

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

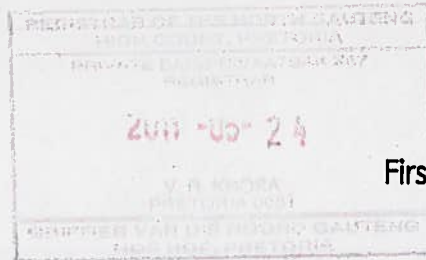
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Case No: 26572/2011

BEFORE THE HONOURABLE JUSTICE MAKGOBA

24 May 2011

In the matter between:



SHAAFI DAAHIR ABDULAH

First Applicant

THE CENTRE FOR CHILD LAW

Second Applicant

**CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA**

Third Applicant

and

THE MINISTER OF HOME AFFAIRS

First Respondent

**THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE**

Second Respondent

THE MINISTER OF SOCIAL DEVELOPMENT

Third Respondent

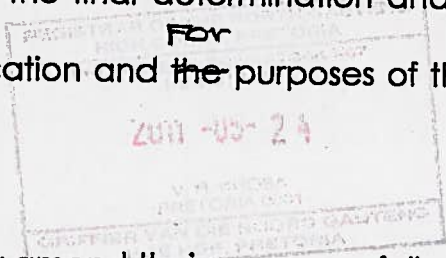
**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT**

Fourth Respondent

~~DRAFT ORDER~~

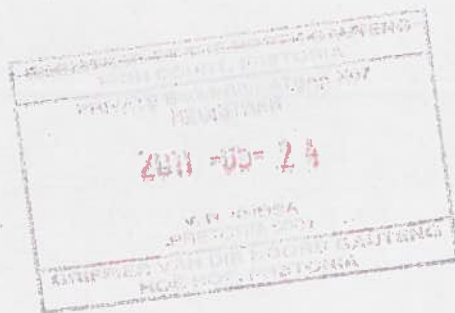
HAVING heard counsel for the parties and having read the papers filed of record the following order is made:

IT IS ORDERED:

1. That non-compliance with the rules of Court is condoned and leave is granted for this application to be heard as a matter of urgency.
2. That the First and Second Respondents must immediately issue the First Applicant with a section 22 asylum seeker permit pending the final determination and finalisation of the main application and ~~the~~ purposes of this application only.
3. That parties may amend their papers as follows:
 - 3.1 The Applicants to file supplementary founding affidavits by 17 June 2011;
 - 3.2 The Respondents to file answering affidavits by 08 July 2011;
 - 3.3 The Applicants to file replying affidavits by 15 July 2011;

3.4 The Applicants to file heads of argument by 21 July 2011 and the Respondents to file by 28 July, after which the matter to be set down on the ordinary roll.

4. That costs be costs in the cause.

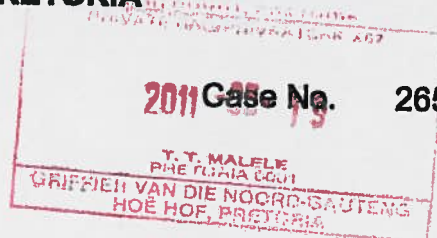


By Order

THE REGISTRAR

IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA



In the matter of:

SHAAFI DAAHIR ABDULAH

FIRST APPLICANT

THE CENTRE FOR CHILD LAW

SECOND APPLICANT

**CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA**

THIRD APPLICANT

And

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE**

SECOND RESPONDENT

THE MINISTER OF SOCIAL DEVELOPMENT

THIRD RESPONDENT

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT**

FOURTH RESPONDENT

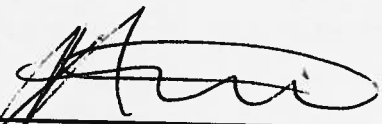
**CHILD WELFARE TSHWANE,
PRETORIA MID-CITY**

FIFTH RESPONDENT

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ATTORNEYS FOR THE APPLICANT
LAWYERS FOR HUMAN RIGHTS
 KUTLWANONG DEMOCRACY CENTRE
 357 VISAGIE STREET
 PRETORIA
 TEL: 012 320 2943/5
 FAX: 012 3202949

REF: L MTSHALI/AC121/11

**TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA**

**AND TO: THE MINISTER OF HOME AFFAIRS
C/O: THE STATE ATTORNEY
8th Floor, Manaka Heights, 167 Andries Street
Pretoria
Ref: 2731/2011/Z12
Fax: 012 328 2662/3; 086 507 0909**

Per fax.

**AND TO: THE MEC: GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT
C/O: THE STATE ATTORNEY
8th Floor, Bothongo Heights, 167 Andries Street
Pretoria
Ref: 2731/2011/Z12
Fax: 012 328 2662/3; 086 507 0909**

Per fax.

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C/O: THE STATE ATTORNEY
8th Floor, Bothongo Heights, 167 Andries Street
Pretoria
Ref: 2731/2011/Z12
Fax: 012 328 2662/3; 086 507 0909**

Per fax

**AND TO: THE TSHWANE INTERIM REFUGEE RECEPTION OFFICE
203 Soutter Street
Pretoria Showgrounds
Pretoria
Fax: 086 579 7823**

Per fax

**AND TO: CHILD WELFARE TSHWANE, PRETORIA MID-CITY
77 Nicholson Street**

**Bailey's Muckleuneck
Pretoria
Fax: 086 6955 451**

Per fax

Original

1

IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA

26572/11
Case No.

In the matter of:

SHAAFI DAAHIR ABDULAH

2011-05-10
T. T. KALELE
PRETORIA 0001
GRIFFIER VAN DIE HOOGHOFGAUTEK
HOË HOF, PRETORIA

FIRST APPLICANT

THE CENTRE FOR CHILD LAW

SECOND APPLICANT

CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA

THIRD APPLICANT

And

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE

SECOND RESPONDENT

THE MINISTER OF SOCIAL DEVELOPMENT

THIRD RESPONDENT

THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT

FOURTH RESPONDENT

CHILD WELFARE TSHWANE,
PRETORIA MID-CITY

FIFTH RESPONDENT

NOTICE OF MOTION

Certified a true copy of the original, filed in this office.
Gesertifiseer 'n ware afskrif van die oorspronklike,
geleëser in hierdie kantoor.

REGISTRAR OF THE SUPREME COURT
GRIFFIER VAN DIE HOOGHOFGAUTEK

TAKE NOTICE that the above applicants intend making application to the above Honourable Court on 24 May 2011 at 10:00 or as soon thereafter as the legal representative for the Applicant may be heard for an order in the following terms:

PART A

- 1 That non-compliance with the ordinary rules and practice directives of this Honourable Court be condoned and the matter be heard as an urgent application.
- 2 That the First and Second Respondents immediately issue the First Applicant with a section 22 asylum seeker permit.

PART B

- 3 That the Second and Third applicants be granted leave to file further affidavits in support of the present application by 24 June 2011.
- 4 Declaring that unaccompanied minors with asylum claims need not produce a court order from the Children's Court to be granted a section 22 asylum seeker permit.
- 5 That the First and Fourth Respondents report to court with a policy and/or operating procedures in line with section 21 A of the Refugees Act as amended in 2008 for the documentation of unaccompanied children with asylum claims.

6 That the First to Fifth Respondents pay the costs of this application on an attorney and client scale to the extent that they oppose this application.

7 Further or/and alternative relief.

TAKE NOTICE that the annexed affidavit of **SHAAFI DAAHIR ABDULAH** will be used in support of this application.

TAKE FURTHER NOTICE that the Applicants have appointed the address of **LAWYERS FOR HUMAN RIGHTS, KUTLWANONG DEMOCRACY CENTRE, 357 VISAGIE STREET** as the address at which they will accept service of all notices and/or process herein.

TAKE FURTHER NOTICE that if you intend to oppose this application, you are required to:

(a) file a notice of intention to oppose on or before **Thursday, 12 May 2011 at 10:00;**

and

(b) file your opposing affidavit, if any, on or before **Monday 16 May 2011**
at **10:00**.

TAKE NOTICE FURTHER that the applicants intend to file a further affidavits in support of Part B of the application on **24 June 2011**. Should you intend to oppose the relief sought in Part B, you are required to file an answer within 15 days of the filing of the affidavits

Dated at Pretoria on this the 10th day of May 2011.

**ATTORNEYS FOR THE APPLICANT
LAWYERS FOR HUMAN RIGHTS
KUTLWANONG DEMOCRACY CENTRE
357 VISAGIE STREET
PRETORIA
TEL: 012 320 2943/5
FAX: 012 3202949
REF: L MTSHALI/AC121/11**

**TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA**

**AND TO: THE MINISTER OF HOME AFFAIRS
C/O: THE STATE ATTORNEY
8th Floor, Bothongo Heights, 167 Andries Street
Pretoria**

Per hand.

(5)

AND TO: THE MEC: GAUTENG DEPARTMENT OF HEALTH AND SOCIAL DEVELOPMENT
C/O: THE STATE ATTORNEY
8th Floor, Bothongo Heights, 167 Andries Street
Pretoria

STAATSKURIEUR
PRIVAATSAK/PRIVATE BAG X91
2011-05-10
PRETORIA 0001
STATE ATTORNEY

Per hand.

[Faint rectangular stamp]

[Handwritten signature]

AND TO: THE MINISTER OF SOCIAL DEVELOPMENT
C/O: THE STATE ATTORNEY
8th Floor, Bothongo Heights, 167 Andries Street
Pretoria

STAATSKURIEUR
PRIVAATSAK/PRIVATE BAG X91
2011-05-10
PRETORIA 0001
STATE ATTORNEY

Per hand.

[Handwritten signature]

[Handwritten initials]

AND TO: THE TSHWANE INTERIM REFUGEE RECEPTION OFFICE
203 Soutter Street
Pretoria Showgrounds
Pretoria

Per fax and per hand.

AND TO: CHILD WELFARE TSHWANE, PRETORIA MID-CITY
77 Nicholson Street
Bailey's Muckleuneck
Pretoria

Per fax and per hand

IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA

Case No.

