of Appeal ("*the SCA*") *Arse v Minister of Home Affairs* 2012 (4) SA 544 (SCA) para 5 and the cases collected there. See too the Constitutional Court ("*the ConCourt")* judgment in *Zealand v Minister for Justice and Constitutional Development and Another* 2008 (4) SA 458 (CC) para 24. As would appear from *Arse*, *habeas corpus* and the *interdictum de homine libero exhibendo* are ingrained parts of our law. Our Common Law has Constitutional application too. See section 35(2)(d) of the *Constitution*.[1] This summary of the law has an important consequence: It is with respect irreconcilable with a finding that such an applicant must first make out a case that she or he is say a *bona fide* asylum seeker (with prospects of success), before she or he becomes entitled to seek release from detention.[2]

Potential grounds for detention

[4] These are not matters where the applicants are in custody awaiting trial, or are still in prison serving their sentences of imprisonment. The applicants aver that they have served their sentences, and were released, only to be detained again, over periods now stretching to a few months. Their sentences were reduced because of presidential pardons prior to their stipulated dates for release. Some seem to have been released on parole. The fact is that they are in detention and that the state must justify the detention. In the past such detention could potentially have been justified under section 34(1) of the **Immigration Act** 13 of 2002 ("*the Immigration Act*").[3] There are two problems

[1] "*Everyone who is detained, including every sentenced prisoner, has the right- (a) … (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released*".
[2] For a contrary view see *O A v Minister of Home Affairs and Others* [2019] ZAGPJHC 470 para 8, 17 and 18. I respectfully disagree.
[3] "*Without the need for a warrant, an immigration officer may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause*

with this approach. One, the **Refugees Act** 130 of 1998 ("*the Refugees Act*") trumps the Immigration Act in asylum matters, as referred to more fully below. Two, in *Lawyers for Human Rights v Minister of Home Affairs and Others* 2017 (5) SA 480 (CC) the ConCourt issued this order (underlining added):

> "*2. Section 34(1)(b) and (d) of the Immigration Act 13 of 2002 is declared to be inconsistent with ss 12(1) and 35(2)(d) of the Constitution and therefore invalid.*
>
> *3. The declaration of invalidity is suspended for 24 months from the date of this order to enable Parliament to correct the defect.*
>
> *4. Pending legislation to be enacted within 24 months or upon the expiry of this period, any illegal foreigner detained under s 34(1) of the Immigration Act shall be brought before a court in person within 48 hours from the time of arrest or not later than the first court day after the expiry of the 48 hours, if 48 hours expired outside ordinary court days.*
>
> *5. …*
>
> *6. In the event of Parliament failing to pass corrective legislation within 24 months, the declaration of invalidity shall operate prospectively*."

[5] The ConCourt in *Lawyers for Human Rights* placed great emphasis on judicial oversight over detention, and hence demanded that detainees be brought to court, in person, without unreasonable delay. The state would have had to allege and prove compliance with section 34(1) of the Immigration Act, as read with *Lawyers for Human Rights* to justify detention. It did not do so in the cases before me. It appears that section 34(1) would no longer be grounds to detain a person without judicial oversight for more than a very limited period. Once

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him or her to be detained in a manner and at a place determined by the Director-General, provided that the foreigner concerned-

(a) shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;

(b) may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;

(c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;

(d) may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days; and

(e) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights."

judicial oversight commences, the Refugees Act does not seem to stipulate any power on anyone to detain a person thereafter. I had access to an unreported judgment by Strydom J of 12 October 2020 in *OC Lawrence v The Minister of Home Affairs and Others* (26145/2020) in this division, where the learned judge held that a person arrested as an illegal immigrant under section 34(1) of the Immigration Act, is entitled to an immediate release when brought to court, because of the effect of *Lawyers for Human Rights*. This issue was raised by Windell J in *O A v Minister of Home Affairs and Others* [2019] ZAGPJHC 470 para 25 as well.

[6] The Refugees Act provides for the other basis why a non-citizen who seeks asylum, is safe from detention in our country. See section 21(4) of the Refugees Act (underlining added):

> "*Notwithstanding any law to the contrary, no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if-*
>
> *(a) such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such application has been reviewed in terms of section 24A or where the applicant exercised his or her right to appeal in terms of section 24B; or*
>
> *(b) such person has been granted asylum*."

[7] The applications for asylum in the matters before me, have not reached the stage where decisions have been made about their eligibility for asylum. Section 21(4) of the Refugees Act has a material impact on the treatment of refugees seeking asylum. Its origins are in international conventions about the treatment of refugees which I need not address in any detail this judgment. Section 1A of the Refugees Act reflects that the act must be interpreted in a manner that is consistent with such conventions and it refers to the Universal Declaration of Human Rights, the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and the 1969 Organisation of African Union Convention Governing the Specific Aspects of Refugee Problems in Africa.

[8] The impact of section 21(4) of the of the Refugees Act (and the obligations we as a country assumed in the treatment of refugees as asylum seekers, are profound. The ConCourt in *Ruta v Minister of Home Affairs* 2019 (2) SA 329 (CC) para 33 held that section 21(4), read with section 2, must be interpreted to include (underlining added):

> "… *that, apart from those officially recognised as refugees and afforded refugee status, no applicant for asylum may be expelled, extradited or returned to any other country or be subjected to any similar measures*."

