

SOUTH AFRICA / JUDGMENT

Adebayo and Another v Minister of Home Affairs and Another (2024-027220) [2025] ZAGPPHC 34 (20 January 2025)

[2025] ZAGPPHC 34

COURT

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

2024-027220

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE NO.: 2024-027220

(1)

REPORTABLE: NO

(2) OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date: 20 January

2025

E van der Schyff

In

the matter between: CHARLES
OLADIPUPO ADEBAYO
First
Applicant
DORAH
KEDIBONE VUKELA
Second Applicant
and
THE
MINISTER OF HOME AFFAIRS
First Respondent
DIRECTOR
GENERAL HOME AFFAIRS Second
Respondent

JUDGMENT

Van der Schyff J

Introduction

- [1] In this application, the first applicant, Mr. Adebayo, seeks that the court direct the respondents, collectively herein referred to as the Department of Home Affairs ('DHA'), 'to place him back in undisturbed possession' of his permanent residence permit and South African identity document within 24 hours of the order being granted.

Discussion

- [2] Mr. Adebayo initially approached the urgent court on two occasions, but the matter was struck for a lack of urgency each time. The application was subsequently enrolled in the opposed motion court. This court does not need to deal with the issue of urgency.
- [3] Mr. Adebayo contends that the DHA unlawfully cancelled and revoked his permanent residence permit and South African identity document.
- [4] Mr. Adebayo seeks final relief in the form of a mandamus. For the grant of the relief sought, there are three requisites, all of which must be present:[1] (i) a clear right, (ii) an injury actually committed or reasonably apprehended, and (iii) there must be no other satisfactory remedy available to the applicant.
- [5] Since all three requirements must be met, the relief sought cannot be granted if the application falls short on any of the three aspects. I will thus deal only with the one aspect where the shortcoming is obvious.
- [6] Section 28 of the Immigration Act 13 of 2002 provides for the withdrawal of a permanent residence permit. The Act provides for certain internal remedies to be utilised when a person is aggrieved by a decision taken under the Act. The papers do not reflect that Mr.

Adebayo utilised any of the internal remedies provided in terms of the Act for a reconsideration of the decision to revoke his permanent residence permit. He also did not approach the court with a review application in terms of the Promotion of Administrative Justice Act 3 of 2000 or any other applicable statute, despite identifying the question of whether the DHA's decision to cancel his permanent residency permit is valid, as one of the issues that need to be adjudicated.

- [7] Mr. Adebayo did not aver or prove there is no alternative legal remedy available. The requirements for review are statutorily prescribed, and the court cannot allow an applicant to bring a review application under the guise of, e.g., a mandamus. As a result, the application stands to be dismissed.
- [8] As for costs, the state respondents did not take issue with the fact that a mandamus was sought in circumstances where review procedures are to be followed. Since this aspect is dispositive of the application, it is fair that each party carries its own costs.

ORDER

In the result, the following order is granted:

1. The application is dismissed.
2. Each party is to carry its own costs.

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the first applicant: T.S. Hadebe Attorneys For the respondents: Adv. A. Morare Instructed by: State Attorney Date of the hearing: 20 November 2024 Date of judgment: 20 January 2025

- [1] Setlogelo v Setlogelo 1914 AD 221 at 227.

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Prepared on 13 October 2026 · Esheria