

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

Case no: **3232/2022**

In the matter between:

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

**APPLICANT**

*In re:*

**HELEN SUZMAN FOUNDATION**

**1<sup>ST</sup> APPLICANT**

**CONSORTIUM FOR REFUGES AND MIGRANTS  
IN SOUTH AFRICA**

**2<sup>ND</sup> APPLICANT**

-and-

**MINISTER OF HOME AFFAIRS**

**1<sup>ST</sup> RESPONDENT**

**DIRECTOR GENERAL OF HOME AFFAIRS**

**2<sup>ND</sup> RESPONDENT**

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

**3<sup>RD</sup> RESPONDENT**

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**ATDFASA'S NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

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**BE PLEASED TO TAKE NOTICE** that the All-Truck Drivers Forum and Allied South Africa (“ATDFASA”), hereby gives its notice of intention to apply for leave to appeal against the judgment and the order handed down by this Court on the 28<sup>th</sup> June 2023, to the Supreme Court of Appeal.

**TAKE NOTICE FURTHER** that ATDFASA contends that on the grounds set out below, the appeal would have prospect of success, *alternatively* there are compelling reasons why the appeal should be heard, on the following grounds:

1. **THE COURT’S FINDING THAT ATDFASA’S CASE WAS PREMISED ON PAJA**

- 1.1. the Court erred in finding that ATDFASA’s challenge to the ZEP’s and the extensions thereto, were premised on PAJA. This is so in that on the reading of ATDFASA’s papers, it is clear that the challenge was premised on the principle of legality.
- 1.2. had the court found that the challenge was premised on the Principle of Legality, as it ought to have done, it would have found that ATDFASA was not required to bring a condonation application but required to provide an explanation for the delay (if any).

2. **THE COURT APPLIED THE WRONG TEST IN DETERMINING WHETHER THERE WAS A DELAY IN THE LAUNCH OF THE CHALLENGE**

2.1. the court erred in applying the 180 days test, in its determination of whether the ATDFASA's challenge was brought within time.

2.2. in determining this question, the court ought to have applied the two-stage approach laid down by the Constitutional Court in **Gijima**<sup>1</sup> and **Asla**<sup>2</sup> cases which required the court to:

2.2.1. First, to consider the explanation given by ATDFASA for the delay. In the event, the court finds that there is a reasonable explanation for the delay, ought to find that the application was brought within a reasonable time. In the event, it finds that the explanation is not reasonable, then it would have found that the delay is unreasonable.

2.2.2. Second, notwithstanding the finding that there was an unreasonable delay in the launching of the application, to find that it is nonetheless clothed with the discretion to overlook the delay and consider the matter.

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<sup>1</sup> **State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Ltd** 2018 (2) SA 23 (CC)

<sup>2</sup> **Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd** 2019 (4)SA 331 (CC)

2.3. In the application of the two-stage approach, the court ought to have found that there has been a reasonable explanation for the delay. This is so in that:

2.3.1. ATDFASA was established in November 2020. Soon after its inception, it engaged with government, with a view to register its disgruntlement and to get government to correct the ails caused by the ZEP's.

2.3.2. Whilst engaging with Government, the HSF brought the main application and ATDFASA deemed it fit, to intervene as a party, in these proceedings as it considered the main application the proper case to ventilate its issues.

2.4. Accordingly, and for these reasons, the court ought to have found that there was no unreasonable delay in the institution of ATDFASA's challenge.

2.5. Even if it would have found that there has been an unreasonable delay, the court in the exercise of its discretion ought to have found that if regard had been had to the nature of the decision as well as the interest involved, have exercised its discretion, and overlooked the delay.

2.6. Therefore, in failing to do so, the court failed to properly exercise its discretion.

3. **THE CHALLENGE TO THE ZEP EXTENSION WAS NOT OUT OF TIME**

3.1. Even if it is found that the Court was correct in finding that ATDFASA's challenge was premised on PAJA, it erred in dismissing ATDFASA's challenge to the extension on the basis that it was brought outside the 180 days.

3.2. The Court ought to have found that although, ATDFASA brought a challenge to the ZEP and the extension thereto, the challenge to the extension was brought within 180 days. This is so, because the extension of the ZEP Scheme was announced in December 2022 and the challenge was brought in April 2023, within the 180 days period.

4. **THE INTERESTS OF JUSTICE WARRANTED THE COURT, THE HEARING OF THE CHALLENGE ON THE MERITS, NOTWITHSTANDING THE DELAY**


4.1. Further to the foregoing, the Court erred in not finding that; (i) the public interest; and (ii) the principle that the Courts should not allow technicalities to prevent them from dealing with real issues, warranted the Court dealing with the merits of

ATDFASA's challenge, notwithstanding any delay and absence of condonation.

5. **THE BIOWATCH PRINCIPLE EXEMPTED ATDFAS FROM A COSTS ORDER**

5.1. The court erred in ordering ATDFASA to pay the costs of the application. The court ought to have found that the principle enunciated by **Bio-Watch v Registrar Generic Resources and Others**<sup>3</sup>, applied and exonerated the ATDFASA against a cost order following the dismissal of its challenge.

**SIGNED AT PRETORIA ON THIS THE 13<sup>TH</sup> DAY OF JULY 2023.**

  
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TO: THE REGISTRAR OF THE ABOVE COURT  
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<sup>3</sup> 2009(6) SA 232 (CC)

**AND TO : DLA PIPER SOUTH AFRICA INC.**

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