[9] A such *Ruta* held that the Refugees Act trumps the Immigration Act when someone seeks asylum. The Refugees Act applies because of the mere fact that asylum is claimed. I have already referred to the effect of *Arse* and *Zealand.*

[10] *Ruta* further held that under the doctrine of the separation of powers, any determination about "*who may seek asylum and who is entitled to refugee status*" is determined under the Refugees Act (para 40). Thus, the ConCourt held in para 43 (footnotes omitted and underlining added):

> "*[43] The Refugees Act makes plain principled provision for the reception and management of asylum seeker applications. The provisions of the Immigration Act must thus be read together with and in harmony with those of the Refugees Act. This can readily be done. Though an asylum seeker who is in the country unlawfully is an "illegal foreigner" under the Immigration Act, and liable to deportation, the specific provisions of the Refugees Act intercede to provide imperatively that, notwithstanding that status, his or her claim to asylum must first be processed under the Refugees Act. That is the meaning of section 2 of that Act, and it is the meaning of the two statutes when read together to harmonise with each other*."

[11] The ConCourt in *Ruta* expressly held that this is the position too where asylum seekers enter the country not through official ports of entry (para 53). The Immigration Act only commences to apply after a proper determination of an application to seek asylum is completed (para 54). *Ruta* expressly held that the process is completed once it is completed in terms of section 24(3) of the Refugees Act.[4] That process in terms of section 24A and 24B is subject to

[4] "*24(3) The Refugee Status Determination Officer must at the conclusion of the hearing conducted in the prescribed manner, but subject to monitoring and supervision, in the case of paragraphs (a) and*

rights of an internal appeal and internal review. Hence section 21(4) affords protection until the completion of those processes. The ConCourt repeatedly made the point that the legislated procedures in the Refugees Act must be completed first before the Immigration Act commences to deal with someone as an illegal foreigner (para 19, 39-41, and especially 43-47, 54, 56 and 59). *Ruta* formulated questions for consideration in para 14 (footnotes omitted):

> "… *An ancillary question is: does the 15-month delay between Mr Ruta's arrival in South Africa in December 2014 and his arrest in March 2016 bar him from applying for refugee status? More generally, can it be that a foreigner may arrive and tarry illegally for months, without applying for refugee status, and then, when the law catches up, insist on the right to apply?* …"

[12] The short answer in *Ruta* is "*no, delay is not a bar to a belated application, and yes, he or she can wait to be caught before commencing the process*". The ConCourt upheld the position that simply claiming asylum is sufficient to grant the applicant access to the application process stipulated in the Refugees Act.

[13] The last point to reflect on is the statement in *Ruta* in para 54 that "… *until the right to seek asylum is afforded and a proper determination procedure is engaged and completed, the Constitution requires that the principle of non-refoulement as articulated in section 2 of the Refugees Act must prevail. The "shield of non-refoulement" may be lifted only after a proper determination has been completed*". This statement gives effect to the international conventions I have referred to.

[14] *Ruta* upheld a quartet of cases in the SCA. *Abdi v Minister of Home Affairs* 2011 (3) SA 37 (SCA), *Bula v Minister of Home Affairs* 2012 (4) SA 560 (SCA), *Ersumo v Minister of Home Affairs* 2012 (4) SA 581 (SCA), and *Arse*. It was not argued before me that they detract from the principles stated already.

Determination of impact of conviction

(c), and subject to review, in the case of paragraph (b), by any member of the Standing Committee designated by the chairperson for this purpose-
(a) grant asylum;
(b) reject the application as manifestly unfounded, abusive or fraudulent; or
(c) reject the application as unfounded."

[15] The structure of the Refugees Act, is that a bureaucratic process is to be followed to determine if someone is eligible for protection as an asylum seeker, or not. The Refugees Act provides for, due to internal remedies, several layers of officials who may decide the eligibility for asylum. It is not necessary to restate those processes in full in this judgment. The point is that the whole legislated process is a bureaucratic process. Thus, the role of the court is that of an adjudicator of the legality of the legislated bureaucratic process. See *Gorhan v Minister of Home Affairs and Others* [2016] ZAECPEHC 70 para 18-22, a judgment by Plasket J. The court is not involved in determining the likely outcome of the process.

[16] It matters not that asylum seeker visas lapsed (as they did in two cases before me), the asylum seekers still have internal remedies under the Refugees Act. Sections 22(12) and 22(13) of the Refugees Act stipulate a deemed waiver of the asylum-seeking application, but only after an administrative process has been completed (underlining added):

> "*(12) The application for asylum of any person who has been issued with a visa contemplated in subsection (1) must be considered to be abandoned and must be endorsed to this effect by the Standing Committee on the basis of the documentation at its disposal if such asylum seeker fails to present himself or herself for renewal of the visa after a period of one month from the date of expiry of the visa, unless the asylum seeker provides, to the satisfaction of the Standing Committee, reasons that he or she was unable to present himself or herself, as required, due to hospitalisation or any other form of institutionalisation or any other compelling reason.*
>
> *(13) An asylum seeker whose application is considered to be abandoned in accordance with subsection (12) may not re-apply for asylum and must be dealt with as an illegal foreigner in terms of section 32 of the Immigration Act*."

[17] The Refugees Act also does makes provision for the withdrawal of an asylum seeker visa in cases of criminal conduct. See first section 22(5) (underlining added):

> "*(5) The Director-General may at any time prior to the expiry of an asylum seeker visa withdraw such visa in the prescribed manner if-*
>
> *(a) the applicant contravenes any condition endorsed on that visa;*
>
> *(b) the application for asylum has been found to be manifestly unfounded, abusive or fraudulent;*

(c) the application for asylum has been rejected; or

(d) the applicant is or becomes ineligible for asylum in terms of section 4 or 5."

