

**IN THE KWAZULU-NATAL HIGH COURT
DURBAN
REPUBLIC OF SOUTH AFRICA**

CASE NO.12727/2009

In the matter between

SINOTHANDO SIPHESIHLE MYEZA

Applicant

and

THE MINISTER OF HOME AFFAIRS

First Respondent

**THE DIRECTOR GENERAL:
HOME AFFAIRS**

Second Respondent

and

106 other cases.

J U D G M E N T

Del. 6 January 2011

WALLIS J.

[1] The circumstances in which in September 2010 I came to hear 252 cases in which the applicants sought to review the alleged failure on the part of the Department of Home Affairs to determine applications allegedly for the issue of identity documents, whether alone or in conjunction with applications for the late registration of the applicant's birth, are dealt with in the judgment handed down in Pietermaritzburg on 23 December 2010 in the case of *Maxwell Thusi v Minister of Home Affairs and another*. It is accordingly unnecessary to deal with that in this

judgment, which relates to some of the Durban cases forming part of that group of cases. My original intention was to deal with all of the Durban cases together but in order to expedite matters I have found it appropriate to divide the task into two. This judgment accordingly relates to cases where the applicant has died or the applicants no longer intend to proceed, or where I have been informed since hearing the argument that they have been settled. It deals with cases where the applicants' attorneys are no longer in communication with their clients and have therefore been unable to deal with the information provided by the Department. Lastly it deals with those cases where the central issue has become academic because it is common cause between the parties that the applicant concerned has received their identity document, leaving only the question of costs for determination and those where there is a contention by the Department that an identity document has been issued.

[2] In what follows I will refer to cases by the number allocated to them in the roll of Durban cases. In number 67 the applicant died in August 2010, but this was only discovered after the application had been argued and relief had been sought on his behalf. Number 52 is not proceeding and 63 is a duplicate on the roll and has been removed. Matters 79 and 89 are not only duplicated on this roll but I am informed that the applicant has already obtained an order relating to these issues through the offices of another firm of attorneys. All five matters are accordingly struck off the roll with no order for costs. So is number 11 where all issues including costs were finally disposed of by an order by Murugasen J made on 6 April 2010.

[3] In 23 cases the final schedule provided by the applicants' attorney shows that they have been settled. No information is furnished of when

and in what circumstances a settlement was reached. It is not even apparent whether they were settled prior to the matters being argued, although that seems probable. A brief examination of the court files suggests that they are cases in which orders have already been taken by consent. Be that as it may all that is now sought is that the applicants be given leave to withdraw the applications. That leave will be granted with no order for costs. That disposes of matters 3, 6, 7, 8, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 54, 55, 56, 97, 107, 129 and 155.

[4] In matter 1 the applicant obtained by consent an order that he be authorised to re-apply for an identity document and this was followed, as in some of the Pietermaritzburg cases, by an application for contempt on the basis that his attorneys had not been timeously furnished with the name of the official who should be approached for this purpose. Once the name was furnished enquiries revealed that the applicant had not re-applied citing financial concerns. The evidence from the Department shows that his identity document was issued in May 2008, prior to the commencement of the review proceedings, but returned to Pretoria, in accordance with departmental practice, because it had not been collected. Plainly therefore the application was ill-founded from the outset and the earlier order should not have been granted. I can do nothing about that, save to draw attention to what I said in the previous judgment about a general costs order in circumstances where the applicant incurred no liability for costs, but the contempt application that is before me will be dismissed.

[5] Matter 123 is also a contempt application. The applicant obtained an order authorising her to make a fresh application for an identity document on 12 November 2009. She made such an application on 17 November

2009. Although she had done this, a contempt application was brought on 14 January 2010 on the basis that she had not been furnished with the name of the official whom she should approach for this purpose. Her identity document was issued on 1 April 2010, but had not been collected by the time that the Department delivered its affidavit. The applicant's attorney concedes that it is unable to contact her and it seems likely that this has been the case since before the contempt application was launched. That application should not have been brought and it will be dismissed. The same is true of number 4, another contempt application, where the applicant's identity document was issued in October 2009 a month after the commencement of the review and prior to the application for contempt.

