

COPY

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC CASE NO: CCT55/24
SCA CASE NO: 1144/23
COURT A QUO CASE NO: 32323/22

In the application for leave to appeal between:

THE MINISTER OF HOME AFFAIRS

First Applicant

THE DIRECTOR-GENERAL OF THE DEPARTMENT
OF HOME AFFAIRS

Second Applicant

and

HELEN SUZMAN FOUNDATION

First Respondent

CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA

Second Respondent

ALL TRUCK DRIVERS FORUM AND ALLIED
SOUTH AFRICA

Third Respondent



FILING SHEET

PRESENTED FOR SERVICE AND FILING:

1. The HSF's Supplementary Answering Affidavit deposed to by Naseema Fakir.

DATED at JOHANNESBURG on this the 5th day of APRIL 2024.

DLA PIPER SOUTH AFRICA (RF) INC.
Attorneys for the First Respondent
6th floor, 61 Katherine Street
Sandown, Sandton, 2196
Tel: (011) 302 0802
Email: Waseeqah.Makadam@dlapiper.com
chigo.mabila@dlapiper.com
Ref: W Makadam / C Mabila

**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
CONSTITUTIONAL HILL
BRAAMFONTEIN**

AND TO: DENGA INCORPORATED
Attorneys for the First and Second Applicant
7th Floor, Nedbank Building
85 Mian Street
Johannesburg **BY EMAIL**
Tel: (011) 492 0037
Fax: (011) 492 0332
Red: Me A Denga/nm/AM17/23
Email: alpheus@dengainc.co.za

AND TO: NORTON ROSE FULBRIGHT SOUTH AFRICA INC.
Attorneys for the Second Respondent
9th floor, 117 on Strand
117 Strand Street,
Cape Town **BY EMAIL**
8000
Tel: 021 405 1200
Email: jason.whyte@nortonrosefulbright.com
laura.macfarlane@nortonrosefulbright.com
Ref: PBO2646

AND TO: MJ MASHAO ATTORNEYS
Attorneys for the Third Respondent
House No. 230 Orient Street
Acardia
Pretoria **BY EMAIL**
Tel: 012 323 0122
Fax: 012 323 0125
Ref: Mr Mashao/MJ00279/MVA

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THE HSF'S SUPPLEMENTARY ANSWERING AFFIDAVIT
(APPLICATION FOR LEAVE TO APPEAL)

I, the undersigned,

NASEEMA FAKIR

state under oath as follows:

- 1 I am the Acting Executive Director of the Helen Suzman Foundation (HSF), the first respondent in this matter. I was the deponent to the HSF's answering affidavit.
- 2 The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct, to the best of my knowledge and belief.

- 3 Where I make submissions on the applicable law, I do so on the advice of the HSF's legal representatives.
- 4 The purpose of this affidavit is to oppose the applicants' application to file a further affidavit, a supplementary affidavit deposed to by the Director General. In reply, I use the same abbreviations used in the HSF'S answering affidavit.
- 5 I have read the supplementary affidavit filed on behalf of CoRMSA opposing the admission of applicants' supplementary affidavit, and the HSF makes common cause with CoRMSA.
- 6 In the event that the applicants' supplementary affidavit is admitted, the HSF respectfully request leave of this Court to file this supplementary affidavit.

THE SCA'S ORDER DATED 15 FEBRARY 2024 IN *MAGADZIRE*

- 7 First, it is irrelevant that the SCA granted leave to appeal in *Magadzire* and refused leave in the HSF/CoRMSA. The *Magadzire* application and HSF/CoRMSA application are not the same applications, despite having been heard together. It is no surprise and of no consequence that the SCA granted leave to appeal for one application and refused leave for the other. There is no danger that, because the SCA is hearing the *Magadzire* appeal, the result will be contradictory or conflicting judgments.
- 8 In *Magadzire*, the Full Court was concerned with the requirements of an interim interdict and granted the applicants an interim interdict, pending the outcome of the review application. In terms of that interim order, the Full Court interdicted the arrest, deportation, or detention of ZEP-holders. In contrast, the HSF/CoRMSA application decided the review application and set aside the Minister's decision rather than a mere interim interdict.



- 9 In the circumstances, what the SCA is called upon to decide on appeal in *Magadzire* involves entirely different legal principles and considerations to those that the applicants want this Court to consider and decide on appeal.
- 10 Moreover, if this Court were to refuse leave to appeal, its reasoning will have no bearing on the outcome of the appeal before the SCA's in *Magadzire*.
- 11 Second, the Full Court in *Magadzire* left open the question of reviewability for determination in the review application in Part B. In *Magadzire* Part B is still pending.
- 12 Accordingly, there is no conflict between the *Magadzire* and HSF/CoRMSA judgments by the Full Court and, whatever the SCA decides in the *Magadzire* appeal will not result in a judgment that conflicts with the Full Court judgment in HSF/CoRMSA.
- 13 Third, the applicants' supplementary affidavit does not add anything to the applicants' grounds of appeal and does not assist this Court assessing whether it is in the interests of justice to grant leave. It is irrelevant to the application for leave to appeal. Moreover, the justification they provide for the need to file a supplementary affidavit is senseless: the fact that they were not aware of the SCA's decision in the *Magadzire* application when they filed the founding affidavit is neither here nor there.

CONCLUSION


- 14 For these reasons, the application for admission of the applicants' supplementary affidavit must fail with costs, including costs of three counsel.



NASEEMA FAKIR



Signed and sworn before me at Johannesburg on this the 5th day of April
2024, the deponent having acknowledged that she knows and understands the
contents of the affidavit, that she has no objection to taking the prescribed oath and
that she considers such oath to be binding on her conscience.



COMMISSIONER OF OATHS

TITLE / OFFICE:

FULL NAMES:

ADDRESS:

CHARL FRANCOIS DU PLESSIS

Practising Attorney

Le Val, North Block

45 Jan Smuts Avenue

Westcliff, Johannesburg

South Africa

Tel: 011 486 0242 /3

Commissioner of Oaths

