IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable
Case no: 2025-013010

In the matter between:

SAMSON NGIRIYABANDI	**APPLICANT**
and	
BORDER MANAGEMENT AUTHORITY OF SOUTH AFRICA	**FIRST RESPONDENT**
MINISTER OF HOME AFFAIRS	**SECOND RESPONDENT**
DEPARTMENT OF HOME AFFAIRS	**THIRD RESPONDENT**

Neutral citation: *Ngiriyabandi v Border Management Authority of South Africa and Others* (Case no 2025-013010) [2025] ZAWCHC 222 (27 MAY 2025)

Coram: **NUKU J**

Heard: 19 February 2025

Order made on: 19 February 2025

Reasons delivered:27 May 2025

Summary: Interdict – Whether it is competent for a court to set aside an administrative decision that has not been challenged by way of a review application – application for an interdict to set aside the decision to refuse the applicant entry into the Republic of South Africa dismissed with costs.

ORDER

The application is dismissed with costs

JUDGMENT

Nuku J

[1] The applicant, a 75-year-old Burundian national arrived at the Cape Town International Airport on 28 January 2025 where he was refused entry into the Republic of South Africa. His refusal of entry was on account of him being in possession of a visitor's visa which included a condition that he should report to the port of entry on or before 26 January 2025. The immigration officer that attended to the applicant took the view that the applicant's visa had expired and hence refused him entry.

[2] On the same day, the applicant, who was assisted by his attorneys of record in this matter, lodged an appeal with the second respondent, in terms of section 8 (1) of the Immigration Act 13 of 2002 (Immigration Act) against the decision refusing him entry.

[3] On 31 January 2025, Mr Wesley Fester, who is in the employ of the first respondent and who had received the applicant's appeal, requested further documentation from the applicant's attorneys.

[4] Whilst the appeal was still pending, the applicant approached the Court for urgent relief on 31 January 2025 and without notifying any of the respondents. The substantive relief that the applicant sought was a *rule nisi* returnable on 18 February 2025 requiring the respondents to show cause why:

> '4.1 The first respondent's decision, taken on 28 January 2025, to refuse the applicant entry into the republic be set aside;
>
> 4.2 The applicant be allowed to enter and remain in South Africa on his visitor's visa until 20 March 2025.'

[5] The matter was in Court on 31 March 2025 when the *rule nisi* was issued. As the *rule nisi* was to operate as an interim interdict, the respondents were obliged to allow the applicant entry into the republic pending the return date.

[6] The respondents opposed the application, and the matter came before me on 18 February 2025 for argument on whether to confirm or discharge the *rule nisi*. I postponed the matter to 19 February 2025 when argument proceeded.

[7] As was pointed out on behalf of the respondents, the relief that the applicant sought was a final interdict setting aside the decision to refuse him entry. But the applicant had not instituted any review proceedings. Instead, he was seeking an interdict setting aside an administrative decision which had not been challenged by way of review and the question was whether that was competent.

[8] It was submitted on behalf of the respondents that based on the so-called *Oudekraal* principle, an administrative action has legal consequences until and unless set aside by a court of competent jurisdiction.

[9] Counsel for the applicant was constrained to concede that it would not be competent for this Court to set aside a decision under the pretext of interdictory relief and in the absence of a challenge by way of a review application.

[10] What was more in this matter was the fact that the relief sought was not only the setting aside of the decision but went further in that the applicant sought a substitution order, relief which, even where competent, is granted in exceptional circumstances. The applicant had pleaded neither review grounds nor exceptional circumstances. As the saying goes, the application never got off from the starting block.

[11] There is one more aspect that requires mention. The application was launched after an internal appeal, in terms of section 8 (1) of the Immigration Act had been lodged but this was not mentioned at all in the applicant's papers. To the urgent judge who granted the *rule nisi*, the impression was created that the applicant had no other satisfactory remedy which was clearly misleading. Even more so when it was the same legal representative who had lodged the section 8(1) appeal.

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L G NUKU

JUDGE OF THE HIGH COURT

Appearances

For applicant:	M Botha
Instructed by:	ZS Inc, Cape Town

For 1st to 3rd respondents: R Appoles

Instructed by: State Attorney, Cape Town