[6] Cases 2 and 5 also involve contempt applications. In each case the receipt shows that an LRB application had been made but the review was brought on the footing that this was an accompaniment to an application for an identity document. A consent order was taken for a re-application to be made for a duplicate identity document. This was followed by a contempt application on the basis that there had been a failure to identify an official to deal with the fresh application. As this order was in any event inappropriate so is the contempt application and it will be dismissed. In each instance the applicant has apparently been issued with an identity document.

[7] Cases such as three of the contempt applications where relief had been obtained prior to the application being launched, that of the applicant who had died and those where I am now told that the case has settled, together with those where I am informed in the final schedule that the attorneys are unable to contact their client, give the disquieting impression that

some at least of this litigation has assumed a life of its own unconnected to the litigant on whose behalf and in whose name it was commenced. Needless to say to the extent that this is the position it is wholly undesirable. The right to review administrative action is one that is intensely personal to the litigant and it is of fundamental importance that the attorneys representing clients in this type of litigation should be in communication with their clients at every stage of the proceedings.

[8] There are 14 cases¹ where the attorneys say that they have been unable to contact their client in the course of preparing the final schedule delivered to me towards the end of November 2010. In many of those cases the Department have simply said that the applicant must re-apply presumably because it has no trace of the application. In others they claim to have contacted the applicant either to advise them to re-apply or to obtain further information for verification purposes. The attorneys have not furnished any response to this because of communication difficulties although they say in some cases that they had told their clients about the attempts to resolve issues on a general basis. It may be that as time has passed since September 2010, when the Department's affidavit was sworn, some at least of these applicants have re-applied and may even have obtained identity documents. It would I think be unfair to assume that the applicants have lost interest in the litigation or are seeking to address their problems in a different way. On the other hand it is by no means clear that when the cases were argued before me the attorneys were in contact with their clients and had instructions to proceed and seek the relief that was sought on their behalf. Accordingly I propose to strike the matters from the roll, with no order for costs. If any applicant wishes to reinstate their application they may only do so if affidavits by the

¹ Numbers 49, 73, 76, 77, 85, 94, 109, 111, 145, 149, 173, 176, 177 and 182.

applicant and a representative of the firm of attorneys are filed together with the notice of reinstatement explaining the cause of the communication breakdown that has occurred since these cases were argued. The affidavits must also set out when and in what manner the relevant applicant was informed that their case was enrolled for hearing on 15 September and when and in what manner the applicant was advised of and approved the terms of the amended relief to be sought on his or her behalf as set out in the heads of argument handed in on 15 September.

[9] That leaves 51 cases where it is agreed that the applicants have received their identity documents. In those cases that means that only the question of costs is still outstanding. I dealt with the principles that should be applied in relation to costs in paragraphs 61 to 65 and 112 to 125 of the *Thusi* judgment and it remains only to apply those principles to these cases. Where an order of costs falls to be made it will be made in the same terms and on the same basis as in that case.

[10] An extraordinarily large number of these cases either suffer from fatal defects, or were launched with undue haste or without making enquiries that patently should have been made before commencing legal proceedings. This demonstrates at the least a lack of consideration of the facts of each client's case and a failure on the part of the attorneys to apply their minds to the different factual situations confronting their client. Over and over again the attorneys wrote letters and drafted affidavits for the applicants saying that they had applied for identity documents when the receipts in their possession either made it clear that this was not the case or at least indicated to anyone having a knowledge of the Department's procedures and the terms of the regulations that this was improbable. Regrettably the impression one is left with is that the

attorneys were more concerned with commencing proceedings and establishing a basis for claiming an order for costs than with resolving the problems facing their clients. That impression is compounded by the fact that it is clear in many instances that the level of communication between them and their clients was limited.