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THIRD RESPONDENT

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT**

FOURTH RESPONDENT

**CHILD WELFARE TSHWANE, PRETORIA
PRETORIA MID-CITY**

FIFTH RESPONDENT

FOUNDING AFFIDAVIT

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I the undersigned,

SHAAFI DAAHIR ABDULAH

do hereby state under oath as follows:

1. I am a minor male asylum seeker from Somalia born 12 January 1994 and currently residing at flat 2, Berea Mansions, 550 Van der Walt Street, Pretoria.
2. The facts contained herein are within my personal knowledge and are both true and correct. Where I make submissions of a legal nature I do so on the advice of my legal representatives
3. I do not speak the English language but I have had this affidavit translated into Somali for me and I confirm the contents as read to me. I further attach a confirmatory affidavit from Nastehe Mohamed Ibrahim who translated the contents of the affidavit in which he confirms that it was a true and correct translation. This affidavit is attached as **Annexure "A1"**.

PARTIES

4. I am the first applicant in the matter a minor male asylum seeker from Somalia born 12 January 1994, and currently occupying a room at flat 2, Berea Mansions, 550 Van der Walt Street, Pretoria.
5. The second applicant is the **CENTRE FOR CHILD LAW** which was established by the University of Pretoria in terms of a constitution and is a Law Clinic registered with the Law Society of the Northern Provinces. The Centre's principal place of business is on the Fourth Floor, Faculty of Law, University of Pretoria

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corner Lynwood Road and Roper Street, Hatfield, Pretoria. The Centre has an interest in unaccompanied foreign children, particularly with regard to their involvement in the care and protection system. The staff at the Centre are knowledgeable with regard to the Children's Act and the way that its provisions interface with the rights of unaccompanied foreign children, in particular documentation rights. The Centre has a specific interest in the positive development of the law relating to children through policy and legislation. The confirmatory affidavit of the Director of the Centre, Ann Skelton, is attached hereto as **Annexure "A2"**.

6. The third applicant is the **CONSORTIUM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA (CORMSA)**, a Non-Profit Organisation with registration number 010-387 NPO and its principal place of business at 5th floor, Braamfontein Centre, 23 Jorissen Street, Braamfontein, Johannesburg, 2001, South Africa. Its membership comprises of the main non-governmental organisation providing services to refugees and asylum seekers across South Africa. Pursuant to its objective of "serving as an advocate for the rights of asylum seekers, refugees and international migrants, through litigation, lobbying and other means," CORMSA enters this application in the interests of the unaccompanied minor children in South Africa. The confirmatory affidavit of Kaajal Ramjathan-Keogh, Chairperson of the Executive Committee of CORMSA is attached hereto as **"Annexure 3"**.

7. The first respondent is the **MINISTER OF HOME AFFAIRS** cited care of the State Attorney, Pretoria at 8th Floor Manaka Heights, 167 Andries Street, Pretoria. The first respondent is cited as the Minister responsible for the

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administration of the Refugees Act and as the responsible official who is vicariously liable for unlawful actions of the employees of the Department of Home Affairs.

8. The second respondent is the **TSHWANE INTERIM REFUGEE RECEPTION OFFICE**, established in terms of the Refugees Act for purposes of adjudicating asylum claims and documenting asylum seekers and refugees in terms of the Refugees Act.

9. The third respondent is the **MINISTER OF SOCIAL DEVELOPMENT** cited care of the State Attorney, Pretoria at 8th Floor Manaka Heights, 167 Andries Street, Pretoria. The third respondent is cited as the Minister responsible for the administration of the Children's Act which applies to all children in South Africa including unaccompanied minor children.

10. The fourth respondent is **THE MEMBER OF THE EXECUTIVE COUNCIL: GAUTENG DEPARTMENT OF SOCIAL DEVELOPMENT** cited care of the State Attorney, Pretoria at 8th Floor Manaka Heights, 167 Andries Street, Pretoria. The fourth respondent is cited as the responsible official who is vicariously liable for unlawful actions of the employees of the Department of Social Development.

11. The fifth respondent is **CHILD WELFARE TSHWANE PRETORIA MID-CITY** a non-governmental organisation, with its head office at 77 Nicolson Street, Bailey's Muckleneuk, Pretoria. The Department of Social Development works through a service level agreement with this non-governmental organisation to assist children who may be in need of care and protection in the Pretoria Mid-City.

JURISDICTION

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12 I am advised that this matter is within the jurisdiction of the above honourable court in that:

12.1 The cause of action has arisen within the territorial boundaries of the court; and

12.2 I am a minor child and seek the court's protection as the upper guardian of all children.

LOCUS STANDI

13. I bring this application in my own capacity. I have no parent or guardian to assist me in this application as I am an unaccompanied minor child seeking asylum in South Africa.

14. Due to the actions of the respondents as described below, I have also faced difficulty accessing South Africa's care and protection system so I do not have a social worker or care-giver to assist me in this application.

15. Because of the urgency of this matter, I have no other option but to approach this court in my own name. I am assisted by my attorney in bringing this application.

16. The second and third applicants join this application in the public interest.

PURPOSE OF THIS APPLICATION

17. The purpose of this application is to obtain an order compelling the Department of Home Affairs to immediately issue me with an asylum seeker permit.

(11)

18. Part B of this application seeks to obtain a *declarator* that similarly placed unaccompanied minors with asylum claims such as myself must be issued with an asylum seeker permit in terms of section 21 and 22 of the Refugees Act as amended in 2008, without being required to first produce an order from the Children's Court. It also seeks to obtain a mandamus directing that the First, Third and Fourth Respondents create and implement a policy and/or operating procedures in line with the Refugees Act clearly setting out how the Departments of Home Affairs and Social Development and the Children's Court must work together to guarantee the documentation, care and protection of unaccompanied minors with asylum claims

BACKGROUND

19. I arrived in South Africa from my country of origin Somalia, unaccompanied and without a parent or guardian in October 2010.

20. Our family home was bombed along with other houses by warring factions during an attack on civilians in Mogadishu, Somalia in September 2010. My father, Daahir Abdulahi Mahomed, was killed in the bombing and the rest of my family (my mother and my siblings), fled in different directions in the commotion that followed. To date I do not know where they are or whether they are alive or dead.

21. I am advised by my legal representatives that the latest country reports on Somalia by reputable organisations such as Human Rights Watch and the UNHCR (Annexures "A4" and "A5" hereto) reveal the following:

- 21.1 Somalia has had no functional government since the fall of Muhammed Siyad Barre in 1991. The current Transitional Federal Government (hereinafter, "TFG") is the fifteenth interim authority since 1991 and it has a fragile hold of power and has been unable to wield control over the country. War between the TFG and Islamist militant groups, notably Al Shabaab and Hizbul Islam has ravaged the country making it ungovernable.
- 21.2 Clashes between the TFG and the militant Islamist groups intensified during 2010, especially in August and September, after Al Shabaab claimed responsibility for the July 11 2010 attacks on Kampala, Uganda's capital.
- 21.3 High civilian casualties were reported in Mogadishu as Islamist militants unlawfully deployed forces in densely populated civilian neighbourhoods, and civilians were being used as human shields to ward off reprisals from TFG military and to launch attacks. As a result, much of the population of Mogadishu fled the city and became displaced within the country and abroad.
22. These reports accurately describe my own experiences in Somalia before I fled.
23. In September 2010, fearing indiscriminate bombing and shooting of civilians, I fled for my life with a group of refugees headed towards South Africa.
24. I have been advised by my legal representatives that in light of my reasons for fleeing Somalia, I can apply for asylum in terms of section 3(b) of the Refugees Act 130 of 1998 because the events in Somalia amount to "events seriously

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disturbing or disrupting public order in either part or the whole of the country". War crimes and crimes against humanity are routinely committed against civilians by both the TFG and Islamist militants and because there are no functional government structures in Somalia, civilians do not enjoy any protection.

25. Upon reaching the South African border (Beitbridge) I duly reported to the immigration officials there and was given an Asylum Transit permit under the Immigration Act, allowing me fourteen days to make my way to the nearest refugee reception office. The other refugees I had been travelling with contributed towards my transport costs up to Johannesburg and provided me with food, and in return, I carried their luggage.
26. Upon arrival in Johannesburg, I presented myself at the Crown Mines Refugee reception office with other refugees and began the process of applying for a section 22 asylum seeker permit.
27. I was denied the section 22 permit on the grounds that I am a minor. Instead, I was told to go to the Department of Social Development. Not knowing what the Department of Social Development was or how to get there, I was advised and financially assisted by other Somalis to attempt to obtain an asylum seeker permit at a refugee reception office in Pretoria. I became increasingly worried because my 14 day permit was going to expire.
28. Upon arrival in Pretoria, I began to look for accommodation within the Somali community. I was fortunate enough to be offered a room by a Somali shop owner which I shared with four other unaccompanied minor boys from Somalia, and in return I was to work as a shop assistant.

- 29. For about a month, my life stabilised. I began to learn a little English from customers who came into the shop and began to ask around about how to get enrolled in school.
- 30. However, in December 2010, the shop was raided by the police and an official demanded to see my permit. Because I do not speak much English, another young man I worked with in the shop explained to the policeman that I had been denied a permit because of my minority.
- 31. However, the policeman proceeded to arrest me arguing that as far as he was concerned, I was illegal, and if I was truly a minor, I would not be working. Everyone in the shop began to beg and plead with the policeman to let me go. The policeman only released me after one of my friends paid him R30. The policeman warned me never to be seen working without a permit again otherwise he would arrest me.
- 32. Despite my best efforts, my 14 day permit had long since expired and become misplaced.
- 33. Soon after this incident, I attended the refugee reception office in Marabastad for an asylum seeker permit. Yet again I was told to go to the Department of Social Development. Still I had no idea where the Department of Social Development was, so I continued working in the shop as I still needed to buy food and pay for my accommodation.
- 34. The police raided the shop again in December and asked to see my permit. My friends yet again explained that I had tried twice already to acquire a permit but had been turned away because of my minority.

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35. A policeman arrested me and began to take me away when my friends begged and pleaded with him yet again and asked him to let me go, which he eventually did.

36. On the advice of other Somalis, I went to Lawyers for Human Rights for assistance with acquiring my permit on 24 January 2011.

37. Lawyers for Human Rights (hereafter LHR) accompanied me to the Department of Social Development where I was allocated a social worker from Child Welfare Tshwane called Vivian Machokonye (see Annexures "A6" and "A7" hereto).