[18] Sections 4 and 5 so referred to, address *inter alia* the effect of serious crimes committed in this country by an asylum seeker. Section 4(1)(e) of the Refugees Act determines that "*an asylum seeker does not qualify for refugee status for the purposes of this Act if a Refugee Status Determination Officer has reason to believe that he or she has committed a crime in the Republic, which is listed in Schedule 2 of the Criminal Law Amendment Act, 1997 (Act 105 of 1997), or which is punishable by imprisonment without the option of a fine*".[5] In this case events proceeded beyond this point of suspicion and section 5(1)(f) of the Refugees Act (in the case of committed crimes) determines that "*a person ceases to qualify for refugee status for the purposes of this Act if he or she has committed a crime in the Republic, which is listed in Schedule 2 of the Criminal Law Amendment Act, 1997 (Act 105 of 1997), or which is punishable by imprisonment without the option of a fine.*"

[19] The impact of an asylum seeker having committed and having been convicted for a serious crime is thus not automatic. Section 5(3) of the Refugees Act states that in such a case, the refugee status of a person, who ceases to qualify for such status, may be withdrawn in terms of section 36. A process is prescribed that the Standing Committee must follow before the refugee status may be withdrawn. It is only then that a person that has committed a serious crime becomes ineligible for asylum in terms in terms of section 5. It is only then that the Director-General may withdraw an otherwise valid asylum seeker visa in terms of section 22(5) referred to above. It is only then that the Director-General may order the detention of the asylum seeker in terms of section 23 of the Refugees Act:

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[5] "*This schedule includes any offence referred to in section 13 (f) of the Drugs and Drug Trafficking Act, 140 of 1992, if it is proved that-*
(a) the value of the dependence-producing substance in question is more than R50 000,00;
(b) the value of the dependence-producing substance in question is more than R10 000,00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy …"

> *"If the Director-General has withdrawn an asylum seeker visa in terms of section 22 (5), he or she may, subject to section 29, cause the holder to be arrested and detained pending the finalisation of the application for asylum* …"

[20] Even such detention would be subject to judicial oversight in terms of section 29(1) of the Refugees Act.[6] The point is this, the state had several months to proceed the administrative processes to determine that the applicants are ineligible for refugee status (or similarly for immigration status) due to the crimes that they have committed or for any other reason. It has not been pleaded and proven that such processes have been commenced or have been completed in the cases before me. On the facts before me, no administrative finding precludes the reliance on section 21(4) of the Refugees Act.

The asylum cases

[21] Against this background I turn to the facts of the asylum matters before me. In summary, as would have appeared from the above, the alleged refugees are entitled to be released, unless the state could allege and prove grounds for the detention. I have earlier referred to *Zealand*; The ConCourt held at para 24:

> "… *Accordingly, it was sufficient in this case for the applicant simply to plead that he was unlawfully detained. This he did. The respondents then bore the burden to justify the deprivation of liberty, whatever form it may have taken*."

[22] The state avers that the applications before me are bogus. On the one hand the laconic pleadings support such a view, on the other hand, the limited issue for decision (justified deprivation of liberty) reflects that very little needs to be alleged by the applicants before me. They were not prepared in this manner, and contain much duplication and irrelevant mater.

[23] As I have stated, the applicants are detained at the Lindela Repatriation Centre. The applicants had been convicted of serious drug related crimes and were, at the time of the hearing, illegally in our country. Their cases for the most part include bald versions about their alleged persecution in Nigeria, and no information about their journeys to South Africa. Either nothing, or very little,

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[6] "*No person may be detained in terms of this Act for a longer period than is reasonable and justifiable and any detention exceeding 30 days must be reviewed immediately by a court in whose area of jurisdiction the person is detained, and such detention must be reviewed in this manner immediately after the expiry of every subsequent period of 30 days of detention*."

is said about their entries into our country. In two of the cases either no, or very unconvincing explanations, are given why they did not apply for asylum or seek the renewal of their asylum-seeking permits before they were apprehended for their crimes and ultimately sentenced. There is complete silence about how they earned a living previously in Nigeria, and complete silence about how they earned a living in South Africa. All state, or suggest, that they belong to the Christian faith (being the reason or suggested for their alleged persecution). In no case is the court given any assurance that the applicants would reside at an ascertainable address once released. (In one case the applicant avers that he resides at "*Nigel*", in another conflicting addresses are given). They all allegedly intended to seek redress in the form of internal administrative remedies in the Refugees Act to apply for and/or restore rights as asylum seekers and/or judicial reviews of alleged administrative action, now that their deportation is imminent. The prospects of success of these steps are not addressed.

[24] The applications fill me with little confidence that they are *bona fide* applications with prospects of success. Still, I would be hesitant to find that I could dismiss them on paper as abuses of the process of court, especially when in my understanding of the law, the applicants only need to allege and prove a simple case of detention (until or unless they seek to attack the case made out by the state). It is correct that in motion proceedings onus plays a lesser role in determining factual disputes, but it is still important to assess the adequacy of the pleaded and proven cases.

[25] I need to say very little more of the facts of each of the asylum cases before me.

[26] In case number 2021/1004, Obinna Felix Nwankwo ("*Mr Nwanko*") had a temporary residency permit. He allegedly entered our country in early 2018. Mr Nwanko had not applied for asylum in almost three years, after two alleged attempts by him in 2018 and 2019 to almost make such application, but from which he allegedly turned back. Mr Nwanko was arrested in August 2019 (thus not long after his alleged arrival). He was sentenced to imprisonment for ten months on 13 January 2020. According to the founding affidavit, he was

released from prison on 14 November 2020, and on the common cause facts, re-arrested. Facing deportation, after about three years in the country, Mr Nwanko gave notice that he intended to apply for asylum only on 9 December 2020. The answering affidavit reflects these versions:

[26.1] "*The applicant was then released upon completion of serving his sentence on 14 November 2020, as is apparent from Annexure "B". Owing to the fact that the applicant was an illegal foreigner, he was handed over by Correctional Services to Mohale Mochekgechekge ("Mchale"), an Immigration Officer in the employ of the Department of Home Affairs (the "DHA") for purposes of deportation …*";

[26.2] "*The applicant's detention was, and remains lawful on the strength of the detention warrant issued by the Nigel Magistrate Court attached hereto and marked Annexure "D"*";[7]

[26.3] "*A warrant for the applicant's detention pending deportation was issued in terms of section 34(1) of the Immigration Act upon an enquiry being conducted by the Magistrate*".

