

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 27877/2021

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
	21/7/2021
	DATE
	SIGNATURE

In the matter between:

HASSIM ALLAMIN

APPLICANT

And

THE MINISTER OF HOME AFFAIRS

1ST RESPONDANT

THE DIRECTOR GENERAL DEPT OF HOME AFFAIRS 2ND RESPONDANT

JUDGMENT

MAKUME J:

- [1] In this matter the Applicant seeks an order declaring his continued detention at Lindela Transit Facility declared unlawful and that he be afforded an opportunity to apply for asylum in terms of Section 21 of the Refugees Act as amended. The application is brought in the urgent court.

- [2] This application is opposed by the Minister and the Director in the Department of Home Affairs on the basis that the Applicant has failed to comply with the provisions of the Refugees Act accordingly that his arrest, detention and pending deportation is justified in law.
- [3] It is common cause that the Applicant who is a national from Bangladesh was arrested in Vereeniging on the 26th March 2021 he could not produce any documents entitling him to remain in the Republic of South Africa in terms of the Immigration Act. He appeared in court and was convicted in terms of of the Immigration Act and sentenced to six (6) months imprisonment.
- [4] Whilst in detention he was interviewed by an Immigration officer and was finally declared an illegal foreigner in the Country and placed at Lindela for purposes of deportation to his country.
- [5] Whilst at Lindela he consulted with his attorneys who addressed a letter to the Department of Home Affairs requesting that he be released and be granted an opportunity to apply for Refugee Status. This was declined.
- [6] In this application the Applicant maintains that he wants an opportunity to present himself to the Refugee officer and to apply for Refugee status.

- [7] The Applicant says that he arrived in South Africa from Bangladesh via Mozambique and entered through the Lebombo Border not at a proper Border Post. This he says was in January 2020 and when he visited the Refugees Office in Pretoria same were closed because of covid-19 Regulations and later when he visited the queues were long, he lost interest and left. He never again presented himself for status determination.

URGENCY

- [8] The Respondent contended that the matter is not urgent it having been removed from the urgent court roll of the 22nd June 2021 and re-enrolled for hearing in the urgent court for the week of the 5th July 2021.
- [9] I accept that the application was removed from the urgent court roll of the 22nd June 2021 not because of lack of urgency nor failure to comply with the Practice Directive but it was to afford the Respondent an opportunity to file their Answering Affidavit. This is evident by the fact that the Answering Affidavit is dated the 29th June 2021 and the Replying Affidavit is dated the 5th July 2021.
- [10] This application accordingly remained urgent as the prospects of the Applicant being deported are continuing.

DOES THE FACT THAT THE APPLICANT FAILED TO PRESENT HIMSELF
AT A REFUGEE OFFICE ON HIS ARRIVAL DEPRIVE HIM OF THE RIGHT
TO DO SO NOW

[11] It is common cause that when he was arrested he did not inform the arresting officer that he wishes to apply for asylum. It is also correct that he gave conflicting versions to his attorneys as to how and where he entered the country. When he was questioned by the Immigration Officer he said that he entered the country on a visit and never said that he had fled Bangladesh in fear of persecution and never told the officer that he wishes to apply for Asylum. The first time that he indicated his intent to apply for Asylum was on the 31st May 2021 when his attorney addressed a letter to the Department demanding his release.

[12] The answer to the question posed above was answered by the Constitutional Court in the matter of **Ruta vs Minister of Home Affairs 2019 (2) SA 329 CC specifically at paragraph 44** where the following was said:

“Moreover in entrusting the processing of Asylum application to Refugee Reception Officers and the determination of refugees status to Refugee Status Determination Officers, the Refugees Act makes precise and detailed provisions for the matters it covers in a way that the Immigration Act does not envisage at all. It is the Refugee Status

Determination Officer and that Officer alone, who is empowered under our law to determine whether an Asylum claimant is a refugee or is not. This level of specificity indicates that regardless of chronological order, the provisions of the Refugees Act govern asylum applications.”

[13] The Applicant has not submitted himself for scrutiny before any of the Refugee Officials to enable them to determine if he does or does not qualify. The Immigration Officer is not such an officer his duties are different from those set aside for the Refugee Status Determination Officer. The fact that the Applicant has stayed a year does not take away his rights in terms of the Refugees Act read together with International Provisions relating to refugees.

[14] The court in *Ruta* (supra) dealt with the issue of delay in paragraph 19 as follows:

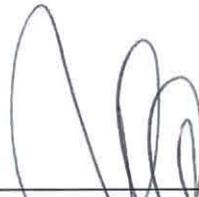
“These were that delay in itself does not disqualify an asylum application, that the only grounds on which an application may be refused are those set out in Section 24(3) of the Refugees Act and that the Refugees Status Determination Officer alone is entitled to adjudge bogus or underserving applications.”

[15] To support the question of delay as a non-issue the Constitutional Court made reference to the Supreme Court of Appeal case in **Bula and Others vs Minister of Home Affairs and Others 2012 (4) SA 560 (SCA)** where it was held that Regulation 2(2) of the Refugees Act

did not require an individual to indicate an intention to apply for asylum immediately on being encountered, nor ought it to be interpreted to mean that when a person did not do so there and then, that he was precluded from doing so thereafter.”

[16] I am accordingly persuaded that the Applicant has made out a good case and I hereby grant judgment in his favour and I make the draft order handed up to me and marked “X” an order of court.

DATED at JOHANNESBURG this the 24 day of JULY 2021.



M.A. MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING : 06th JULY 2021
 DATE OF JUDGMENT : 21st JULY 2021
 FOR APPLICANT : ADV LIPSHITZ
 INSTRUCTED BY : BUTHELEZI ATTORNEYS
 FOR RESPONDENT : ADV MALEMA
 INSTRUCTED BY : THE STATE ATTORNEY