

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

**CASE NO.1065/2010
and 72 other cases**

In the matter between

NOMSA MKHIZE

Applicant

and

THE MINISTER OF HOME AFFAIRS

First Respondent

DIRECTOR-GENERAL: HOME AFFAIRS Second Respondent

J U D G M E N T

Del. 9 February 2011

WALLIS J.

[1] This is the third and last judgment dealing with the 252 cases in which applicants brought review proceedings against the Department of Home Affairs arising out of their alleged failure to deal with applications for the issue of identity documents. The background to the judgments is to be found in the previous judgments¹ and it is unnecessary to repeat them. The relevant legal principles appear from the judgment in *Thusi*. This judgment deals with three categories of cases. The first are those where the Department has attended to the late registration of the applicant's birth but no identity document has been issued. The second consists of cases where there are queries in regard to the application. The third and largest category is cases where the Department says that it has

¹ Those of *Thusi v Minister of Home Affairs & Others and 71 other cases* handed down in Pietermaritzburg and *Myeza v Minister of Home Affairs & Others and 106 other cases* handed down in Durban.

no trace of any application and that the applicant must accordingly apply afresh. I will deal with each category in turn.

[2] There are five cases² where, according to the Department, the applicant's birth has been registered pursuant to an LRB application and the applicant now needs to make an application for the issue of an identity document. In each of those cases it is patently clear from the receipt put up in support of the application that it was solely an application for the late registration of the applicant's birth. This is in accordance with the Department's policy of dealing with LRB applications separately from applications for identity documents. In other words it appears from the receipts themselves that the applicants did not make applications for the issue of identity documents.

[3] Insofar as the applications are for the review of an alleged failure by the second respondent to take a decision on the applicant's application for the late registration of birth the answer to the application is that such a decision has been made. Insofar as the application seeks the review of a failure on the part of the second respondent to take a decision on an application for an identity document no such application has been made. For those reasons each of these five applications must be dismissed. The attorneys who prepared the application papers should have realised that their clients had not in fact made applications for the issue of an identity document. Had they done so steps could have been taken to ascertain whether the applicants' births had been registered and once that was confirmed they could have been advised to make applications for identity documents without resorting to legal proceedings.

² Nos.41, 83, 128, 136 and 151 on the Durban roll.

[4] In two other cases the failure to distinguish between an LRB application and an application for an identity document occasioned similar problems. In case No.134 an LRB application was made on 12 June 2009. The applicant's mother was contacted by the Department because there was a question about his name. That was clarified and he was issued with a birth certificate and applied for an identity document on 6 July 2010. According to the Department's website that has been handed to him. Had it been appreciated that this was only an LRB application and not an application for an identity document the review proceedings would not have been launched in January 2010. The application must be dismissed.

[5] Similarly in case No.146 the failure to appreciate that no application for an identity document had been made was probably the cause of an apparently lengthy delay. The review commenced on the basis that an LRB application and an application for an identity document had been made on 21 June 2008. That was incorrect and pursuant to the LRB application the applicant's birth had been registered on 6 July 2008, two weeks after the application. The problem was the absence of an application for an identity document. That application was only made in September 2010. Again the application must be dismissed.

[6] Matter No.59 is a case where an order was granted on 5 October 2009 and contempt proceedings were brought on 10 December 2009. By that stage the applicant's birth had been registered on 16 October 2009. As it is plain from the receipt that the application was an LRB application and not one for the issue of an identity document there had accordingly been compliance with the order insofar as such compliance was possible. The contempt application must be dismissed.

[7] In matter No.91 the problem encountered with the applicant's LRB application was that he already had an identity number and accordingly his birth had been registered. On 1 September 2010 he made a fresh application thereby abandoning the previous one. The review application must therefore be dismissed.

[8] In matter No.99 the applicant provided incorrect details in support of her LRB application. When she contacted the Department they told her she would have to make a fresh application but she has not done so apparently because of some financial difficulties. Again the review application is misconceived and must be dismissed.

[9] Matter No.121 is similar. The applicant made an LRB application, provided incorrect details, was interviewed and told to make a fresh application. She has not done so allegedly because of financial difficulties. That is an odd explanation as she was able to provide instructions to enable the review application to be launched on 17 December 2009. Be that as it may the review application must be dismissed.