[27] These averments fall short of how a defence must be pleaded and proven. If I may look at the annexures to seek to understand the case, it seems that Mr Nwanko appeared on 13 November 2020 before a magistrate in Nigel and that his detention was ordered for purposes of deportation in terms of section 34(1)(b) (presumably of the Immigration Act).[8] There is also an annexure "F" to the answering affidavit. It is not a notice as pleaded, but seemingly an application to the Krugersdorp court in terms of section 34(1)(d) (presumably of the Immigration Act). I have referred to the impact of Lawyers for Human Rights on sections 34(1)(b) and 34(1)(d) of the Immigration Act.

[28] In case number 2021/2013, Simon Okechukwu John [Agbadom] ("*Mr John*") entered our country to work as an engineer in 2008. He obtained a temporary asylum seeker permit on 14 December 2009 and it expired on 14 January 2010. He was last issued, by an extension, with a temporary asylum seeker permit on 2 February 2011 which permit expired on 2 May 2011, nine years ago. It was not renewed; the reason is not provided. He stated that he was "*arrested for criminal activities on 22 March 2014 and sentenced to*

[7] The attached forms show detention in terms section 34(1)(b).
[8] Also mentioned is section 7(1)(g), a section empowering regulations.

imprisonment on 14 April 2015".[9] The answering affidavit shows that he was sentenced to an 8-year term of imprisonment. He finished his sentence on 14 April 2020 on his version, was kept in prison, until transferred to Lindela on 10 November 2020. According to the founding affidavit, he commenced a judicial review in Pretoria to review an alleged decision, taken by an unidentified person or body, on a date not mentioned, allegedly to reject his alleged asylum application (on the known facts, no such application has been rejected). In the next paragraph of his founding affidavit he also avers that he seeks his release from detention to pursue internal remedies of the Refugees Act, without stating what they are, or what he intends to do about them, or why he has not pursued them yet. Still, it remains clear that he seeks asylum protection, on the version that he advances.

[29] The release of Mr John (and of the applicant mentioned next) is common cause. The state avers that the applicants were released on parole and "*handed over to Immigration Officers for purposes of deportation*". The answering affidavit reflects these versions:

[29.1] "*Warrants for placement under correctional supervision on parole/ release upon expiration of sentence were issued to the applicants by the Department of Correctional Services as is apparent from Annexures "DHA7" and "DHA8"*";

[29.2] "*The applicants' detention at Lindela was on the strength of a warrant lawfully issued by Magistrates. The said warrants of detention are attached hereto and marked Annexures "DHA 13" and "DHA14"*";

[29.3] "*The applicants' detention at Lindela was on the strength of a warrant lawfully issued by Magistrates. The said warrants of detention are attached hereto and marked Annexures "DHA 13" and "DHA14"*".

[30] Also in case number 2021/2013, Obinna Edwin Anyacho ("*Mr Anyacho*") entered our country in June 2015, obtained a temporary asylum permit, and was arrested almost immediately in August 2015 for criminal conduct. He was kept in custody until conviction and sentencing on 4 December 2018. He also gives no detail of his crime(s) or sentence. The answering affidavit shows that this he was sentenced to a 7-year term of imprisonment. His temporary asylum permit expired whilst he was in prison. It was issued on 9 July 2015 and

[9] The papers also reflect 14 April 2016

expired on 15 October 2015. He was released from prison on an unspecified date, seemingly kept in prison, until transferred to Lindela on 23 October 2020. He too commenced a review an alleged decision, taken by an unidentified person or body, on a date not mentioned, also allegedly to reject his alleged asylum application. He too in the next paragraph makes the averment that he seeks his release to pursue internal remedies of the Refugees Act, without stating what they are or what he intends to do about them, or why he has not pursued them yet. Still, it also remains clear that he seeks asylum protection, on the version that he advances. I have already reflected the version in the answering affidavit in the previous paragraph.

[31] Again, these averments by the state fall short of how a defence must be pleaded and proven. If I may look at the annexures to seek to understand the case, it seems that:

[31.1] Annexures "*DHA7*" and "*DHA8*" are mere warrants for placement of a sentenced prisoner on parole or to be released on completion of the sentence served;[10]

[31.2] Annexures "*DHA13*" and "*DHA14*" are two sets of documents, commencing with a warrant issued by the Department of Home Affairs (?). In the case of Mr John on 22 October 2020 and in the case of Mr Anyacho on 15 October 2020. In the case of Mr John, on 23 October 2020 a magistrate in Port Elizabeth confirmed his detention. Seemingly in terms of section 34(1)(b) (presumably of the Immigration Act).[11] After some more documents follows in the case of Mr Anyacho a confirmation of detention by a magistrate dated 15 October 2020, seemingly in terms of section 34(1)(b) (presumably of the Immigration Act).

[32] In summary, two facts arise: The three applicants are in detention, and they allegedly seek protection as asylum seekers.

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[10] Although not addressed, this may be a basis for the initial hand-over of a person to an immigration officer, before the state is compelled to follow the processes of judicial supervision. See section 34(7) of the Immigration Act.

[11] Also mentioned is section 7(1)(g), a section empowering regulations.

