

SOUTH AFRICA / JUDGMENT

Mzoxolo v Minister of Home Affairs and Another (2025-040046) [2025] ZAGPPHC 431 (5 May 2025) [2025] ZAGPPHC 431

COURT

North Gauteng High Court, Pretoria

BEFORE

E van der Schyff

CASE / FILE NUMBER

2025-040046

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REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION,
PRETORIA

CASE NO.: 2025-040046

(1)

REPORTABLE: NO

(2) OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED: NO

Date: 5 May 2025

E van der Schyff

In

the matter between: MABUSELE
MZOXOLO
Applicant
and
THE
MINISTER OF HOME AFFAIRS
First Respondent
THE
DIRECTOR-GENERAL, DEPARTMENT
OF
HOME
AFFAIRS
Second Respondent

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicant (Mr. Mzoxolo) approached the urgent court for an order directing his release from the Lindela Deportation Center and preventing his imminent deportation to his country of birth, the Democratic Republic of Congo. He first went by the name of Saidi Amadu, but is reflected in the national population register as Mabusela Mzoxolo with identity number 8[...].
- [2] In the founding papers, Mr. Mzoxolo avers that he was born on 17 February 1986 in the Republic of the Congo. He came to South Africa around the year 2000 through the OR Tambo International Airport shortly after his father passed away. On his arrival, he was adopted by Ms. Beth Mabusela, a South African citizen. She assisted him during 2006 in applying for a South African identity document, which was duly issued. He has since started his own family and is the father of two children.

Urgency

- [3] Mr/ Mzoxolo avers that the application is urgent because of his imminent deportation. He has been detained at the Lindela Correctional Center (Lindela) since 15 December 2024. In terms of section 34(1)(d) of the Immigration Act 13 of 2002 he cannot be detained for more than 120 days before being deported. Due to financial constraints, he was only able to consult with his legal representatives on 28 February 2025. I pause to note at this point that Mr. Mzoxolo avers that he did not have the necessary financial resources because he is unemployed, was living from hand to mouth, and had no funds in savings. He later averred that he did not have access to his bank accounts because of the fact that his identity document was blocked. This contradiction is significant.

- [4] A supplementary founding affidavit and a replying affidavit were subsequently filed by Mr. Mzoxolo. The filing of a supplementary affidavit was necessary to address certain queries raised by the court when the application was first enrolled in the urgent court in March 2025. A replying affidavit was filed after the respondents' (the DHA) opposing papers were filed. The matter was again struck from the roll and the court is said to have taken issue with the fact that a replying affidavit was filed and not a supplementary founding affidavit. The supplementary founding affidavit was subsequently filed, and Mr. Mzoxolo seeks the incorporation of the replying affidavit to the supplementary founding affidavit. In order to facilitate the hearing of the matter and to obtain as comprehensive a factual matrix as possible due to the far-reaching effect that deportation will have, I will read the replying affidavit as part of the founding papers. The respondents filed a subsequent supplementary answering affidavit and will not be unduly prejudiced by such an approach.
- [5] It suffices to say that Mr. Mzoxolo's imminent deportation renders the matter sufficiently urgent to consider.

The parties' respective cases

- [6] Mr. Mzoxolo applied for and was issued a passport in 2014. When he approached the offices of the Department of Home Affairs to renew his passport, he was informed that his ID had been blocked. His identity document was confiscated. He avers that he was not provided with prior notice regarding an investigation regarding his ID, and no reasons were provided to him prior to blocking his ID. I pause to note that the court is not informed of the date on which Mr. Mzoxolo's identity document was confiscated or the specific office of the DHA where it transpired.
- [7] Mr. Mzoxolo says he was informed that he would be contacted by the Department of Home Affairs in due course. Mr. Mzoxolo was taken into custody on 4 November 2024 and transferred to Lindela on 15 December 2024. Once again, the lack of detail is significant. Mr. Mzoxolo fails to inform the court why he was arrested and what events transpired after his arrest. A judicial review application was issued prior to this urgent court application under case number 2025-035637 for reviewing the decision to block and confiscate his identity document.
- [8] I pause to note that Mr. Mzoxolo did not append the founding affidavit to the review application to his urgent court application. It was, however, appended to the respondent's answering affidavit. The following facts contained in the founding affidavit need to be noted:
- a) He entered the Republic in 2005 through the OR Tambo International Airport;
 - b) Shortly after his arrival, he was adopted by Ms. Bathabile Mabusela. The adoption was not registered as they both are laypersons.
- [9] In the supplementary founding affidavit, Mr. Mzoxolo avers that he did not have access to personal funds as a result of his detention and the blocking of his South African identity number. He was then financially assisted by friends who assisted him 'out of goodwill and

concern for the injustice [he is] suffering.' As for his adoption, he avers that Ms. Mabusela took him in as a minor when he was abandoned after the death of his biological father and the disappearance of his biological mother. The adoption was an informal adoption. Because Ms. Mabusela lives in rural KwaZulu-Natal Natal a confirmatory affidavit could not have been obtained from her.