[11] The general problems with these applications emerge from a consideration of the applications in which identity documents have ultimately been issued to the applicants. The following cases are all matters in which the applications for judicial review should be dismissed:

- a) In matter 10 the applicant obtained an identity document pursuant to an application brought in June 2010. That application was dealt with expeditiously as the identity document was issued in October 2010. The previous application on which the review was based had been made in April 2007 and there is an unexplained application by the same applicant through another firm of attorneys. An extension of time is needed and it is not in my view in the interests of justice to grant it.
- b) In matter 24 the review application was brought on the basis of an application for an identity document made in September 2008. However an entirely fresh application had been made on 26 November 2009. Nonetheless review proceedings were commenced in January 2010 on the basis of the earlier application, although the receipt for the later application was annexed to the founding affidavit. To compound matters it was said in the founding affidavit that the 2010 application had been made prior to the 2008 application. Manifestly the attorney disregarded the later application. An identity document was issued in April 2010 pursuant to that application.

- c) In matter 27 the review was based on an application made in 2007. A fresh LRB application had been made on 5 August 2009 at the instance of a helpful official at the Department, but this was explained away on the basis that the applicant intended to pursue the earlier application as she did not want her ‘application to be held up for a much longer period of time following this application in August 2009.’ Fortunately for her the Department was unaware of this intention, which her attorneys should have explained was patently misplaced, and her fresh application was smoothly processed with her birth being registered on 2 December 2009 and thereafter an identity document being issued, pursuant to an application therefore, on 1 April 2010. The application should not have been made and must be dismissed.
- d) In matter 30 an application was brought on 28 January 2009 for a duplicate identity document to replace one that had been stolen. The receipt says that it was an LRB application together with an application for the re-issue of an identity document. The letter of demand ignored this and no attempt was made to clarify matters. The review application was launched on 14 December 2009 and the applicant’s identity document was issued on 13 January 2010. The case is a marginal one but I am not satisfied on a balance of probabilities that commencing proceedings was justified. The entitlement to bring review proceedings depends not simply upon delay in dealing with the application but with unreasonable delay and it is necessary in order to satisfy the court that the institution of proceedings was justified that the delay had assumed such proportions that it was no longer reasonable to expect the applicant to exercise patience and wait. That is of course a question the answer to which is entirely fact-bound.

- e) In matter 31 the application was brought on the basis of a 2005 receipt although a further application was brought on 30 August 2006 and another one in 2008. The Department replied to the letter of demand but its response was ignored and review proceedings were launched two days later. As those were based on the 2005 application they were defective because that had been supplanted by the later applications. In any event the interests of justice do not require that the time for commencing review proceedings in relation to the 2005 application should be extended.²
- f) In matter 33 an LRB application was made on 14 April 2009. That was granted and the applicant must thereafter have applied for and obtained an identity document in the middle of 2010. The review proceedings were commenced in January 2010 and it is unclear on the basis of an application for both late registration of birth and an identity document. That was incorrect and it is not apparent whether the applicant's birth had been registered before the review proceedings were commenced. It is not possible therefore to hold that the institution of proceedings was justified.
- g) In matter 34 both the review and the letter of demand were based upon an application made on 22 October 2008. However a fresh application had been made on 22 May 2009. The letter was written only two months later on 23 July 2009 and the proceedings were commenced on 27 August 2009. The proceedings were based on the incorrect application and were premature in relation to the current application as there had not been an unreasonable delay in dealing with it.
- h) In matter 36 the application was made on 8 January 2009, the letter of demand was addressed on 25 June 2009 and the review

² This is technically what is required when 'condonation' is sought for failing to commence review proceedings within 180 days.

commenced on 30 July 2009. The final schedule shows that there had been earlier proceedings brought by the same applicant through two other firms of attorneys based on an application to the Department made on 21 December 2007. This is not mentioned in either the letter or the founding affidavit. In the absence of an explanation I am not satisfied that there was unreasonable delay before the proceedings were commenced.

