IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No.: **22059/18**

In the matter between:

A I First Applicant

S B Second Applicant

A N Third Applicant

and

THE DIRECTOR OF ASYLUM SEEKER MANAGEMENT: DEPARTMENT OF HOME AFFAIRS First Respondent

THE CAPE TOWN REFUGEE RECEPTION OFFICE MANAGER Second Respondent

THE MINISTER OF HOME AFFAIRS Third Respondent

THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HOME AFFAIRS Fourth Respondent

THE CHAIRPERSON OF THE STANDING COMMITTEE FOR REFUGEE AFFAIRS Fifth Respondent

Heard: 1 August 2019

Delivered: 2 September 2019

JUDGMENT

MYBURGH AJ:

Introduction

[1] This is an urgent application for an order that the first to fourth respondents be compelled to provide the applicants (three undocumented foreign nationals from Burundi), with permits in terms of section 22 of the Refugees Act, 130 of 1998 (*"the section 22 permits*", "*the Act*" and *"the interim relief"*). This relief is sought pending the final relief sought in the main application. The final relief in the main application, is that the first and second respondents accept and consider the asylum seeker applications of the applicants as *sur place* refugees in terms of section 21 of the Act (*"the main action"* and *"the final relief"*). While I am not called upon to determine the main application at this juncture, the strength of the applicant's case in that respect, is relevant to the determination of this application.

[2] While the respondents have declined to accede to the interim relief sought, they did undertake that, pending the determination of this application for interim relief, no action will be taken against the applicants on the basis that they are, or may be seen as, illegal foreigners. This undertaking was encapsulated in an order, by agreement between the parties, granted by His Lordship Justice Wille on 19 July 2019, and extended on 1 August 2019, after this application was heard. According to the

applicants, this undertaking, falls far short of the relief to which they are entitled, pending the determination of the main application.

The facts

[3] The applicants arrived in South Africa from Burundi between 2006 and 2012 and applied for asylum in terms of the Act. Their applications were rejected by the fifth respondent in 2014 as being manifestly unfounded.[1] In doing so the fifth respondent relied on section 24(3) of the Act, which provides that:

> "*(3) The Refugee Status Determination Officer must at the conclusion of the hearing-*
>
> *(a) grant asylum; or*
>
> *(b) reject the application as manifestly unfounded…*"

[4] In summary, the applicants' case in the main application is as follows: Subsequent to the rejection of their applications, and in 2015, widespread political violence broke out in Burundi and as a result, hundreds and thousands of Burundians fled the country. Those who remained have been subjected to oppression, torture, rape and sexual violence. The applicants say that it is not safe for them to return to Burundi

[1] The first applicant received her decision on 26 February 2014, the second on 23 December 2014 and the third on 1 December 2014.

and that they are, what is called *sur place* refugees. (His Lordship Cameron J, in Ruta v Minister of Home Affairs (2) SA 329 (CC) describes *sur place* refugees as follows:

> "*In particular, refugees sur place, an international category of refugees, enter the country of refuge on one basis. Thereafter, supervening events in their country of origin involuntarily render them refugees*".[2]

[5] The applicants thus wish to make a new application for asylum based on new facts which were not before the decision-makers in 2014 when their applications for asylum were rejected. However, the first respondent holds the view that "*a failed asylum seeker who has not departed the Republic after he/she was rejected must be deported … Those who return from their countries and wish to apply, they are free to apply at any Refugee Centre accepting newcomers*".

[6] This position was conveyed to the applicants in an email dated 25 October 2018 (*"the email"*) and it was the email that triggered the main application. The complaint of the applicants, which is the subject matter of the main application, is that the director has effectively closed the door on them by refusing to accept and consider their applications for asylum.

[7] The applicants explain that without the section 22 permits, they remain undocumented, vulnerable, unable to secure accommodation, unable to obtain jobs to provide for themselves and their families and that they may at any time be arrested, detained and/or deported. They assert that they are entitled to urgent interim relief on two bases:

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[2] Ruta at [51].

1. In the first instance, they argue that despite the main application not being a judicial review, it is still *bona fide* and well-founded litigation aimed at pursuing asylum in South Africa. Hence they argue that they are entitled to section 22 permits as an interim measure pending the finalisation of that litigation. As authority they rely squarely on the Saidi case[3], the import of which (they argue) is that the respondents are obliged to issue section 22 permits in instances such as this.

