IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: 2739/2005

DATE: 9 MARCH 2009

In the matter between:

1. DE GAULLE KILIKO 1st APPLICANT

2. LANDRY MTOFENE 2nd APPLICANT

3. MOUNKIA CEDRICK TSIENO 3rd APPLICANT

4. FERMI IGOR PAMBOU MGOUALA 4th APPLICANT

5. MAMDUDI THADEE VUETTE 5th APPLICANT

6. ALBAN MALEKE 6th APPLICANT

7. CHRISTOPHE STANISLAUS DIANTSIKOM BALOSSA 7th APPLICANT

and

1. THE MINISTER OF HOME AFFAIRS 1st RESPONDENT

2. THE DIRECTOR GENERAL, DEPARTMENT OF HOME AFFAIRS 2nd RESPONDENT

3. THE CHIEF IMMIGRATION SERVICES DEPARTMENT OF HOME AFFAIRS 3rd RESPONDENT

JUDGMENT

VAN REENEN, J:

In a written judgment handed down by me on 16 January as long ago as 2006, I declared certain policies and practices implemented in the Western Cape Refugee Centre unconstitutional and simultaneously issued a structural interdict, which was returnable on 8 June 2006 in terms whereof the 3rd respondent, Mr De Wet, had to report to this Court on specified matters, as a means of overseeing the implementation of measures designed to remedy the unacceptable backlogs which had developed as regards the processing of section 22 permits for refugees.

That structural interdict was on 8 June 2006, extended to 19 March 2007 and the 3rd respondent directed to file a further report dealing with a number of additional aspects. As the 3rd respondent, in paragraph 19 of his report in response to that direction, mentioned that a process engineer had been appointed to conduct a feasibility study; to prepare a report; and devising a plan to overcome the problem regarding the reception of refugees, the matter was by agreement between all concerned postponed for an indefinite time, the understanding being that the matter would be re-enrolled once the said engineer's report became available.

Once the process engineer's report had become available, the matter was set down for hearing with the concurrence of all

concerned to be heard on 18 February 2008. The report was annexed to an affidavit deposed to by one Yoliswa Mzamane, an Assistant Director, Refugee Reception Office, Cape Town, which had been filed on 31 January 2008, instead of by 31 January 2007, as directed and in which further promising developments in facilitating the handling of applications for refugee status were foreshadowed and/or alluded to.

I, in a further judgment, handed down on 4 March 2008 found that in respect of all matters, other than the shepherding of the structural interdict, I was *functus officio* and that the available options were limited because of a realisation that :-

Firstly, the States financial resources are not unlimited and must be prudently apportioned between all the State's numerous constitutionally prescribed commitments, as well as;

Secondly, the deference normally shown by Courts to the doctrine of separation of powers.

In the circumstances the only remaining option was to resuscitate and extend the structural interdict to 12 December of last year and to direct the 3rd respondent to report to this Court, in the form of an affidavit, dealing with plans to relocate the Refugee Reception Offices to the NIB House; whether that

had come to fruition; the extent to which an information technology system had been introduced; and the combined effect of those matters on section 22 and status determination applications.

As according to the court records, the 3rd respondent had failed to comply with the said directive on 12 December 2008, I issued an order calling upon the 3rd respondent to appear today to show cause why he should not be punished for contempt of court. The 3rd respondent has now filed an affidavit, from which it appears that Mr Richard Sikakane deposed to an affidavit in which the matters I required to be dealt with were addressed. Mr Sikakane was required to do so, as he, at the time, was the manager of the Refugee Reception Offices which had, as from 1 May 2008, relocated to new premises in the Sturrock Building, Montreal Drive, Airport Industria from Customs House and Barrack Street.

As the 3rd respondent was stationed at the Barrack Street offices of the Department of Home Affairs, and for that reason did not have first-hand knowledge of the matters he was required to report on, it was considered that appropriate that Mr Sikakane should report to the Court. It is apparent from the 3rd respondent's affidavit, that Mr Sikakane's report had been finalised on 5 December 2008, the day on which it had to be

filed, and that he was unavailable to sign it earlier than 8 December 2008, constituted the reason why it was only filed on 9 December.

As I, unbeknown to counsel, had not been placed in possession of Mr Sikakane's affidavit and the reasons for his having deposed to it instead of the 3rd respondent, the order calling upon the 3rd respondent to show cause, was made. The 3rd respondent alludes to the fact that he was requested to depose to a confirmatory affidavit shortly before the matter was to have been heard on 12 December, but found himself in Mafiking at the time. The 3rd respondent has fully explained the circumstances and reasons why he personally had not reported to this Court and tendered his apology. Such apology is unreservedly accepted by this Court.

As I am satisfied that the 3rd respondent had not wilfully and/or maliciously failed to comply with paragraph 10 of the order of 4 March 2008, the *rule nisi* calling upon him to appear today, is discharged.

What remains to be decided next is what must be done about the structural interdict which has limped along for over two years. It is clear from what one reads in the newspapers, that all is not well at the Cape Town Refugee Reception Offices. That would suggest that the problems that have faced the

applicants in applying for section 22 permits, have not been fully addressed as yet. That, however, is not the evidence before this Court. What I do have is Mr Sikakane's evidence that the processing of section 22 permits in February of this year, have shot up to 5 441 and extensions of such permits to 4 855. Bearing in mind that there were only 20 work days in February, 272 permits and 242 extensions were processed on a daily basis during that period. That, in my view, constitutes a significant improvement on the only 20 per day that were attended to during 2005. That is unsurprising, because the staff complement has since been increased from a mere nine to 52.

It appears from the 3rd respondent's affidavit that the government has resolved to introduce a dispensation in terms of which it is envisaged that nationals of certain countries be exempted from the Refugees Act 130/1998 in terms of section 31(2) of the Immigration Act 13/2005. It is anticipated that the effect of that initiative will be that the number of people needed to be serviced by Refugee Reception Centres will be reduced by approximately 60%. It seems to follow logically that if that were to be achieved, it would bring about a substantial enhancement in the number of people that could be adequately serviced by those offices.

I have been assured by counsel appearing for the 3rd respondent that the envisaged initiative is not merely a pipedream, but there is a serious intention to give effect thereto. That undertaking has played an important role in having come to the conclusion I have come to as regards the fate of the structural interdict.

As on the facts to which I am obliged to have regard, I am satisfied that the Department of Home Affairs has at long last taken adequate steps in an attempt to purposefully take reasonable steps to ensure compliance with its constitutional obligations. I have culled that phrase from S v Jaipal 2005(4) 581 CC at paragraph 56.

May I add that I paraphrased that phrase, because it requires that the State must take all reasonable steps and should ensure maximum compliance with its constitutional imperatives, and I am not fully satisfied that that has been achieved in the instant case as yet. It would appear to me that I can do no more than to express the hope that such steps as have been introduced to date, will continue to improve incrementally in the future.

As it appears to me that I have fully exhausted such limited coercive powers as are at my disposal, I am left with no choice other than to discharge the structural interdict. As these proceedings were necessitated by less than desirable expedition on the part of the Department of Home Affairs to fully comply with its constitutional imperatives, it, in my view, would only be fair to all concerned in the circumstances to order the Department of Home Affairs to pay such costs as have been incurred and have not as yet been specifically dealt with in other cost orders made by the Court to date.

May I just in conclusion thank counsel for their assistance throughout this long drawn-out matter.

VAN REENEN, J