

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case No: 040799/2024

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED: NO

DATE: 12 December 2024

SIGNATURE:

In the first application between:

P[...] M[...] OBO

APPLICANT

M[...] M[...]

and

**THE DIRECTOR GENERAL OF
HOME AFFAIRS**

FIRST RESPONDENT

MINISTER OF HOME AFFAIRS

SECOND RESPONDENT

THE DEPARTMENT OF HOME AFFAIRS

THIRD RESPONDENT

In the Second Application between:

Case No: 2024/046416

S[...] Z[...] J[...] OBO R[...] S[...]

APPLICANT

and

THE DIRECTOR GENERAL OF
HOME AFFAIRS

FIRST RESPONDENT

MINISTER OF HOME AFFAIRS

SECOND RESPONDENT

THE DEPARTMENT OF HOME AFFAIRS

THIRD RESPONDENT

In the third application between:

Case No: 2024/019004

G[...] R[...] OBO N[...]
R[...] AND N[...] R[...]

APPLICANT

and

THE DIRECTOR GENERAL OF
HOME AFFAIRS

FIRST RESPONDENT

MINISTER OF HOME AFFAIRS

SECOND RESPONDENT

THE DEPARTMENT OF HOME AFFAIRS

THIRD RESPONDENT

In the fourth Application between:

Case No :2024/ 017782

A[...] H[...] M[...]2 OBO
Z[...] P[...] M[...]2

APPLICANT

and

**THE DIRECTOR GENERAL OF
HOME AFFAIRS**

FIRST RESPONDENT

MINISTER OF HOME AFFAIRS

SECOND RESPONDENT

THE DEPARTMENT OF HOME AFFAIRS

THIRD RESPONDENT

Various applications to compel – issuing of full unabridged birth certificates- copy and paste allegations – no proper case made out on the papers -court is an upper guardian of all minor children – transgression with the Immigration act- no bona fides established- applications dismissed

JUDGMENT

NHARMURAVATE AJ

INTRODUCTION

[1] These matters were brought before the unopposed motion court wherein the following order/s were sought in terms of the various notices of motion filed by the Applicants that in relation to P[...] and S[...] the following orders were sought:

[2] *“the applicant sought that the respondent assist and investigate relevant issues of the applicant in his application for the South African birth certificate within 90 days of this order and make findings within 30 days of the investigation.”*

[3] In relation to the M[...]2 and R[...] matters the following orders are sought to:

“1. Compel the Respondents to allow the Applicant to make an application for the registration of birth on behalf of its minor child.

2. *Upon approval of the registration of the birth application, the respondents must issue a full unabridged birth certificate to the minor child of the applicant.*

3. *Ordering the Respondents to pay costs of this application jointly and severally liable one paying the other to be absolved.”*

[4] There was no opposition in all the matters by the Respondents. To make sense of all these applications I shall address them each below as follows:

M[...] P[...]

[5] The Applicant is one M[...] P[...] who resides at M[...] Street, Katlehong, Gauteng province. She alleges that the department of Home Affairs has failed or refused to grant her a birth certificate document of the Republic of South Africa. She seeks an order that the Respondent grant the birth certificate within 15 days from the date of the service of this order.

[6] The Applicant alleges that the minor concerned was born in this country on the 13th of March 2012 and the birth was registered by the First Respondent. She alleges that the First Respondent has refused in numerous occasions to assist her, in her attempt, in obtaining the birth certificate. She alleges that when she goes to Home Affairs for the application of the minor's birth certificate, they always send her back without giving her adequate reasons. She has been approaching Home Affairs since 2018 to 2022. She thereafter gave up due to the lack of being assisted.

[7] She thereafter issued a letter of demand through her legal representatives which was ignored which has subsequently led to this court's application.

ANALYSIS OF P[...]

[8] This application firstly is poorly drafted, the prayers sought in the notice of motion are not supported by the averments made on the founding papers. Upon reading of the papers, they are very confusing as to who is attesting? This

application purports to be drafted by the Applicant who is the mother of the minor M[...]. However, this court is not informed of the status of the father. Whereas his status is of outmost importance in terms of section 21 of the Children's Act.

[9] *21 Parental responsibilities and rights of unmarried fathers*

(1) The biological father of a child who does not have parental responsibilities and rights in respect of the child in terms of section 20, acquires full parental responsibilities and rights in respect of the child—

(a) if at the time of the child's birth he is living with the mother in a permanent life- partnership; or

(b) if he, regardless of whether he has lived or is living with the mother—

(i) consents to be identified or successfully applies in terms of section 26 to be identified as the child's father or pays damages in terms of customary law;

(ii) contributes or has attempted in good faith to contribute to the child's upbringing for a reasonable period; and

(iii) contributes or has attempted in good faith to contribute towards expenses in connection with the maintenance of the child for a reasonable period.”

[10] The recognition of the natural fathers' rights over their minor children has been confirmed quite a few times by our courts specially the constitutional court in various judgments, that it is unjustifiable to differentiate and exclude fathers as they have full parental responsibilities and rights over their child¹.

¹ Centre for Child Law v Director-General: Department of Home Affairs [2021] ZACC 31

[11] This application does not address pertinent issues like when did the Applicant go to Home Affairs this court is merely given a thumb suck of a period between 2018 to 2022 without qualifying when, and to which office of the Respondent the Applicant attended to and what were the responses of these dates.

[12] In my view it does not appear that there was any attempt made by the Applicant to even obtain the registration of a birth certificates. The averments in support of the orders sought are only composed of four paragraphs which inform this court absolutely nothing. There is no substance in the papers filed in this regard. In my view the legal representatives make proper inquiries before drafting these papers.

[13] In my view this application is not *bona fide*. In a world which is engulfed with human trafficking where one in three identified victims of human trafficking is a child. South Africa enjoys a significant population of children which in terms of the constitution, courts are called upon to always uphold and protect their best interest. Our country like the rest of the world is not immune to the pandemic of human traffickers who source children for various reasons. Caution must be exercised in such matters².

[14] To be efficient, I then requested Mr Moretsele Counsel appearing for the Applicant to furnish the original documents of the attachments used as the copies were not clear and some were not even certified as true copies thereof. I requested to be furnished with the original documents (to which I was informed were not available in court). I then request that they be made available the next court day which was a Wednesday. I further informed him that the Applicant's address was nearby (Katlehong) and so were his instructing Attorneys. I did not foresee any difficulty obtaining same and I was treating these matters with caution and urgency because they involve the child's best interest which are the most important considerations in a matter concerning the child.

² The Southern African region is home to a significant population of children. It is a region where traffickers source, harbour and exploit their victims. The Southern African migratory routes are among major corridors for thousands of young men, including boys, who embark on their journeys often crossing as many as five countries for the purposes of education, family reunification, and employment. Migrant children often endure extreme physical hardships and are targets of abuse, exploitation and violence while on the move, this includes human trafficking.

[15] However, Counsel in this matter did not come back with original documents nor did this court receive any information as to why they decided to vanish with the information requested. Further, there was also no communication received from the legal representatives' offices Xiviti Attorneys in this regard which raised my suspicion that this matter was not before court *bona fide*.

Supporting Documents

[16] The copy of the proof of birth of the minor is a late confirmation of birth from a Thelle Moerane Regional Hospital dated the 3rd of February 2022. This attachment is in contradiction to the averment made in the founding paper. In terms of the law a child's birth must be registered within 30 days of birth³. Registration thereafter is considered as a late registration which therefore requires the Applicant to prove certain factors as requested by the office of the Respondent⁴.

[17] The late confirmation of birth is dated 3 February 2022 without qualifying it further as to why they are attaching a late confirmation of birth of a child who was born in 2012. There is no explanation why the minor child was not registered when she was born in 2012 or immediately thereafter. Why did the Applicant only decide to approach the offices of the Respondent in 2018 if the child was born in 2012 at Thelle Mogoarane. Why are the attempts made 6 years down the line to approach the office of the Respondent?

[18] What was also worrisome, is that the minor child in the pro forma affidavit is named **K[...]** **P[...]** whereas this application is done by the Applicant on behalf of **M[...]** **P[...]**. This then begs the question whose application is this? Or rather who is the biological mother **M[...]** **P[...]** because in front of the police she only confirmed one child **K[...]** **P[...]** born in 2018-11-23. Whereas this application before me concerns a minor born in 2012 March 13. In this regard there are many possibilities.

[19] Alarming so, is the attachment of a pro-forma statement by the Applicant from the South African Police Services wherein she alleges that she was born in

³ Section 9(1) Births and Deaths Registration Act 51 of 1992

⁴ Regulation 3 of the Births and Deaths Registration

South Africa, and she does not have an Identity document because both her parents passed away. I note that not a single death certificate of the parents of the Applicant is attached as proof of this allegation. The alleged deceased are also nameless and bear no dates of birth or jurisdiction. Additionally, there are not even confirmatory affidavits to that effect from any family member which makes it hard for this court to be convinced that this is true.

[20] The Applicant further does not inform this court if she had siblings with the deceased parents which makes it very hard for this court to believe that the Applicant is indeed a South African citizen whose parents have both passed away.

[21] Further, the Applicant alleges to have been born in this country from South African parents has attached not a South African identity document but a Kingdom of Lesotho passport. This passport was issued on the 29th of August 2017. This is not explained anywhere in the papers. This means that she is a Lesotho citizen and at best in 2017 she was still in the Lesotho when the passport was issued. An inference can then be drawn that when the minor child was born in 2012 whilst the mother was still in the Lesotho and is a Lesotho citizen. It is also important to note that the expiry date noted on the applicant's passport it's the 28th of August 2027. It is highly improbable that she was born in South Africa regard being had to the attachments in support of her claim. This court draws inference that "*attempts*" were made from 2018 to obtain the birth certificate of the minor simply because she was not in the country in 2012 since the passport was issued in 2017 otherwise, she would have explained all these discrepancies in her founding papers.

[22] In terms of regulation 8 (1) of the registration of births and death⁵ which provides for children born of parents who are non-South African citizens which in my view the Applicant falls under. The Applicant was required to give a notice within 30 days of the birth of the child within the Republic. In addition to that the notice of this birth must be given to the Respondents accompanied by proof of birth attested to by a medical practitioner who attended to the birth or examined the mother, secondly an affidavit attested to by a person who witnessed the birth of the child where the birth

⁵ Act 51 of 1992 (as amended)

occurred. Thirdly, a certified copy of a valid passport and visa or permit of the mother or father or both parents of the child as the case may be so and where applicable certified copy of a marriage certificate of the parents. None of these requirements are met.

[23] The Applicant also attached a minor's road to health card with the name **R[...]**. This application before this court purports to be on behalf of **M[...]** **P[...]** not **R[...]** whose name was squeezed in the card. In my view this is not a *bona fide* application this is brought by the legal representatives' *mala fide* and this amounts to an abuse of the courts processes.

[24] In my view the Applicant the delay from 2012 to 2018 is not explained. This application fails to demonstrate *good cause as to* why she did not register the minor children with the offices of the Respondents within the lawfully stipulated times of 30 days. The confirmation of birth is a requirement, meaning a parent must bring it to the Respondents offices to register the birth of a minor child in order to obtain the birth certificate. This was only obtained in February 2022 it is therefore not plausible that she attended to the offices of the Respondent in 2018 if this was obtained in 2022.

Service to the Respondent

[25] The Applicants' reasons for setting down the application on the unopposed is simply because there was no opposition from the Respondents. However, from the papers the return of service attached is for **Mosele Majoro obo Boitumelo Majoro**. In my view these papers were not served on the Respondents. Only the set down was served on the offices of the First Respondent on the 10th of July.

[26] I therefor find that this application has no merit and stands to be dismissed . The conduct of the attorney Xivit Attorneys and Mr Moretsele Counsel for the Applicant is not what is expected from an officer of this court.

Duplication of matters

[27] It also came to my attention that the same matter was issued by the same Attorney under different case numbers 2024/ 104754. This matter was done by the very same Counsel Mr Moretsele who avoided inquiries made by this court by disappearing only to emerge on the 9th of December 2024 before a different judge on a similar matter for the same parties with the knowledge that judgement was pending herein under this case number. This conduct from legal representatives is not acceptable.

[28] This judgement will be referred to the LPC for further investigation on the actions of the legal representatives herein Mr Moretsele and Xiviti Attorneys.

S[...] Z[...] J[...]

[29] This application was also from the same attorney **Xiviti Attorneys** The same order is sought as per the **P[...]** matter, and it was also moved by the same Counsel Mr Moretsele. Similarly, the nature of the application is alleged to be the refusal to grant the applicant's birth certificate. This application is to compel issue thereof.

[30] This application is similar to the **P[...]** matter in fact it is a copy and paste from the errors in the numbering of the founding papers to the averments which are made⁶. This is a display of a lack of respect of this court by the legal representatives involved herein⁷.

[31] The Applicant herein alleged that she was born in this country on the 28th of April 2014 and her birth was registered by the First Respondent. Similarly to paragraph seven of the **P[...]** matter the same allegations are made that since 2018 to 2022 they approached the nameless offices of the Respondent to seek registration of a full unabridged birth certificate with no success until they gave up.

[32] In my view it is highly impossible that all these Applicants have attended the same nameless Respondents office from 2018 to 2022 without being distinctive as to

⁶ Lembore and Others v The Minister of home affairs and others 29 July 2024/ZAGPJHC

⁷ Para 14 Supra

the date the month and to their reasons of why they were unsuccessful. It is difficult for this court to be convinced that these applications are *bona fide*.

Supporting documents

[33] This application was supported by a late birth confirmation of T[...] M[...] dated in February 2022 without the Applicant taking this court into confidence as to why the minor's registration was done late. Similarly, in this application the court requested original documents which **Xiviti Attorneys** and Counsel **Mr Moretsele** did not make available, nor did they convey any message to court for their reasons in failing to furnish the court with same. I note that the late confirmation of birth does not even have the mother's details in full that is her passport number or date of birth.

[34] Additionally, the affidavit attested to by the Applicant through the South African Police Services alleges that she is the biological mother of B[...] N[...] and R[...] N[...] she alleges that wants to change them to use her surname. There are no reasons why she wishes to change the N[...] surname to her surname. Similarly to the previous application the details of the father are not there the court is not informed of the status of the father whether he is alive or dead etc. As highlighted previously the rights of the biological fathers of children born out of wedlock have been asserted by the Act of the natural fathers of children born out of wedlock⁸. This application similar to the above does not meet the of births and deaths regulations specifically regulation 8(1) read together with regulation 12(1) and (2)⁹.

[35] On a closer look at the Applicant's SAPS affidavit both the minors have a different surname to the Applicant and what she seems to want to do is to change their surnames. Further she gave the social workers permission to obtain a birth certificate in relation to the change of surname. These contents confuse the application even further.

[36] In my view, the late birth confirmation may have been obtained inappropriately simply because the SAPS affidavit is dated the 7th of February 2022. Whereas the

⁸ Natural Fathers of Children Born out of Wedlock

⁹ Act 51 of 1992 (as amended)

late confirmation of birth was done on the 4th of February 2022. It bears the surname S[...]. A proper registration thereof should reflect the N[...] surname not S[...] as the Applicant wishes to change both her minor children to her surname which makes this late confirmation of birth more suspicious.

[37] This is like the *P[...]* matter, there is no explanation why the Applicant only sought to register the minor child late let alone approach the nameless office of the Respondent in 2018 which was four years after the child was born. If indeed the minor child was born in this country, why was the birth registered late in 2022 there is no explanation in this regard.

[38] In my view, this is proof that the Applicant has not approached the office of the Respondents simply because the registration of birth in the hospital is a requirement for the minor child to obtain a full unabridged birth certificate. If this was only obtained in 2022 then she could not have attended the offices of home affairs in 2018 and 2022 as she was not in possession of one.

[39] The court as an upper guardian of all minor children and it has a duty to ensure that when it makes such orders as sought that it exercises caution. The implication of granting the orders sought by the Applicant is that the child could possibly be handed to a wrong person or whoever's name is on the full unabridged birth certificate has a right to leave any country with the child. Which could possibly be abating human trafficking.

[40] The lack of information and the poor draftsmanship of the papers leaves this court with much to speculate about. The minor's road to health card causes more confusion the mother is reflected as Z[...] S[...] and there has been no explanation provided to this court why there's such a difference between the two.

[41] Additionally, the Applicant (inclusive of P[...]) did not take this court into confidence as to what has been legalizing their status or stay in the country as they are not citizens of this country, yet they claim to be staying in the country. There are no details as to how long they have been in the country and how they have entered the country. It is a requirement in terms of regulation 8(1) to demonstrate a passport

with a valid visa or otherwise. In the absence of same an inference can be drawn that they are staying illegally in the country.

[42] My view is further fortified by the passport attached which reflects the movement stamps. There is a visitors permit dated the 13th of April 2020. This was alarming because on the 26th of March 2020 this country was under level 5 lockdown for 21 days effectively, from this date all ports of entry were closed. It is peculiar then how the Applicant obtained a visitor's visa. The Applicants cannot come to court with unclean hands specially on a matter concerning children rights who can be easily victimized or even become victims of human trafficking.

[43] The constitutional court highlighted the importance of a person coming before the court with clean hands in the Tembo matter. Zondo CJ held as follows that: *"In my view the High Court was right to dismiss Mr Tembo's application on the basis that he was approaching the Court with dirty hands. He had contravened the Immigration Act on numerous occasions. He has not provided any explanation as to why he entered this country illegally when he could have entered the country legally. Not only did he do this once but he entered and left South Africa illegally many times. He has stayed in South Africa illegally for many years and now he approaches our courts for relief. As long as Mr Tembo has not provided an acceptable explanation for engaging in a series of contraventions of the Immigration Act, his hands remain dirty and our courts should not entertain his application for benefits of the very Act of Parliament which he has contravened deliberately for many times. No self-respecting country can allow someone who has conducted himself towards its laws the way that Mr Tembo has conducted himself towards our Immigration Act to approach its courts and seek benefits under the same Act when it suits him or her after deliberately contravening that Act countless times¹⁰."*

[44] Similarly, there is no merit in the application sought before this honorable court this application stands to be dismissed. Factual and in law none of the requirements for seeking the above were met in line with the regulations. The

¹⁰ Rayment and Others v Minister of Home affairs and Others 2024 (2) SA 591 (CC) (4 December 2023)

conduct of Mr Moretsele and Xivit Attorneys is to be investigated by the LPC in how they have handled this matter inclusive of disobeying this courts instruction.

G[...] R[...]

[45] This application is also similar to the two applications wherein the Applicant seeks to compel the Respondents to issue the Applicant's minor child with a full unabridged birth certificate. This application has been attested to by the father to the minor children G[...] R[...] W[...] on behalf of the two biological children born respectively on the 3rd of April 2016 and the 27th of November 2019.

[46] This application is confirmed by the mother whose status and further details are not related anywhere else on the papers , Similarly, the Applicant relates that on 10 or about early May 2016 and other numerous times in 2019 and 2023 he visited the office of the department of Home Affairs located in Musina Limpopo with the intention to register and or apply for the birth certificate for the children. He was turned back on several occasions and told that he cannot apply, and he was refused an opportunity to make an application for the birth certificate since the mother was not in possession of valid South African identity document.

[47] The Applicant alleged that he suffered prejudice as a result of the Respondents unlawful conduct. He further alleges that he tried exhausting internal remedies by sending a letter of demand to the office of home affairs in Musina which has not been Responded to.

Supporting Documents

[48] Similarly, this court requested original copies of the annexures to the application simply because there were bad copies and some were also not authenticated in line with the requirements. The documents herein took at the very least two weeks to make their way through to this court. Firstly, the copy of the identity document which was attached to the notice of motion was a different copy which was then subsequently handed. It was a more newer identity document way one can clearly see the details of the Applicant.

[49] What was worrisome in this matter is that there is an allegation that there is a mother D[...] N[...] she does not seem to have an identity document or a birth date. Those details are also missing in the road to health cards which have been attached to this application. However, the Applicant does not take this court into confidence to explain why the mother does not have an identity document why the mother does not have a birth date.

[50] Further, what is of concern is that the road to health cards which have been produced as proof that the minors were born in this country to both parents do not have the name of the Applicant as the father. This is not explained. Whereas this application alleges that both parties reside together this court has not been taken into confidence why that is so. Even the relationship status between the two is not known (the Applicant and mother) which is a requirement in terms of regulation 5(1),(2),(3) inclusive of (4) which clearly stipulates that a notice of birth which does not meet the requirements of sub regulations (3) and(4) should not be accepted.

[51] Further, the surname written on the road to health cards is totally different from the surname that appears on the identity document by the Applicant. It is not clear why the surname will be spelled erroneously by the mother who lives with the Applicant surely, she knows how to spell the Applicant's surname. Again, this court is not taken into confidence why the two surnames are spelled differently.

[52] In my view, such matters are sensitive as they concern minor children who need to be protected. Whichever parents name ultimately appears on the full unabridged birth certificate will be given rights over that child as a parent who can if they so wish leave with the child for another country or do anything else. Therefore, this court must satisfy itself that when it makes such an order that this order is competent in law and given to the relevant person. I am not satisfied that the Applicant has proved that he is the father to both minor children. The courts functions not to merely rubber stamp unopposed matters specially matters concerning minor children.

[53] Most concerning is how the legal representatives herein have treated these matters. This application purports to have been signed by the deponent who has signed his surname in a correct way as it appears in his identity document but how the Applicant has been cited is totally different. This just shows the lack of due diligence on the part of both the legal representative and Counsel Mr Malange in the matter.

[54] Further, the deponent purportedly signed this document in Musina yet the Commissioner of Oaths who commissioned this document sits in Pretoria and this court has not been given an explanation how the Commissioner of oaths Mr. VJ Baloyi was able to commission the documents of an Applicant who signed in Musina. If that was the case the Applicant was never made to understand what taking an oath means.

[55] Therefore, this application similarly stands to be dismissed as the Applicant did not even demonstrate that they met the requirements of the Act inclusive of satisfying the regulations¹¹.

A[...] H[...] M[...]2

[56] Similarly, this application is to compel the Respondents to allow the Applicant to make an application for registration on behalf of his minor child and upon approval that the Respondent must issue a full unabridged birth certificate to the minor child.

[57] M[...]2 Is an adult male who is also residing at Madimbo Village 1[...]. He is making this application on behalf of the minor child Z[...] P[...] M[...]2 born on the 16th of November 2015. The Applicant alleges that the minor child resides with him and the mother M[...] M[...]. He also alleges that he was turned back by the officials of the department on numerous times in 2014 to 2023.

[58] In terms of section 9 of the Births and Deaths Registration Act 51 of 1992 (as amended):

¹¹ Regulation 5 and 8 of the registration of births and Deaths Registration Act 2014

“9. Notice of birth

(1) *In the case of any child born alive, any one of his or her parents, or if the parents are deceased, any of the prescribed persons, shall, within 30 days after the birth of such child, give notice thereof in the prescribed manner, and in compliance with the prescribed requirements, to any person contemplated in section 4.*

(2) ..

(3) ..

(4) ..

(5) *The person to whom notice of birth was given in terms of subsection (1), shall furnish the person who gave that notice with a birth certificate, or an acknowledgement of receipt of the notice of birth in the prescribed form, as the Director-General may determine.”*

[59] In terms of the law registration can only be done if the child is born alive within 30 days after the birth of such a child. Registration cannot take place before the child is born. This application is not bona fide. The reason why I say so is that the minor child was born in November 2015. It is highly implausible how the Applicant can attend numerous times to the Respondents offices in 2014 to 2023. It's common cause that the minor child was not born in 2014. This application was deposed to in February 2024 it is highly impossible that the Applicant will not recall the dates when he proceeded to the offices of home affairs to register the minor child in 2023.

[60] This court is also concerned that the Applicant alleges that he was turned back because the mother of the minor child is not in possession of a valid South African identity document. This court is not taken into confidence if this is true or not. Both road to health cards do not have the mother identity document or even passport number of the mother let alone the birth date. The mother does not seem to have any legal identity which is worrisome.

[61] In terms of the Immigration Act 13 of 2002 as amended foreigners are obliged as follows:

foreigners erroneously allowed to enter Republic

No illegal foreigner shall be exempt from a provision of this Act or be allowed to sojourn in the Republic on the grounds that he or she was not informed that he or she could not enter or sojourn in the Republic or that he or she was admitted or allowed to remain in the Republic through error or misrepresentation, or because his or her being an illegal foreigner was undiscovered.”

Offence

(a) Anyone who enters or remains in, or departs from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years.

[62] *(b) Any illegal foreigner who fails to depart when so ordered by the Director-General, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding four years.”*

[63] This application is similar in every nature to the R[...] application it's a copy and paste. Even the entire numbering of these applications is similar where there is an error in relation to the numbering in the M[...]2 matter I will also be similar in this application. Whereas the uniformed rules of court direct that the facts that the Applicant relies on must be set out simply, clearly and in chronological sequence, and without argumentative matter, in the affidavits which are filed in support of the notice of motion. It is well established that an applicant should make out its case in its founding affidavit, and certainly not belatedly in argument'. This application amounts to an abuse of the courts process.