2. The second basis advanced by the applicants is that the applicants should be afforded the protection they seek *pendente lite* by virtue of principles applicable to the grant of interim interdicts.

[8] The respondents oppose this application on the basis that it is not urgent and that neither sections 21 nor 22 of the Act, nor the common law principles relating to the grant of interim interdicts, found the relief sought.

Urgency

[9] Some matters are inherently urgent and others become urgent due to particular circumstances. However, that is not where the enquiry ends. In addition to the consideration of the nature of the matter, regard must also be had to the orderly functioning of the court and fairness to the opposing side. The timing of the

[3] Saidi and Others v Minister of Home Affairs and Others 2018 (4) SA 333 (CC).

application must not amount to an abuse of the court or to the opposing legal team and the degree of relaxation of the rules depends on the urgency of the case.[4]

[10] Uniform rule 6(12) of the Uniform Rules of Court provides that:

> "*(a) In in urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it deems fit.*
>
> *(b) In every affidavit or petition filed in support of any application under paragraph (a) of the subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course*". [Emphasis added]

[11] Rule 6(12)(b) thus requires of an applicant to set out explicitly the circumstances that make the matter urgent, and the reasons why the applicant cannot be afforded substantial redress at a hearing in due course.[5] A case must be made out, in the founding affidavit, to justify the extent of the departure from the rules.[6]

[12] This matter has a long history. The applicants, after applying for asylum, and having their applications refused, stayed on in South Africa. They did not challenge the rejections of the applicants, neither by way of the internal review

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4 *Erasmus*, Superior Court Practice, Jutta, Service 2, 2016 at D1-84, Luna Meubel Vervardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W) at 137A-E.

5 Van Loggerenberg at D1-88 and the cases cited therein, *inter* alia, Salt and Another v Smith 1991 (2) SA 186 (NmHC) at 187A-B and I C & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd 1981 (4) SA 108 (C).

6 Luna Meubels at 137F-G.

or appeal, nor by a judicial review. They say that practically and commercially, they were not in a position to do so. The applicants point out that generally asylum seekers are typically poor and marginalised people[7] without the resources to challenge decisions such as these. They also state that this was so in their case. (I will proceed on the basis that this is the factual position as the respondents did not, and perhaps were not in a position to, dispute the evidence of the applicants in this respect.)

[13] After the rejections, the applicants remained in South Africa for four years without doing anything about their status in the country. However, in 2018 they approached the University of Cape Town Refugee Rights Clinic for assistance ("*the clinic*").

[14] The clinic advised that the applicants should reapply for asylum, this time as *sur place* refugees, and to this end, engaged with the Department of Home Affairs between August and October 2018. However, the email put an end to the engagement.

[15] The email which communicated the respondent's refusal to entertain the applicants' applications as *sur place* refugees triggered the launch of the main application on 29 November 2018. At this stage the applicants did not seek the issue of section 22 permits. The decision not to do so was informed by the view of their legal representatives that, having launched the main application, they

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[7] See Gavric v Refugee Status Determination Officer and Others 2019 (1) SA 21 (CC) at paragraph 70 where is mentioned that *"[M]any of the applicants for asylum who deal with RSDOs are unrepresented, vulnerable and lacking in the necessary language and legal skills to have a meaningful engagement with them…*".

would, as of right, be issued with section 22 permits. (As already mentioned, the applicants rely on the Saidi case in this regard.)

[16] This being their view, when the main application became opposed on 24 April 2019 the applicants requested that they be issued with section 22 permits. They expected that it would be a formality that they would be issued their section 22 permits.

[17] However, in response, the State Attorney, on behalf of the respondents, addressed a letter to the applicants on 23 May 2019, stating the following:

> "*1. Your clients are not entitled or illegible* [sic] *for a section 22 permit or an extension of a section 22 permit.*
>
> *2. Your clients are all illegal foreigners and have been so since 2014. They have continued to remain in the Republic of South Africa with impunity since then.*
>
> *3. There is nothing unlawful about our client's refusal to issue your clients Section 22 permits, as they are by law not entitled to said permits and neither is our client in terms of the law obliged to issue same.*
>
> *4. Your clients are now falling squarely in the ambit of the Immigration Act 13 of 2002 as they have no documentation regularising their sojourn and stay in the Republic of South Africa.*
>
> *5. Further all your clients failed to challenge judicial reviews of the decision in 2014 and instead opted to continue remaining in the Republic of South Africa illegally.*

6. Our client humbly disagrees with the assertions that the [Ruta v Minister of Home Affairs 2019 (3) BCLR 383 (CC)] is applicable to your clients and this will be ventilated in legal argument.

