

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 32323/22

In the matter between:

OPERATION DUDULA

Applicant

and

HELEN SUZMAN FOUNDATION

First Respondent

MINISTER OF HOME AFFAIRS

Second Respondent

DIRECTOR-GENERAL OF DEPARTMENT OF HOME AFFAIRS

Third Respondent

**THE CONSORTIUM FOR REFUGEES AND MIGRANTS
IN SOUTH AFRICA ("CoRMSA")**

Fourth Respondent

**THE TRUCK DRIVERS' ASSOCIATION OF
SOUTH AFRICA ("TASA")**

Fifth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT the Applicant make application to the Honourable Court, at a date and time to be arranged with the Registrar of the Court, in terms of Rule 12 for an Order:

1. THAT the Applicant be and is granted leave to intervene as a party in the declaratory and review application proceedings brought before Court by the First Respondent under case number 32323/22.

2. THAT the Applicant be and is joined as the Sixth Respondent in the said application proceedings.
3. THAT the application proceedings set down for Monday, 28 November 2022 under the case number 32323/22, be postponed *sine die*.
4. THAT the Applicant in the declaratory and review application proceedings attend to amending the Notice of Motion and Founding Affidavit (by supplementary affidavit, as the case may be), to effect the joinder of the Applicant as the Sixth Respondent, within 20 (twenty) days of this Order.
5. THAT the Applicant in the said application proceedings is to serve the application papers as amended, on the First to Fourth Respondents therein, within the 20 (twenty) days referred to in paragraph 4 above.
6. THAT the First to Fourth Respondents attend to supplementing their Answering Affidavits within 15 (fifteen) days of receipt of the amended papers in prayers 4 and 5 above, and that the Fifth and Sixth Respondents file their Answering Affidavits within 15 (fifteen) days thereafter.
7. THAT the costs of this application be costs in the main application proceedings under case number 32323/22.
8. THAT any of the Respondents herein, who opts to oppose this application pay the costs thereof.

9. Granting the Applicants such further and/or alternative relief as the Court may deem fit.

And that the accompanying affidavit of **ZANDILE DABULA**, together with the annexure thereto will be used in support hereof.

TAKE NOTICE FURTHER that the Applicants have appointed the address of their attorneys of record as set out below, at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required:

- (a) to notify the Applicants' attorneys in writing within 5 (five) days of receipt hereof,
- (b) and within 15 (fifteen) days after you have so given notice of your intention to oppose the application, to file your Answering Affidavit(s), if any; and further that you are required to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the date and time to be arranged with the Registrar and/or as may be fixed by the Court, alternatively, at the hearing of the main application.

DATED at PRETORIA this 22 day of NOVEMBER 2022.

D MABUNDA INC. ATTORNEYS

Attorneys for the Intervening Applicants

301 Howard House

Loveday Street, Corner Main

Johannesburg

2000

Ref: D. MABU/D001

c/o MJ Mashao Attorneys

230 Orient Street

Arcadia, Pretoria

TEL: (012) 323 0122

Email: mattorneys@telkomsa.net**REF: MASHAO/CVL/MJ0009001**

TO:

THE REGISTRAR OF THE HIGH COURT, GAUTENG DIVISION, PRETORIA

AND TO:

D L A PIPER SOUTH AFRICA (RF) INC.

First Respondent's attorneys

6th Floor, 61 Katherine Street

Sandown, Sandton

Tel.: (011) 302-0802

Ref.: W Makadam/N v Onsolon/M Thulare

c/o MACINTOSH CROSS & FARQUHARSON

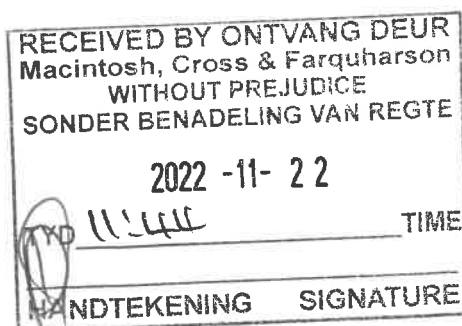
834 Pretorius Street

Arcadia, PRETORIA

Tel.: (012) 342-4855

Email: al@macintoshcross.co.za

Ref.: Anneke Lotter



Received copy hereof this
day of November 2022

For: 1st Respondent

AND TO:

THE STATE ATTORNEY, PRETORIA

Second and Third Respondents' Attorneys

SALU Building

316 Thabo Sehume Street

Cnr Thabo Sehume and Francis Baard Street

Pretoria Central, PRETORIA

C/o SIGOGO ATTORNEYS

416 Kirkness Street

Loftus Office Park

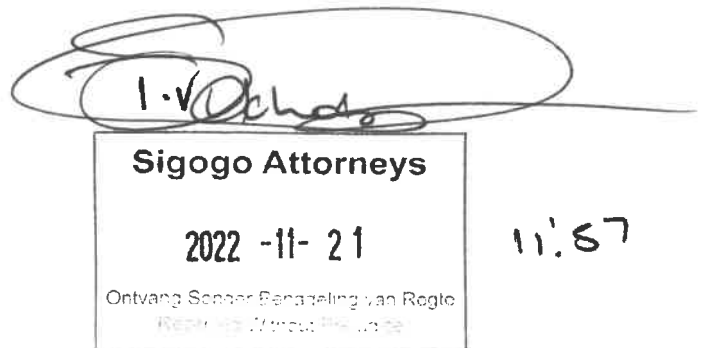
Building B, 3rd Floor

Arcadia, Pretoria

TEL: (012) 346 0822

Email: khethani@sigogoinc.co.za

REF: K Swuhana/TM/DHA0001



Received copy hereof this
day of November 2022

For: 2nd and 3rd Respondent

AND TO:

NORTON-ROSE FULBRIGHT INC.

Fourth Respondent's Attorneys

9th Floor, 117 on Strand

117 Strand Street

Cape Town, 8000

Tel: (021) 405 1200

Email: Jason.whyte@nortonrosefulbright.com &

Laura.macfarlane@nortonrosefulbright.com

C/o MACROBERT ATTORNEYS

MacRoberts Building

1060 Jan Shoba Street

Brooklyn

Pretoria, 0181

Email: newessels@macrobert.co.za &

rkaseke@macrobert.co.za

MacRobert
Attorneys

2022 -11- 22

Without prejudice of clients rights
Sonder benadeling van klient se regte

12:09

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

CASE NO: 32323/22

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Fourth Respondent

**THE TRUCK DRIVERS’ ASSOCIATION OF
SOUTH AFRICA (“TASA”)**

Fifth Respondent

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE TO INTERVENE

I, the undersigned

ZANDILE DABULA

do hereby declare under oath as follows:

1. I am a major female and Executive Director of the Applicant, c/o M J Mashao Attorneys, 230 Orient Street, Arcadia, Pretoria, and in Gauteng Province.
2. The facts herein contained are, save where the context otherwise indicates, within my personal knowledge and are, to the best of my belief, both true and correct.
3. I am authorised to depose to this affidavit and bring this application on behalf of the Applicant. This is so by virtue of my capacity as the Secretary General of the Applicant and also on the strength of the Memorandum of Association, annexed hereto, marked "JA1".

THE PARTIES

4. The Applicant is **OPERATION DUDULA**, an association and/ or organisation acting in the interests of its members in terms of Section 38 of the Constitution of the Republic of South Africa Act¹, (*"the Constitution"*) c/o **M J MASHAO ATTORNEYS, 230 ORIENT STREET, ARCADIA, PRETORIA** and in **GAUTENG PROVINCE**.
5. The First Respondent is **HELEN SUZMAN FOUNDATION**, a non-governmental organisation, c/o **D L A Piper South Africa (IF) INC.**, 6th Floor, 61 Katherine Street, Sandown, Sandton, Gauteng Province.
6. The Second Respondent is **THE MINISTER OF HOME AFFAIRS**, cited herein in his capacity as an organ of State and a member of cabinet responsible for the oversight and administering of the Immigration Act², c/o the State Attorney, SALU Building, 316 Thabo

¹ No. 108 of 2006

² No. 13 of 2002

Sehume Street, cnr Thabo Sehume and Francis Baard Street, Pretoria, Gauteng Province.

7. The Third Respondent is the **DIRECTOR-GENERAL OF THE DEPARTMENT OF HOME AFFAIRS**, cited herein in his capacity as such, c/o the State Attorney, SALU Building, 316 Thabo Sehume Street, cnr Thabo Sehume and Francis Baard Street, Pretoria, Gauteng Province.
8. The Fourth Respondent is **THE CONSORTIUM FOR REFUGEE AND MIGRANTS SOUTH AFRICA** ("CoRMSA"), a non-governmental organisation, c/o Norton-Rose Fulbright Inc, [INSERT] Sandton, Gauteng Province.
9. The Fifth Respondent is the **TRUCK DRIVERS' ASSOCIATION OF SOUTH AFRICA** ("TASA"), an association of truck drivers in the RSA, c/o Moleba Modiga Attorneys, [INSERT], Benoni, Gauteng Province.