- i) Matter 38 involve an LRB application made on 20 March 2008, where the receipt was marked as indicating that it might take 6 to 8 months to process. An identity number was issued but the letter was written and the review commenced on the basis that an identity book for which no application had been made was required. No check was made before writing a letter or commencing legal proceedings whether an identity number had been issued to the applicant. An identity document was issued in April 2010. The failure to ascertain the true facts renders the review application defective.
- j) Matter 42 illustrates the rush to commence proceedings already mentioned. The application to the Department for a replacement identity document was made on 12 September 2009 and was followed by a letter of demand on 17 December 2009. Although this attracted a response on 20 January 2010 saying that the matter was being investigated that had no effect and review proceedings were commenced on 27 January 2010. Clearly there had not been an unreasonable delay by then. Also the need for an investigation was apparent, as a leading chain of department stores had told the applicant that his identity number had been duplicated. The applicant's identity document was issued on 25 March 2010. There had not been an unreasonable delay in dealing with the application

and so review proceedings were not justified.

- k) Case number 44 illustrates the deficiencies in the approach by the attorneys. The receipt clearly referred to forms DHA-24 and DHA 288, which a practitioner in this field should be aware are the forms for an LRB application. Nonetheless it was asserted in the letter of demand and the founding affidavit that an application for the issue of an identity book had been made. That shows a disregard for the facts that is unacceptable. It also meant that when the Department was confronted with a letter of demand relating to an identity document any attempt to investigate was doomed to failure and was a waste of time. It is unclear when the applicant's birth was registered but these deficiencies make it inappropriate to do anything other than to dismiss the application.
- l) The applicant in matter 50 made an LRB application on 12 June 2008 according to the receipt. His birth had in fact been registered but his birth certificate had been destroyed in a fire. On 8 July 2009 a demand was made for the issue of an identity document even though no application had been made for that. The response to this demand was that an LRB application was necessary. Instead of pointing out that this had been made the response asserted a claim to an identity document. Review proceedings in relation to an identity document commenced on 13 August 2009 and the LRB application was approved on 24 August 2009. An identity document was issued on 14 December 2009, presumably as a result of a separate application. The application was clearly misconceived.
- m) In number 60 the applicant had been issued with an identity document in February 2009 but lost it shortly afterwards. He applied for a replacement on 26 May 2009. A letter of demand was

written on 23 October 2009 and review proceedings commenced on 2 December 2009. In the meantime and apparently while litigation was underway he was interviewed and fresh fingerprints were taken as the question of a duplicate identity document was investigated. There is no attempt to deal with this. I am not satisfied that there had been an unreasonable delay prior to the commencement of proceedings.

- n) Number 62 is a case where the application revealed that there were two people with the same identity number. That involves a more protracted process because both people must be contacted as the duplication may involve fraud, the one identity number must be deleted and a fresh identity number issued. The real problem appears to be that the Department did not keep the applicant properly informed of the process rather than that there was unreasonable delay in processing the application. The application had been made on 17 March 2009 and the proceedings were commenced on 2 December 2009. The applicant's new identity document was issued with a new identity number on 22 January 2010 and collected on 16 February 2010. Again I am not satisfied that there was an unreasonable delay justifying the commencement of proceedings.
- o) Matter 65 relates to an application for a replacement identity document made in 2006. The department say that the identity document was issued but not collected and returned to Pretoria and destroyed. In view of the lapse of time and in the face of that allegation by the Department it is not appropriate to grant the extension of time that is required.
- p) Matter 69 was clearly according to the receipt an LRB application. This was disregarded in the letter of demand sent on