7. Your clients regrettably can no longer be classified as asylum seekers as such classification ceased in 2014 and are currently illegal foreigners. It is thus factually and legally incorrect to refer to your clients as asylum seekers as they failed in 2014 to convince the authorities that they were indeed legitimate refugees". [Emphasis added]

[18] This letter, the applicants say, was the trigger for this application which was launched shortly after the receipt of the letter on 27 May 2019 as it was only on receipt of the letter that the applicants became aware of the unequivocal stance of the respondents.

[19] In answer, the respondents argue that the reliance on the letter is misplaced, for the following reasons:

1. The applicants waited five years after the rejection of their applications for asylum before acting, and during that time they made no attempt to review and set aside the decisions. Approximately four years after the rejection, the applicants launched the main application on 29 November 2018 in the ordinary course, and only six months later, on 27 May 2019, they launched the second application. The respondents thus argue that the urgency on which the applicants rely was of their own making.

2. The respondents also argue that they already made their attitude clear when they sent the email and assert that the letter is simply a reiteration of their position as expressed then, some eight months earlier.

[20] I disagree. The two documents are quite different. In the email two points are made, first, that a failed asylum seeker who has not departed must be deported and secondly that returning asylum seekers may, on their return, apply for asylum again. It is made clear that new applications for asylum by the applicants will not be entertained. The email does not deal with the issue of section 22 permits at all. The letter addresses the question of section 22 permits and sets out the respondents' position clearly, i.e. that the applicants are not eligible for the permits and the respondents are not obliged to issue them. The letter is thus not simply a reiteration of the email. The letter, and not the email, contains an unequivocal setting out of the respondents' position on the issue now before court, i.e. the entitlement (or not) to section 22 permits.

[21] The applicants are correct that the letter, and not the email, was the trigger for this application. Furthermore, the applicants were not dilatory in coming to court. They did so expeditiously after receipt of the letter. Not only did the applicants commence proceedings expeditiously, they also gave the respondents enough time to deal with their applications.

[22] In the circumstances, I find that the applicants have made out a case for urgency.

The requirements for interim relief

[23] As mentioned above, the applicants base their case on two grounds. When arguing the first ground, counsel for the applicants advanced a view that the section 22 permits are there for the asking in any instance where asylum seekers have, or seriously intend to make an application for asylum. While I am not convinced that this is the case, I make no definitive finding in that respect as, given my finding on the second basis advanced, it is not necessary to do so.

[24] It is trite that an applicant seeking interim relief must show that:

> *"(a) the right that forms the subject matter of the main action and that the applicant seeks to protect is prima facie established, even though open to some doubt;*
>
> *(b) there is a well-grounded apprehension of harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing his right;*
>
> *(c) the balance of convenience favours the granting of interim relief*[8]*; and*
>
> *(d) the applicant has no other satisfactory remedy*".[9]

[25] It is only the first of these requirements that requires serious consideration. The applicants have shown that they will suffer harm if the interim relief is not granted. They will not be able to work unless they are employed on an illegal basis and will, at the very least, face resistance should they try and enrol their children at school. They will find it difficult, if not impossible to obtain

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8 This requirement falls away if the applicants are able to show a clear right.

9 Setlogelo v Setlogelo 1914 AD 221 at 222; *Cilliers* et al: *Herbstein and Van Winsen*, The Civil Practice of the High Courts of South Africa, Fifth Edition, Volume 2, Juta at 1456 – 1457.

medical attention at a state hospital. It is so that the respondent's undertaking means that they will not be deported, and thus their right to *non-refoulement* will be respected, but this is only one of a conspectus of rights that allow people in their position to live a life of dignity.

[26] I did consider whether the applicants had gone beyond what is necessary in the relief they seek. I think not. All they ask is that to which others, who have had their applications for asylum accepted for consideration, are entitled.

[27] The applicants have no other satisfactory remedy. It is self-evident that a claim for damages will not undo the prejudice they will suffer, nor can I think of any other legal remedy.[10]

[28] Finally, as will become apparent, the view I take on the first requirement, means that the need to show a balance of convenience falls away.

