Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPORTABLE

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case no: 69/2012

In the matter between:

K[redacted] I[redacted] E[redacted] Appellant

and

The Minister of Home Affairs First Respondent

Director General: Department of Home Affairs Second Respondent

Bosasa Operations (Pty) Ltd Third Respondent

Neutral citation: *E*[redacted] *v Minister of Home Affairs* (69/2012) [2012] ZASCA 31 (28 March 2012)

Coram: MTHIYANE DP, NUGENT, MAJIEDT and WALLIS JJA and NDITA AJA.

Heard: 27 March 2012

Delivered: 28 March 2012

Summary: Foreigner seeking asylum in South Africa – arrested when not in possession of an asylum transit permit or an asylum seeker permit – arrested as

an illegal foreigner in terms of s 34(1), read with s 23(2) of the Immigration Act 13 of 2002 – claiming asylum and release from detention in terms of ss 2 and 21(4) of the Refugees Act 130 of 1998 – relationship between Immigration Act and Refugees Act – foreigner can rely on Refugees Act at any stage – delay in indicating a wish to apply for asylum not a ground for preventing such an application.

ORDER

On appeal from: Eastern Cape High Court, Port Elizabeth (Chetty J sitting as court of first instance) it is ordered that:

1 The appeal is upheld with costs, such costs to include those of two counsel.

2 The order of the court below is set aside and replaced with the following order:

'(a) The Second Respondent is directed, in terms of regulation 2(2) of the regulations in terms of the Refugees Act 130 of 1998, forthwith, and in any event not later than 48 hours after the issue of this order, to issue the Applicant with an asylum transit permit valid for 14 days in terms of s 23(1) of the Immigration Act 13 of 2002 and subject to such conditions as ordinarily attach to such a permit.

(b) Subject to his reporting at the Refugee Reception Office in Port Elizabeth, within 14 days of receiving such permit, for the purpose of applying for asylum in terms of s 21 of the Refugees Act, and there applying for asylum, the First and Second Respondents are interdicted from deporting the Applicant from South Africa before the final determination of his application for asylum, including any review or appeal in relation thereto.

(c) The First and Second Respondents are directed to ensure that when the Applicant reports at the Refugee Reporting Office in Port Elizabeth, he shall immediately be dealt with and assisted to make an application for asylum in accordance with the provisions of the said regulation 2(2).

(d) It is declared that, upon completion of an asylum application in terms of paragraph (c) above, the Applicant will be entitled to be issued with an asylum seeker permit in terms of s 22 of the Refugees Act.

(e) Upon being furnished with an asylum transit permit in terms of paragraph (a) above the Applicant will be entitled to his immediate release from detention at Lindela Detention and Holding Facility in Krugersdorp and shall not thereafter be subject to detention in terms of either the Refugees Act or the Immigration Act for so long as he is in possession of a valid asylum seeker permit.

(f) The First and Second respondents are directed to pay the costs of this application.'

JUDGMENT

WALLIS JA (MTHIYANE DP, NUGENT and MAJIEDT JJA and NDITA AJA concurring)

[1] Mr E[redacted], the Appellant, is an Ethiopian national. According to him he was unlawfully imprisoned in Shashena prison and tortured for his political beliefs by members of the ruling party, the Ethiopian People's Revolutionary Party. He escaped by bribing some prison officials and fled to Kenya. He did not regard that country as a safe haven because, so he says, there are Ethiopian

intelligence officers stationed there whose task is to find and capture Ethiopian refugees and return them to Ethiopia. As he had a brother in this country he decided to seek refuge here. However, he was arrested at Willowmore in the Eastern Cape as an illegal foreigner and is at present detained at the Lindela Detention and Holding Facility at Krugersdorp. An urgent application to secure his release and further relief relating to a claim for asylum in South Africa was dismissed by Chetty J in the Eastern Cape High Court. Leave to appeal was likewise refused by Chetty J, but granted on petition by this Court. It has been set down for expedited hearing in terms of directions issued by the President of the Court. The Minister of Home Affairs and the Director-General of the department, to whom I will refer as the respondents, oppose the appeal.