31 July 2009 9 days after the registration of the applicant's birth and prior to an application being made for an identity document. The application was misconceived. It does however provide an insight into the mystery referred to in paragraphs 26 and 118 of the judgment in *Thusi* regarding the involvement of Ms Oodit in a number of these cases. The reason is that in this matter the State Attorney queried the authority of Goodway & Buck to represent the applicant. The response was in the form of two powers of attorney. The first was by the applicant given to Ms Oodit, with powers of substitution. The second was given by Ms Oodit in favour of Goodway & Buck.³ It seems probable from this that the explanation is that Ms Oodit is referring clients to Goodway & Buck on some basis. I am surprised that this could not be explained to me as Ms Chetty was present in court throughout the argument and she was patently aware of the arrangement as the powers of attorney were filed under cover of a notice signed by her.⁴ It is not mentioned in either of the two memoranda on costs, although it would have been appropriate to do so as one infers that Ms Oodit is not acting gratuitously in giving advice in these matters.

- q) The applicant in case 84 had made an LRB application in 2003 and the letter of demand and the founding affidavit were based on this, which raised issues of condonation. However, without any indication that it might affect the position he attached to his affidavit a receipt for a fresh LRB application made on 11 June 2009. The letter of demand dated 9 July did not mention this and

³ In several other cases I read after dealing with this one, such as matter 102, the same challenge was raised and it provoked the same response. In some at least of these the founding affidavit contained an express allegation that no attorney other than Goodway & Buck had been consulted by the applicant. This was patently false.

⁴ In other cases she had witnessed Ms Oodit's signature on the power of attorney.

the review commenced on 28 August. Plainly that was unwarranted. His birth was registered and he made an application for an identity document in 2010, which was successful.

- r) An LRB application was made in case 88 on 1 April 2009. The applicant was required to report for an interview and the attorneys say that they were contacted by the Department to this end but have received no further communication. However the applicant must have gone for the interview because his birth was registered and he then applied for and obtained an identity document. I am not satisfied in those circumstances that commencing legal proceedings was justified.
- s) The applicant in matter 90 was told on 15 January 2010 that there was a potential problem with his application in that his identity number appeared to be shared with another person. This information was included in the affidavit drafted and sworn that day without any further investigation being undertaken. Five days later the problem had been resolved and he was issued with a new identity document with a different identity number. Manifestly the process of addressing his application was underway at the time proceeding should have been commenced and if allowance is made for printing the identity document and sending it to Durban to be collected it is probable that it had already been resolved. Clearly the review application was premature.
- t) The applicant in matter 96 discovered that someone else had an identity document with the same details as his. It is probable that the other identity document was fraudulent, as it had been issued only a couple of months prior to his and with the same details but a different photograph. He applied for a duplicate and surrendered the identity document in his possession. The letter of demand quite

incorrectly said that he had lost his original identity document. The review was launched in August 2009. A new identity document was issued the following month but for some unexplained reason was not collected until June 2010. I am not satisfied that in a case involving a potential fraud there was an unreasonable delay in dealing with the application.

- u) The review in cases 98 and 105 were defective from the outset as attached to the founding affidavit in each was a printout from the Department's website showing that the applicant's identity document was being printed in Pretoria. In the face of that the proceedings should not have been commenced.
- v) The same is true of the review in case number 101. This was an LRB application that had been approved on 28 October 2009. The review was only commenced on 17 December after the only possible relief had already been obtained.
- w) Matter 102 is a case involving a duplicate identity number. The application was made on 8 April 2009 and the review was launched on 17 December 2009. Ms Oodit was the client's attorney although the founding affidavit expressly stated that 'I have neither instructed nor consulted with any other attorney regarding my application for an Identity Document and that Goodway & Buck are the only attorneys that bear a valid mandate for this matter'. Bearing in mind that there was a duplicate identity number to be dealt with I am not satisfied that there was an unreasonable delay in processing the application and the falsehood in the founding affidavit is a further reason not to make an order for costs.
- x) Case number 108 involves an application on 14 August 2009. It was almost certainly an LRB application not one for an identity

document although the letter on 19 November 2009 claimed that it was one for an identity document and ‘in all probability’ also one for late registration of the applicant’s birth. The applicant’s birth was registered on 20 January 2010 and review proceedings were commenced in February. Clearly that was misconceived.