[64] In the full bench decision of *Lembore and Others v Minister of home affairs* the honourable Mlambo JP held as follows “[14]*The analysis of the six applications above clearly confirms that what was placed before this court was a single affidavit, reproduced 6 times with minor changes the inescapable conclusion is that none of the affidavits contain personal information relating to the applicants individual experiences nor can they be regarded as truthful in fact, the founding affidavit in associable a matter similarly launched by Manamela ma attorneys when it was in*

this division before making its way to the constitutional court is similar to the ones before us in all material ways I'm almost using the exact same word in some areas, and repeating the bottom what was included in the ones in castle. There is therefore no other conclusion than those reached in the sequestration matters and in the Eastern Cape division above that to find that this is an abuse of this code process further that Manamela MA attendance has found for itself a cottage a cottage industry of exploiting vulnerable asylum seekers, who likely to not understand what they are posing to¹²

[65] This application was attested to on the 14th of February 2024 similar to R[...]. However, the stamp from the commissioner of oaths does not look like it was commissioned on the 14th of February 2024. Similarly, this was deposed to in Musina, yet the Commissioner of Oaths sits in Pretoria and there's no explanation provided why Mr. Patuxolo Pat Petshana was able to Commission a document while he was in Pretoria. It is probable that the Applicant deposed in the absence of the Commissioner of Oaths.

[66] Similarly original documents were requested which took at the very least two weeks if not more. Simply because the annexures which were attached to the application, were not clear and they were not authenticated. I was not provided with the copy of the identity document of the Applicant. I was informed that he lives deep in the village. This concerned me simply because the copy attached is one of the oldest copies of the identity documents and it is not clearly eligible one can hardly see the Applicant's identity details. It was strange that only the original road to health card of the minor could be made available but not the original copy of the identity document, assuming that both are coming from the same residence as alleged in the papers.

[67] I was furnished with the road to health card and documents which did not form part of the Application which in my view I cannot consider as they were not before me.

¹² Supra

[68] In **Bato Start Fishing (Pty) Ltd v Minister of Environmental Affairs 2004(4) SA 490(CC) Para 48** the Constitutional Court remarked as follows: *“court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field.*

CONCLUSION

[69] In my view, it will not be plausible for this court to make orders as sought in the various notices of motions filed. The Applicants have not demonstrated on the probabilities that they made any attempts to attend to registering the minor children for their full unabridged birth certificates with the relevant office/s of the Respondent as discussed.

[70] Secondly, it is my view that the Applicants through their legal representatives are abusing the courts process by bringing matters without making proper inquiries with the Applicants. The legal representatives simply filed these applications with the hope that these applications will be merely granted by the court simply because the matters were not opposed perhaps with the hope of getting costs from the unsuspecting Respondent. This is far from the truth as the courts are the upper guardians of all minor children. It is imperative that caution is exercised where such orders are sought.

[71] The conduct of the legal representatives specially Xiviti Attorneys and Mr Moretsele in these matters is questionable which calls for further investigation by the Legal Practise Council . Specially the conduct of duplicating matters under different case numbers .

[72] In the Lembore matter the honourable Mlambo JP stressed the importance of integrity within the legal profession in presenting and representing their matters in court. The full bench highlighted the Minister of Home Affairs and others: in re Lawyers of human rights v Minister of Home Affairs and others wherein the constitutional court emphasized that: *“legal practitioners are an integral part of our justice system they must uphold the rule of law, act diligently and professionally.*

They all were high ethical and moral duty to the public in general but in particular to their clients and the courts.”

[73] All four applications relate very little about the circumstances of the minor, the same with the Applicants or the biological mothers or fathers as discussed. In my view, it will not be in the best interest of all minor children involved in these matters to grant the orders sought. Let alone demonstrating that they qualified for same under regulations 5, 8 read together with 12 of the registration of births and deaths Act.

[74] In the circumstances the following order is made :

1. The Applicants applications are dismissed.
2. The Legal Practice Council is to be served with this order in order to investigate conduct of Xivit Attorneys and Mr Moretsele .
3. This judgement is also to be served with the all Respondents .

NHARMURAVATE, AJ
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

First and Second Application

For the Applicant : Adv M S Moretsele
Instructed by. : Xiviti Attorneys

Third Application

For the Applicant : Adv R F Malange
Instructed by. : Baloyi Maluleke Inc

Forth Application

For the Applicant : Adv T Pilusa
Instructed by : Baloyi Maluleke Inc

Date of Hearing : 19 August 2024
Date of Judgment : 12 December 2024