[2] Mr E[redacted] says that he entered South Africa at Musina at the end of May 2011. He sought and was given an asylum transit permit in terms of s 23(1) of the Immigration Act 13 of 2002. Such a permit is valid for 14 days. If within that time the holder of the permit does not report to a Refugee Reception Officer at a Refugee Reception Office in order to apply for asylum in terms of s 21 of the Refugees Act 130 of 1998, 'the holder of that permit shall become an illegal foreigner' and be dealt with in accordance with the provisions of the Immigration Act relating to illegal foreigners.[1] Those provisions are embodied in s 34 of that Act and provide for the detention and deportation of the person

1 Section 23(2) of the Immigration Act.

concerned.

[3] According to Mr E[redacted] he endeavoured to comply with the requirements of s 23 at the Refugee Reception Office in Pretoria but was unsuccessful because the officials at the office helped only a few asylum seekers and there were a number of people in the queue who were not assisted. He then, in consultation with his brother, who lives in Mafikeng, set out for that town with a view to his brother assisting him with his application. However, on 4 June 2011, he was mugged whilst en route and all his personal belongings were stolen, including the asylum transit permit. On 10 June 2011 he reported the theft to the police at Wolmaransstad and deposed to a short affidavit. In it he said that he had lost his permit and wanted to obtain another one. He expressed the desire to be a citizen of South Africa.

[4] Mr E[redacted] says that his brother sought advice from a cousin who also lives in South Africa and the cousin said that if he came to where he lived in Willowmore in the Eastern Cape, he would help by taking him to Cape Town to apply for asylum. He does not explain why Cape Town was chosen for this purpose, but says that he went there and on 12, 13, 19 and 20 July 2011 slept outside the Refugee Reception Office in order to secure a place near the front of the queue. However, he says that this proved unsuccessful because the office dealt with so few applicants on the days in question. He then returned to

Willowmore with the intention of making an application in Port Elizabeth, but does not say that he made any attempt to do so before his arrest on 15 August 2011.

[5] The respondents do not accept Mr E[redacted]'s story. They say that they cannot verify his version because he does not identify any of the officials he dealt with at Musina. This seems to be an odd contention. One would have thought that there would be a register kept at places such as Musina of all asylum transit permits issued to potential asylum seekers, which register could be consulted to check the accuracy of allegations such as these. To expect asylum seekers, many of whom must speak languages unfamiliar to South African officials – Mr E[redacted] speaks Amharic and has a limited grasp of English – to note and record the names of the officials with whom they interact is not reasonable.

[6] The respondents point to other gaps and possible contradictions in Mr E[redacted]o's version of events. Thus he says that he spent two weeks in Pretoria attempting to apply for asylum, but that is difficult to reconcile with his entering the country at the end of May and being mugged on 4 June, whilst on his way to Mafikeng. Much detail is also missing from his story, such as identifying where he stayed in Pretoria; the means used to travel to Mafikeng and his brother's address in that town; why he made his report to the police at Wolmaransstad;

why he went to Willowmore, then Cape Town and then came back to Willowmore instead of applying for asylum in Port Elizabeth and what he did between 20 July, when he was in Cape Town, and 15 August when he was arrested in Willowmore. These are all proper matters for investigation and may ultimately justify the respondents' doubts about Mr E[redacted]'s status and purpose in coming to this country. However, they are not matters that can be resolved on the papers and the respondents are unable to challenge Mr E[redacted]'s statements about his treatment in Ethiopia; the threats to his safety and well-being if he had stayed in that country; and the problems he would face were he now to be returned there.

[7] It is unnecessary in those circumstances to address the submission by counsel for Mr E[redacted] that it is for the Refugees Reception Officer to determine whether a person is a genuine refugee and that, because the details of an asylum seeker's application must remain confidential in terms of s 21(5) of the Refugees Act, it is unnecessary for an applicant such as Mr E[redacted] to furnish details of his status as a refugee and impermissible for the court to enquire into that question. It suffices to say that on the evidence before us there is sufficient material to indicate that Mr E[redacted] may have a valid claim to refugee status. That being so we do not have to consider whether he could have succeeded if less had been placed before the court.

[8] On the application papers as they stand the court below was therefore obliged to approach the case on the basis that Mr E[redacted] had left Ethiopia because of a well-founded apprehension of being persecuted for his political opinions and because of that fear he was unwilling to return to it. I stress that the final decision on the truthfulness of his claims will need to be taken by a Refugee Reception Officer, but for the purposes of this application his statements in that regard could not be disputed and the case should have been decided on that footing. However, even on that footing he was at the time of his arrest and detention an illegal foreigner in terms of the Immigration Act and liable to arrest and deportation, subject only to his right to claim refugee status under the Refugees Act.