THE PURPOSE OF THIS APPLICATION:

10. In this application the Applicant is applying in terms of Rule 12 of the Uniform Rules of Court for leave to intervene as the Sixth Respondent in the declaratory and review proceedings in which the First Respondent seeks the relief that certain specified decisions of the Second Respondent be declared unlawful, unconstitutional, and invalid and/or that same be reviewed and set aside and referred back to the First Respondent for reconsideration.

11. The full grounds upon which the Applicant herein contends that it has a direct and substantial interest in the said application proceedings and therefore that it is entitled to intervene as a party are discussed below.

THE GROUNDS FOR INTERVENTION:

12. The Applicant is a civil rights movement whose main objective is to fight crime and criminality using legal protests and court applications. The organization is of the view that the extension of the Zimbabwean Exemption Permits together with a high number of illegal immigrants in the country is compounding the already dire situation of criminality.
13. Accordingly, the Applicant submits that it has a direct and substantial interest in the main application proceedings brought by the First Respondent, based on the facts discussed above. Therefore, the Applicant has the right to appear in these proceedings and to safeguard its fundamental rights in terms of the applicable laws of the RSA, particularly the Immigration Act, read with Sections 9(1), 34, 36 and 38 of the Constitution.
14. The Applicant does not expect this application to be opposed, because the main application is pending before the Court and the Applicant is undoubtedly an interested party entitled to be involved in such proceedings. The Applicant will be raising defences based on all the above in its Answering Affidavit in the main application proceedings, with or without a counter-application, as the case may be.

15. The Applicant however would like to add that this application, in much the same way as the issue of standing, is a preliminary issue in which the merits are assumed in the Applicants' favour,³ and therefore that the question whether it is entitled to join as the respondent⁴ should be decided first and in its favour. Needless to point out that Rule 12 provides that the joinder or intervention application could be applied for "*at any stage of the proceedings*".
16. It is the Applicant's respectful submission that it has, in this affidavit, furnished sufficient grounds and/or *prima facie* proof of its direct and substantial interest (and hence its right to intervene) in the main application proceedings. It is also both in the national and public interest that the Applicant, having regard to the nature and extent of each of its interests or rights involved, be allowed to join as a party and a Respondent in the matter. The Applicant has, based thereon, reasonable prospects of succeeding at the end of the day. Having regard the Applicant's main objective and its rights as enshrined in the Constitution the Applicant submits that it is imperative that its submissions before the court can make a ruling on the First Respondent's main application.
17. The Applicant further submits that its interest in the relief sought herein presents a serious matter for consideration by the Honourable Court, as it has demonstrated a direct and substantial interest in the subject matter of the dispute and it is submitted that the Applicant has satisfied the requirements as laid in Rule 12 of the Uniform Rules of Court read together with the Constitution of the Republic of South Africa. The Applicant respectfully asks that the Court not put itself in a position where it is made to proceed with

³ *Steel and Engineering Industries Federation and others v National Union of Metalworkers of South Africa* (1) 1993 (4) SA 190 (T), 1911-J, in which Myburgh J stated that an 'objection taken *in limine* to the *locus standi* of an applicant must be dealt with on the assumption that all the allegations of fact relied on by the party are true'.

⁴ Rule 12 should be read with rule 6(14), which makes rule 12 applicable to applications.

the declaratory and review application by the First Respondent in their absence, bearing in mind that the interest they each have therein, is a legally recognised interest.⁵

RELIEF SOUGHT

19. In the premise, the Applicant pray that it may please the Honourable Court to grant them relief as prayed for in the Notice of Motion to which this affidavit is attached.



DEPONENT

SIGNED and sworn to before me at *Pretoria* on this *21st* day of NOVEMBER 2022, the deponent having acknowledged in my presence that he/she knows and understands the contents of this affidavit, the provisions of Government Gazette R1478 of 11 July 1980 as amended by Government Gazette R774 of 20 April 1982, concerning the taking of the oath, having been complied with.

COMMISSIONER OF OATHS

THOBANG PATRICK MABOYA
PRACTICING ATTORNEY
COMMISSIONER OF OATH
SUITE 107, 1st FLOOR
TUDOR BUILDING
PRETORIA

⁵ *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A), 659. See too *Ex Parte Marshall: In Re Insolvent Estate Brown, supra*, 131E; See too, Van Winsen, Cilliers and Loots, *op cit*, 179 and the cases there cited; paras 4 and 8 to 15 above.