A clear right

[29] Section 22(1) of the Act provides as follows:

> "***22. Asylum seeker permit.*** *– (1) The Refugee Reception Officer must, pending the outcome of an application in terms of section 21(1), issue to the applicant an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions, determined by the Standing Committee, which are not in*

[10] This aspect is dealt with in a good deal of detail below where I quote the argument of counsel for the applicants together with his references to a number of leading cases.

> *conflict with the Constitution or international law and are endorsed by the Refugee Reception Officer on the permit*".

[30] The respondents' case regarding section 22 is a simple one, i.e. that the provision only comes into play once an application in terms of section 21(2) has been lodged. While the argument has an attractive logic, it fails to take cognisance of the fact that the respondents have refused to accept the applicants' applications for consideration. It is the refusal to do so that disentitles the applicants to a section 22 permit.

[31] Regarding the respondent's refusal to consider the applicants' applications for asylum, section 1 of the Promotion of Administrative Justice Act[11] (*"PAJA"*) provides that:

> *"'decision' means any decision of an administrative nature, made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to-*
>
> *(g) doing or refusing to do any other act or thing of an administrative nature, and a reference to a failure to take a decision must be construed accordingly*".

and Section 6 (2) provides that:

> *"A court or tribunal has the power to judicially review an administrative action if –*
>
> *(g) the action concerned consists of a failure to take a decision;*".

[11] 3 of 2000.

[32] The relief sought in the main application is merely that the respondents consider the applicants applications, a step that occurs before any assessment is made of the merits of the application for asylum. In support of this proposition counsel for the applicants referred to a number of leading cases. The submissions as well as the refences to the cases are instructive. I quote:

> "*The issuance of a s 22 permit is hence unrelated to the merits of any particular asylum claim. Its purpose is to protect the asylum seeker during his or her sojourn in South Africa, pending the final determination of the asylum seeker's claim (which, if successful, will result in him or her being recognised as a refugee).*
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> *As held in Saidi at paragraph 13, "[T] temporary permits issued in terms of [section 22] are critical for asylum seekers. They do not only afford asylum seekers the right to sojourn in the Republic lawfully and protect them from deportation but also entitle them to seek employment and access educational and healthcare facilities lawfully*.
>
> *The Constitutional Court further upheld in Saidi an interpretation of the Act that allowed asylum seekers to be issued with s 22 permits even after their asylum application had been rejected, but during any judicial review. The court stated:*
>
> > *'This interpretation better affords an asylum seeker constitutional protection whilst awaiting the outcome of her or his application. She or he is not exposed to the possibility of undue disruption of a life of human dignity. That is, a life of: enjoyment of employment opportunities; having access to health, educational and other facilities; being protected from deportation and thus from a possible violation of her or his right to freedom and security of the person; and communing in ordinary human intercourse without undue state interference'*[50].

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[50] *Saidi at para 18. See also Minister of Home Affairs and Others v Watchnuka and Another 2004 (4) SA 326 (SCA) ("Watchnuka") at para 32:*

> '*But where employment is the only reasonable means for the person's support other considerations arise. What is then in issue is not merely a restriction upon the person's capacity for self-fulfilment, but a restriction upon his or her ability to live without positive*

The Constitutional Court continued at paragraph 27 of Saidi:

> *'This Court has repeatedly emphasised that courts must adopt a purposive reading of statutory provisions. One of the purposes of the Refugees Act is to 'give effect within the Republic of South Africa to the relevant international legal instruments, principles and standards relating to refugees'. At the heart of international refugee law is the principle of non-refoulement (non-return). This is not about non-return for the sake of it; it is about not returning asylum seekers to the very ills - recognised as bases for seeking asylum - that were the reason for the escape from their countries of origin'.Even if an asylum seeker has contravened the Immigration Act 13 of 2002 ('the Immigration Act') or the regulations thereto, this cannot serve as a basis for denying him or her the protections of asylum status.*[51] *In Ruta, the Constitutional Court upheld a number of judgments of the Supreme Court of Appeal*[52] *and concluded:*
>
> *'The quartet of cases decided that asylum applicants held in an 'inadmissible facility' at a port of entry into the Republic enjoy the protection of the Refugees Act and of the courts (Abdi); ordered the release from detention of an asylum seeker whose asylum transit permit had expired, and whose application for asylum had been rejected by the Refugee Status Determination Officer but whose appeal before the Refugee Appeal Board was pending (Arse); affirmed that if a detained person evinces an intention to apply for asylum, he or she is entitled to be freed and to be issued with an asylum seeker permit valid for 14 days (Bula); and conclusively determined that false stories, delay and adverse immigration status no ways preclude access to the asylum application process, since it is in that process, and there only, that the truth or falsity of an applicant's story is to be determined (Ersumo).*
>
> *…*