- y) In matter 110 the applicant made an LRB application on 6 May 2008, which was approved. The review application was brought in December 2009 in respect of both an LRB application and one for an identity document. The ultimate issue of an identity document appears to have been in terms of a separate application details of which are not available. It is not clear that there was any outstanding application the decision on which could be subject to review when legal proceedings were commenced in December 2009. The application must therefore be dismissed.
- z) The applicant in case number 112 had her identity document stolen in 2008. She only applied for a replacement on 31 July 2009. The letter of demand was written three and a half months later and proceedings were commenced in December 2009. It cannot be said that there was an unreasonable delay prior to that date.
- aa) On 15 June 2009 the applicant in case 114 made an LRB application. That is what the receipt says. The demand letter disregarded this. The application was approved on 31 October 2010 and thereafter an application for an identity document was made and an identity document issued on 26 February 2010. The review application was fatally defective relating as it did to an application that had not even been made.
- bb) The applicant in case number 115 applied for a change in surname as well as a new identity document to reflect that change. His application was made on 12 June 2009 and proceedings were

commenced in December 2009. There is no information in the founding affidavit as to the reasons for wanting to change his surname or as to the potential difficulties in doing so. It is presumably a more complex process than a straightforward application for an identity document. In those circumstances I am not satisfied that there had been an unreasonable delay prior to the commencement of proceedings.

cc) Matter 117 was an LRB application made on 15 June 2009. The letter of demand was dated 27 October and the proceedings were launched on 17 December 2009. There had not been an unreasonable delay and the applicant received his identity document on 3 February 2010. As the receipt shows that he had only applied for the late registration of his birth it seems that he must have applied for an identity document in the interim once his birth was registered. Manifestly he was not in touch with his attorneys, nor they with him, because in September 2010 they sought an order on his behalf requiring him to make a fresh LRB application and thereafter a fresh application for an identity document.

dd) Case 125 is similar in that only an LRB application was made on 22 April 2009 according to the receipt. The identity document issued in December 2009 must have been issued pursuant to a separate application. All this was disregarded in both the letter of demand and the founding affidavit. The review application is accordingly defective.

ee) In case number 133 both the letter of demand and the founding affidavit are based upon applications made in 2002 and 2005 respectively. However the papers reveal that there was another application in 2008. On that ground alone it is not in the interests

of justice to grant the application for condonation.

ff) In one of the most egregious examples of a disregard of the facts the application in case number 138 was to review a failure to take a decision on an application for an identity document that had not been made. An LRB application was made as stated clearly on the receipt and had been granted as appeared from the birth certificate annexed to the founding affidavit. Nonetheless the founding affidavit claimed that an application for an identity document had been made. It is difficult to see how anyone paying any attention to the documents could have erred in this way.

gg) Case number 139 is a condonation application where the application for both a late registration of birth and an identity document had been made in 2007. Proceedings were commenced in September 2009 and an identity document was issued in December 2009. The only purpose in granting condonation would be to award costs. In my view the interests of justice do not require that extensions of time under s 9 of PAJA be granted for that purpose. The purpose of affording the court the power to grant an extension of the 180 period for commencing review proceedings is to ensure that the interests of justice are served in relation to the applicant and as the applicant has obtained what he requires there is no interest of justice that would be served by granting the extension sought.

hh) Number 142 is an LRB application that was approved on 19 June 2009 prior to the commencement of review proceedings. The letter of demand said that the attorneys were not in possession of an identity number, but their client was and proof of that is attached to the founding affidavit. The review related to an application that had not been made and must be dismissed.