[10] In matter No.156 the applicant has made two different applications, the most recent of which is clearly an LRB application. There is a problem with the applications as they are made in different names. Moreover the information given to the Department about the applicant's mother's name is now disputed by the applicant. There is nothing to indicate that the Department has delayed unduly in trying to resolve these issues. In those circumstances the review application must fail.

[11] In matter No.161 the applicant made an application and attended an interview. According to the Department his application was then rejected and he needed to be interviewed again. According to the final schedule such an interview was conducted in June 2010. Again there is no basis for thinking that the Department has been unduly tardy in dealing with the application. The review must therefore be dismissed.

[12] In matter No.162 the application is one for the issue of an identity document. The applicant's birth has been registered and a birth certificate is annexed to the application. However there is a difference between the name on the birth certificate and name on the receipt for the application for an identity document. In addition it appears that according to the Department's records the identity number appearing on the birth certificate is invalid. That is confirmed by a check on the Department's website. Clearly these issues needed to be resolved and there is no evidence to suggest that the Department has delayed unduly in trying to resolve them. Accordingly the review application must be dismissed.

[13] In matter No.35 an application was made on 3 March 2009 for the reissue of an identity document. The letter of demand was sent on 22 July 2009 and the review was commenced on 27 August 2009. According to the founding affidavit the applicant was advised on 26 August 2009, before the commencement of review proceedings, that there was a problem and that he should make a fresh application. Somewhat cryptically he says:

‘I have made various applications from the request of the various officials that have attended on me and I think that the Department is now simply wasting my time.’

He accordingly wished the Department to deal with his application as a matter of urgency. I do not think that the review should have been

launched without ascertaining what the problem was and seeking to resolve it. In those circumstances I am unable to hold that unreasonable time had elapsed from the date of the application for an identity document until the commencement of the review proceedings. They must accordingly be dismissed.

[14] Matter No.40 typifies the approach adopted in these cases. The application appears to be one for the reissue of an identity document as a fee was paid. On 8 December 2009 a letter of demand was written. On 20 January 2010 the Department responded that it was undertaking investigations and would revert to the attorneys. Undeterred by that response they commenced review proceedings the following day, 21 January 2010. Although in the final schedule they claim to have been in communication with their client they were apparently not informed that she lodged a fresh application on 4 March 2010. As the review is premised on the earlier application, the lodging of a fresh application amounts to an abandonment of the earlier application. The review must accordingly be dismissed.

[15] In case No.62 the applicant made an application on 9 May 2008 and the receipt shows that it was an application for an identity document although an LRB application was necessary. The letter of demand sent on 23 September 2009 evoked no response and the review was launched on 5 November 2009. In June 2010 the applicant attended an interview and was thereafter given a birth certificate indicating that her birth had been registered. She then made a fresh application for an identity document. There is accordingly no need for any substantive relief to be granted and the only remaining question is that of costs. In my view the delay was unreasonable and an order for costs should be made.

[16] Matter No.48 involves an application for the reissue of an identity document made on 6 July 2006. The applicant properly complains that he has returned on a number of occasions to the office where he made the application and had simply been told that his identity document is not yet available. According to the Department there is a need for him to attend an interview. There is no explanation for the fact that this has not been adequately communicated to him or for the fact that such an interview has not been conducted on one of his many visits to the Department's offices. The applicant is entitled to relief in accordance with the order formulated at the end of this judgment.

[17] The applicant in matter No.72 applied for the issue of an identity document on 27 March 2009. She was told at the time that her identity number was shared with someone else. In other words there was a duplication of identity numbers that needed to be clarified. She returned to the service point on two occasions in May and July 2009 to no avail. A letter of demand was written on 29 October 2009, which did not refer to the possible duplication. On 7 December 2009, the morning that she deposed to her founding affidavit, the applicant went to the service point and was advised by an official that because her identity number was shared with someone else further documents were required from her. Her response in the founding affidavit was to say:

‘I cannot understand why the respondents require further documents as I have complied with all their requirements and believe that to request for further documents will only delay processing my application even further.’

That type of obdurate attitude is unhelpful and her attorneys should have been advised her of that not drafted an affidavit containing this statement. The review application falls to be dismissed.

[18] In matter No.82 the applicant has twice tried to have her date of birth as set out in her current identity document corrected. The most recent application was 8 March 2007. Notwithstanding a number of visits to both offices to which applications have been made the applicant has received no adequate response. All that the Department says is that in May 2010 they contacted the applicant's attorneys as she needed to be interviewed. In my view this is a clear case of undue delay and the applicant is entitled to relief in accordance with the order at the end of this judgment.

