



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 25 March 2015
STATUS Immediate

Minister of Home Affairs & others v Somali Association of South Africa & another (831/13) [2015] ZASCA 35 (25 March 2015)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Media Statement

Today the SCA dismissed an appeal by, amongst others, the Minister of Home Affairs (the Minister) and Director General of the Department of Home Affairs (the DG) (collectively referred to as the relevant authorities) and ordered them to restore the refugee reception services to the Port Elizabeth Refugee Reception Centre such that new applicants for asylum will be able to make applications in terms of s 21 of the Refugees Act 130 of 1998 and, if they qualify, be issued with permits in terms of s 22 of the said Act. The SCA also directed the DG to report in writing to the Somali Association of South Africa Eastern Cape and the Project for Conflict Resolution and Development (the respondents) as to what steps have been taken and what progress has been made to ensure compliance with the aforesaid order.

On 16 February 2012 and at the instance of the respondents, Pickering J in the Grahamstown High Court reviewed and set aside the decision by the DG to close the Port Elizabeth RRO (PE RRO) (the first decision). On 14 May 2012 Pickering J refused leave to the relevant authorities to appeal and directed that pending the outcome of any further appeal, his order that a fully functional RRO be opened and maintained, not be suspended. That notwithstanding and despite the order of Pickering J, the PE RRO remained closed to new applicants. On 21 September of that year the DG indicated that Pickering J's order had been overtaken by events as a fresh decision had been taken to close the PE RRO (the second decision). The respondents challenged the second decision. This time the matter came before Eksteen J, who set that decision aside. He, like Pickering J, also ordered the relevant

authorities to ensure that an RRO is open and fully functional within the Nelson Mandela Metropolitan Municipality. But he granted leave to the relevant authorities to appeal to the SCA.

The SCA found that the second decision by the DG fell short of constitutional legality because: (a) he had failed to consult with interested parties, such as the respondents; and (b) it was irrational inasmuch as his decision to close the PE RRO had been made in ignorance of the true facts material to that decision. The SCA accordingly confirmed the conclusion reached by Eksteen J. During the course of its judgment, the SCA expressed strong criticism of the relevant authorities and in particular the DG for: (a) failing to disclose to it that the second decision had been taken whilst a petition was pending before it in respect of the first decision – had that disclosure been made as the DG was obliged to, the SCA would in all likelihood have concluded that the petition had become academic; (b) failing to comply with the orders of court; and (c) showing a lack of candour in a response by the Minister to a question by an opposition MP in Parliament. The SCA accordingly concluded that as the relevant authorities had shown themselves not to be capable of trust, a simple declaration that the second decision by the DG to close the PE RRO was unlawful, would not suffice and would not constitute effective relief for the respondents.

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