

SOUTH AFRICA / JUDGMENT

Aakiji and Others v Minister of Home Affairs and Others (2013/21797, 2013/21796, 2013/21799) [2013] ZAGPJHC 268 (3 October 2013) [2013] ZAGPJHC 268

COURT

South Gauteng High Court, Johannesburg

BEFORE

M A Makume

CASE / FILE NUMBER

2013/21797, 2013/21796, 2013/21799

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REPORTABLE

IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

DATE:03/10/2013

In the matter between:

CASE NO: 2013/21797

AAKIJI WASIM.....Applicant

CASE NO: 2013/21796

ALFAJ UDDIN.....Applicant

CASE NO: 2013/21799

ARMAN BABU FARUK..... Applicant

and

THE MINISTER OF HOME AFFAIRS.....First Respondent

DIRECTOR GENERAL, DEPARTMENT

OF HOME AFFAIRS.....Second Respondent

BOSASA (PTY) LTD

t/a LEADING PROSPECTS TRADING.....Third Respondent

J U D G M E N T

MAKUME, J:

[1] The applications mentioned above served before me in the urgent court on 25 June 2013.

[2] All three applicants who are foreign nationals seek an order that they be released from detention at Lindela and that their

continued detention at that place be declared unlawful and unconstitutional.

[3] Counsel for the first respondent in all three matters pointed out that the three applicants had filed a similar application which served before the urgent court on 4 June 2013 and the applications were either withdrawn or dismissed. He handed up to court a copy of a notice of motion under Case No 2013/18983 in which application the three applicants cited above had filed a joint application citing themselves as first, second and third applicants seeking an order against the Minister of Home Affairs for their release and an order declaring their continued detention at Lindela unlawful and unconstitutional.

[4] Mr Wasim Aakiji who was the first applicant in the matter deposed to the only affidavit on behalf of himself and Uddin Alfaj

and Arman Faruk described as second and third applicants, in Case Number 2013/18983.

[5] Counsel for the applicants argued that on 4 June 2013 the application was withdrawn or removed from the roll and not dealt with on the merits.

[6] Having read the affidavits by Wasim Aakiji, Uddin Alfaj and that of Arman Babu Faruk in the three applications before me and compared same with what Wasim Aakiji deposed to on 4 June 2013. I was of the view that there were serious contradictions. I then stood the matter down until the following day to enable the applicants to reconsider their position.

[7] On 26 June 2013 when the matter was called counsel for the three applicants informed the court that his instructions were to proceed with the matters despite what appeared to be serious and material contradictions.

[8] In support of his instruction he handed up an affidavit by one Thamsanqa Hadebe who said that he was the attorney of record for the three applicants in the matter sat down for 4 June 2013 and that the joint application was withdrawn by agreement between the applicants and the respondents because at the time first applicant had a pending matter not yet finalised and that the three applicants would then bring separate applications. He concluded that on 14 June 2013 his mandate was terminated.

[9] It is common cause that the present attorney of record in all the three applications before me is Mafuwane MJ Attorneys of

Johannesburg.

- [10] It is further common cause that all the three applicants signed their separate affidavits in support of each one's application on 18 June 2013. There is nowhere in their separate affidavits where they mention having been before court on the same facts on 4 June 2013 and what the result of that application was.
- [11] The applicants do not tell the court what happened between 4 June 2013 until they deposed to fresh affidavits on 18 June 2013 some 14 days later. This matter lost urgency if it had any when it was withdrawn on 4 June 2013 and should never have been brought before this Court on the urgent roll. A clear abuse of the urgent court.
- [12] As an example of a material contention which I pointed counsel to and sought an explanation was the following:

12.1 In the affidavit of 4 June 2013 at paragraph 9 Wasim Aakaji says the following:

"Third, Second Applicant and I came in South Africa seeking for asylum. I arrived in South Africa on the 10th January 2013 through the Mozambique border of Komatie poort to seek for asylum. Second Respondent came to South Africa on the 02nd February 2013. He also sought asylum."

- [13] In his affidavit dated 18 June 2013 Wasim Aakaji now says the following:

"I arrived in South Africa on the 3rd December 2011 on a visa. I came to this country running away from political persecution from my country. My intention was to apply for political asylum. However my visa expired and after its expiry I renewed it for a further period of 4 months."

- [14] In the first affidavit Wasim says nothing about the third respondent in fact after what he said at paragraph 9 he says nothing

or very little about both second and third applicants. He goes on setting out his own plight and praying that he be released from

Lindela. It seems he had forgotten that he was also pleading the case of second and third applicants.

- [15] Wasim paints a different picture about himself in the second affidavit. It is clear to this Court that he is dishonest and

nothing that he says can be trusted.

- [16] What perturbed me is for counsel and his instructing attorney to insist on arguing the three applications despite the serious

discrepancies in the affidavits. There are many more discrepancies which I deem not necessary to refer to.

- [17] There is a duty on counsel and his instructing attorneys to dissociate themselves from dishonest practices by clients and not take part in a matter clearly aimed at abusing the urgent court.
- [18] As with the previous application the present applications were served on the office of the State Attorney on 20 June 2013 being a Thursday thus affording the respondent virtually two working days to deal with all three applications besides other matters that the State Attorney has to deal with.
- [19] Wepener J in the matter *In re Several Matters on the Urgent Court Roll 2013 (1) SALR (GSJ)* page 549 at page 554 alluded to such abuse at paragraph [17] where he says the following:

“An abuse of the process has developed in all likelihood in the hope that the Respondents will not be able to file opposing affidavits in time in order to steal a march upon such respondent. This practice must be addressed in order to stop matters being unnecessarily enrolled and clogging the Urgent Court roll. In these matters sufficient time should be granted to the respondents to file affidavits, and they can rarely do so when the papers are served less than a week before a matter is to be heard. That week includes a weekend when the state machinery normally comes to a standstill. Practitioners would be well advised to be more realistic and to afford state departments a more reasonable time in which to file affidavits. While there are no doubt matters which required urgent attention on shorter notice, amongst the 30 or so applications by foreigners to be released from custody that are on the roll today, I am struggling to find one that justifies a hearing today. If these are matters the affidavits generally fail to set out their urgency as required by the Practice Manual and Rule 6”.

- [20] I agree with the sentiment expressed by Wepener J and fully align myself therewith. In this matter not only were the applicants dishonest but also sought to be heard without any opposition had it not been for the alertness of counsel for the Minister.
- [21] I dismissed the applications and ordered that applicant's attorneys pay costs de bonis propriis. The other two applications were subsequently withdrawn.
- [22] Accordingly the following order is hereby made:

Aakiji Wasim – Case No 2013/21797

- a) The application is dismissed.
- b) Applicant's attorneys is ordered to pay cost on an attorney and client scale de bonis propriis:

Alfaj Uddin – Case No 2013/21796

Arman Babu Faruk – Case No 2013/21799

- a) The applications are withdrawn.
- b) No order as to costs.

M A MAKUME

JUDGE OF THE SOUTH GAUTENG

HIGH COURT, JOHANNESBURG

Date Heard: 26 JUNE 2013

Judgment Delivered: 03 October 2013

APPEARANCES:

For the Applicant

Adv. Dikolomela Instructed by Mafuwane MJ Attorneys

For the Respondent

Adv. Sekgwate Instructed by the State Attorney

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Prepared on 12 October 2026 · Esheria