[19] The next case, matter No.103 is similar in that the applicant was seeking both a replacement identity document and an amendment to her date of birth. That much is apparent from the two cash register receipts attached to the receipt for her application. The application was made on 6 March 2009 and a letter of demand was sent on 11 November 2009. On 13 November 2009 the Department addressed a letter to the applicant asking her to furnish certain additional documents, which she did at some unspecified time in January 2010. The review application was launched on 9 February 2010. In my view that did not give the Department adequate time to deal with the further documents and complete its investigations. In that regard I bear in mind that the application was being processed through the Mbazwana office of the Department in the Hluhluwe area, although the applicant claims to be permanently resident in Durban. I am not satisfied that an unreasonable time has elapsed for dealing with the application and the review application falls to be dismissed.

[20] Matter No.137 is an LRB application and the receipt is marked as

such. The application was made on 28 November 2008. According to the Department there had been a previous application by the applicant and an identity document had been issued, but it was not collected and after a period destroyed. There is a discrepancy between the date of birth in the present application and that in the previous application. The applicant mentions a previous application in 2003 but says only that he is not in possession of a receipt for that application. He also says that his original birth certificate was lost at the time of his mother's death. Although it is clear that this was an LRB application both the letter of demand and the review proceed on the basis that it was an application for the issue of an identity document. The Department say that the applicant must be interviewed in order to resolve the discrepancy in regard to his date of birth. This is not dealt with by the applicant. In those circumstances I am not satisfied, notwithstanding the time that has elapsed, that there has been unreasonable delay on the part of the Department. Accordingly the application falls to be dismissed.

[21] In matter No.167 the application was made in 2005. Although the applicant did not have his birth certificate it was apparently possible for the official concerned to retrieve his identity number from the Department's computer system. It appears that the applicant has been required to sign new documents and provide additional photographs and did so again as recently as September 2010. There has manifestly been an undue delay in his case and he is entitled to the relief embodied in the order at the end of this judgment.

[22] The next case, No.168, involves an application for the reissue of an identity document in somewhat obscure circumstances. The applicant says that in 1987 when he went to open a bank account he was told that

there was already someone with his identity number who had opened such an account. He says he complained about this to the Greenwood Park police station and was advised to apply for a corrected identity document. No explanation is given as to what transpired between 1987 and 10 February 2009 when he made the application that is the subject of these review proceedings. The applicant says that he has returned to the Department's offices in Isipingo on nine occasions to make enquiries and has never been called to an interview or given any satisfactory response. All that the Department says is that this is a case of a duplicate that is under investigation. That seems to me to be an inadequate response to an application made over a year before the review proceedings were commenced. Like the previous case the applicant is entitled to relief.

[23] In matter No.175 the application is one for the late registration of the applicant's birth. The Department's response to that application is to say that an identification number had already been furnished to the applicant and that they required fingerprint verification. However the final schedule says that the Department's website reflects that the applicant's identity document is ready for collection. That is peculiar if no application for an identity document had been made and it raises the possibility that there is another application not mentioned in the papers. Clearly the applicant has an identity number because one needs that in order to check on the Department's website. It seems likely therefore that at some stage the applicant has made an application for the issue of an identity document. In addition to the information on the website the final schedule records that on 25 October 2010 the applicant went to the Department and was told that her identity document had been returned to Pretoria and that she needed to re-apply. This would no doubt be on the basis that it had been available for collection and not collected so that it had been returned for

destruction. As the application papers only reflect an application for the late registration of the applicant's birth and the information furnished in the final schedule reflects that her birth has been registered it seems to me that the application for review does not disclose any proper grounds for the grant of relief and it must be dismissed.

[24] The last case in this category is one where there has patently been an undue rush to commence proceedings. The applicant applied for the issue of an identity document in October 2008. As he received no response he approached his attorneys who wrote a letter of demand on 6 October 2009. Whether provoked by that letter or merely as a matter of coincidence on 7 October 2009 the Department's customer service centre wrote to the applicant informing him that it was 'unfortunately necessary to request that you submit a new application for an identity document'. This the applicant did on 26 October 2009. A further letter of demand was sent by the attorneys on 1 February 2010 a little over three months later and the application was launched on 12 March 2010. I do not regard a delay of a little over four months as being so unreasonable as to justify the commencement of review proceedings. The application must accordingly be dismissed.