[9] It is unclear whether this was the approach of the judge in the high court. He dealt with a number of similar applications involving Bangladeshi citizens and one from India, together with that of Mr E[redacted]. He held that the claims to be asylum seekers in those other cases were patently false and contained 'a plethora of lies' in support of their claims to be refugees. He described these cases, which were apparently similar to a number of others that he said have been brought on a weekly basis in that court, as an abuse. In dealing with Mr E[redacted] he started by saying that his previous remarks were of equal application, but he did not then go on to say that his version of events was untrue. He merely said that on any basis Mr E[redacted] was an illegal foreigner

and fell to be dealt with in terms of the Immigration Act. He added that this would be so even if he applied for asylum under the Refugees Act. That accorded with the case advanced by the respondents, which was that irrespective of the truth of Mr E[redacted]'s statements he had become an illegal foreigner in terms of s 23(2) of the Immigration Act and was accordingly liable to be detained and deported in terms of s 34 of that Act. The respondents' stance was that no application for asylum had been made under the Refugees Act and, even if one was made, that would not affect Mr E[redacted]'s status as an illegal foreigner or the validity of his detention.

[10] In *Arse v Minister of Home Affairs*,[2] this Court held that the detention of a refugee under s 34(1) of the Immigration Act was unlawful and impermissible where the refugee had applied for asylum in terms of the Refugees Act. It said that, in those circumstances, the refugee was protected from arrest, detention and deportation by the provisions of s 21(4) of the Refugees Act, which provides that:

'Notwithstanding any law to the contrary, no proceedings may be instituted or continued against any person in respect of his or her unlawful entry into or presence within the Republic if:

(*a*) such person has applied for asylum in terms of subsection (1), until a decision has been made on the application and, where applicable, such person has had an opportunity to exhaust his or her rights of review or appeal in terms of Chapter 4 …'

2 *Arse v Minister of Home Affairs* [2010] 3 All SA 261 (SCA).

[11] The contentions advanced by the respondents in the court below were clearly postulated on the proposition that the decision in *Arse* applied only where an application for asylum had already been made and did not affect the operation of ss 23(2) and 34(1) of the Immigration Act where no such application had been made. However, that approach to the issues in this case has been overtaken by the later decision of this Court in *Bula & others v Minister of Home Affairs*[3] handed down on 29 November 2011. That case dealt with asylum seekers from Ethiopia who had entered South Africa without seeking or obtaining asylum transit permits or any other documents that would legitimise their presence in this country. Like Mr E [redacted] they were detained under the Immigration Act, in their case under s 9(4), but that does not affect the matter. Immediately after their detention and removal to Lindela attorneys acting on their behalf wrote to the Department of Home Affairs demanding that all deportation proceedings against their clients be stopped; that they be released from detention and afforded an opportunity to apply for asylum. That case, like this, therefore arose in circumstances where the asylum seekers had not applied for refugee status at the time of their arrest and detention. Like Mr E [redacted] they were illegal foreigners and as such liable to arrest and deportation under the Immigration Act. This Court nonetheless held that they were entitled to invoke the protection of the Refugees Act and for that purpose were entitled to their

3 *Bula & others v Minister of Home Affairs* [2011] ZASCA 209.

release from custody, protection against deportation whilst applications for refugee status were being processed and ancillary relief.

[12] The Court in *Bula* held that once a person claiming asylum indicated a desire to make an application for refugee status the protection afforded to such persons by the Refugees Act applied to such person. This emerges from the following passages in the judgment:

'[70] An important regulation in this regard is Regulation 2 of the regulations under the RA [Refugees Act] which provides:

"2(1) An application for asylum in terms of section 21 of the Act:

(a) must be lodged by the applicant in person at a designated Refugee Reception Office without delay;

(b) must be in the form and contain substantially the information prescribed in Annexure 1 to these Regulations; and

(c) must be completed in duplicate.

(2) Any person who entered the Republic and is encountered in violation of the Aliens Control Act,[4] who has not submitted an application pursuant to subregulation 2(1), but indicates an intention to apply for asylum shall be issued with an appropriate permit valid for 14 days within which they must approach a Refugee Reception Office to complete an asylum application."

[71] In para 24 of *Abdi*[5] this court noted that the provisions of the Act are in accordance with international law and practice as evidenced by decisions of the European Court of Human Rights.