- ii) Matter 150 was fatally defective from the outset as the founding affidavit annexed an extract from the Department's website stating that the identity document was being printed in Pretoria. Whether or not that was accurate that is a matter that should have been checked before commencing proceedings and only if found to be incorrect should proceedings have been brought.
- jj) In case number 152 what appears to have been an LRB application was made on 10 March 2009 and approved on 9 December 2009. The review application was brought on 18 January 2010. It was therefore misconceived from the outset. Insofar as it was founded on a failure to deal with an application for an identity document it is not established on the papers on a balance of probabilities that such an application was made and it appears unlikely that it was as the identity document was issued as a result of an application made after the applicant's birth had been registered.
- kk) In case 153 the final schedule reflects that the applicant had made two other applications through other attorneys in one of which at least an order for costs had been made. The reason for this is not canvassed in the founding affidavit although it manifestly should have been. There is a material non-disclosure in the application papers and on this ground the application must fail.
- ll) In number 159 the receipt for an LRB application is dated 6 November 2008. That application had been approved and the applicant contacted to apply for an identity document which he did on 6 May 2010, four months after commencing proceedings to review the failure to decide his (non-existent) application for an identity document. The review application is not just defective. It was wholly unjustified.
- mm) In case 163 the application was made on 2 May 2009, the letter

was written on 15 October 2009 and the review commenced on 7 December 2009. It was a case where there was apparently a duplication of identity numbers that was resolved and an identity document issued on 14 May 2010. In my view there was no unreasonable delay. The problem is more likely one of lack of communication as to what was happening, an ongoing thread in these cases.

- nn) Number 165 is another application for condonation. The application was made to the Department on 7 September 2005 although the letter of demand says 2008 and there is an unexplained departmental stamp on the receipt reflecting the date as 19 February 2009. Bearing all this in mind as well as the fact that the purpose of an extension is purely to obtain a costs order this is not a case where condonation should be granted.
- oo) Case number 169 is quite extraordinary in that the applicant had made a fresh application to the Department the day before the commencement of review proceedings. There is no attempt to give any consideration to the effect of his doing so. Whatever his motivation it is clear that to commence proceedings thereafter on the basis of an old application was not justifiable. His previous application had been made in January 2009 and involved an amendment to the births register. That would have required an interview and may explain the earlier delay. Be that as it may the application should not have been commenced when it was.
- pp) Case number 171 is unusual in that it relates to a former citizen of the Democratic Republic of Congo, who has become naturalised. He received his naturalisation certificate on 8 September 2009 and applied for a replacement identity document showing his new citizenship on the same day. The letter of demand was dated

14 January 2010 and the review commenced on 19 February 2010. His identity document was issued on 1 June 2010. Again this is a marginal case but in my view there had not been unreasonable delay prior to the commencement of the review.

[12] That leaves cases 43, 46, 80, 86, 95, 126, 127, 130, 131, 143, 166 and 170 where the commencement of proceedings was justified. In each of these cases, whether involving an LRB application or one for an identity document, the time that elapsed between the application being made and the commencement of the review proceedings was excessive and the Department has provided no explanation for the delay. In several it had lost track of the application although the possibility cannot be excluded that the identity document that has now been issued was issued as a result of a fresh application. In any event on the factual material at present before the court the commencement of proceedings appears justified and the respondents must bear the costs of this on the same basis as the favourable costs orders in the Pietermaritzburg cases.

[13] There is one other contempt application where it is now accepted that an identity document has been issued to the applicant. That is case number 154. On 5 October 2009 an order reviewing the failure to provide the applicant with an identity document was granted together with an order that the respondents register the applicant's birth and issue him with an identity document within 60 days of the grant of that order. This was not done and on 11 December a contempt application was brought. According to the Department it only registered the applicant's birth on 6 May 2010 and her identity document was issued a month later. That was a clear breach of the order granted by consent on 5 October 2009. In those circumstances the institution of contempt proceedings was justified

and the costs attendant upon such an application as dealt with in the judgment in *Thusi* should be awarded.