[25] Matter No.181 differs from the others in that it was an application for an unabridged birth certificate for the applicant's daughter. There was undoubtedly a significant delay in dealing with this application. However, on the day that the applicant deposed to her founding affidavit she visited the Department's offices and was given an explanation for the delay which she says did not make sense to her. She does not say what that explanation was. She was also given a toll-free number to telephone in order to enquire about the application. For some reason that is not

explained in the papers neither she nor the attorneys bothered to telephone that number to make enquiries and ascertain what the true position was. That quite clearly ought to have been done before launching an application for a review of the failure to issue the unabridged birth certificate. In those circumstances the application must be dismissed.

[26] In matter No.158 the applicant has already obtained an order and thereafter launched contempt of court proceedings. According to the final schedule she has made a fresh application for an identity document, which accords with the terms of the existing order. In those circumstances no question of contempt arises and the contempt application must be dismissed.

[27] Four other applications fall to be dismissed. In matter No.55 the application was made on 13 June 2005. The letter of demand was only written four years later. That requires an extension of time for the commencement of review proceedings. Given the lengthy delay I am not satisfied that it is in the interests of justice to extend the time period. In matter 61 the applicant made an LRB application in 2007 and a subsequent application in February 2009. For reasons that are not explained the review is based on the earlier application. That is impermissible.

[28] In matters 132 and 174 the receipts annexed to the founding affidavit and the letter of demand are entirely illegible so that it is not possible to ascertain what application was in fact made or even when the application was made. As the court cannot read the basic documents on which these applications are founded the applications must be dismissed.

[29] In five cases³ it is recorded in the final schedule that the applicants have been issued with birth certificates. The schedule also says that in each case, whatever the nature of the original application, a fresh application for an identity document has been lodged. That leaves only the question of the costs of the applications. As the applicants were clearly entitled to receive birth certificates and in each case there was a substantial delay in providing them with a birth certificate I am satisfied that an order for costs should be made on the same footing as in the earlier judgments.

[30] In matters 45 and 135 the applicants applied for the issue of a duplicate identity document. In the one case the application was made on 3 September 2007 and in the other on 11 September 2006. In both cases I think it appropriate to extend the time period of 180 days for bringing review applications. There is no suggestion by the Department that it will be prejudiced in that event and there appears to be no reason for blaming the applicants for the delay. The failure to take a decision within a reasonable time on their applications for identity documents should be reviewed and declared to be unlawful and an appropriate order made for further relief directed at resolving their applications.

[31] Matter 25 is an LRB application made in February 2009. The review application was launched on 22 January 2010. That was done in the face of a letter from the Department dated 20 January 2010 saying that they were investigating the application. The application should not have been launched without ascertaining the outcome of those investigations. However, by the time the final schedule was provided in November 2010 nothing had been forthcoming in that regard. In those circumstances it

³ Nos.29, 58, 64, 81 and 141.

seems to me that the applicant should obtain relief by way of review and ancillary relief. The same applies to matter 32, where the same letter was received by the attorneys prior to the commencement of application proceedings and the proceedings were commenced five days later notwithstanding the letter. In my view, however, these are clearly cases where the attorneys should not have launched the proceedings when they did but should have afforded the Department an opportunity to complete their investigations before commencing proceedings. As I have remarked in other cases there appears to have been a rush to commence proceedings. As a mark of its displeasure at this conduct on the part of the attorneys the fee to be awarded in these cases should be reduced by 40%.

[32] That leaves 31 cases. There are 18 that pre-date the change in Departmental procedure referred to by Mr Ramashia in his affidavit. That change occurred on 25 April 2008. Prior to that date people would apply simultaneously for the late registration of their birth and the issue of an identity document. After that date the LRB application would have to be made and dealt with before the application for an identity document could be made. The 18 cases that pre-date 25 April 2008 appear to be cases where the two applications were made simultaneously. The other 13 applications are applications where it is plain from the receipts that the applicant only made an LRB application. In all these cases, however, the Departmental response is simply that they have no trace of the applications and that the applicants must re-apply.