- [10] In the replying affidavit that is now incorporated in the founding papers, Mr. Mzoxolo informs the court again that he has been in South Africa since 2000. He avers that any reference to the year 2005 is a typing error. However, he now states that he arrived in South Africa with his biological parents and that his father passed away shortly after arriving in the country. He also clarified that he attempted to renew his passport in 2024, which led to him realising his identity document was blocked.
- [11] Mr. Mzoxolo avers that the prima facie right entitling him to interim relief is the fact that he is a South African citizen with a South African passport and South African identity number issued by DHA. His identity number has been blocked by the DHA.
- [12] The respondents (DHA) oppose the application. The DHA informs the court that Mr. Mzoxolo was convicted for being in contravention of section 49(1)(a) of the Immigration Act, after he pleaded guilty to the charges. He was sentenced to pay a fine of R4000 or to undergo 2 months' direct imprisonment. In the sworn statement in terms of section 112(2) of the Criminal Procedure Act 51 of 1977, the applicant states that he left his country of origin in September 2024 with a valid passport, which got lost when he moved to a new place of residence.
- [13] Upon his release from the Qalakabusha Maximum Correctional Facility, the Magistrate signed a confirmation for his continued detention pending deportation. The decision to detain and deport Mr. Mzoxolo was the outcome of a judicial function. Judicial decisions are not reviewable under the Promotion of Administrative Justice Act 3 of 2000.
- [14] The DHA further informs the court that:
- a) Mr. Mzoxolo's identity document could not be verified and was identified as having been fraudulently obtained;
 - b) Mr. Mzoxolo informed immigration officials that he entered the country on land, not through the OR Tambo International Airport;
 - c) He alluded to having entered the country for the first time on 7 July 2018 through Zambia, Tanzania, and Zimbabwe;
 - d) He indicated that he had four kids;
 - e) The interview records were signed by Mr. Mzoxolo.

- [15] The DHA submits that Mr. Mzoxolo is not a South African citizen, he was just found with a South African identity document. He pleaded guilty to charges even before he was in DHA's custody. The court ordered his detention pending deportation. He pleaded guilty and did not make the allegations he is currently making. The DHA submits that because Mr. Mzoxolo is detained as a consequence of being found guilty of contravening section 49(1)(a) of the Immigration Act and being detained for deportation as a result of the conviction, his remedy would have been to appeal the conviction.
- [16] For unknown reasons, Mr. Mzoxolo chose not to deal with the allegations relating to him pleading guilty in a court of law of contravening s 49(1)(a) of the Immigration Act, the contents of his section 112(2) statement, or his interview with the immigration officer in a replying affidavit filed in reply to DHA's supplementary answering affidavit. Mr. Mzoxolo's affidavits are void of detail and contain, for the most part, general, vague statements.
- [17] Section 49(1)(a) of the Immigration Act provides that anyone who enters or remains in or departs from the Republic in contravention of this Act, shall be guilty of an offence.
- [18] In the founding papers, no case is made out that Mr. Mzoxolo's current predicament is directly linked to his identity document being blocked. He was arrested for contravening s 49(1)(a) of the Immigration Act, and pleaded guilty to the offence. He even provided an explanation for being in the country without a valid permit, in that he lost the valid passport with which he entered the country. His detention and imminent deportation are the result of being found guilty in a court of law. Mr. Mzoxolo does not indicate why he pleaded guilty to the charge, while the section 112 statement filed in the criminal case reflects that he was represented by a legal representative. Mr. Mzoxolo did not play open cards with this court in his initial founding affidavit. He refrained from informing the court that his detention was the consequence of pleading guilty to a charge of contravening s 49(1)(a) of the Immigration Act. Additional shortcomings in Mr. Mzoxolo's affidavit include the total lack of detail regarding, among others, the time allegedly spent in South Africa that preceded his informal adoption, and the complete lack of information regarding the alleged Ms. Mabusele's whereabouts.
- [19] Mr. Mzoxolo's reliance on his identity document being blocked as sustaining a prima facie right to be granted the interim relief sought, is contradicted and rendered invalid by the plea of guilty filed in relation to the charge of contravening s 49(1)(a) of the Immigration Act that led to his conviction. It is not the blocking of the identity document that led to his detention and imminent deportation, but his conviction, which has not been appealed. Mr. Mzoxolo failed to make out a prima facie right, even if subject to some doubt, to the relief sought.
- [20] It is trite that a court is bound to consider an application on the papers filed. In the affidavits filed in support of this application a case is not made out for the relief sought. Mr. Mzoxolo's application stands to be dismissed.

[21] Given the consequence of the relief granted, and considering that Mr. Mzoxolo is unemployed, no costs order is granted.

[22] I pause to note that I indicated during the hearing that the judgment in this application would be handed down by Friday, 2 May

2025. Since the annexures annexed to the DHA's supplementary affidavit were not clearly legible, I requested hard copies thereof to be delivered to me.[1] I indicated that the judgment cannot be finalised until I am provided with the hard copies. I only received those hard copies today.

ORDER

In the result, the following order is granted:

1. The application is considered to be an urgent application and any non-compliance with the Uniform Rules of Court is condoned.
2. The application is dismissed.
3. No order as to 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 applicant: Adv. S. Shongwe Instructed by: Ngobeni Mamabolo Inc. For the respondent: Adv. LR Pasha Instructed by: State Attorney, Pretoria Date of the hearing: 29 April 2025 Date of judgment: 5 May 2025

[1] An email was sent to both parties' respective representatives.

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