4 Now the Immigration Act.
5 *Abdi v Minister of Home Affairs* 2011 (3) SA 37 (SCA).

[72] Regulation 2(2) ought to have been the starting point as the appellants clearly fell within its ambit. They had not lodged an application within the terms set out in Regulation 2(1)(a). The word "encountered" in Regulation 2(2) must be given its ordinary meaning which is to meet or come across unexpectedly. The regulation does not require an individual to indicate an intention to apply for asylum immediately he or she is encountered, nor should it be interpreted as meaning that when the person does not do so there and then he or she is precluded from doing so thereafter. The purpose of subsection 2 is clearly to ensure that where a foreign national indicates an intention to apply for asylum, the regulatory framework of the RA kicks in, ultimately to ensure that genuine asylum seekers are not turned away. It is clear that the appellants, when they were detained at Lindela, communicated to the Department's officials and enforcement officers by the letter referred to earlier in this judgment that they intended to apply for asylum. Once the appellants, through their attorneys, indicated an intention to apply for asylum they became entitled to be treated in terms of Regulation 2(2) and to be issued with an appropriate permit valid for 14 days, within which they were obliged to approach a Refugee Reception Office to complete an asylum application …

[73] That does not mean that a decision on the *bona fides* of the application is made upfront. Once the application has been made at a Refugee Reception Office, in terms of s 21 of the RA, the Refugee Reception Officer is obliged to see to it that it is properly completed, render such assistance as may be necessary and then ensure that the application together with the relevant information is referred to a RSDO [Refugee Status Determination Officer].

[74] In terms of s 22 of the RA an asylum seeker has the protection of the law pending the determination of his application for asylum. To that end he or she is entitled to an asylum seeker permit entitling a sojourn in South Africa. As can be seen from the provisions of s 24(3) set out in para 67 above it is for the RSDO and the RSDO alone to grant or reject an

application for asylum. In terms of s 24(3)(c) the application could be rejected on the basis of being 'unfounded'.

…

[78] Regulation 2(2) of the Refugee Regulations set out in para 70 above makes it even more clear that, once there is an indication by an individual that he or she intends to apply for asylum, that individual is entitled to be issued with an appropriate permit valid for 14 days within which there must be an approach to a Refugee Reception Office to complete an application for asylum. Read with s 22 of the RA it is clear that once such an intention is asserted the individual is entitled to be freed subject to the further provisions of the RA.

[79] …

[80] It follows ineluctably that once an intention to apply for asylum is evinced the protective provisions of the Act and the associated regulations come into play and the asylum seeker is entitled as of right to be set free subject to the provisions of the Act.'

[13] Even if one were to accept that Mr E[redacted]'s story about his attempts to obtain refugee status on reaching South Africa is untrue, that does not mean that he does not wish to apply for that status. When Mr Magadla, the Immigration Officer, found him at his cousin's business premises he clearly encountered him, within the meaning of regulation 2(2) of the Refugee Regulations.[6] He had not yet made an application for refugee status in terms of regulation 2(1). If he did not then indicate his wish to apply for refugee status, he had, by the time the present proceedings were commenced, indicated such an intention. Under regulation 2(2) he was entitled to be issued with an appropriate permit – clearly

6 Regulations promulgated in terms of s 38 of the Refugees Act by GN R366 in *GG* 6779 dated 6 April 2000.

an asylum transit permit in terms of s 23(1) of the Immigration Act – valid for 14 days within which he was to approach a Refugee Reception Office in order to complete an asylum application. The application would then be adjudicated by the Department of Home Affairs, which would, according to regulation 3(1), generally do so within a period of 180 days, during which time Mr E[redacted] would be under the obligations set out in regulation 3(2). If the application was found during this process to be 'manifestly unfounded, abusive or fraudulent'[7] the asylum seeker permit could be withdrawn and he would then be subject to detention in terms of s 23 of the Refugees Act. All of this flows from the judgment in *Bula.*

[14] Counsel for the Minister and the Director-General did not challenge the correctness of the judgment in *Bula.* His submission, as it emerged in the course of argument, commenced with the provisions of regulation 2(1)(*a*) of the Refugee Regulations. That requires an application for asylum to be made 'without delay'. Building on that foundation he submitted that if, on all the facts in a particular case, there has been an undue delay in applying for asylum then the immigration authorities are not obliged to entertain an application for asylum and the protection of the Refugees Act is lost. It was submitted that before an applicant can rely upon that protection they must show that there has been compliance with the primary duty to report to the authorities in order to

7 Section 22(6)(b) of the Refugees Act.

apply for asylum. Stress was laid on the point that this is in accordance with international legal instruments governing the treatment of refugees and applications for asylum.

[15] The difficulty with this submission is that it is inconsistent with the emphatic terms of regulation 2(2), which was held in *Bula* to be the starting point of the enquiry.[8] Whilst regulation 2(1) says that an application for asylum must be submitted without delay, neither it nor the Refugees Act prescribes a time within which such an application must be made, nor does the Refugees Act sug5est that delay in making an application is of itself a ground for refusing an otherwise proper claim for refugee status. The grounds upon which an application for asylum may be refused are set out in s 24(3) of the Refugees Act. They are that the application is 'manifestly unfounded, abusive or fraudulent' or simply 'unfounded'. There is nothing to indicate that a meritorious application may be refused merely on the grounds of delay in making the application.

[16] Regulation 2(2) is consistent with this in that it foreshadows that, when the foreigner is encountered by the immigration officer, they will be in South Africa in violation of the Immigration Act. In other words they will be an illegal foreigner under that Act.[9] No distinction is drawn between one type of illegal

8 See para 72.
9 In s 1 of the Immigration Act an illegal foreigner is defined as meaning a foreigner who is in the Republic in

presence and another. In other words it makes no difference whether the individual entered the country and never sought an asylum transit permit, or whether they obtained such a permit and allowed it to lapse by not reporting to a Refugees Reception Office. Nor is there any reference to the duration of the illegal presence, or to any mitigating factors, such as poverty, ignorance of these legal requirements, inability to understand any of South Africa's official languages and the like. There is also no reference to aggravating factors, for example, that their illegal entry was deliberate and that they have deliberately sought to avoid the attentions of the authorities. Regulation 2(2) applies to any foreigner encountered in South Africa, whose presence in this country is illegal. It says, as this Court held in *Bula*, that any such person who then indicates an intention to apply for asylum must be issued with an asylum transit permit, valid for 14 days, and permitted to apply for asylum.

[17] There is no warrant in all this for the submission that undue delay deprives the asylum seeker of the rights afforded by regulation 2(2). In any event counsel had difficulty in identifying what would amount to undue delay. He accepted that the mere elapse of 14 days from the time of entry into the Republic would not amount to undue delay. He postulated, what he described as an extreme example, the case of a person who entered the country illegally, settled, established a business, married and had children who were attending

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contravention of that Act.

school, when their illegal status was discovered. However, it was unclear whether he regarded such a case as beyond redemption or merely at the extreme outer limits of what would be tolerated. All that these examples illustrate is that the suggested limitation on the right to apply for asylum lacks a foundation in the Refugees Act and the Refugee Regulations.

[18] The proposed limitation is too vague and too dependent on the subjective judgment of the immigration officer in each case to provide a secure basis for determining the rights of asylum seekers. That was illustrated by the attempt to apply it to the facts of the present case. The respondents are not in a position to refute Mr E[redacted]'s allegation that he tried time and again to apply for asylum at various Refugee Reporting Offices in different towns, without success. At best for them there was a period from his last unsuccessful attempt in Cape Town on 20 July 2011 until his arrest on 15 August 2011 during which he did not claim to have tried to apply for asylum. That is 26 days, a period of a little over three and a half weeks. It is twelve days more than the period afforded to the holder of an asylum transit permit. Having accepted that non-compliance with the 14 day period was not decisive, counsel was at a loss to explain why the additional 12 days in this case meant that there had been undue delay.

[19] For those reasons the suggested qualification to this Court's judgment in *Bula* is not in my view justified. That means that the appeal must succeed.

Before leaving the topic of regulation 2(2), however, it is important that I record an important qualification to what I have said about the effect of that regulation. Everything I have said is on the footing that we are dealing with a first encounter by an immigration officer with an illegal foreigner who has not made an application for asylum. Nothing in this judgment addresses the situation where an asylum transit permit has been issued under regulation 2(2), where no application for asylum is made and that permit lapses. It would be odd were the regulation to mean that, if an immigration officer thereafter encountered the same foreigner and the foreigner again indicated a desire to apply for asylum, an obligation to issue a fresh asylum transit permit would arise. However, it is unnecessary to express any final view on this, as those are not the facts before us.

[20] Counsel for Mr E[redacted] submitted that in addition to relief based narrowly on regulation 2(2) his client is entitled to a declaratory order that his original arrest and detention were unlawful. There are two insuperable obstacles in his path. The first is that this was not relief sought in the original notice of motion and the respondents were accordingly not afforded an opportunity to address such a claim. The second is that, in the very similar factual circumstances of *Bula*, it was held that the initial arrest and detention of the applicants was lawful in terms of s 34(1) of the Immigration Act. It would be entirely inappropriate in those circumstances for us to enter upon that question.

Mr E[redacted] cannot be adversely affected by that being left to be dealt with, if necessary, on another day and in another court.

[21] As regards relief that must follow upon the sequence prescribed by regulation 2(2) in the light of the remaining provisions of the Refugees Act and the Immigration Act. Mr E[redacted] must first be issued with an asylum transit permit valid for 14 days. His continued detention will then on any basis become unlawful and he must be released. He will be obliged to apply for asylum within 14 days. If he does not do so he will again become an illegal foreigner and be subject to the relevant provisions of the Immigration Act. In order to ensure that he is not prevented from applying for asylum within the 14 day period the Minister and Director-General, as the representatives of the Department of Home Affairs will be directed to afford him priority when he reports to the Refugee Reception Office for that purpose. In order to facilitate this the order will provide that he shall report at the Port Elizabeth office, which is the one closest to the place where he was living prior to his arrest and detention, namely Willowmore. His counsel indicated that this would be acceptable. Once Mr E[redacted] has made an application for asylum it will be dealt with in the ordinary course and, so long as he is in possession of an asylum seeker permit under s 22 of the Refugees Act, he will not be susceptible to detention or deportation. Of course, his entitlement to such a permit is subject to the Minister's right in the circumstances set out in s 22(6) of the Refugees Act to withdraw the permit.

However it is unnecessary at this time to explore the Minister's right to do that or the legal consequences of that occurring.

[22] In regard to costs an order was sought for costs to include the costs of three counsel and to be on the attorney and client scale. I am not persuaded that either order would be appropriate. The costs of two counsel should be allowed.

[23] In the result the appeal succeeds and it is ordered that:

1 The appeal is upheld with costs, such costs to include those of two counsel.

2 The order of the court below is set aside and replaced with the following order:

'(a) The Second Respondent is directed, in terms of regulation 2(2) of the regulations in terms of the Refugees Act 130 of 1998, forthwith, and in any event not later than 48 hours after the issue of this order, to issue the Applicant with an asylum transit permit valid for 14 days in terms of s 23(1) of the Immigration Act 13 of 2002 and subject to such conditions as ordinarily attach to such a permit.

(b) Subject to his reporting at the Refugee Reception Office in Port Elizabeth, within 14 days of receiving such permit, for the purpose of applying for asylum in terms of s 21 of the Refugees Act, and there applying for asylum, the First and Second Respondents are interdicted from deporting the Applicant from South Africa before the final determination of his application for asylum,

including any review or appeal in relation thereto.

(c) The First and Second Respondents are directed to ensure that when the Applicant reports at the Refugee Reporting Office in Port Elizabeth, he shall immediately be dealt with and assisted to make an application for asylum in accordance with the provisions of the said regulation 2(2).

(d) It is declared that, upon completion of an asylum application in terms of paragraph (c) above, the Applicant will be entitled to be issued with an asylum seeker permit in terms of s 22 of the Refugees Act.

(e) Upon being furnished with an asylum transit permit in terms of paragraph (a) above the Applicant will be entitled to his immediate release from detention at Lindela Detention and Holding Facility in Krugersdorp and shall not thereafter be subject to detention in terms of either the Refugees Act or the Immigration Act for so long as he is in possession of a valid asylum seeker permit.

(f) The First and Second Respondents are directed to pay the costs of this application.'

M J D WALLIS

JUDGE OF APPEAL

For appellant:	Anton Katz SC (with him Mushahida Adhikari and Ashley Moorhouse) Instructed by: McWilliams & Elliott Inc, Port Elizabeth Webbers Attorneys, Bloemfontein.
For respondents:	G Bofilatos SC (with him S Rugunanan) Instructed by: State Attorney, Port Elizabeth State Attorney, Bloemfontein