[33] I am satisfied that in each of these cases an unreasonable period of time has elapsed since the making of the applications and that they should already have been disposed of by the Department. In those cases pre-dating 25 April 2008 I am also satisfied that the period 180 days for

commencing review proceedings should be extended. In that regard I am principally guided by the circumstances of the applicants, the fact that the delay is not be laid at their door and the fact that the Department has not opposed an extension of time. In all these cases, therefore, it seems to me that the applicants should be granted relief by way of a review of the Department's failure to deal with their LRB applications. Whilst in 18 cases the applicant has, in addition to the LRB application, made an application for an identity document, it would I think be disruptive of the current procedures in the Department to grant relief in relation to those applications. What should happen is that the Department must dispose of their LRB applications and once birth certificates have been issued the applicants can then apply for identity documents in accordance with current procedures.

[34] It is said in the final schedule in respect of some of these applicants that they have in fact attended interviews with the Department. This is notwithstanding the Department saying that it has no trace of their applications. That raises a concern arising from the change in Departmental procedure that took effect on 25 April 2008 and from the fact that the applicants seem to have believed that they had made both an LRB application and applied for an identity document even where it is patently clear from the receipts that they have not done so. It occurs to me that in some at least of these cases the applicant's birth may have been registered but that when they have returned to the Department to make enquiries they have enquired as to the issue of an identity document rather than a birth certificate. It may be therefore that some of these 31 applicants have in fact had their births registered and would be in a position now to apply for an identity document were they aware of that fact. In responding to the order that I propose to make, which is similar to

the orders that I made in comparable matters in the Pietermaritzburg cases the Department should bear this possibility in mind.

[35] There is one other matter that should be dealt with. In 13 of these cases it is clear that the applicants only made an LRB application. Nonetheless in every letter of demand it is said that they applied for an identity document together with an application for the late registration of their birth. In all cases bar one⁴ the founding affidavit is drafted on the basis that the applicant applied for an identity document in conjunction with an LRB application. That this was incorrect should have been apparent to the attorneys, even if their clients were subject to a misapprehension in that regard. It was the responsibility of the attorneys to clarify the matter for their clients and to pursue their clients' rights strictly in accordance with the terms of the receipts. It is unnecessary for me to speculate as to why they did not do so. The fact is that they did not do so and in failing to do so did not properly discharge their duty to their clients or to the court. Again, in my view, the court should mark its displeasure in that regard by reducing the fees to which they are entitled by 40%.

[36] In the last of these cases, matter 15, an order was made on 6 April 2010 recording that the applicant's birth had been registered and that her identity document was available for collection from a Mr Burger at the Pinetown offices of the Department. According to the final schedule the applicant called at the offices on a date that she cannot remember and Mr Burger was not present. She was told that her identity document was not yet ready for collection. It seems to me that this is a case similar to two that I dealt with in paragraph 14 of the earlier judgment in relation to

⁴ No.172.

Durban cases. A similar order will issue.

[37] In the result I grant the following orders:

- (a) Matters No.35, 40, 41, 53, 61, 72, 83, 91, 99, 103, 121, 128, 132, 134, 136, 137, 146, 151, 156, 161, 162, 174, 175, 178 and 181 are dismissed.
- (b) In matters 59 and 158 the contempt of court applications are dismissed with no order for costs.
- (c) In each of matters 29, 47, 58, 64, 81 and 141 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.
- (d) In matter 82 the following order is granted:
 - (aa) The second respondent's failure to take a decision with a reasonable time on the applicant's application for the issue of an amended identity document correctly reflecting her date of birth is reviewed and declared to be unlawful.
 - (bb) The respondents are directed to deliver an affidavit by an authorised official in which is set out the outcome of the applicant's application; the causes of the delay in processing the applications; in the event of the application not yet having been finalised the requirements of the Department (if any) by way of further information, attendance at interviews or otherwise that are necessary to finalise the application and the steps being taken by the Department to finalise the application.
 - (cc) The application is adjourned for hearing in the motion court on

Monday, 28 February 2011.

