

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

Case No.: **32323/22**

In the matter between:

**HELEN SUZMAN FOUNDATION** Applicant

**CONSORTIUM FOR REFUGEES AND  
MIGRANTS IN SOUTH AFRICA** Intervening Applicant

and

**MINISTER OF HOME AFFAIRS** First Respondent

**DIRECTOR GENERAL OF THE  
DEPARTMENT OF HOME AFFAIRS** Second Respondent

**ALL TRUCK DRIVERS FORUM  
AND ALLIED SOUTH AFRICA** Third Respondent

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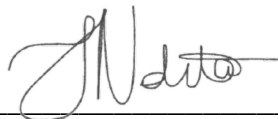
**FILING SHEET**

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**DOCUMENT PRESENTED FOR SERVICE AND FILING:**

- 1 Supporting Affidavit by **THIFULUFHELI SINTHUMULE** in respect of the application for interim enforcement brought in terms of section 18(3) of the *Superior Courts Act* 10, 2013 by the Helen Suzman Foundation (**HSF**).

Signed at Cape Town on this the 8<sup>th</sup> day of SEPTEMBER 2023.



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To:

**REGISTRAR OF THE ABOVE  
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**And to:**

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and

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Third Respondent

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**SUPPORTING AFFIDAVIT**

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I, the undersigned,

**THIFULUFHELI SINTHUMULE**

do hereby make oath and state that:



1. I am the Executive Director at the Consortium for Refugees and Migrants in South Africa (**CoRMSA**), which has its offices at 87 De Korte Street, Braamfontein, Johannesburg.
2. I am authorised to depose to this affidavit and bring this application on behalf of CoRMSA.
3. The facts contained in this affidavit are true and correct, to the best of my knowledge and belief, and are within my personal knowledge, unless the context indicates otherwise.
4. Where I make reference to the law, I do so on the advice of CoRMSA's legal representatives, whose advice I accept as correct.
5. The purpose of this affidavit is to confirm that CoRMSA supports and makes cause with the application for interim enforcement made by the Helen Suzman Foundation (**HSF**) on an urgent basis on 1 September 2023.
6. On 16 September 2022, CoRMSA was granted leave to intervene as co-applicant with the HSF in this matter.
7. As will appear from CoRMSA's application, CoRMSA sought substantially the same relief as that sought by HSF: to challenge the decision taken by the first respondent (the **Minister**) not to further extend the Zimbabwean Exemption Permit (the **ZEP**) beyond (then) 31 December 2022 (the **Impugned Decision**).

8. CoRMSA subsequently participated in the proceedings before the Court and made submissions in support of the relief sought.
9. On 28 June 2023, a full bench of the above Court handed down judgment in the matter wherein it granted the relief sought by the HSF and CoRMSA.
10. On 13 July 2023, the Respondents applied for leave to appeal against the judgment. Subsequent to this, dates were agreed upon in respect of a date for the hearing of the leave to appeal (18 September 2023) as well as for the filing of submissions. CoRMSA opposes the leave to appeal and intends to make written and oral submissions as agreed.
11. CoRMSA and its legal team were subsequently made aware of correspondence that had been exchanged between the attorneys acting for the HSF and those acting for the Respondents. In particular, we became aware of the letter dated 29 August 2023 (annexure HSF6 to the interim application) from the Respondents' attorneys to HSF's attorneys wherein the Respondents refused to grant an undertaking to respect the terms of paragraph 147.4 of this Court's judgment pending the outcome of the application for leave to appeal and any further appeal process that might be undertaken.
12. On receipt of HSF's application, CoRMSA has decided to support and make cause with the relief set out therein and has instructed its attorneys to prepare this affidavit.

13. I wish to emphasise a number of factors which would warrant the granting of the relief sought by the HSF.

13.1. CoRMSA persists in its view that the Impugned Decision is unlawful, irrational, unreasonable, unconstitutional, and was reached after an unfair process in which stakeholders in the ZEP and the asylum systems – such as CoRMSA and all of its members – were wholly excluded.

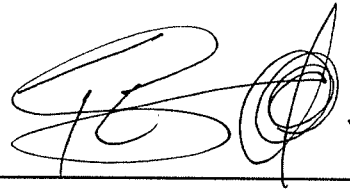
13.2. This Court's judgment remedies that failing by setting aside the Impugned Decision and requiring that the Respondents conduct a procedurally fair process under the *Promotion of Administrative Justice Act 3, 2000 (PAJA)* and during which institutions such as the HSF and CoRMSA would have an opportunity to make submissions.

13.3. CoRMSA represents a significant sector of the ZEP community, including but not limited to those Zimbabweans who would otherwise have claimed asylum were it not for the introduction of the ZEP exemption system. It is thus critical to the fairness of any decision to be made that CoRMSA and other institutions representing asylum seekers are able to comment and to dissuade the Minister from making a flawed decision.

14. The refusal by the Respondents to accede to the HSF's request for an undertaking undermines these factors and would result, come 31 December 2023, in the Impugned Decision being implemented without the fair process ordered by this Court. For that reason, the Respondents' refusal undermines the rule of law and the judicial process.

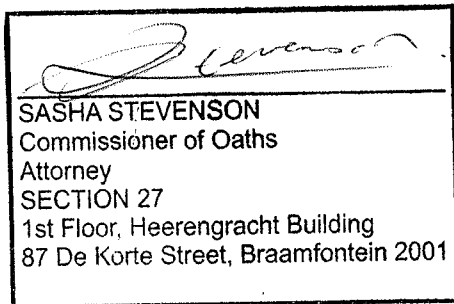
15. I stress that this is not simply an academic argument. If the Court does not safeguard the integrity and enforceability of its judgment, come 31 December 2023, any ZEP holder who has not obtained an alternative visa would, in the eyes of the Department of Home Affairs, become an illegal immigrant and subject to immediate deportation. This would impact not only the thousands of ZEP holders themselves, but on the rights of others within the South Africa economy.
16. At best, the refusal by the Minister to give an undertaking creates considerable uncertainty as to what will in fact transpire come 31 December 2023. It is thus essential that this Court provide clarity and certainty as to the rights and status of ZEP holders pending any appeal.
17. Whilst it is possible that the Minister may extend the ZEP for a further period, this will come as cold comfort to ZEP holders who have employment, schooling and other rights which they otherwise enjoy in South Africa.
18. In contrast, there can be no prejudice to the Minister in the granting of interim relief pending the outcome of any appeal.
19. I submit that it would be in the interests of justice for the interim relief to be granted. Put simply, the Minister's intended course of action would simply negate this Court's judgment in its entirety and the relief afforded to ZEP holders would be rendered academic.
20. CoRMSA accordingly supports the relief sought by HSF in its notice of application.





**THIFULUFHELI SINTHUMULE**

The Deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn to before me at Braamfontein on this the 08 day of September 2023, the regulations contained in Government Notice No.R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



**COMMISSIONER OF OATHS**

Name:

Title:

Address: