

**THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

CASE NO. 30123/11

In the matter between:

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

Applicant

and

**PRESIDENT OF THE REPUBLIC
OF SOUTH AFRICA**

First Respondent

THE MINISTER OF HOME AFFAIRS

Second Respondent

**THE MINISTER OF INTERNATIONAL
RELATIONS AND CO-OPERATION**

Third Respondent

THE MINISTER OF STATE SECURITY

Fourth Respondent

**THE DIRECTOR - GENERAL OF THE
OFFICE OF THE PRESIDENCY**

Fifth Respondent

**THE DIRECTOR - GENERAL
DEPARTMENT OF HOME AFFAIRS**

Sixth Respondent

**THE DIRECTOR - GENERAL OF THE
DEPARTMENT OF INTERNATIONAL
RELATIONS AND CO-OPERATION**

Seventh Respondent

**THE DIRECTOR - GENERAL OF THE
DEPARTMENT OF STATE SECURITY**

Eighth Respondent

**CENTRE MANAGER FOR THE
CROWN MINES REFUGEE
RECEPTION OFFICE**

Ninth Respondent

**THE CHAIRPERSON: THE STANDING
COMMITTEE FOR REFUGEE AFFAIRS**

Tenth Respondent

THE REFUGEE STATUS DETERMINATION

Eleventh Respondent

M I m-c

**OFFICER RESPONSIBLE FOR GRANTING
REFUGEE STATUS TO THE TWELFTH
RESPONDENT**

FAUSTIN KAYUMBA NYAMWASA

Twelfth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

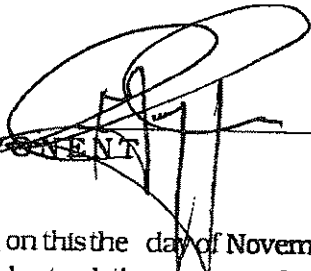
MATODZI ISHMAEL MUNYANGANE

do hereby make oath and swear that:

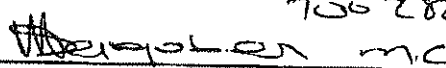
1. I am an adult male Refugee Status Determination Officer in the Department of Home Affairs previously stationed at the Crown Mines Refugee Reception Office. I am the Eleventh Respondent in these proceedings.
2. The facts herein contained are within my personal knowledge and are true and correct.
3. I am aware of the above-mentioned application brought against the President of the Republic of South Africa and others.

M²I M.C

4. I have read the affidavit of MKUSELI APLENI, the Director-General of the Department of Home Affairs and confirm averments therein insofar as they relate to me. I also confirm that I adjudicated the asylum applications of the Twelfth Respondent, his wife and his children.

DEPONENT 

THUS SIGNED AND SWORN to before me at PRETORIA on this the day of November 2011 by the deponent he having acknowledged that he knows and understands the contents of this affidavit, and considers it to be true and correct, that he has no objection to taking the prescribed oath and considers it to be binding on his conscience.

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 COMMISSIONER OF OATHS

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 FIVE-ARM RECREATION CENTRE
 SOUTH AFRICAN POLICE SERVICE

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THE MINISTER OF HOME AFFAIRS

Second Respondent

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Third Respondent

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**THE DIRECTOR - GENERAL OF THE
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Eighth Respondent

**CENTRE MANAGER FOR THE
CROWN MINES REFUGEE
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Ninth Respondent

**THE CHAIRPERSON: THE STANDING
COMMITTEE FOR REFUGEE AFFAIRS**

Tenth Respondent

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**THE REFUGEE STATUS DETERMINATION
OFFICER RESPONSIBLE FOR GRANTING
REFUGEE STATUS TO THE TWELFTH
RESPONDENT**

Eleventh Respondent

FAUSTIN KAYUMBA NYAMWASA

Twelfth Respondent

**SECOND; SIXTH; NINTH; TENTH AND ELEVENTH RESPONDENTS'
ANSWERING AFFIDAVIT**

I, the undersigned,

MKUSELI APLENI

1. do hereby make oath and swear that:

1.1 I am the Director-General of Home Affairs, the Sixth Respondent in these proceedings and in that capacity am competent to depose to this affidavit also on behalf of the Second; Ninth; Tenth and Eleventh Respondents, respectively ("the Respondents").

1.2 The facts herein contained are, save where otherwise indicated by the context, within my personal knowledge and are, to the best of my belief, true and correct.

- 1.3 Where I refer to matters falling outside my knowledge I do so on the strength of information furnished to me and confirmed with corresponding confirmatory affidavits of people who can swear positively to the correctness of those facts.
- 1.4 Where I make reference to documents that are in the possession of the Department of Home Affairs ("the Department"), I do so, on the strength of the fact that the documents are official documents generated by the Department in the ordinary course of business.
- 1.5 Where I make legal submissions, I do so on the strength of the legal advice of the legal representatives of the Respondents, which advice I believe to be correct.
- 1.6 I have read the affidavit deposed to by Kaajal Ramjathan - Keogh ("**Ramjathan-Keogh**") on behalf of the Applicant. I am advised that it may assist to deal with the matter under the heads as outlined hereunder:
- 1.6.1 *In limine* – the Applicant has no *locus standi* to bring these proceedings;
- 1.6.2 The nature of the challenge brought by the Applicants;

1.6.3 A broad outline of the Respondents' answer to the challenge;

1.6.4 The confidentiality of asylum applications;

1.6.5 Response to the averments in the Applicant's affidavit.

LOCUS STANDI

2. The Applicant is a juristic person which has as its principal objective an obligation to promote the human rights (including socio-economic rights) of asylum seekers, refugees and other international migrants.
3. The Applicant purports to bring this application in its own interests, pursuant to section 38 (a) of the Constitution of the Republic of South Africa ("the Constitution"); and in the public interest, pursuant to section 38 (d) of the Constitution.
4. I am advised that the Applicant has no standing to institute these proceedings pursuant to section 38 (a) of the Constitution on the following grounds:
 - 4.1 There is no allegation that a right in the Bill of Rights has been infringed or threatened and the Applicant has not

demonstrated, with reference to the categories listed in section 38 (a) to (e) of the Constitution that it has a sufficient interest in obtaining the relief sought.

- 4.2 Respondents submit that there is no relationship between the Applicant, its constitution and the relief sought. Further legal argument will be made during the hearing of this application.
5. I am advised further that the Applicant has no standing to institute these proceedings pursuant to section 38 (d) of the Constitution on the grounds that the Applicant has not demonstrated that the public has sufficient interest in the relief sought.
6. Accordingly, the Applicant does not have *locus standi* to institute these proceedings.
7. I am advised that *locus standi* must be established in the founding affidavit and that failure to do so is fatal for the Applicant's application. Further legal argument will be made during the hearing of this application.

WHEREFORE the Respondents pray that the application be dismissed with costs.

NATURE OF THE APPLICANTS' CHALLENGE

8. I paraphrase the prayers which the Applicant seeks in these proceedings:

8.1 As I understand, the Applicant seeks an order reviewing and setting aside the decision taken on or about June 2010 by the Ninth Respondent and/or the Tenth Respondent and/or the Eleventh Respondent acting under supervision and control of the Second and Sixth Respondents ("the impugned decision"), to grant Faustin Kayumba Nyamwasa, the Twelfth Respondent, refugee status in terms of the Refugees Act, 130 of 1998 ("the Refugees Act");

8.2 A declarator that the impugned decision be held to be unlawful, inconsistent with the Constitution and invalid;

8.3 Consequential relief, including remitting the question of the Twelfth Respondent's refugee status in terms of the Refugees Act to the Tenth and Eleventh Respondents, under supervision and control of the Second and Sixth Respondents for reconsideration in light of this Court's judgment and under directions that:

(a) the relevant Respondents immediately reconsider the Twelfth Respondent's refugee status in terms of South African and international law and with due consideration to be given to the evidence provided by the Twelfth Respondent, should he choose to provide it; and

(b) such consideration of the Twelfth Respondent's refugee status be completed and that a notification of such completion with full reasons for the decision be provided to this Court within 30 days of this Court's order;

BROAD OUTLINE OF THE RESPONDENTS' ANSWER

9. The legal matrix within which the function of the Respondents is to be understood, in broad terms, is outlined below.
10. The Republic of South Africa ("the Republic") did not recognise refugees until 1993. Following the transition to democracy, the Republic became a signatory to the United Nations Convention Relating to the Status of Refugees 1951.
11. As a result thereof and in 1998 the Refugees Act, 130 of 1998 ("the Act") was passed. The Act came into operation in 2000.

12. The Second Respondent is, under the Act, responsible for the administration of the Act.
13. In its Preamble, it provides – *“whereas the Republic of South Africa acceded to the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, as well as other human rights instruments, and has in so doing, assumed certain obligations to receive and treat in its territory refugees in accordance with the standards and principles established in international law, ...”*
14. The obligations of the Republic under international law as well as the Refugees Act are set out primarily as follows: *“Notwithstanding any provision of this Act (the Refugees Act), no person may be refused entry into the Republic, expelled, extradited, or returned to any other country or be subject to any similar measure if, as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where he or she may be subjected to persecution on account of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group or his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other*

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*events seriously disturbing public order in any part or the whole of that country.*¹

15. The qualification for refugee status under the Act I set out in the following terms: *"Subject to Chapter 3, a person qualifies for refugee status for the purposes of this Act if that person – owing to a well-founded fear of being persecuted by reason of his or her race, gender, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; is a dependant of a person contemplated in paragraph (a) or (b)."*²
16. Persons are excluded from refugee status in the following circumstances: *"A person does not qualify for refugee status for the purposes of this Act if there is reason to believe that he or she has*

¹ Section 2(a) and (b) of the Refugees Act 130 of 1998, as amended, Unless specifically stated otherwise, all references are to the said Refugees Act.

² Sections 3(a), (b) and (c) of the Act.

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*committed a crime against peace, a war crime or a crime against humanity, as defined in any international legal instrument dealing with any such crimes; or has committed a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment; or has been guilty of acts contrary to the objects of and principles of the United Nations Organisation or the Organisation of African Unity; or enjoys the protection of any other country in which he or she has taken residence.*³

17. The structure of the Refugees Act is such that a person who enters the Republic and is seeking asylum on any of the specified grounds must make an application in person and in accordance with the prescribed procedures to a Refugee Reception Officer at any Refugee Reception Office.⁴
18. A person who qualifies for refugee status and who would like one or more of his or her dependants who have accompanied him or her to the Republic to receive asylum must, when applying for asylum, also assist every such dependant to apply for asylum in terms of the Refugees Act or apply on behalf of any such dependant who is not able to apply by himself or herself.⁵

³ Sections 4(a), (b), (c) and (d) of the Act.

⁴ Section 21 of the Act.

⁵ Section 33 of the Act.

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19. "Dependant" is defined to include "...the spouse, any unmarried dependent child...of such asylum seeker or refugee".
20. Refugee Reception Offices are established in terms of section 8 of the Refugees Act.
21. The Standing Committee for Refugee Affairs ("Standing Committee") is established in terms of section 9 (1) of the Refugees Act and must function without any bias and must be independent.
22. The interpretation, application and administration of the Refugees Act must be with due regard to the Convention Relating to the Status of Refugees (UN, 1951); the Protocol Relating to the Status of Refugees (UN, 1967); the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU, 1969); the Universal Declaration of Human Rights (UN, 1948); and any other relevant convention or international agreement to which the Republic is or becomes a party.⁶
23. The Standing Committee has the powers and duties, *inter alia*, to formulate and implement procedures for the granting of asylum; to regulate and supervise the work of the Refugee Reception Officer; to liaise with representatives of the UNHCR or any nongovernmental organisation; to advise the Minister or Director-General on any matter

⁶ Section 6(1) of the Act.

referred to it by the Minister or Director-General; to review decisions by the Refugee Status Determination Officers in respect of manifestly unfounded applications; to decide any matter or law referred to it by a Refugee Status Determination Officer; to monitor the decisions of the Refugee Status Determination Officers; and to determine the conditions relating to study or work in the Republic under which an asylum seeker permit may be issued.⁷⁷

24. Once refugee status is granted, it can only be withdrawn if a person has been recognised as a refugee erroneously on an application which contains any materially incorrect or false information, or was so recognised due to fraud, forgery, a false or misleading representation of a material or substantial nature in relation to the application or if such person ceases to qualify for refugee status in terms of section 5 and after the Standing Committee has given such person due notice and an opportunity to make written representation with regard to the intended withdrawal.

THE CONFIDENTIALITY OF ASYLUM APPLICATIONS

25. Confidentiality is key to the effective operation of the asylum and refugee regime in South Africa. This is intended, *inter alia*, to enable

⁷⁷ Section 11 of the Act.

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asylum seekers to gain confidence and trust in the asylum and refugee system in the Republic.

26. For this reason the Refugees Act imposes a duty of confidentiality of asylum applications on the authorities including the Respondents. It requires that the confidentiality of asylum applications and information thereof be kept confidential at all times. This implies that an asylum seeker has a right to privacy.
27. I am advised that there is no reason why the principle governing the right to privacy, should not apply to asylum seekers. The constitutional right to privacy applies to everyone in South Africa. The confidentiality requirements of the Act are especially important for asylum seekers, whose claims are usually based, as in this case, on a fear of persecution by the authorities of their countries of origin and whose safety may be endangered if protection of information is not ensured. I am advised that to contend otherwise would be against the spirit of the 1951 Convention.
28. In addition thereto, information disclosed during an application for asylum (due to its personal nature) is protected by the principle of confidentiality.

29. As stated above, the principle of confidentiality operates only against the Respondents and not the asylum seeker himself or herself. The asylum seeker is at liberty to voluntarily disclose any information relating to his or her application for asylum to third parties.
30. Despite such disclosure, the Respondents remain bound by, and subject to the principle of confidentiality concerning everything relating to an asylum application. The Respondents, by operation of the law, may disclose only very limited information relating to the Twelfth Respondent's refugee status.
31. To disclose any further information would be a serious transgression of the refugee's right to privacy and would raise grave safety issues in the event such person has to remain in the Republic or be deported for that matter. It is worse in this case since there has been more than one attempt on the Twelfth Respondent's life.
32. The Respondents contend therefore, that the principle of confidentiality seeks to strike a balance between any competing rights in the Constitution and this provision is rational and constitutionally permissible taking into account, the importance of its purpose.
33. I am advised that maintaining confidentiality of asylum applications is not only internationally recognised but it is a practice obtaining in

other open and democratic societies based on human dignity, equality and freedom. Further legal argument will be made at the hearing of this application.

34. For these reasons, the Respondents will not be disclosing any information in this application which will lead to contravention of the principle of confidentiality.

I now turn to deal with the affidavit of Ramjathan - Keogh.

35. AD PARAGRAPHS 1 and 2

35.1 I note the position of Ramjathan - Keogh and do not join issue with her in this regard.

35.2 I however, do not agree with her that she is duly authorised to depose to the affidavit instituting these proceedings.

35.3 I also do not agree that the facts to which this affidavit relates are all true and correct, particularly insofar as she makes averments which are inconsistent with those that I make in this affidavit.

36. AD PARAGRAPH 3

36.1 It is not indicated on annexure "KR1" how many members of the Executive Committee attended the meeting and voted in favour of the Applicant intervening in these proceedings.

36.2 It is required by the Constitution of the Applicant that any matter before the Executive Committee shall be resolved by a simple majority of votes, the Chairperson having a casting vote in the event of an equality of votes.

36.3 Save for what I stated above, I do not have personal knowledge of the remaining allegations made in this paragraph and do not admit them.

37. AD PARAGRAPHS 3.1 to 3.3

I note the allegations made in these paragraphs.

38. AD PARAGRAPHS 3.4.1 and 3.4.2

For the reasons already stated in this affidavit, I deny the allegations made in these paragraphs.

39. AD PARAGRAPH 4

39.1 To the extent that the contents hereof correctly reflect the law, I admit them. To the extent that they do not, I deny them.

39.2 In particular, I aver that there has to be acceptable evidence on which a reason to believe that the asylum seeker has committed a war crime is based.

39.3 Moreover, the presumption of innocence applies to every accused person.

40 AD PARAGRAPHS 5 and 7

40.1 If the object of the contents hereof is to allege that South Africa has failed to adhere to its international and domestic legal obligations, they are denied.

40.2 The Republic has an obligation to grant asylum to a person who has a well founded fear of being persecuted by reason of his or her political opinions if he or she were to be returned to their country of origin.

40.3 To act otherwise would not be in the public interest.

40.4 I therefore deny the contents of this paragraph.

41. AD PARAGRAPHS 8 to 19

41.1 The Crown Mines Refugee Reception Office was closed in June 2011 following a court order to that effect. All the officials previously employed at Crown Mines Refugee Reception Office were transferred to Pretoria.

41.2 The Ninth Respondent was a centre manager and not a Refugee Status Determination Officer as alleged by the Applicant.

41.3 The Ninth Respondent is an employee of the Department. The Applicant is incorrect in holding the view that the Twelfth Respondent is, or could be in the care of the Ninth Respondent.

41.4 Subject to what I have stated above, I do not take issue with the Applicant relating to the citation of the parties.

42 AD PARAGRAPHS 20 and 21

42.1 I do not agree with the Applicant that any of the Respondents have acted in a manner that warrants these proceedings, cause concern to the public or that there is a compelling need for the institution of this application.

D.K. 

42.2 The Respondents have acted within the scope of the enabling legislation and the Constitution.

43 **AD PARAGRAPH 22**

43.1 There is nothing in the notice of motion suggesting that the Applicant is seeking to review the Respondents' failure to act. I am advised that the review in this regard may only be brought in terms of Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). I am advised that the Applicant's application is wanting in this regard.

43.2 To the extent that the Applicant makes out a case for the review of the Respondents' failure to act, the Respondents deny the allegations made in this paragraph.

44. **AD PARAGRAPH 23**

44.1 I note the contents of annexure "KR3". The Applicant seems to assert as a fact that the Twelfth Respondent is suspected to have committed war crimes and might be extradited to Spain and France. From the outset, I challenge the Applicant to produce tangible proof of these allegations and proof of

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extradition applications which were brought by either Spain or France since 25 June 2010, being the date of the letter.

- 44.2 It appears that the Applicant sought an undertaking that the Twelfth Respondent would not be deported or extradited and that the Respondents would not issue him with a travelling document pending an opinion to be received from their legal representatives.
- 44.3 If the Twelfth Respondent were an illegal foreigner, he would not qualify for a travel document anyway. He would, however, be liable to deportation in terms of the provisions of the Immigration Act 13 of 2002 ("the Immigration Act").
- 44.4 The Refugees Act prohibits deportation of asylum seekers and refugees. The Refugees Act also obliges the Respondents, on application, to issue any person recognised as refugee with an identity document.
- 44.5 Extradition does not fall within the constitutional powers, competence or functions of the Respondents. Thus, what the Applicant requested in annexure "KR3" was not in law, competent.
- 44.6 It is submitted with respect, that the opinion of Senior Counsel in this regard would not change the legal position.

44.7 Notably, the Applicant seems to acknowledge and recognise that *“were Nyamawasa to be returned to Rwanda, he would face serious risk of political persecution, and that South Africa is correspondingly obliged to honour the principle of non-refoulement”*.

44.8 In light of this concession, it is not clear what this application is all about. I, nonetheless, deny the allegations made in this paragraph.

45. **AD PARAGRAPH 24**

45.1 I note the contents of annexure **“KR4”**.

45.2 I confirm that the Twelfth Respondent and his wife and children applied for and were granted asylum on 22 June 2010. The Applicant is aware of that fact.

45.3 It is interesting though, to note that according to the article, *“Legal sources said the difficulty for SA was that it could not send Lt- General Nyamwasa back to Rwanda, because to do so would expose him to political persecution, and would offend SA’s international law obligations”*.

46. **AD PARAGRAPHS 25 and 26**

I note the allegations made in these paragraphs. I also note the contents of annexure "KR5" and "KR6", respectively.

47. AD PARAGRAPHS 27 and 28

47.1 I note the allegations made in this paragraph including the contents of annexure "KR7".

47.2. The contents hereof are obviously the opinions of the authors of the documents, who cannot swear positively to the truth thereof, and, *a fortiori*, neither can the deponent to the affidavit.

47.3. I deal with the summary below.

48. AD PARAGRAPH 28.a

I note the contents hereof.

49. AD PARAGRAPHS 28.b and c.

49.1 I have no personal knowledge of the allegations made in annexure "KR8" and "KR9", respectively, and do not admit them. As stated above, neither the authors of annexure "KR7"

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nor the deponent to the Applicant's founding affidavit have personal knowledge of the facts alleged herein.

49.2 I am advised that in the absence of such proof the allegations remain allegations.

49.3 Annexures "KR8" and "KR9" are not certified as true copies by the Registrar of the relevant court. I am advised that once again, these documents constitute hearsay evidence and are inadmissible. I am advised that further legal argument will be made during the hearing of this application.

50. **AD PARAGRAPHS 28.d to 28.n**

I admit the contents of the statute and legal instruments to the extent that they have been correctly cited. I however, deny the legal submissions made in these paragraphs. I am advised that further legal argument will be made during the hearing of this application.

51. **AD PARAGRAPH 28.o**

I deny the contents of this paragraph. The Twelfth Respondent qualified for refugee status on his own merits and also on the basis

D.K. 

that he was the spouse of an asylum seeker who qualified on her own merits.

52. AD PARAGRAPHS 28.p and 28.q

52.1 I deny the contents of these paragraphs.

52.2 The Twelfth Respondent and his wife and children were properly granted asylum in terms of the law of the Republic. There was no acceptable evidence before the Eleventh Respondent to do otherwise than grant refugee status to the Twelfth Respondent, his wife and children.

52.3 The allegations against the Twelfth Respondent were considered and the Eleventh Respondent came to the conclusion that they were conflicting reports which did not amount to concrete information linking the Twelfth Respondent to the alleged crimes.

52.4 The Eleventh Respondent also came to the conclusion that the mere allegation that the Twelfth Respondent was involved in the alleged crimes certainly did not serve to exclude him, his wife and their children from being granted asylum.

53. AD PARAGRAPHS 28.r to 28.u

53.1 In terms of the Refugees Act, there are measures in place for the checks and balances of the decision of the Refugee Status Determination Officer.

53.2 The primary objective of the Republic is not to refuse any one person entry into the Republic, expel, extradite, or return any person to any other country if, doing so would compel such a person to return or to remain where that person may be subjected to persecution

53.3 This is the nature of the international and domestic obligation of the Respondents. To this end, the Applicant has to ensure that this object is achieved.

53.4 The Applicant is invited to place credible evidence before this Honourable Court to substantiate its allegation that the Twelfth Respondent is acting with *"impurity"*.

53.5 The remaining allegations in these paragraphs are denied.

54. AD PARAGRAPHS 29.a and b.

b.k. 

54.1 At the time that the Twelfth Respondent and his wife were granted asylum the Eleventh Respondent was aware of unsubstantiated allegations that the Twelfth Respondent was involved in crimes against humanity and war crimes.

54.2 He considered the said allegations and came to the conclusion that they were conflicting reports which did not amount to concrete information linking the Twelfth Respondent to the alleged crimes.

54.3 With regard to the Twelfth Respondent's wife and children there were no such allegations.

54.4 Consequently, I deny the contents of these paragraphs.

55. AD PARAGRAPH 29.c

55.1 I re-iterate that refugee status once granted, can only be withdrawn if recognition was as a result of error in an application which contains materially incorrect or false information, or recognition was due to fraud, forgery, a false or misleading representation of a material or substantial nature in relation to the application or if such person ceases to qualify for refugee status in terms of section 5 and after the Standing

Committee has given such person due notice and an opportunity to make written representation with regard to the intended withdrawal.

55.2 Unless the situation is as stated above, there is no obligation on the Respondents to withdraw the refugee status of a person.

55.3 I submit that without this information, the Applicant is not in a position to insist that the South African authorities ought to take steps to withdraw the refugee status.

55.4 Moreover, no case has been made out by the Applicant for the withdrawal of the refugee status of the Twelfth Respondent's wife and children.

55.5 In light of the afore-going, I deny the correctness of the legal submissions made in this paragraph.

56. **AD PARAGRAPH 30**

I note the allegations made in this paragraph.

57. **AD PARAGRAPH 31**

I admit the allegations made in this paragraph including the contents of annexure "KR10".

58. **AD PARAGRAPH 32**

58.1 Annexure "KR11" is an acknowledgement by the Standing Committee of receipt of the opinion of the Applicant's legal representatives. It was signed on behalf of the Chairperson.

58.2 Subject to what I have stated above, I admit the allegations made in this paragraph.

59. **AD PARAGRAPH 33**

I admit the allegations made in this paragraph including the contents of annexure "KR12".

60. **AD PARAGRAPH 34**

60.1 I do not agree with the Applicant that no meaningful response was forthcoming from the Respondents for five (5) months. In the preceding paragraph, the employees of the Department advised the Applicant that their matter concerning the status of

the Twelfth Respondent was handed over to the Department of Justice, South African Police Services and International Relations.

60.2 The Applicant was advised to direct all future correspondences to those offices.

60.3 I however, note the allegations made in this paragraph including the contents of annexure "KR13".

61. AD PARAGRAPHS 35 to 41

I do not have personal knowledge of the allegations made in these paragraphs. I, however, note the contents of annexures "KR14" to "KR18"

62. AD PARAGRAPH 42

I admit the allegations made in this paragraph.

63. AD PARAGRAPH 43

I do not have personal knowledge of the allegations made in this paragraph.

64. **AD PARAGRAPHS 44 to 46**

64.1 The opinion of the Applicant's legal representatives does not, with respect, oblige the Respondents to act contrary to the provisions of the law. Such opinion is based on hearsay evidence and other unsubstantiated allegations.

64.2 For these reasons and others contained elsewhere in this affidavit, I deny any obligation on the part of the Respondents to act as alleged.

65. **AD PARAGRAPH 47**

I admit the allegations made in this paragraph.

66. **AD PARAGRAPH 48**

66.1 I have already dealt with the provisions of the Refugees Act governing the withdrawal of refugee status.

66.2 I deny any allegation made in this paragraph which is inconsistent with what I have stated above.

66.3 I emphasise that no false, forged, fraudulent or materially incorrect information was contained in the applications of the Twelfth Respondent and his wife that could ground an application for the withdrawal of their refugee status. The Eleventh Respondent was well aware of the conflicting and unsubstantiated allegations against the Twelfth Respondent, but considered them insufficient to exclude him, his wife and children family from being granted asylum.

67. AD PARAGRAPHS 49 and 50

67.1 I do not agree that the allegations made in these paragraphs are correct.

67.2 Assuming that the refugee status of the Twelfth Respondent is withdrawn, he will by operation of the law be an illegal foreigner liable to deportation in terms of section 32 of the Immigration Act No. 13 of 2002.

67.3 Furthermore, there is no basis on the papers to grant the Twelfth Respondent, in the event of the withdrawal of his refugee status, permanent resident status, as proposed by the Applicant.

67.4 I understand the Applicant to be saying that if the Twelfth Respondent were to be deported to Rwanda he would be subjected him to political persecution. I am advised that deporting him would be contrary to our constitutional and international obligations.

67.5 If the Applicant does not seek the Twelfth Respondent's deportation, I am advised that this application is academic. Further legal argument will be made during the hearing of this application.

68. AD PARAGRAPHS 51 and 52

I deny the allegations made in these paragraphs.

69. AD PARAGRAPH 53

69.1 I deny that the Applicant is entitled to the order sought.

69.2 I am advised that its application does not make out a case for the relief sought.

70. In the premises, the Respondents pray that the Applicant's application be dismissed with costs, such costs to include those occasioned by the employment of two counsel.

[Handwritten Signature]
DEPONENT

THUS SIGNED AND SWORN to before me at **PRETORIA** on this the ¹⁴..... day of **November 2011** by the deponent, he having acknowledged that he knows and understands the contents of this affidavit and considers it to be true and correct, that he has no objection to taking the prescribed oath and considers it to be binding on his conscience.

[Handwritten Signature]
COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
STASIE KOMMISSARIS
KAAPSTAD

2011-11-14

CAPE TOWN
STATION COMMISSIONER
SOUTH AFRICAN POLICE SERVICE

FAX RX Result Report



MFP

FS-1118MFP

Firmware Version 2GM_2000.004.008 2005.12.16

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MFP

FS-1118MFP

Firmware Version 2GM_2000.004.008 2005.12.16

Job No.: 1600

Total Time: 0°17'31"

Page: 16

Completed

Document Name: doc16112011135309



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Docex: 298

16 November 2011

Enq: J L DE LANGE

My Ref: 38/2011/Z12

Email: jdlange@justice.gov.za

Your Ref: MJP/STATE/L00

MOJAPELO ATTORNEYS
PRETORIA

No.	Date and Time	Destination	Times	Result	Resolution/ECM
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16/11/2011 12:23

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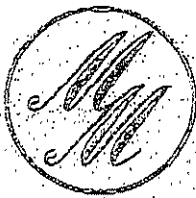
TO: _____

FROM: MOHLABA MOSHOANA ATT

FAX: 0123264715

TEL: 0123289966

COMMENT: URGENT



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Our ref: MR MOHLABA/FZT/efb/CIV/N. 0069/ 7

Your ref: 3433/07/Z62

THE OFFICE OF THE STATE ATTORNEY
MANAKA HEIGHTS
"ATTENTION: MR D. C. OLWAGE"
PER FAX: 012 328 2662/3

16TH NOVEMBER 2011

Dear Sir/Madam

**RE: EREL NGOBENI/MINISTER OF SAFETY AND SECURITY
CASE NO: 105522/07**

We refer to our letter dated 04th October 2011.

Kindly take note that we still await payment of the judgment amount herein.

Kindly revert to us with the progress herein.

Yours faithfully

MOHLABA & MOSHOANA

PER: F Z THUKETANA



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

BRANCH: OFFICE OF THE CHIEF LITIGATION OFFICER (Law Enforcement)

Private Bag X 81, PRETORIA, 000 • Momentum Centre, 329 Pretorius Street, PRETORIA
Tel (012) 315 1614, Fax (012) 315 1105 / 357 8017

Ref: 9/13/3 Mtsweni S W and Fou Others (RS1) : Your ref : 6370/2010/Z50
Enq: M S Seabela
E-mail: SSeabela@justice.gov.za

16 November 2011

The State Attorney
Private Bag X 91
PRETORIA
0001



Tel:
Fax: 012 328 2662/3
No of Pages: 4

Attention: Ms M S Matlou

CIVIL ACTION: S MTSWENI AND FOUR OTHERS / MINISTER OF POLICE AND MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

1. I refer to the above matter and send herewith Notice of Unsatisfied Judgment for your attention.
2. It would appear that judgment was granted against the defendants on 25 February 2011. According to your letter dated 17 June 2011, summons was not yet served at that time.
3. It is our instructions to take the matter up with the other side's attorneys and revert as a matter of urgency.

Spilly Seabela
LAO

On behalf of the Department of Justice and Constitutional Development



Wits Law Clinic

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or DoceX 197, Johannesburg
For attention of: Peter Jordi

PER FAX: (012) 328-2662

The State Attorney
PRETORIA

Tel: (011) 717-8562
Fax: (011) 717-8519

Ref: LAB 10/1124-Phalane
PJ/wb
J Noor Mohamed

Date: 16 November 2011

Your Ref: Monama/0279/2011/Z6

Sir

PHALANE/MINISTER OF POLICE

We write to inform you that our client's application in terms of Rule 60(2) was heard in the Pretoria Magistrate's Court. The magistrate ordered that your client is to deliver his discovery affidavit within 10 days of the granting of this order.

Kindly furnish us with your client's discovery affidavit immediately, failing which our client will launch the appropriate application.

Yours faithfully


WITS LAW CLINIC