38. I was advised by Lawyers for Human Rights that the Department of Social Development had a duty in terms of the Refugees Act to assist me with entering into the care and protection system and acquiring section 22 permit.

39. However I did not hear from the social worker for a long time so I returned to Lawyers for Human Rights. Ms Samantha Mundeta, a Legal Counsellor at Lawyers for Human Rights, phoned my social worker to enquire on the progress with the acquisition of my permit and opening of the Children's Court hearing and was informed by my social worker that the Children's Court did not assist foreign children. A confirmatory affidavit by Ms Mundeta is attached hereto as Annexure "A8".

40. Ms Mundeta arranged to take me to the Children's Court directly on 8 March 2010 in terms of section 53 (e) of the Children's Act.

41. However, the day before we went to the Children's Court, on 7 March 2010 I was again apprehended while walking with a friend on Essellen and Celliers Streets by police officials who asked to see my permit. My friend explained my

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predicament, but the police arrested me and only released me on payment of R50 by my friend on the same day.

42. On 8 March 2011, Ms Mundeta took me to the office of the Presiding Magistrate, Magistrate van der Merwe of the Pretoria Children's Court.

43. The Magistrate immediately advised her to take me to my embassy. However, she informed the Magistrate that Somalia has no government and no embassy, and this is when the Magistrate phoned my social worker named above, and ordered him telephonically in the presence of my lawyer to accompany me to the Department of Home Affairs to assist me with acquiring a permit.

44. The social worker accompanied me to the Tshwane Interim Refugee Reception Office on about 15 March 2011. The officials refused to give me the permit in the absence of either a parent or guardian or an order for placement in temporary safe care from the Children's Court in terms of the Children's Act as a child in need of care and protection.

45. Because I came to South Africa unaccompanied and have no parent, guardian or next of kin in the country, the only option available to me was a court order for placement in temporary safe care from the Children's Court in terms of the Children's Act as a child in need of care and protection.

46. In order for the Children's Court to grant the court order in paragraph 44 above, my social worker would have to make a recommendation to the Children's Court that I was in need of care and protection and obtain an order to place me in

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temporary safe care, until a final order could be made by the court about my future care arrangement.

47. I am advised by my legal representatives that according to the Department of Social Development's "Guidelines: Services for Separated and Unaccompanied Children Outside their Country of Origin in South Africa", unaccompanied children should be assumed to be in need of care and protection and immediately placed in an agreed temporary safe care facility.

48. However, when Samantha Mundeta of Lawyers for Human Rights contacted my social worker to enquire about progress with acquiring the temporary safe care court order required by the Department of Home Affairs, the social worker said he had no intention of acquiring such an order.

49. My social worker further stated that he had sent one of his colleagues to carry out a home visit to the room that I shared with the other some unaccompanied minor boys. Based on that visit, my social worker had come to the conclusion that I was better off than other more vulnerable children, and therefore did not qualify as a child in need of care and protection.

50. The reasons he cited for his findings were:

50.1 that I at least had some accommodation (following from his colleague's home visit to the room I shared with other unaccompanied minor boys);

50.2 that I had a "guardian" (the woman he identified as my guardian, Nasteho Mohamed Ibrahim, is a Somali lady who helps me with translation from Somali to English from time to time, but does not live near me or provide for me in any way. She has never been officially

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made my guardian in terms of the Children's Act or any other relevant law.)

50.3 that I was receiving a stipend of R400 from Refugee Aid Organisation. This was accommodation assistance I began to receive in March 2011 after I reported to the organisation that I was stranded. I had not received any assistance from my social worker and I had lost my shop assistant job because my employer feared more trouble from the police for hiring an undocumented person.

51. Because he was of the opinion that I was not in need of care and protection, and he informed Ms Mundeta that he could not acquire a temporary safe care order just because I needed a permit.

52. To date, I am still undocumented and I find myself in an extremely difficult situation. I do not have a parent or guardian to assist me with acquiring a permit, yet I cannot acquire the relevant court order required by the Department of Home of Affairs in order to access the permit.

53. I am constantly faced with the threat of arrest and feel insecure to move around Pretoria and try to lead a normal life. Most recently on 18 April 2011 I was arrested, detained and harassed in a police vehicle by police officials for approximately an hour because I was unable to produce a permit. I was alone and with my limited English I could not properly explain my situation to the police official.

54. I have also been excluded from pursuing my education. In April I was offered a place for High School in a Muslim school but because I have no permit, I lost the place.

55. When I fall ill, public hospitals refuse me to treat me because I do not have a permit.

56. I am not the only unaccompanied minor in this situation. I know and have lived with other unaccompanied minor boys from my country who are 15 years old and above who have resorted to lying about their age at the Refugee Reception Office stating that they are over 18 years old in order to be issued with asylum seeker permits to avoid arrest and denial of basic services.

57. The consequence of this is that they have faced difficulty accessing the public education system because they are "over-age", and those who genuinely cannot fend for themselves face difficulties with convincing social workers and NGOs to assist them because their permits contradict their claims to minority.

58. The system currently being implemented to deal with unaccompanied minors has made us vulnerable to arrest and detention instead of protecting us.

CLEAR RIGHT

59. I am advised that section 32 of the Refugees Act 130 of 1998 requires that unaccompanied children with asylum claims first be brought before the Children's Court for an order for assistance with applying for asylum.

60. The Refugees Act as amended in 2008 in section 21A, sets out the new procedure for unaccompanied minors as follows:

"Any unaccompanied minor who is found under circumstances that clearly indicate that he or she is an asylum seeker and a child in need of care and protection in terms of the Children's Act, (Act No. 38 of 2005), must -

- a) be issued with an asylum seeker permit in terms of section 22; and
- b) in the prescribed manner be brought before the Children's Court in the district in which he or she be found, to be dealt with in terms of the Children's Act."

61. The Refugees Amendment Act 33 of 2008 has been signed and assented to by the President, but is not yet operational. However it is submitted that this is the highest and most up-to-date statement of policy and should therefore guide government action.

62. The issuance of an asylum seeker permit is listed first and separately from the Children's Court process.

63. The current practice is that adult asylum seekers are issued with a section 22 permit on the very day that they apply. The decision whether or not they are to be granted refugee status and interviews testing the authenticity of their refugee claim are done at a later stage. Pending the outcome of this process they enjoy the right to legally sojourn in the country including the right to work and study in the country. They also have a way of positively identifying themselves because of these permits.

64. My rights as an unaccompanied minor child to a name and nationality, to education, to social services, as well as my right not to be detained and to security of person and freedom of movement because I cannot access the care and protection system.

65. Because I am an asylum seeker who is also child, I am disadvantaged in that I must remain an illegal immigrant until a decision is made about my future in the country, if one is ever made, yet Article 22 of the Convention of the Rights of the Child protects children's rights to asylum processes.

ACTUAL INJURY

66. As indicated above, I have been arrested four times for not having a permit since my arrival in the country in October 2010, most recently on 18 April 2011. This has traumatised me severely and caused me to live in perpetual fear.

67. I am also unable to begin rebuilding my life in South Africa without any form of identity. I cannot continue with my education, I cannot earn a living and I even struggle with accessing NGO aid because I have no way of proving who I am and my age.

68. My life is at a complete standstill because I do not have a permit.

69. I also see no possibility of obtaining any permit or assistance due to the social worker's unwillingness to help foreign children. I simply do not know what to do at this point.

NO ALTERNATIVE REMEDY

70. As explained above, I have exhausted all channels available to me as a child to acquire a permit including seeking the assistance of a social worker from the Department of Social Development, approaching the Children's Court and approaching the Department of Home Affairs directly.

71. Notwithstanding demand, the Department of Home Affairs fails or refuses to issue me with an asylum seeker permit. (See Annexure "A9" hereto). I am frustrated with being sent from pillar to post to no avail. This court in its capacity as the upper guardian for children is my last hope.

BALANCE OF CONVENIENCE FAVOURS THE APPLICANT

72. The first and second respondents would only be performing their statutory duty by issuing me, a minor child, with permit. They have absolutely nothing to lose.

73. I, on the other hand, risk further arrest and undue prejudice should this permit not be granted.

URGENCY

74. I submit that this matter is extremely urgent.

75. As explained above protection of adult asylum seekers' security of person and freedom from arbitrary arrest and detention is so urgent that their section 22 permits are granted immediately upon application, long before any further decisions are made about their refugee status. Protection of children is even more urgent, and it is not in the best interests of a child for the issuance of this section 22 permit to be delayed.

17

S. P. A

76. I have already been arrested repeatedly for not having a permit and any further delay in the issuance of my section 22 permit would be a gross infringement of my constitutional rights.

COSTS

77. I submit that that the Court should make an order for costs on an attorney and client scale against the respondents jointly and severally if and to the extent that they oppose this application due to the unnecessary nature of this type of application.

WHEREFORE I PRAY FOR THE ORDERS AS SET OUT IN THE NOTICE OF MOTION

Thus sworn and signed in Pretoria on this 10th day of May 2011.

Shadi

DEPONENT

SIGNED and AFFIRMED to before me at PRETORIA on the 10th day of May 2011, after the deponent stated that he is aware of the content of this statement and considers the affirmation to be binding on his conscience. I certify that the

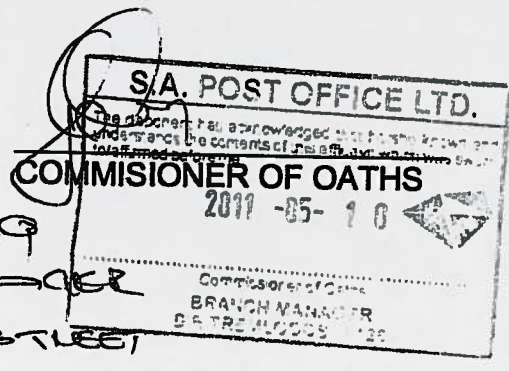
18

S.D.A

24

regulations provided for in the Government Gazette Notice R. 1258 of 21 July 1972 have been complied with.

FULL NAMES: JACOB DE CLEERCK
DESIGNATION: BRANCH MANAGER
ADDRESS: 334 SCHOENMA STREEK
PRETORIA



[Handwritten signature]

S.D.A

25



IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA

Case No.

In the matter of:

SHAAFI DAAHIR ABDULAH **FIRST APPLICANT**

THE CENTRE FOR CHILD LAW **SECOND APPLICANT**

**CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA** **THIRD APPLICANT**

And

THE MINISTER OF HOME AFFAIRS **FIRST RESPONDENT**

**THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE** **SECOND RESPONDENT**

THE MINISTER OF SOCIAL DEVELOPMENT **THIRD RESPONDENT**

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT** **FOURTH RESPONDENT**

**CHILD WELFARE TSHWANE, PRETORIA
PRETORIA MID-CITY** **FIFTH RESPONDENT**

CONFIRMATORY AFFIDAVIT

L. N. M.

I the undersigned,

NASTEHO MOHAMED IBRAHIM

do hereby state under oath as follows:

- 1. I am an adult ~~unemployed~~ female translator at Refugee Aid Organisation, residing address at Flat 16 Barry Hof Building, 389 Visagie Street, Pretoria, Central, Pretoria.
- 2. I confirm that the founding affidavit of Shaafi Daahir Abdulahi on which he appended his signature was indeed deposed to by him.
- 3. I further confirm that I speak Somali and I read and explained the affidavit to Shaafi Daahir Abdulahi in Somali. I confirm that the affidavit which I read and explained to him is the one to which he appended his signature.
- 4. He confirmed that he understood the contents of the affidavit.

Thus sworn and signed in Pretoria on this 10th day of May 2011.

Nasteho
DÉPONENT

THUS SIGNED AND SWORN TO at Pretoria on this 10th day of May 2011, the deponent having acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath, that the oath which she has taken in respect thereof is binding on her conscience, and that the contents of this affidavit are both true and correct.

[Handwritten signature]
N.M.I



FULL NAMES: JAKOB DE CLEER
DESIGNATION: Branch manager
ADDRESS: 334 Schoeman Street
Fietonia

IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA

In the matter of:

SHAAFI DAAHIR ABDULAH

FIRST APPLICANT

THE CENTRE FOR CHILD LAW

SECOND APPLICANT

And

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE**

SECOND RESPONDENT

THE MINISTER OF SOCIAL DEVELOPMENT

THIRD RESPONDENT

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT**

FOURTH RESPONDENT

**CHILD WELFARE TSHWANE, PRETORIA
PRETORIA MID-CITY**

FIFTH RESPONDENT

CONFIRMATORY AFFIDAVIT

I, the undersigned

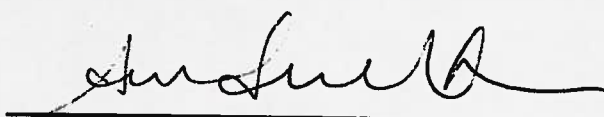
ANN MARIE SKELTON

Handwritten signature and initials
MC

Hereby take oath and state as follows:

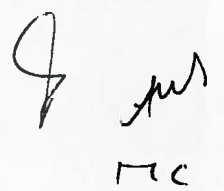
1. I am employed as the Director of the Centre for Child Law at the University of Pretoria. The relevant details relevant to the Centre are set out in the founding affidavit.
2. I am duly authorised to depose to this affidavit
3. I have read the founding affidavit of SHAAFI DAAHIR ABDULAH.
4. I confirm that the statements made in the affidavit, in so far as they pertain to the Centre for Child Law and its interest in this matter, are true and correct.

Thus affirmed to and signed in Pretoria on this 4th day of May 2011.



DEPONENT

SIGNED and AFFIRMED to before me at PRETORIA on the 4th day of May 2011, after the deponent stated that she is aware of the content of this statement and considers the affirmation to be binding on her conscience. I certify that the regulations provided for in the Government Gazette Notice R. 1258 of 21 July 1972 have been complied with.


REC

31

70168344
Mkani PC
COMMISSIONER OF OATHS

FULL NAMES: CHARLES Mkhosi

DESIGNATION: Constable

ADDRESS: 119 Duxbury Road, Hillcrest
Brooklyn S.A.S.

SUID-AFRIKAANSE POLISDIENSTE
KLIENTEDIENSENTIUM
BROOKLYN
2011-05-04
CLIENT SERVICE CENTRE
BROOKLYN
SOUTH AFRICAN POLICE SERVICE

IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA

In the matter of:

SHAAFI DAAHIR ABDULAH **FIRST APPLICANT**

THE CENTRE FOR CHILD LAW **SECOND APPLICANT**

**CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA** **THIRD APPLICANT**

And

THE MINISTER OF HOME AFFAIRS **FIRST RESPONDENT**

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RECEPTION OFFICE** **SECOND RESPONDENT**

THE MINISTER OF SOCIAL DEVELOPMENT **THIRD RESPONDENT**

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT** **FOURTH RESPONDENT**

**CHILD WELFARE TSHWANE, PRETORIA
PRETORIA MID-CITY** **FIFTH RESPONDENT**

CONFIRMATORY AFFIDAVIT

I the undersigned,

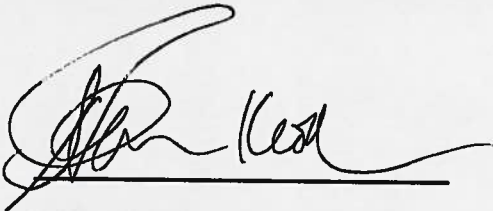


KAAJAL RAMJATHAN-KEOGH

do hereby state under oath as follows:

- 1. I am the Chairperson of the Executive Committee of the Consortium for Refugees and Migrants in South Africa (CORMSA). The details relevant to CORMSA are set out in the founding affidavit.
- 2. I am duly authorised to depose this affidavit.
- 3. I have read the founding affidavit of SHAAFI DAAHIR ABDULAHI.
- 4. I confirm that the statements made in the affidavit, in so far as they pertain to CORMSA and its interest in this matter are true and correct.

Thus sworn and signed in Johannesburg on this 10th day of May 2011.



DEPONENT

SIGNED and AFFIRMED to before me at PRETORIA on the 10th day of May 2011, after the deponent stated that she is aware of the content of this statement and considers the affirmation to be binding on her conscience. I certify that the regulations provided for in the Government Gazette Notice R. 1258 of 21 July 1972 have been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

DESIGNATION:

ADDRESS:

RIONA KALUA
COMMISSIONER OF OATHS
PRACTISING ATTORNEY RSA
7th FLOOR BRAAMFONTEIN CENTRE
23 JORISSEN STREET
TELEPHONE (011) 403-2765

Annexure 'A4'
321

World Report 2011: Somalia

Events of 2010

The Transitional Federal Government (TFG), supported by the African Union Mission in Somalia (AMISOM), lost control of further territory to opposition groups in Somalia in 2010, with bitter fighting imposing a significant toll on civilians, especially during an upsurge of attacks in August and September. Al-Shabaab and Hizbul Islam, the militant Islamist groups that spearhead the opposition, consolidated control over much of south-central Somalia, where the population experienced relative stability but also increasingly harsh and intolerant repression, in the name of Sharia law. A humanitarian crisis exists across the country. Humanitarian agencies have limited access due to ongoing insecurity, and armed opposition groups threatened humanitarian workers, journalists, and civil society activists with attack.

The northern region of Somaliland, a self-declared independent republic, provided a rare positive note in the region when its long-delayed presidential election took place in a largely free and fair atmosphere in June 2010.

Indiscriminate Warfare in Mogadishu

Continual fighting between militant Islamist groups and the TFG raged in Mogadishu, Somalia's capital, throughout 2010, with all parties conducting indiscriminate attacks causing high civilian casualties. Opposition fighters have deployed unlawfully in densely populated civilian neighborhoods and at times used civilians as "shields" to fire mortars at TFG and AMISOM positions. These attacks are conducted so indiscriminately that they frequently destroy civilian homes but rarely strike military targets. Often AMISOM or TFG forces respond in kind, launching indiscriminate mortar strikes on the neighborhoods from which opposition fighters had fired and then fled, leaving only civilians to face the resulting devastation.

The TFG lost further ground to al-Shabaab during the year and at this writing controls just a few square blocks around the presidential palace at Villa Somalia in Mogadishu, with the AU forces defending the capital's port, the airport, and a few other strategic sites.

Clashes and attacks intensified in August and September—during the Islamic holy month of Ramadan—after al-Shabaab claimed responsibility for the July 11 bomb blasts in Kampala, Uganda's capital. At least 76 civilians died in those attacks, which struck crowded public gatherings the day of the football World Cup final. Uganda provides the largest contingent of the 7,100-member African Union Mission in Somalia.

AMISOM forces were accused of indiscriminate shelling in retaliation for the Kampala blasts, particularly in Bakara Market. Bakara and other residential areas were repeatedly hit on July 12 and 13, again in late August, and on September 9; dozens of civilians were killed and injured in these attacks.

On August 23 al-Shabaab and Hizbul Islam called for an escalation in the fighting, and al-Shabaab claimed responsibility for an August 24 suicide attack at the Muna Hotel, which killed 32 people, including civilians and several members of parliament. Another suicide attack on Mogadishu's international airport on September 9 killed at least nine people, including civilians.

Much of the remaining population of Mogadishu fled this new round of fighting and is now displaced in makeshift camps on the outskirts of the capital, primarily in the Afgoi corridor, with little access to humanitarian aid and at risk of harassment by local militia groups.

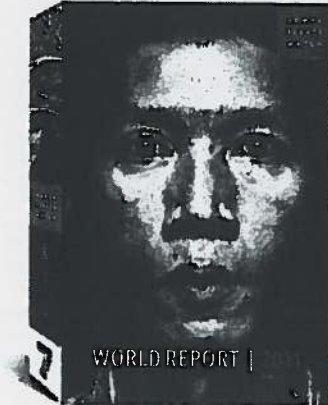
Both the armed opposition groups and the TFG have used children in their ranks.

Abuses in Opposition-Controlled Areas

South-central Somalia was under the control of local administrations linked to armed opposition groups throughout 2010. In many areas al-Shabaab rule brought relative stability and order, which contrasts dramatically with the chaos in Mogadishu. Residents from some of these areas credit al-Shabaab with ending a constant menace of extortion, robbery, and murder from bandits and freelance militias. But even where this holds true, security has come at a steep price, especially for women.