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humiliation and degradation. For it is not disputed that this country, unlike some other countries that receive refugees, offers no State support to applicants for asylum. While the second respondent offers some assistance as an act of charity, that assistance is confined to applicants for asylum who have young children, and even then the second respondent is able to provide no more to each person than R160 per month for a period of three months. Thus a person who exercises his or her right to apply for asylum, but who is destitute, will have no alternative but to turn to crime, or to begging, or to foraging. I do not suggest that in such circumstances the State has an obligation to provide employment, for that is not what is in issue in this appeal, but only that the deprivation of the freedom to work assumes a different dimension when it threatens positively to degrade rather than merely to inhibit the realisation of the potential for self-fulfilment'.

[51] *Section 22(4) of the Act.*

[52] *The four key judgments of the Supreme Court of Appeal are Abdi v Minister of Home Affairs 2011 (3) SA 37 (SCA) ("Abdi"); Arse v Minister of Home Affairs 2012 (4) SA 544 (SCA) ("Arse"); Bula v Minister of Home Affairs 2012 (4) SA 560 (SCA) ("Bula") and Ersumo v Minister of Home Affairs 2012 (4) SA 581 (SCA) ("Ersumo").*

> *More precisely, the Supreme Court of Appeal were plain about specifically the points at issue in this case - does delay, even considerable delay, and possible untruths, obstruct access at the outset to the asylum seeker process? On this the previous decisions were unequivocal. The Department's officials have a duty to ensure that intending applicants not statutorily excluded are given every reasonable opportunity to apply (Abdi). A contention by the Department that only those who at "the first available opportunity" indicate their intention to apply for asylum are entitled to do so was roundly rejected. The "every reasonable opportunity", at any stage, standard of Abdi was reaffirmed. It followed "ineluctably" that, once an intention to apply for asylum was evinced, the protective provisions of the Refugees Act and regulations come into play and "the asylum seeker is entitled as of right to be set free subject to the provision of the [Refugees] Act" (Bula). A later contention by the Department, that undue delay deprived one seeking to apply for asylum of the right to be issued with a 14-day permit within which to approach a Refugee Reception Office, was rejected as having "no warrant" (Ersumo).*"

[33] The Saidi case is relevant as it deals specifically with section 22 permits, albeit that the case is distinguishable as it dealt with applicants, whose applications for asylum had been rejected, who had exhausted the reviews and appeals under the Act, but had instituted proceedings for a judicial review under PAJA.[15] The applicants had thus not exhausted all avenues in respect of their rejected applications. In this instance, the applicants applied for asylum, the applications were rejected, and no further steps were taken by them. It is new applications for asylum that they wish to lodge and that the respondents refuse to entertain.

[34] In my view the Ruta case is more apposite. In that case, a Rwandan national, had only applied for asylum 15 months after entering the country. For that reason, the Department of Home Affairs argued he was too late in applying for asylum and should be deported. Thus, as is the case here, the applicant was barred from making an

[15] The Promotion of Administrative Justice Act, 3 of 2000.

application for asylum. The court found that delay was not a basis to exclude the applicant from making an application, and that he should be permitted to make his application. One of the factors which would be taken into account when the application was considered would then be his delay in making the application together with all the other relevant considerations. There is thus a factual similarity between Ruta and the present case.

[35] The respondents' position is based in the notion that the Immigration Act 13 of 2002 trumps the Refugees Act, a view that has been considered and found to be wanting. In this regard His Lordship Constitutional Court Justice Cameron in Ruta states the following:

> *"[27] Of relevance to Mr Ruta's position when arrested is that the 1951 Convention protects both what it calls 'de facto refugees' (those who have not yet had their refugee status confirmed under domestic law), or asylum seekers, and 'de juris refugees' (those whose status has been determined as refugees). The latter Refugees Act defines as 'refugees'. This unavoidingly entails an indeterminant area within which for those who seek refugee status but have not yet achieved it. Domestic courts have also recognised that non-refoulement should apply without distinction between de juris and de facto refugees.*
>
> *[28] The right to seek and enjoy asylum means more than merely a procedural right to lodge an application for asylum - although this is a necessary component of it. While states are not obliged to grant asylum, international human rights law and international refugee law in essence requires states to consider asylum claims and provide protection until appropriate proceedings for refugee status determination have been completed.*

[29] In sum, all asylum seekers are protected by the principle of non-refoulement – refoulement, and the protection applies as long as the claim to refugee status has not been finally rejected after a proper procedure.