- (dd) 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.
- (e) In matters 45 and 135 the following order is granted:
 - (aa) The second respondent's failure to take a decision within a reasonable time on the applicant's application for the issue of a duplicate identity document in terms of Regulation 14 of the Identification Regulations as published in Government Notice R361 in Government Gazette 29824 of 20 April 2008 (as amended) is reviewed and declared to be unlawful.
 - (bb) The respondents are directed to deliver an affidavit by an authorised official in which is set out the outcome of the applicant's application for the issue of a duplicate identity document; the causes of the delay in processing the application; in the event of the application not yet having been finalised the requirements of the Department (if any) by way of further information, attendance at interviews or otherwise that are necessary to finalise the application and the steps being taken by the Department to finalise the application.
 - (cc) The application is adjourned to the Motion Court on 28 February 2011.
 - (dd) 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.
- (f) In matters 48 and 168 the following order is granted:

- (aa) The second respondent's failure to take a decision within a reasonable time on the applicant's application for the issue of a corrected identity document in terms of s 19 of the Identification Act 68 of 1997 is reviewed and declared to be unlawful.
- (bb) The respondents are directed to deliver an affidavit by an authorised official in which is set out the outcome of the applicant's application for the issue of a corrected identity document; the causes of the delay in processing the application; in the event of the application not yet having been finalised the requirements of the Department (if any) by way of further information, attendance at interviews or otherwise that are necessary to finalise the application and the steps being taken by the Department to finalise the application.
- (cc) The application is adjourned to the Motion Court on 28 February 2011.
- (dd) 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.
- (g) In matter 167 the following order is granted:
 - (aa) The second respondent's failure to take a decision on the applicant's application for an identity document in terms of s 15 of the Identification Act 68 of 1997 is reviewed and declared to be unlawful.
 - (bb) The respondents are directed to deliver an affidavit by an authorised official in which is set out the outcome of the applicant's application for the issue of an identity document; the causes of the delay in processing the application; in the event of the application not yet having been finalised the requirements of the Department (if any) by

way of further information, attendance at interviews or otherwise that are necessary to finalise the application and the steps being taken by the Department to finalise the application.

- (cc) The application is adjourned to the Motion Court on 28 February 2011.
- (dd) 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) In matters 28, 37, 51, 57, 66, 68, 70, 71, 75, 78, 92, 93, 104, 106, 113, 122, 160 and 180 the following order is granted:
 - (aa) The second respondent's failure to take a decision within a reasonable time on the application for the late registration of the applicant's birth in terms of s 9(3A) of the Births and Deaths Registration Act 51 of 1992 is reviewed and declared to be unlawful.
 - (bb) The respondents are directed to deliver an affidavit by an authorised official in which is set out the outcome of the application for the late registration of the applicant's birth; the causes of the delay in processing the application; in the application not yet having been finalised the requirements of the Department (if any) by way of further information, attendance at interviews or otherwise that are necessary to finalise the application and the steps being taken by the Department to finalise the application.
 - (cc) The application is adjourned to the Motion Court on 28 February 2011.
 - (dd) 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.

- (i) In matters 25, 26, 32, 39, 87, 100, 116, 120, 140, 144, 148, 157, 164, 172 and 179 the following order is granted:
 - (aa) The second respondent's failure to take a decision within a reasonable time on the application for the late registration of the applicant's birth in terms of s 9(3A) of the Births and Deaths Registration Act 51 of 1992 is reviewed and declared to be unlawful.
 - (bb) The respondents are directed to deliver an affidavit by an authorised official in which is set out the outcome of the application for the late registration of the applicant's birth; the causes of the delay in processing the application; in the application not yet having been finalised the requirements of the Department (if any) by way of further information, attendance at interviews or otherwise that are necessary to finalise the application and the steps being taken by the Department to finalise the application.
 - (cc) The application is adjourned to the Motion Court on 28 February 2011.
 - (dd) The respondents are ordered to pay the applicant's costs of the application, such costs to be in an amount of R3000.00 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.
- (j) Matter 15 is adjourned for hearing in the Motion Court at Durban on Monday 28 February 2011. The respondents are directed to have available at court for collection by the applicant her identity document. If it has been handed to the applicant prior to that then an affidavit must be delivered by the official who handed the identity document to her stating when and where that took place and

attaching proof of receipt by the applicant.

DATES OF HEARING	15, 27 & 29 SEPTEMBER 2010
DATE OF JUDGMENT	9 FEBRUARY 2011
APPLICANTS' COUNSEL	MS D SRIDUTT (Heads of argument prepared by Mr G. D. Harpur SC with Ms D Sridutt)
APPLICANTS' ATTORNEYS	GOODWAY & BUCK
RESPONDENTS' COUNSEL	MR R.B.G. CHOUDREE SC (with Ms J. Hendricks)
RESPONDENTS' ATTORNEY	THE STATE ATTORNEY