Grinding repression characterizes daily life in communities controlled by al-Shabaab, and many local administrations have sought to implement harsh and intolerant measures in the name of Sharia law. These measures control minute details of personal lives, including the way people dress and work. The punishments for even minor offenses are often summary, arbitrary, and cruel. A climate of fear prevents most people from speaking out against abuses of power. As one resident of the southern town of El Wak said, "We just stay quiet. If they tell us to follow a certain path, we follow it."

Freedoms women took for granted in traditional Somali culture have been dramatically rolled back. In many areas women have been barred from engaging in any activity that leads them to mix with men, even small-scale commercial enterprises on which many of them depend for a living. Al-Shabaab authorities have arrested, threatened, or whipped countless women for trying to support their families by selling cups of tea.



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35

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Elections in Somaliland and Instability in the North

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The situation remains unstable in the contested regions of Sool, Sanag, and Cayn, which lie between Somaliland, in Somalia's northwest, and the autonomous state of Puntland in the northeast. Thousands of civilians were displaced by clan-based clashes and conflicts over resources in the disputed area in June.

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Somalia remains one of the world's most dangerous places to be a journalist. At least three journalists were killed in 2010, bringing the total killed since 2007 to 22. Two were targeted killings: Sheikh Nur Mohamed Abkey of state-run Radio Mogadishu was killed by three gunmen in May, and Abdullahi Omar Gedi was stabbed by unknown assailants in Galkayo. Barkhat Awale was killed by a stray bullet in Mogadishu on August 24. Both TFG and opposition forces have harassed the dwindling number of journalists still struggling to operate in Somalia. In April al-Shabaab banned all BBC broadcasts in Somalia and confiscated equipment.

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The majority of human rights defenders fled the country in the past years amid increasing threats to civil society and media; the few individuals remaining in south-central Somalia censor themselves.

The delivery of humanitarian assistance to south-central Somalia has been partially blocked by insecurity as well as measures imposed by armed opposition groups specifically targeting humanitarian agencies. At least eight agencies have been expelled from Somalia by al-Shabaab since January. In addition, United States sanctions on support to terrorist groups have restricted the delivery of food aid toward southern and central Somalia. As a result, some agencies had to cancel their operations, and access is reportedly at its lowest point since 2006.

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Western governments, the UN, the AU, and neighboring countries, with the exception of Eritrea, are united in supporting the TFG as the government of Somalia. The July 2010 bombings in Kampala, Uganda, increased regional concern over the threat posed by al-Shabaab and its connections to al-Qaeda. At this writing the principal response has been to increase the number of AMISOM troops to approximately 7,100 and pledge further funds.

Of the US\$213 million pledged by a joint UN, European Union, and AU conference held in Brussels in April 2009, little has reached Somalia. The EU, Ethiopia, Uganda, and Kenya trained TFG soldiers and police in neighboring countries throughout 2010. But efforts to bolster the TFG's weak military and police capacity have been plagued by allegations of corruption and the defection of newly trained troops, some with their weapons; many of the trainees complain that they never received their salaries.

Since withdrawing from Mogadishu in early 2009, Ethiopian troops have repeatedly entered into Somalia for security operations near the border. Ethiopia, along with Eritrea, remains a key player in Somalia, with both countries providing various types of support to proxy forces, although Eritrea's support for armed opposition groups has reportedly declined, according to UN experts.

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**health and
social development**

Department: Health and Social Development
GAUTENG PROVINCE

Enquiries: Mr. F E Ndwambi

Tel.No 012 359 3441

Ref: Intake 03/02/2011

FOR ATT: FAITH

CHILD AND FAMILY CARE SOCIETY

PRESBYTERIAN CHURCH AND SCHOEMAN STREET

PRETORIA CITY

RE: REFERRAL OF THE CLIENT SHAAFI DAAHIIR ABDULAHI D.O.B: 1994/01 /12

The above mentioned referral refers.

The client visited our office today, 03 January 2011 seeking Asylum because it is said that he arrived in South Africa in October 2010 after he lost his family and his home in a bombing in Mogadishu. He resides at house No.550 Vander Walt Street and Berea Mansion Street.

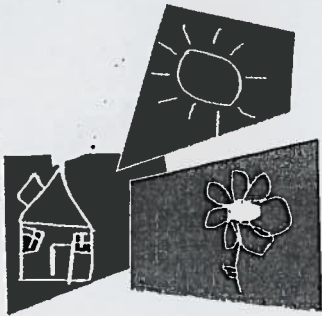
May you please kindly assist the child with further intervention.

Your consideration in this regard will be highly appreciated.

Mr. Fhatuwani Emmanuel Ndwambi (Social Worker)

Date: 03 January 2011





Child Welfare Tshwane
NPO Reg No 001-612

(40)

'Annexure A7'
Child Welfare Tshwane

77 Nicolson Street
Bailey's Muckleneuk
PO Box 503
Pretoria 0001

Tel: 012 460 9236
Fax: 012 460 6333

E-mail: info@childwelfare.co.za
www.childwelfare.co.za

Child Welfare Tshwane- Midcity

7 February 2011

Adoptions
Tel: 012 343 9392

Atteridgeville
Tel: 012 973 8131
Fax: 012 373 8306

Bramley
Children's Home
Tel: 012 460 6375
Fax: 012 343 8325

Centurion
Tel: 083 4908559

Olivenhoutbosch
Tel: 073 7831844

Eersterust
Tel: 012 806 7046/7
Fax: 012 806 7283

Elandsport
Tel: 012 386 8652
Fax: 012 386 7332

Itumeleng Shelter
Tel: 012 343 1373
Fax: 012 344 5747

Jamelodi
Tel: 012 805 4056/7
Fax: 012 805 4997

Mid City
Tel: 012 322 5803
Fax: 012 320 1419

Therapy Unit
Tel: 012 343 0535
Fax: 012 343 8788

RE: SHAAFI DAAHIIZ ABOHULAH

This letter serves as a confirmation that we have received the referral of the abovementioned child. Further investigations will be done, as the client falls within our jurisdiction area.

Please contact the undersigned worker for further information.

Yours Sincerely


Vivian Machokonye
(Social Worker)
Landline: 0123225803

Chairperson Celest Van Niekerk • Deputy Chairperson Mafusi Lekganyane

Unlocking the potential of vulnerable children and families

IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA

Case No.

In the matter of:

SHAAFI DAAHIR ABDULAH	FIRST APPLICANT
THE CENTRE FOR CHILD LAW	SECOND APPLICANT
CONSORTIUM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA	THIRD APPLICANT

And

THE MINISTER OF HOME AFFAIRS	FIRST RESPONDENT
THE TSHWANE INTERIM REFUGEE RECEPTION OFFICE	SECOND RESPONDENT
THE MINISTER OF SOCIAL DEVELOPMENT	THIRD RESPONDENT
THE MEMBER OF THE EXECUTIVE COUNCIL: GAUTENG DEPARTMENT OF HEALTH AND SOCIAL DEVELOPMENT	FOURTH RESPONDENT
CHILD WELFARE TSHWANE, PRETORIA PRETORIA MID-CITY	FIFTH RESPONDENT

CONFIRMATORY AFFIDAVIT

S.M. J

43

I the undersigned,

SAMANTHA MUNDETA

do hereby state under oath as follows:

1. I am an adult female legal counsellor at Lawyers for Human Rights currently residing at 21 Strelizia, DF Malan Road, Lyttleton, Centurion
2. The facts contained herein are to the best of my knowledge and belief both true and correct.
3. I have read the founding affidavit of SHAAFI DAAHIR ABDULAH I and confirm and corroborate the contents thereof insofar as same pertain to me

Thus sworn and signed in Pretoria on this 10th day of May 2011.

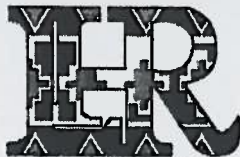
Mundeta

DEPONENT

SIGNED and AFFIRMED to before me at PRETORIA on the 10th day of May 2011, after the deponent stated that she is aware of the content of this statement and considers the affirmation to be binding on her conscience. I certify that the regulations provided for in the Government Gazette Notice R. 1258 of 21 July 1972 have been complied with.



FULL NAMES: JACOB DE CLERCK
 DESIGNATION: Branch manager
 ADDRESS: 33x Schoeman Street
Pretoria



Annexure "A a"

43

LAWYERS FOR HUMAN RIGHTS

REFUGEE AND MIGRANT RIGHTS PROGRAMME - PRETORIA
Kutlwanong Democracy Centre, 357 Visagie Street, Pretoria 0002
Tel 012 320 2943 Fax 012 320 2949 Web www.lhr.org.za

By fax

Our Ref: L Mtshali/AC121/11

20 April 2011

TO:

THE MINISTER OF HOME AFFAIRS

Fax: 012 432 6637

Per fax

AND TO:

THE DIRECTOR GENERAL HOME AFFAIRS

Fax: 086 608 1987

Per fax

AND TO:

**THE MANAGER
TSHWANE INTERIM REFUGEE RECEPTION OFFICE**

Fax: 086 579 7823

Per fax

AND TO:

THE MINISTER OF SOCIAL DEVELOPMENT

Fax: 086 541 8066

Per fax

AND TO:

**THE MEC: GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT**

Fax: (011) 355 3259

Per fax



Dear Sirs

RE: LETTER OF DEMAND: ISSUANCE OF S22 PERMIT - UNACCOMPANIED MINOR CHILD SHAAFI DAAHIR ABDULAHI

1. We refer to the above and confirm that we represent Shaafi Daahir Abdulahi, an unaccompanied minor child from Somalia born 12 January 1994.
2. Client has a prima facie asylum claim, having fled indiscriminate civilian attacks in Somalia, in which he lost his family in a bombing. Somalia has not had a government since 1991 and attacks on civilians by warring factions are commonplace.
3. Since his arrival in South Africa in October 2010, client has been arrested four times, most recently on 18 April 2011, when he was held and harassed in a police vehicle for an hour because he was unable to produce a permit on demand.
4. In our view, this matter is extremely urgent as client lives in perpetual fear of arrest and has no peace of mind as he walks the streets of South Africa.
5. This is notwithstanding that fact that client has attempted to apply for an asylum seeker permit on three occasions without any success.
6. On the first two occasions, officials at the Refugee Reception Offices in Johannesburg and Pretoria (TIRRO) merely referred him the Department of Social Development. Not knowing what this was or how to get there, he approached Lawyers for Human Rights for assistance.
7. We accompanied him to the Department of Social Development where he was allocated a social worker from Child Welfare Tshwane, who was supposed to ensure that the child was dealt with in terms of the Children's Act and to assist him with regularising his status in South Africa.
8. To date, the social worker has failed or refused bring client before the Children's Court for the opening of a children's enquiry for client, and to obtain a court order for his placement in safe care; yet the TIRRO Refugee Reception Office has recently refused to issue the child with a permit without such court order.
9. We are aware of Passport Control Instruction No1 of 2004 which currently sets out the Department's procedure in respect of "unaccompanied minor illegal foreigners". However we submit that it is wholly inappropriate for unaccompanied minor asylum seekers.
10. We submit that the intention of the legislature was to create a scheme in the best interests of children that prevents the kind of prejudice suffered by our client, and this is demonstrated in section 21 A of the Refugees Act as amended in 2008, which although not yet in operation, has been approved and has repealed section 32 of the Refugees Act 130 of 1998.
11. This provision states that:

“Any unaccompanied minor who is found under circumstances that clearly indicate that he or she is an asylum seeker and a child in need of care and protection in terms of the Children’s Act, (Act No. 38 of 2005), must -

- a) be issued with an asylum seeker permit in terms of section 22; and
- b) in the prescribed manner be brought before the Children’s Court in the district in which he or she be found, to be dealt with in terms of the Children’s Act.”

- 12. In light of the vulnerability of unaccompanied minor asylum seekers to arrest, it makes sense that issuance of an asylum seeker permit is listed first and separately to the Children’s Court process.
- 13. It is not in the best interests of the child to withhold a permit as it makes them more vulnerable.
- 14. In order to prevent further prejudice to children in our client’s position, we demand an undertaking that the Department of Home Affairs will create a policy and/or operating procedures in line with legislation as stated in paragraph 11 above.
- 15. Furthermore, in order to prevent further undue infringements on client’s fundamental rights, we hereby demand an undertaking from the Department of Home Affairs to issue our client with an asylum seeker permit by Tuesday 26th April 2010. Should we not hear from the Department of Home Affairs on the abovementioned date, we will institute legal proceedings on an urgent basis.
- 16. However we trust that litigation will not be necessary in this matter as all government departments are mandated to work together in the best interests of the child.

Yours faithfully,
LAWYERS FOR HUMAN RIGHTS
Per:



LINDA MTSHALI

Transmission Report

46

Date/Time
Local ID 1

21-04-2011
012 320 2949

10:32:20

Transmit Header Text
Local Name 1

LHR
LHR

This document : Confirmed
(reduced sample and details below)
Document size : A4



LAWYERS FOR HUMAN RIGHTS

REFUGEE AND MIGRANT RIGHTS PROGRAMME - PRETORIA
Kudwanang Democracy Centre, 357 Visagie Street, Pretoria 0002
Tel 012 320 2943 Fax 012 320 2949 Web www.lhr.org.za

By fax

Our Ref: L. Mshali/AC121/11

20 April 2011

TO:

THE MINISTER OF HOME AFFAIRS

Fax: 012 432 6637

Per fax

AND TO:

THE DIRECTOR GENERAL HOME AFFAIRS

Fax: 086 608 1987

Per fax

AND TO:

THE MANAGER
TSHWANE INTERIM REFUGEE RECEPTION OFFICE

Fax: 086 579 7823

Per fax

AND TO:

THE MINISTER OF SOCIAL DEVELOPMENT

Fax: 086 541 8066

Per fax

AND TO:

THE MEC: GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT

Fax: (011) 355 3259

Per fax



Total Pages Scanned : 3

Total Pages Confirmed : 3

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Abbreviations:

HS: Host send
HR: Host receive
WS: Waiting send

PL: Polled local
PR: Polled remote
MS: Mailbox save

MP: Mailbox print
RP: Report
FF: Fax Forward

CP: Completed
FA: Fail
TU: Terminated by user

TS: Terminated by system
G3: Group 3
EC: Error Correct

Transmission Report

47

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21-04-2011
012 320 2949

10:30:48

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LHR
LHR

This document : Confirmed
(reduced sample and details below)

Document size : A4



LAWYERS FOR HUMAN RIGHTS

REFUGEE AND MIGRANT RIGHTS PROGRAMME - PRETORIA
Kutwanong Democracy Centre, 357 Visagie Street, Pretoria 0002
Tel 012 320 2943 Fax 012 320 2949 Web www.lhr.org.za

By fax

Our Ref: L.Mahali/AC121/11

20 April 2011

TU:

THE MINISTER OF HOME AFFAIRS

Fax: 012 432 6637

Per fax

AND TO:

THE DIRECTOR GENERAL HOME AFFAIRS

Fax: 086 608 1987

Per fax

AND TO:

THE MANAGER
TSHWANE INTERIM REFUGEE RECEPTION OFFICE

Fax: 086 579 7823

Per fax

AND TO:

THE MINISTER OF SOCIAL DEVELOPMENT

Fax: 086 541 8066

Per fax

AND TO:

THE MEC: GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT

Fax: (011) 355 3259

Per fax



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Total Pages Confirmed : 3

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MS: Mailbox save

MP: Mailbox print
RP: Report
FF: Fax Forward

CP: Completed
FA: Fail
TU: Terminated by user

TS: Terminated by system
G3: Group 3
EC: Error Correct

Transmission Report

48

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LHR
LHR

This document : Confirmed
(reduced sample and details below)

Document size : A4



LAWYERS FOR HUMAN RIGHTS

REFUGEE AND MIGRANT RIGHTS PROGRAMME - PRETORIA
Kulwaosong Democracy Centre, 357 Visagie Street, Pretoria 0002
Tel 012 320 2943 Fax 012 320 2949 Web www.lhr.org.za

By fax

Our Ref: L.Mitchell/AC121/11

20 April 2011

TO:

THE MINISTER OF HOME AFFAIRS

Fax: 012 432 6637

Per fax

AND TO:

THE DIRECTOR GENERAL HOME AFFAIRS

Fax: 086 608 1987

Per fax

AND TO:

THE MANAGER
TSHWANE INTERIM REFUGEE RECEPTION OFFICE

Fax: 086 579 7823

Per fax

AND TO:

THE MINISTER OF SOCIAL DEVELOPMENT

Fax: 086 541 8066

Per fax

AND TO:

THE MEC: GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT

Fax: (011) 355 3259

Per fax



Total Pages Scanned : 3

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FA: Fail
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TS: Terminated by system
G3: Group 3
EC: Error Correct

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40

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LHR

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Document size : A4**



LAWYERS FOR HUMAN RIGHTS

REFUGEE AND MIGRANT RIGHTS PROGRAMME - PRETORIA
Kulwaneng Democracy Centre, 357 Visagie Street, Pretoria 0002
Tel 012 320 2943 Fax 012 320 2949 Web www.lhr.org.za

By fax

Our Ref: L.Mabali/AC121/11

20 April 2011

TO:

THE MINISTER OF HOME AFFAIRS

Fax: 012 432 6637

Per fax

AND TO:

THE DIRECTOR GENERAL HOME AFFAIRS

Fax: 086 608 1987

Per fax

AND TO:

**THE MANAGER
TSHWANE INTERIM REFUGEE RECEPTION OFFICE**

Fax: 086 579 7823

Per fax

AND TO:

THE MINISTER OF SOCIAL DEVELOPMENT

Fax: 086 541 8066

Per fax

AND TO:

**THE MEC: GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT**

Fax: (011) 355 3259

Per fax



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PR: Polled remote
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MP: Mailbox print
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FA: Fail
TU: Terminated by user

TS: Terminated by system
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EC: Error Correct

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50

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LHR
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(reduced sample and details below)
Document size : A4



LAWYERS FOR HUMAN RIGHTS
REFUGEE AND MIGRANT RIGHTS PROGRAMME - PRETORIA
Kuthwanong Democracy Centre, 357 Vhangu Street, Pretoria 0002
Tel 012 320 2948 Fax 012 320 2949 Web www.lhr.org.za

By fax

Our Ref: L.Mtshali/AC/121/11

20 April 2011

TO:

THE MINISTER OF HOME AFFAIRS

Fax: 012 432 6637

Per fax

AND TO:

THE DIRECTOR GENERAL HOME AFFAIRS

Fax: 086 608 1987

Per fax

AND TO:

**THE MANAGER
TSHWANE INTERIM REFUGEE RECEPTION OFFICE**

Fax: 086 579 7823

Per fax

AND TO:

THE MINISTER OF SOCIAL DEVELOPMENT

Fax: 086 541 8066

Per fax

AND TO:

**THE MEC: GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT**

Fax: (011) 355 3259

Per fax



Total Pages Scanned : 3

Total Pages Confirmed : 3

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MS: Mailbox save

MP: Mailbox print
RP: Report
FF: Fax Forward

CP: Completed
FA: Fall
TU: Terminated by user

TS: Terminated by system
G3: Group 3
EC: Error Correct

**IN THE HIGH COURT OF SOUTH AFRICA
(North Gauteng High Court)**

51

Case No. 26572/2011

In the matter between:

SHAAFI DAAHIR ABDULAH I & 2 OTHERS

Applicant

and

CHILD WELFARE TSHWANE, PRETORIA MID-CITY

5th Respondant

and

RETURN: SERVICE OF NOTICE OF MOTION

IT IS HEREBY CERTIFIED:

That on the 12 MAY 2011 at 12h55 at THE MANAGER, 77 NICOLSON STREET, BAILEY'S MUCKLENEUK, being the principal place of business of CHILD WELFARE TSHWANE, PRETORIA MID-CITY, a copy of the Notice of Motion APPLICANT'S FOUNDING AFFIDAVIT AND ANNEXURES was served upon A H NELL - PRINCIPLE OFFICER after the original document was displayed and the nature and contents thereof explained to her. A H NELL a person apparently not less than sixteen years of age and in the employ of CHILD WELFARE TSHWANE, PRETORIA MID-CITY accepted service. Rule 4(1)(a)(v).