[30] Section 2 of the Refugees Act embodies all these principles. It goes further than the 1951 Convention. Its more generous wording is derived from our own continent – the Organisation of African Unity Convention Governing the Specific Active aspects of Refugee Status in Africa.

[31] This is not internationalist blurb. It applies directly to the problem at hand. For our Constitution requires us, when interpreting any legislation, to prefer any reasonable interpretation that is consistent with international law over any alternative interpretation that is inconsistent with it".[16]

"[40] None of this provides a sweetheart's charter for bogus asylum seekers or an open door for non-refugees. Nor do the provisions render our borders leaky to a flood of fortuning supplicants posing as asylum seekers. The Refugees Act provisions and its mechanisms are hard-headed and practical. In design and concept they protect our national sovereignty and our borders. It may be that in their application administrative capacity or skills have been lacking, but the source of the difficulty cannot fairly be located in the statutes provision for receiving genuine asylum seekers and facilitating and processing their applications.

[41] At heart the minister's argument seeks to invest the provisions of the Immigration Act with power to trump those of the Refugees Act. This cannot be. While the Immigration Act determines who is an 'illegal foreigner' liable to deportation, the Refugees Act, and that statute alone, determines who may seek asylum and who is entitled to refugee status.

[16] Ruta [27] to [31].

> *[42] The Refugees Act was enacted some four years before the Immigration Act. Well-established interpretive doctrine enjoins us to read the statutes alongside each other, so as to make sense of their provisions together. But it is equally clear that in this process the Immigration Act's provisions cannot be read to supersede or subordinate those of the Refugees Act. A long-standing principle of statutory interpretation points to the conclusion that a later statute's general provisions do not derogate from a statute's specific provisions (lex generalis specialibus non derogat).*
>
> *[43] The Refugees Act makes plain principled provision for the reception and management of asylum seeker applications. The provisions of the Immigration Act must thus be read together with and in harmony with those of the Refugees Act. This can readily be done. Though an asylum seeker whose in the country unlawfully is an 'illegal foreigner' under the Immigration Act, and liable to deportation, the specific provisions of the Refugees Act intercede to provide imperatively that, notwithstanding that status, his or her claim to asylum must first be processed under the Refugees Act. That is the meaning of s 2 of that Act, and it is the meaning of the two statutes when read together to harmonise with each other*".[17] [Emphasis added]

[36] The Immigration Act does not trump the Refugees Act as the respondents argue. In my view the applicants have a clear right to their applications for asylum being considered. In Ruta we are enjoined to interpret the Immigration Act in a manner that is harmonious with the Refugees Act. The position of the respondents does not achieve this imperative.

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[17] Ruta at [40] to [43].

[37] It follows that the applicants, given that they comply with all the other requirements for interim relief, are entitled to the order they seek at this juncture.

Conclusion

[38] The applicants have shown that they have a clear right to the relief they ultimately seek in the main application, a well-grounded apprehension of harm and no other satisfactory remedy. The respondents seek to have the Immigration Act trump the Refugees Act. This is contrary to the injunction in the Ruta case that the two statutes can and should be read in harmony. The applicants are thus entitled to the interim relief they seek, i.e. that they be issued with section 22 permits.

Order

[39] In the circumstances, I make the following order:

1. the applicants' non-compliance with the Uniform Rules of Court is condoned and this application is heard on an urgent basis in terms of rule 6(12)(a);

2. the first to fourth respondents are directed to issue the applicants with permits in terms of section 22 of the Refugees Act, 130 of 1998, which permits are to be extended from time to time as is necessary until the final determination of the relief sought in the main application;

3. the respondents are directed to pay the applicants' costs.

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P A MYBURGH
Acting Judge of the High Court

Appearances:

For the applicant:	Advocate D Simonz Instructed by The University of Cape Town Refugee Law Clinic
For first respondent:	Advocate E A De Villiers – Jansen SC Advocate T Mayosi
Instructed by …	The State Attorney