[33] On what grounds does the state rely for the detention of these three applicants? I use case number 2021/1004 to illustrate the defences raised. The state relied on up to five justifications and partial justifications in these matters. In law each such justification ought to have been pleaded properly, and where appropriate, proven. This has not happened in the cases before me. Assuming (but not deciding that) I still had to consider the annexures and argument based on them:

[33.1] A warrant issued by the Nigel Magistrate's Court for the detention of Mr Nwankwo, issued in terms of section 34(1) of the Immigration Act (addressed earlier herein)[12] on 13 November 2020. In the light of the ConCourt decision in *Ruta*, this defence is bad in law, as he seeks asylum protection. In addition, the state made no attempt to allege and prove that the continued detention complied with the prescripts of the Immigration Act as read with *Lawyers for Human Rights*. The court order seems to have been issued invalidly in terms of section 34(1)(b) of the Immigration Act. Mr Nwankwo is entitled to the protection of section 21(4) of the Refugees Act (addressed earlier herein)[13] and to be released thereunder;

[33.2] Section 29(1)(b) of the Immigration Act.[14] In the light of the ConCourt decision in *Ruta*, this defence is bad in law, as the internal processes under the Refugees Act must first be exhausted to determine if the applicant qualifies for asylum before the Immigration Act stands to be considered;

[33.3] Mr Nwankwo would never qualify for asylum or even a temporary visa due to his criminal record. In themselves, such averments would only be relevant if they constitute a basis for lawful detention. As set out earlier, the impact of criminal proceedings in any event must be considered under the processes under the Refugees Act, and not by this court;

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[12] Para 4-5, and 9-13.
[13] Para 6-8.
[14] It is addressed more fully later herein.

[33.4] A submission that the applicant has waived his right to seek asylum. This is a factual issue. The only reference to such a waiver is to a signature by the applicant on a document, a notice of deportation, where he alleged elected not to appeal the decision to deport him. That process refers to a process followed under the Immigration Act. This was not expressly pleaded as a waiver of a right to apply for asylum, even if the applicant would have been bound thereby forevermore. (I make no such finding.) The defence of waiver is a factual defence, but on the facts of this matter I need to say no more than to refer to the summary of principles by Van Zyl DJP in *Coppermoon Trading 13 (Pty) Ltd v Government of the Province of the Eastern Cape and Another* 2020 (3) SA 391 (ECB) para 23-27; and

[33.5] Non-compliance with "*new*" regulation 8. I address this below, as the state relies on a judgment that I respectfully disagree with. My ultimate finding is that this ground for justification must fail too.

[34] Section 4 was amended with effect from 1 January 2020 in terms of the Refugees Amendment Act, 11 of 2017. This included the introduction of sections 4(1)(e) referred to earlier and 4(1)(h) of the Refugees Act. Also introduced was section 4(1)(i), as section that has not been addressed fully before me. It seems to me that the amendments do not change the fact that the determination of eligibility for asylum remains a bureaucratic process, involving mainly a Refugee Status Determination Officer and/or the Standing Committee for Refugee Affairs and/or the Refugee Appeals Authority.

[35] The "*new*" regulations were published as Regulations 1707 on 27 December 2019 in Government Gazette 42932 and came into effect on 1 January 2020 (on the same day as certain amendments to the Refugees Act). I do not find that it would be permissible to remove the right of an asylum seeker to apply for asylum at any time (as set out earlier herein) by way of a regulation where such asylum seeker was already in our country by 1 January 2020 (and applied before that date for asylum). I make no such finding, as retrospective operation

would be unusual.[15] In addition, I do not make a finding that any such regulation could impose stricter conditions for asylum seekers than what the Refugees Act, read in the context of international conventions, envisages. As the matter was not fully pleaded or argued before me, I restrain my comments.

[36] The new regulations 8(3) and 8(4) state:

> "*(*3) *Any person who upon application for asylum fails at a Refugee Reception Office to produce a valid visa issued in terms of the Immigration Act must prior to being permitted to apply for asylum, show good cause for his or her illegal entry or stay in the Republic as contemplated in Article 31(1) of the 1951 United Nations Convention Relating to the Status of Refugees*.
>
> *(4) A judicial officer must require any foreigner appearing before the court, who indicates his or her intention to apply for asylum, to show good cause as contemplated in subregulation (3*)."

[37] In context such an application purportedly must be made at a port of entry:

> "*7. Any person who intends to apply for asylum must declare his or her intention, while at a port of entry, before entering the Republic* …"

[38] Gqamana J in the Eastern Cape Local Division, Port Elizabeth delivered on 22 September 2020, *Mwale v The Minister of Home Affairs and Another* (case number 1982/2020) dealt with these regulations. The judgment is unreported.

[39] It seems to me, with respect, that the removal of the right to apply for asylum at any place other than at a port of entry, as found by the learned judge in *Mwale*,[16] would require more than the regulation relied upon. In fact, section

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[15] See *National Director of Public Prosecutions v Carolus and Others* 2000 (1) SA 1127 (SCA) para 31-36.

[16] "*[19] The Refugees Act and the new regulations made under it prescribe the procedure to be followed when applying for an asylum. An individual who intends to apply for asylum must declare his or her intention while at a port of entry before entering the Republic (Regulation 7 of the new regulations)* …"

and

"*[30] Clearly from the passages quoted above, delay on applying for asylum is not a bar in itself. However, and more fundamentally the principle enunciated by Wallis JA, in Ersumo must be understood on the factual and legal position applicable then. Regulation 2 (2) has since been repealed and accordingly it is not applicable in the instant matter. The current relevant legal prescript is reg 7 of the new regulations, and the only interpretation to be given to it is that, the intention to apply for asylum must be declared while at the port of entry, before entering the Republic. The new regulations are now more restricter as compared to the repealed reg 2 (2), which allowed an individual to assert his or her intention to apply for asylum when he or she is "encountered' to be in violation of the Immigration Act. So all the judgments (See footnotes 23 and 24 above) upon which the applicant places reliance on for her submissions are of no assistance to her plight having regard to the legislative amendments since then*."

4(1)(h) of the Refugees Act by necessary implication still recognises alternate entry (underlining added to reflect the bureaucratic process):

> "*(1) An asylum seeker does not qualify for refugee status for the purposes of this Act if a Refugee Status Determination Officer has reason to believe that he or she-*
>
> *(a) …*
>
> *(h) having entered the Republic, other than through a port of entry designated as such by the Minister in terms of section 9A of the Immigration Act, fails to satisfy a Refugee Status Determination Officer that there are compelling reasons for such entry*".