SHERIFF CHARGES/EXPENSES: (You may require that this account be taxed and vouched before payment)

Description	Tariff	QTY	Amount	Description	Tariff	QTY	Amount
Service	44.00	1	44.00				
post	20.00	1	20.00				
Registration & Return	29.00	1	29.00				
Travelling	3.00	20	60.00				
Urgent Service	310.00	1	310.00				

TO: THE REGISTRAR OF THE HIGH COURT, Pretoria

Zero rated items	0.00
Sub-total	463.00
VAT	64.82
Total	527.82

Account No.: 0LAWYER250
TO: LAWYER FOR HUMAN RIGHTS
IDASA DEMOCRACY CENTRE
357 VISAGIE STREET
PRETORIA
0002

Your Reference: AC121/LMTSHALI

Mrs Isabel Nieuwenhuys - Deputy Sheriff

(Properly appointed in terms of Section 6(1) of the Sheriff's Act No. 90/1986)

Signed at Pretoria on 16/05/11

My Reference: 2011/05/09039.00 / ICH

Sheriff Pretoria South East
P.O. Box 12526, Hatfield, 0028 Dx 40 Hatfield
TEL: +27(12) 342 0706
FAX: +27(12) 342 7138
VAT No./BTW Nr.: 4310201837



WorkCentre 5222 Transmission Report

52

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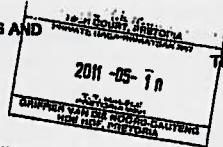
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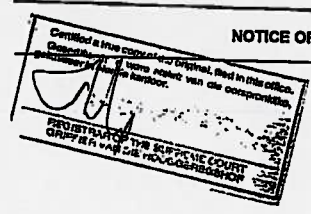
IN THE NORTH GAUTENG HIGH COURT
HELD AT PRETORIA

26572/11
Case No.

- In the matter of:
- SHAAFI DAAHIR ABDULAH FIRST APPLICANT
 - THE CENTRE FOR CHILD LAW SECOND APPLICANT
 - CONSORTIUM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA THIRD APPLICANT
 - And
 - THE MINISTER OF HOME AFFAIRS FIRST RESPONDENT
 - THE TSHWANE INTERIM REFUGEE RECEPTION OFFICE SECOND RESPONDENT
 - THE MINISTER OF SOCIAL DEVELOPMENT THIRD RESPONDENT
 - THE MEMBER OF THE EXECUTIVE COUNCIL: GAUTENG DEPARTMENT OF HEALTH AND SOCIAL DEVELOPMENT FOURTH RESPONDENT
 - CHILD WELFARE TSHWANE, PRETORIA MID-CITY FIFTH RESPONDENT



NOTICE OF MOTION



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 PG: Polling RB: Relay Broadcast RS: Relay Send BF: Box Fax Forward CP: Completed
 SA: Send Again EN: Engaged AS: Auto Send TM: Terminated

WorkCentre 5222 Transmission Report

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Logo

LHR Fax

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Document Size A4SEF

IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA

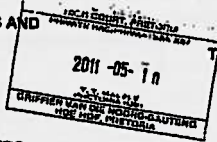
26572/11
Case No.

In the matter of:

SHAAFI DAAHIR ABDULAH FIRST APPLICANT

THE CENTRE FOR CHILD LAW SECOND APPLICANT

**CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA** THIRD APPLICANT



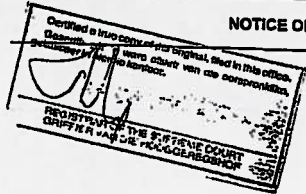
And
THE MINISTER OF HOME AFFAIRS FIRST RESPONDENT

**THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE** SECOND RESPONDENT

THE MINISTER OF SOCIAL DEVELOPMENT THIRD RESPONDENT

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT** FOURTH RESPONDENT

**CHILD WELFARE TSHWANE,
PRETORIA MID-CITY** FIFTH RESPONDENT



NOTICE OF MOTION

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 PG: Polling RB: Relay Broadcast RS: Relay Send BF: Box Fax Forward CP: Completed
 SA: Send Again EN: Engaged AS: Auto Send TM: Terminated

54

78

IN THE NORTH GAUTENG HIGH COURT
(HELD AT PRETORIA)

CASE NO: 26572/ 2011

In the matter between :-

SHAAFI DAAHIR ABDULAHI	1 st Applicant
THE CENTRE FOR CHILD LAW	2 nd Applicant
CONSORTIUM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA	3 rd Applicant

and

MINISTER OF HOME AFFAIRS	1 st Respondent
THE TSHWANE INTERIM REFUGEE RECEPTION OFFICE	2 nd Respondent
THE MINISTER OF SOCIAL DEVELOPMENT	3 rd Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL: GAUTENG DEPARTMENT OF HEALTH AND SOCIAL DEVELOPMENT	4 th Respondent
CHILD WELFARE TSHWANE, PRETORIA MID-CITY	5 th Respondent

NOTICE OF INTENTION TO OPPOSE

BE PLEASED TO TAKE NOTICE THAT the First, Third and Fourth Respondents intend to oppose the application and that it appoint the undermentioned address of its attorney for the service upon it of any pleadings or other documents in this action.

2
55

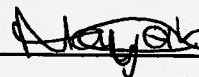
DATED AND SIGNED at PRETORIA this 12th day of MAY 2011


**First, Third and Fourth RESPONDENTS' ATTORNEY
THE STATE ATTORNEY (PRETORIA)
MANAKA HEIGHTS, 8TH FLOOR
167 ANDRIES STREET
PRIVATE BAG X91
PRETORIA
Tel: (012) 309 1565/1520
Fax: (012) 328 2662/3086 507 0909
Dx: 298 PRETORIA
Ref: 2731/2011/Z12
Enq: Mrs JL de Lange**

TO: THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PRETORIA

**AND
TO:** APPLICANTS' ATTORNEY
LAWYERS FOR HUMAN RIGHTS
KUTLWANONG DEMOCRACY CENTRE
357 VISAGIE STREET
PRETORIA
Tel: (012) 320 2943/ 5
Fax: (012) 320 2949
Ref: L Mtshali/ AC 121/11

**RECEIVED COPY ON
DATE: 12 May 2011
TIME: 11:39**



56

78

**IN THE NORTH GAUTENG HIGH COURT
(HELD AT PRETORIA)**

CASE NO: 26572/ 2011

In the matter between :-

SHAAFI DAAHIR ABDULAH	1st Applicant
THE CENTRE FOR CHILD LAW	2nd Applicant
CONSORTIUM FOR REFUGEES AND	3rd Applicant
MIGRANTS IN SOUTH AFRICA	

and

MINISTER OF HOME AFFAIRS	1st Respondent
THE TSHWANE INTERIM REFUGEE	2nd Respondent
RECEPTION OFFICE	
THE MINISTER OF SOCIAL DEVELOPMENT	3rd Respondent
THE MEMBER OF THE EXECUTIVE COUNCIL:	4th Respondent
GAUTENG DEPARTMENT OF HEALTH AND	
SOCIAL DEVELOPMENT	

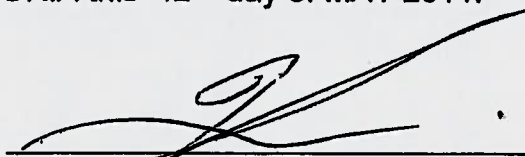
CHILD WELFARE TSHWANE,	5th Respondent
PRETORIA MID-CITY	

NOTICE OF WITHDRAWAL OF OPPOSITION

BE PLEASED TO TAKE NOTICE THAT the Third Respondent hereby withdraws the Notice of Opposition dated 12 MAY 2011.

KINDLY TAKE FURTHER NOTICE THAT the Third Respondent will abide by the decision of the Honourable Court.

DATED AND SIGNED at PRETORIA this 12th day of MAY 2011.



~~First, Third and Fourth~~ **RESPONDENTS' ATTORNEY**
THE STATE ATTORNEY (PRETORIA)
MANAKA HEIGHTS, 8TH FLOOR
167 ANDRIES STREET
PRIVATE BAG X91
PRETORIA
Tel: (012) 309 1565/1520
Fax: (012) 328 2662/3; 086 507 0909
Dx: 298 PRETORIA
Ref: 2731/2011/Z12
Enq: Mrs JL de Lange

TO: THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PRETORIA

AND TO: **APPLICANTS' ATTORNEY**
LAWYERS FOR HUMAN RIGHTS
KUTLWANONG DEMOCRACY CENTRE
357 VISAGIE STREET
PRETORIA
Tel: (012) 320 2943/ 5
Fax: (012) 320 2949
Ref: L Mtshali/ AC 121/11

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TIME:

LAWYERS FOR HUMAN RIGHTS-PRETORIA LAW CLINIC
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TVANG SONDER BENADELING VAN REGTE
DATE RECEIVED: 16.05.2011
TIME: 14:24

PP [Signature]

78

IN THE NORTH GAUTENG HIGH COURT
(HELD AT PRETORIA)

CASE NO: 26572/ 2011

In the matter between :-

**SHAAFI DAAHIR ABDULAH
THE CENTRE FOR CHILD LAW
CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA**

**1st Applicant
2nd Applicant
3rd Applicant**

and

MINISTER OF HOME AFFAIRS

1st Respondent

**THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE**

2nd Respondent

THE MINISTER OF SOCIAL DEVELOPMENT

3rd Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT**

4th Respondent

**CHILD WELFARE TSHWANE,
PRETORIA MID-CITY**

5th Respondent

FILING NOTICE

**DOCUMENT: FIRST AND SECOND RESPONDENTS' UNSIGNED ANSWERING
AFFIDAVIT**

ON ROLL:

**FILED BY: RESPONDENTS' ATTORNEY
THE STATE ATTORNEY (PRETORIA)
MANAKA HEIGHTS, 8TH FLOOR
167 ANDRES STREET
PRIVATE BAG X91
PRETORIA
Tel: (012) 309 1565/1520
Fax: (012) 328 2662/3; 086 507 0909
Dx: 298 PRETORIA
Ref: 2731/2011/Z12
Enq: Mrs J.L de Lange**

59

**TO: THE REGISTRAR OF THE HIGH COURT
PRETORIA**

**AND TO: APPLICANTS' ATTORNEY
LAWYERS FOR HUMAN RIGHTS
KUTLWANONG DEMOCRACY CENTRE
357 VISAGIE STREET
PRETORIA
Tel: (012) 321 2943/ 5
Fax: (012) 321 2949
Ref: L Mtshali/ AC 121/11**

60

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

Case No: 26572/2011

In the matter between:

SHAAFI DAAHIR ABDULLAHI

First Applicant

THE CENTRE FOR CHILD LAW

Second Applicant

**CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA**

Third Applicant

and

THE MINISTER OF HOME AFFAIRS

First Respondent

**THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE**

Second Respondent

THE MINISTER OF SOCIAL DEVELOPMENT

Third Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND
SOCIAL DEVELOPMENT**

Fourth Respondent

FIRST AND SECOND RESPONDENTS' ANSWERING AFFIDAVIT

I, the undersigned,

NOKUTHULA SIBANYONI

do hereby make an oath and state that:

1.