[14] In two applications, numbers 74 and 118, the Department says that the applicants' identity documents are ready for collection and the applicants deny this. The simple way in which to resolve this is to require the Department to produce the identity documents at court and then to consider what costs orders should be made. Accordingly these applications are adjourned to be heard by me on Monday 24 January 2011. The respondents are directed to have available at court for collection by the applicants their identity documents. If they have been handed to the applicants prior to that then an affidavit must be delivered by the official who handed the identity document to the relevant applicant stating when and where that took place and attaching proof of receipt by the applicant. The parties are directed to approach my registrar to ascertain the arrangements for dealing with these two cases on that day.

[15] The last two cases are instances where the Department says that the applicants have received their identity documents and the applicants dispute this. These are cases 124 and 147. In the former the Department said that as a result of the applicant not collecting his identity document it had been returned to Pretoria but according to its website it has now been delivered to him. In both cases the delays in processing the applications are unexplained and in my view unreasonable. An order for costs will follow on the same basis as the cases referred to in paragraph [12]. The applicants are given leave to set the applications down on supplemented papers for the purpose of obtaining further relief if they remain in dispute with the Department over the issue of the receipt by them of their identity

documents.

[16] The costs of arguing these applications they were fully dealt with in the judgment in *Thusi* and the topic need not be considered here.

[17] The following orders are accordingly granted:

- a) Matters 11, 52, 67, 79 and 89 are struck off the roll with no order for costs.
- b) In matters 3, 6, 7, 8, 9, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 54, 55, 56, 97, 107, 129 and 155 leave is granted to withdraw the applications with no order as to costs.
- c) Matters 49, 73, 76, 77, 85, 94, 109, 111, 145, 149, 173, 176, 177 and 182 are struck off the roll and may only be reinstated after affidavits have been delivered by both the applicant and the applicant's attorney dealing with the matters set out in paragraph 8 of this judgment.
- d) In matters 1, 2, 4, 5 and 123 the contempt applications are dismissed.
- e) In matter 154 the respondents are ordered to pay the costs of the contempt application brought by the applicant, such costs to be in the sum of R1500.00 plus VAT.
- f) In matters 10, 24, 27, 30, 31, 33, 34, 36, 38, 42, 44, 50, 60, 62, 65, 69, 84, 88, 90, 96, 98, 101, 102, 105, 108, 110, 112, 114, 115, 117, 125, 133, 138, 139, 142, 150, 152, 153, 159, 163, 165, 169 and 171 the applications are dismissed.
- g) In matters 43, 46, 80, 86, 95, 124, 126, 127, 130, 131, 143, 147, 166 and 170 the respondents are ordered to pay the applicant's costs of the application, such costs to be in an amount of R5000.00 plus VAT plus all necessary disbursements in respect

of court fees, sheriff's charges and the appearances of counsel, subject to the fee for each such appearance being limited to an amount of R450.00.

- h) Matters 74 and 118 are adjourned for hearing before me at Durban on Monday 24 January 2011. The respondents are directed to have available at court for collection by the applicants their identity documents. If they have been handed to the applicants prior to that then an affidavit must be delivered by the official who handed the identity document to the relevant applicant stating when and where that took place and attaching proof of receipt by the applicant.

DATES OF HEARING	15, 27 and 29 SEPTEMBER 2010
DATE OF JUDGMENT	6 JANUARY 2011
APPLICANTS' COUNSEL	MS D SRIDUTT (heads of argument prepared by G D Harpur SC and Ms D Sridutt)
APPLICANTS' ATTORNEYS	GOODWAY & BUCK
RESPONDENTS' ATTORNEY	THE STATE ATTORNEY
DEFENDANT'S ATTORNEYS	MR R B G CHOUDREE SC and MS J HENRIQUES