[40] I do not make a finding that it would be permissible in terms of the international conventions binding on our country, to limit asylum seekers to entry through ports of entry and to keep them to strict timelines. In fact and with respect, I struggle to see the application of the "*non-refoulement*" principle to such an approach to dealing with asylum seekers. As the matter was not fully pleaded or argued before me, I restrain my comments.

[41] The learned judge in *Mwale* also recognised exceptions to entries through official ports of entry. The learned judge held in para 28[17] that in the absence of a good explanation why he/she is illegally in the country, non-compliance with regulation 8(3) precludes an asylum seeker from seeking his/her release from detention in a court pending the completion of the processes under the Refugees Act (and then determined the issue on the facts averred in the founding papers). I respectfully disagree. The law as set out by the ConCourt and the SCA, and as contained in section 21(4) of the Refugees Act, with respect is clear. A court has no role to play in the prescribed bureaucratic processes to determine if an asylum seeker is a bona fide asylum seeker (or not), and this court's jurisdiction is limited to judicial oversight of the

[17] "[*28] So the answer to the first point of argument raised by the applicant is that, immigration officers are empowered in terms of section 21 (IB) of the Refugees Act and reg 8 (3) of the new regulations to interview an applicant to ascertain whether valid reasons exists as to why such an applicant is not in possession of an asylum transit visa and an applicant has a duty to show good cause for her illegal entry or stay in the Republic. No evidence has been presented by the applicant to establish good cause for her illegal entry or stay in the Republic. Argument advanced on her behalf by Mr Menti, was that, all what was required of the applicant was merely to assert an intention to apply for asylum (See: applicant's founding affidavit, paras 31 and 34), and once she has done so at any stage, she was entitled to be released from detention and to be allowed to apply for asylum. This argument is not sustainable having regard to the provisions of s 21(1B) of the Refugees Act and reg 7 and 8 (3) of the new regulations*";

bureaucratic processes. The regulation does not, if this was permissible, remove the right to apply for asylum and to exhaust internal remedies in that process. Until the process is completed, the detainee is entitled to be released in terms of section 21(4) of the Refugees Act, and a court is not involved in making determinations on the merits of the application for asylum.

[42] The finding by the learned judge in *Mwale* that the repeal of old regulation 2[18] materially changed the law on the release of detainees, is with respect, incorrect. On my reading of the judgments, the ConCourt and the SCA with respect did not make their findings based on the existence or not of the old regulation 2. It is true, if one has regard to two of the four SCA cases referred to as part of the quartet approved by the ConCourt in *Ruta*, *Bula and Others v Minister of Home Affairs and Others* 2012 (4) SA 560 (SCA) para 59, 72 and 78 and *Ersumo v Minister of Home Affairs and Others* 2012 (4) SA 581 (SCA) para 12-19, the courts had regard to the old and now repealed regulation 2, but with respect it was only part of the courts' reasoning.

[43] As such it seems to me that one in the context of trite law and the constraints of regulations having to be *intra vires*, that one should interpret regulation 8(4) not to preclude a court hearing an application by a detainee to be released to apply trite law and order the release for the bureaucratic processes to be completed (even if after such an inquiry the court is sceptical about the application's prospects of success or the motivation of the applicant).

[44] The learned judge in *Mwale* further held in para 31[19] that (in any event) an unchallenged detention order by a magistrate under the Immigration Act bars

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[18] It read:

"*2(1) An application for asylum in terms of section 21 of the Act:*

(a) must be lodged by the applicant in person at a designated Refugee Reception Office without delay;

(b) must be in the form and contain substantially the information prescribed in Annexure 1 to these Regulations; and

(c) must be completed in duplicate.

(2) Any person who entered the Republic and is encountered in violation of the Aliens Control Act, who has not submitted an application pursuant to subregulation 2(1), but indicates an intention to apply for asylum shall be issued with an appropriate permit valid for 14 days within which they must approach a Refugee Reception Office to complete an asylum application."

[19] "*[31] Mr Menti on behalf of the applicant, argued in no uncertain terms that the confirmation of the warrant of detention by the magistrate on 20 August 2020, is not challenged in these proceedings. The applicant's case was simply that despite such a confirmation she was not barred to assert her*

a reliance on the Refugees Act. I respectfully disagree. I have dealt with the authorities about the interaction between the two acts and how the Refugees Act trumps the Immigration Act when someone seeks asylum.

[45] Lastly, the learned judge in *Mwale* para 33 made the following factual determination:

> "*[33] Section 4(1)(e) excludes an asylum seeker to qualify for refugee status if such person has committed a crime in the Republic, which is listed in Schedule 2 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), or which is punishable by imprisonment without the option of a fine. Therefore, due to her conviction and sentence, the applicant does not qualify for refugee status for purposes of the Refugees Act. The applicant is accordingly not entitled to any of the relief sought and her application must fail*."

[46] With respect I disagree. The findings by the learned judge with respect does not accord with the wording of the section (referred to earlier), the scheme of the act, the separation of powers, or the case authority I have referred to and sections in the act.[20] It is not for the court to make a finding that the applicant is an undesirable person (or that the applicant will be found to be such a person).

[47] Accordingly, the five grounds relied upon by the state would not justify the continued detention of the applicant. Urgency and non-joinder were not pursued in argument. I also need not address in urgent court the additional remedies the applicant seeks, even if he had made out a case for them (a finding I do not make).

[48] Mr Nwankwo is entitled to be released.

[49] In case number 2021/2013, the state relied on similar justifications for the detention of Mr John and Mr Anyacho. The main factual difference between these two cases and the previous one pertaining to Mr Nwankwo, is that the two applicants had applied for asylum, and their temporary asylum permits lapsed. Mr Nwankwo had not applied for asylum earlier. I do not believe that

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intention to apply for asylum. Such argument is unsustainable on a proper and correct interpretation of the new amendments to the Refugees Act and the new regulations."

[20] See sections 4(1)(e), 24(2), 24(4), 24B, 5(1)(f), 36, and 9A of the Refugees Act.

the other factual nuances are determinative of the applications by Mr John and Mr Anyacho.

[50] The point is this: Lapsed temporary asylum permits or not, the state has taken no steps to terminate their status as refugees as set out earlier herein. As such their asylum applications have not been resolved. As such the asylum-seeking process is still pending and they are entitled to be released from detention.

[51] A structured order to determine timelines for the officials to issue renewed asylum-seeker permits and to compel the officials to consider withdrawing the permits was granted in an unreported judgment in this division on 17 December 2020, *SD David v The Minister of Home Affairs and Others* (case number 2020/29434). Upon reflection I decided against applying it. (a) Such relief was not requested. (b) I also cannot detain the applicants if their detention is not lawful. (c) Once I start issuing executive orders, I will transgress onto matter not reserved for judges (and where do I stop with such orders?) (d) In my view, with respect, my power in terms of section 172(1)(b) of the Constitution to grant a just and equitable order in a constitutional matter (such as the present), should not be used to cure the failure by the state to address in its bureaucratic processes the status of the applications for asylum (and residency, dealt with next).

[52] Also in this case, urgency and non-joinder were not pursued in argument. I also need not address in urgent court the additional remedies the applicants seek, even if they had made out a case for them (a finding I do not make).

[53] Mr John and Mr Anyacho are entitled to be released.

The immigration case

[54] This brings me to the immigration matter, case number 2021/0014.

[55] In terms of section 10(1) of the Immigration Act, a non-citizen requires a permanent residence permit to be lawfully in the country (issued in terms of section 27), or alternatively one of several temporary visas listed in section 10(2). Any temporary visa issued as contemplated in section 10(2) of the Immigration Act, is issued in terms of section 10(4) "*on condition that the holder*

is not or does not become a prohibited or an undesirable person" as set out in sections 29 and 30 respectively. A prohibited person so referred to, includes in terms of section 29, anyone against whom a conviction has been secured in the Republic of South Africa in respect of drug-related charges or money laundering. Still, the Director-General may in terms of section 29(2) of the Immigration Act "*for good cause, declare a person referred to in subsection (1) not to be a prohibited person*". If the state relies on a finding that a person is a prohibited person who does not qualify for a temporary visa in terms of the Immigration Act, it must allege and prove the material facts

[56] I personally made very certain that the applicant in case number 2021/0014, Uguchukwu Raphael Onwuakpa ("*Mr Onwuakpa*") does not seek asylum protection. He only seeks relief under the Immigration Act. As was the case in the other applications, Mr Onwuakpa is also in detention at Lindela Repatriation Centre and he also seeks his release. He allegedly resides in East London. Mr Onwuakpa entered the country in 2006 to seek asylum. However, on 5 January 2010 he married a South African citizen and obtained a temporary residency permit. Mr Onwuakpa's temporary residency permit, after some renewals, was due to expire on 22 July 2017. Mr Onwuakpa avers that he is lawfully in the country, self-evidently untrue. He was arrested for a crime not described his affidavit on 15 August 2015, kept in custody, and sentenced on 2 December 2018 for an unspecified time. Mr Onwuakpa gives no detail of their married life or living arrangements, but states that they have three children. Mr Onwuakpa makes out no case that a good faith spousal relationship exists. He does not tell one how he made a living in Nigeria and later in South Africa. He avers that he was released from prison on about 19 November 2020 and thereafter detained at Lindela.

[57] Some of the omitted matter appears from the answering affidavit. Regarding the crime, this statement was made:

> "*The applicant was arrested in East London in the Eastern Cape province on 15 August 2015 for contravening section 5(b) of the Drugs and Drugs Trafficking Act 1992 (the "Drugs Act") as he was in possession of and was dealing in drugs and contravention of section 2(1) (e) of the Prevention of Organized Crime Act of 1998 (Recketeering). As a result, on 4 December 2018,*

> *the applicant was convicted and sentenced to a 10-year term of imprisonment in terms of section 276(1)(b) of the Criminal Procedure Act (1977) (the "CPA") under case number RC2/l 00/15. A copy of SAPS 69 Form evidencing the same is annexed hereto marked Annexure "A*"."

[58] The answering affidavit avers that the three children reside in Nigeria in Lagos, cared for by Mr Onwuakpa's sister.

[59] Against this background, the relief sought in the notice of motion, apart from dealing with urgency and costs, is:

> "*2 Declaring the detention of the Applicant to be unlawful.*
>
> *3 Directing the Respondents to release the Applicant immediately*".

[60] The relief sought is not that Mr Onwuakpa's deportation be stayed pending some relief, and/or that he be assisted by the state to prosecute such remedies. He only seeks his unconditional release. As reflected earlier, if his detention is unlawful, unconditional release would be proper relief. If his detention is lawful, he would have to make out some other basis for such unconditional release. The basis for such relief must be pleaded and proven.

[61] The case for unconditional release must not be confused with the question if Mr Onwuakpa has internal remedies in terms of the Immigration Act to renew his temporary residence permit, or what is prospects of success in such an endeavour would be. Those questions might be relevant to seeking on some basis his unconditional release, but in the absence of the equivalent of section 21(4) of the Refugees Act, are not in themselves grounds for the unconditional release of a lawfully detained person.