- 1.1 I am adult female Assistant Director and Chief Directorate, Assylum Seeker Management.
- 1.2 The facts stated herein fall within my personal knowledge, and best belief both true and correct unless context indicates otherwise.
- 1.3 Where I make legal submissions, I do so on the advice of the legal representative.
- 1.4 I have read the Applicants' papers and would like to respond thereto as follows:

2.

Before I respond to the allegations on the Applicants' paper, I would like to make the following background:

3.

- 3.1 This is an application to seek an order that the First and Second Respondents immediately issue the First Applicant with a section 22 Asylum Seeker Permit.
- 3.2 The Applicant is allegedly a seventeen (17) year old boy from Somalia (Mogadisho). He came to South Africa unaccompanied by an adult parent or guardian.
- 3.3 He arrived in South Africa during October 2010 to seek for asylum.
- 3.4 According to the South African law, there is a special legislation that deals with asylum seekers and also legislation dealing with children's rights.
- 3.5 The refugee Act, 30 of 1998 prescribes the circumstances in which refugees' status may be acquired.
- 3.6 Children Act 36 of 2005.

THE LAW:

4.

- 4.1 S 21 (1) a application for Asylum must be made in person in accordance with the prescribed procedures to a refugee reception office at any refugee reception office.

4.2 S 21 (2) the Refugee Reception Officer concerned:

4.2.1 S 21 (2) (a) must accept application form from the Applicant.

4.2.2 S 21 (2) (c) may conduct such inquiry as he or she deems necessary in order to verify the information furnished in the application

4.2.3 S 21 (3), when making an application for asylum, every Applicant must have his or her fingerprints or other prints taken in the prescribed manner and every Applicant who is 16 year old or older must furnish two recent photographs of himself of such dimension as may be prescribed Asylum Seeker Permit.

4.3 S 22 (1) the Refugee Reception Office must pending the outcome of an application in terms of section 21 (1), issue to the Applicant on asylum seeker permit in the prescribed form allowing the Applicant to sojourn in the Republic temporarily, subject to any conditions...

4.4 The First Applicant's case is different. He is an unaccompanied child. His matter should be dealt with differently from the above mentioned asylum seekers.

4.5 All children should be treated equally as in accordance with Section 28 of the constitution of the Republic of South Africa, Act 105 of 1996 and also as required by the Children's Act 38 of 2005.

SECTION 32 UNACCOMPANIED CHILD:

5.

5.1 Section 32 (1) Any child who appears to qualify for refugee status in terms of section 3 and who is found under circumstances which clearly indicates that he or she is a child in need of care as contemplated in the Child Care Act, must forthwith be brought before the children's Court for the district in which he, she was found.

5.2 The children's Court may order that a child be assisted in applying for asylum in terms of this Act.

DEFINITION OF A CHILD:

6.

6.1 Child means a person under the age of 18 years.

- 6.2 Section 150 of Children's Act identifies children in need of care and protection.
- 6.3 Section 150 (1) The child is in need of protection if the child:
- 6.3.1 has been abandoned and is without any visible means of support.
 - 6.3.2 has been exploited or lives in circumstances that expose the child to exploitation.
- 6.4 A child who is a victim of child labour etc.

SECTION 155: CHILDREN IN COURT PROCESS:

7.

The decision on a question whether child is in need of care and protection.

8.

Children's Court Order to be aimed at securing stability of child's life.

The following investigation is to be done:

- 8.1 Assessment of the developmental therapeutic and other needs of his child.

- 8.2 A documented permanency plan taking into account the child's age etc.
- 8.3 Why the child left the family, provide counselling
- 8.4 Educational and medical need.

CONCLUSION:

9.

- 9.1 The Applicant if found to be a child, would be entitled to all necessary and relevant need of a normal child.
- 9.2 The refugee Act does not entitle an unaccompanied child to surpass the process of children's Court as it is essential and also integral part of ascertaining proper adjudication of children matters.
- 9.3 All the requirement of the Act must be strictly followed to for the best interest of the children.
- 9.4 The best interest of the child should be the first consideration. From what is contained in this affidavit it appears that the child did not get/receive a proper advise and proper help.
- 9.5 It is now in the best interest of the child that should follow the proper channels of the law in order to serve his best interests.



- 9.6 Granting an unaccompanied minor an Asylum Seeker Permit without considering his other need as a child would not be just under the circumstance.
- 9.7 An Asylum Permit will not assist the child to be registered at any school it will not help the child to get proper care and welfare, food, clothing, medical assistance, it will not stop the child from being exploited, it will not protect the child against child labour. Human trafficking amongst other things etc.
- 9.8 Therefore the Section 22 permit is not a solution to the child's problems.
- 9.9 Since the High Court is the upper guidance at all minor children, the child's interest should be considered first.

WHEREFORE this application be dismissed with costs.

NOKUTHULA SIBANYONI

**THUS SIGNED AND SWORN TO BEFORE ME AT ON THIS THE
DAY OF MAY 2011, BY THE DEPONENT HAVING ACKNOWLEDGED
 THAT SHE KNOWS, UNDERSTANDS AND HAS NO OBJECTIONS TO THE
 CONTENTS OF THIS AFFIDAVIT. SHE CONSIDERS IT TO BE CORRECT, TRUE
 AND BINDING TO HER CONSCIENCE.**

COMMISSIONER OF OATHS

IN THE NORTH GAUTENG HIGH COURT

HELD AT PRETORIA

Case No. 26572/2011

In the matter of:

SHAAFI DAAHIR ABDULAH

FIRST APPLICANT

THE CENTRE FOR CHILD LAW

SECOND APPLICANT

**CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA**

THIRD APPLICANT

And

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE TSHWANE INTERIM REFUGEE
RECEPTION OFFICE**

SECOND RESPONDENT

THE MINISTER OF SOCIAL DEVELOPMENT

THIRD RESPONDENT

**THE MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH AND SOCIAL
DEVELOPMENT**

FOURTH RESPONDENT

**CHILD WELFARE TSHWANE,
PRETORIA MID-CITY**

FIFTH RESPONDENT

REPLYING AFFIDAVIT

S.D.A




I the undersigned

SHAAFI DAAHIR ABDULAH

Do hereby make oath and state the following:

1. I am a minor male asylum seeker from Somalia born 12 January 1994, and currently residing at flat 2, Berea Mansions, 550 Van der Walt Street, Pretoria. I deposed to the founding affidavit in this application.
2. The facts contained herein are within my personal knowledge and are both true and correct. Where I make submissions of a legal nature I do so on the advice of my legal representatives.
3. I have read the answering affidavit of the First and Second Respondents in this matter my reply is set out below.
4. Before giving my reply, I hereby note that due to time constraints, I am unable to respond to every allegation of the Respondents' Answering Affidavit ad seriatim. However, no inference regarding the veracity or otherwise of all of the Respondents' answers and allegations should be drawn from this.
5. Briefly I wish to make the following submissions in reply:
 - 5.1 I do not dispute the necessity of the Children's Court process nor do I wish to surpass it.
 - 5.2 The Children's Court process is certainly necessary and is provided for in both the section 32 of the Refugees Act 130 of 1998 and section 21A of the Refugees Act as amended in 2008, and I do not dispute this.

S. D A 

- 5.3 However, I submit that the permit must be issued first and then the Children's Court process conducted thereafter. The Children's Court process is a 90-day or more process aimed at finding a solution that ensures stability in a child's life. In fact, the Children's Act provides that a child who is in need of care and protection may remain in temporary safe-care for a period of up to six (6) months without a court order.
- 5.4 My own situation as described in the founding affidavit, however, demonstrates how long it may be before an unaccompanied minor can have their day in the Children's Court, and how vulnerable unaccompanied minors are during the long wait. As indicated in the founding affidavit, I have been arrested repeatedly, I have not been able to go to school, I cannot access health care and I cannot access social assistance.
- 5.5 The asylum seeker permit is a temporary document valid for renewable maximum of only 180 days at time while long term decisions are being made about an asylum seeker's future in the country.
- 5.6 The asylum seeker permit will ensure that I am not vulnerable to the incidents already alluded to above, while the Children's Court process is underway.
- 5.7 As set out in my founding affidavit, I have already taken steps to attempt to obtain protection through the Children's Court process, which attempts have failed, and therefore need immediate protection as it remains unclear as to whether I will eventually be subject to this process.

SDA

5.8 I therefore submit that an asylum seeker permit is an interim measure without which a child, in a position such as mine, can enjoy fundamental rights or access to basic services.

WHEREFORE I PRAY FOR THE ORDERS AS SET OUT IN THE NOTICE OF MOTION

Thus sworn and signed in Pretoria on this 20th day of May 2011.

chaafs

DEPONENT

SIGNED and AFFIRMED to before me at PRETORIA on the 20th day of May 2011, after the deponent stated that he is aware of the content of this statement and considers the affirmation to be binding on his conscience. I certify that the regulations provided for in the Government Gazette Notice R. 1258 of 21 July 1972 have been complied with.

FULL NAMES:

Jacob de Clescq

DESIGNATION:

Branch manager

ADDRESS:

334 Schoeman Street
Pretoria