[62] The founding papers did not address the above distinction between the Refugees Act and the Immigration Act. Seemingly the highlight of the case purportedly made out for Mr Onwuakpa's unconditional release, is the following:

> "*I am advised that a person may only be detained under Immigration Act if the said person has breached a permit condition, and their permit have been removed by the First Respondent in accordance with fair administrative procedures under the Promotion of Administrative Justice Act 3 of 2000. I respectfully maintain that this has not been done in my case*";

> "*I respectfully submit that I am entitled to sojourn temporarily in the Republic of South Africa because a good faith spousal relationship exists between us. I maintain that I am also entitled to be given an opportunity to make an application for the extension of my Temporary Residence permit. This will also enable me to rejoin my family. I believe it is my constitutional right to live together as husband and wife in community with my wife and my children in terms of the provisions of the Constitution of South Africa*";

[63] My failure to comment on these averments, does not indicate acceptance of the averments as grounds for unconditional release. Whether or not the applicant has made out a case for his unconditional release would be a question that would only arise if his detention was lawful to begin with.

[64] A lot of confusion was caused by Mr Onwuakpa's numerous irrelevant statements about the Refugees Act (whilst in fact it became common cause at the hearing that he did not rely thereon). This confusion impacted on the answering affidavit, but is no reason why the lawfulness of (continued) detention not be alleged and proven in due compliance with trite principles. This is what was pleaded:

> "*The applicant's detention at Lindela was on the strength of a warrant lawfully issued by the Magistrate at the Uitenhage Court*";
>
> [Nothing was pleaded about the legal basis for the warrant, or even when it was issued.]
>
> "*A warrant for the applicant's detention pending deportation was issued in terms of section 34(1) of the Immigration Act. This warrant is annexed hereto marked Annexure "E"*";
>
> [Nothing was pleaded about when (or by whom) the warrant was issued. As in the asylum cases already dealt with, "E" is not a warrant issued by a Magistrate, but a document seemingly issued by an official. It bears the date stamp 27 October(?) 2020(?)[21] of the Department of Home Affairs. Attached thereto is an illegible confirmation by a court, ostensibly issued in terms of section 34(1)(b) (presumably of the Immigration Act). It bears the date stamp 28 October 2020 of the Uitenhage Magistrate's Court. I have referred to the order in *Lawyers for Human Rights* setting

[21] The copy is unclear.

aside section 34(1)(b) of the Immigration Act. Nothing was placed before me to show why such an order would be valid.]

"*The allegations herein contained are denied. The applicant's detention was confirmed by warrant of detention issued and confirmed by a Magistrate in terms of the law. The Confirmation by Court of Detention for Purposes of Deportation is attached hereto and marked Annexure "J"*";

[The papers on CaseLines stopped at annexure "I". Not only was no detail pleaded, but no proof was annexed either.]

[65] As matters stand, the state has failed to allege and prove any basis for the detention of Mr Onwuakpa, other than perhaps a warrant issued in terms of a section of the Immigration Act set aside in *Lawyers for Human Rights*.

[66] Mr Onwuakpa is entitled to be released on the facts as they are before me.

Costs

[67] Costs must follow the results. In one instance counsel informed me that he acted pro bono and that his attorney acted pro bono. He asked for costs. I enquired if that would not be a contravention of the rules of the advocates profession. It would be. See General Council of the Bar Rule 7.3.1:

"*7.3.1 A member may take a brief subject to an agreement to charge no fees; in such a case no fee shall be recoverable by the member and he must immediately give notice that he is receiving no fees to the registrar or clerk of the Court and to the secretary.*

7.3.2 When a member agrees to charge no fees, no fees for such member shall be brought up for taxation by the attorney instructing him."

[68] The Code of Conduct of the Legal Practice Council has a different rule, rule 31.1:

"*31.1 Counsel who accept pro bono briefs shall not, after acceptance, seek to charge a fee except as may be permissible under section 92 of the Act*."

[69] I am not certain if section 92 of the Legal Practice Act 28 of 2014 addresses the counsel's ethical dilemma, as it addresses recovery. I do not have to resolve it either.

Accordingly, I make the following orders:

In case number 21/01004:

1. Dispensing with forms, services and time periods prescribed by the Uniform Rules of Court and directing that the matter be enrolled and heard as an urgent application in terms of Uniform Rule 6(12);
2. The First, Second and Third Respondents are hereby ordered to release the applicant from detention forthwith;
3. The First, Second and Third Respondents are hereby ordered to pay the costs of this application,
4. It is recorded that the applicants' attorney and counsel acted pro bono;
5. The remainder of the relief sought is postponed sine die;

In case number 21/0013:

6. Dispensing with forms, services and time periods prescribed by the Uniform Rules of Court and directing that the matter be enrolled and heard as an urgent application in terms of Uniform Rule 6(12);
7. The First and Second Respondents are hereby ordered to release the applicants from detention forthwith;
8. The First and Second Respondents are hereby ordered to pay the costs of this application;
9. The remainder of the relief sought is postponed sine die;

In case number 21/0014:

10. Dispensing with forms, services and time periods prescribed by the Uniform Rules of Court and directing that the matter be enrolled and heard as an urgent application in terms of Uniform Rule 6(12);
11. The First and Second Respondents are hereby ordered to release the applicant from detention forthwith;
12. The First and Second Respondents are hereby ordered to pay the costs of this application.

DP de Villiers AJ

Heard: During the urgent week of 2 to 5 February 2021

Delivered on: 18 February 2021 by uploading on CaseLines

Case Number: 21/01004

On behalf of the applicant:	Adv S. Mbunzu
Instructed by:	Hulana Attorneys
For the respondents:	Adv MZ Raphesu
Instructed by:	Molefe Dlepu Incorporated

Case Number: 21/0013

On behalf of the applicants:	Adv SB Mngomezulu
Instructed by:	Jafta (Lerato) Attorneys
For the respondents:	Adv MZ Raphesu
Instructed by:	State Attorney

Case Number: 21/0014

On behalf of the applicant:	Adv SB Mngomezulu
Instructed by:	Jafta (Lerato) Attorneys
For the respondents:	Adv MZ Raphesu
Instructed by:	State Attorney