

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

MATTER HEARD BEFORE THE HONOURABLE MADAM JUSTICE COLLIS (J), MR JUSTICE MALINDI (J) AND MR ACTING JUSTICE MOTHA (AJ) VIA MICROSOFT TEAMS ON 11 TO 14 APRIL 2023

CASE NO: 32323/2022

In the matter between:

HELEN SUZMAN FOUNDATION

First Applicant

**CONSORTIUM FOR REFUGEES AND
MIGRANTS IN SOUTH AFRICA**

Second Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

DIRECTOR GENERAL OF HOME AFFAIRS

Second Respondent

**ALL TRUCK DRIVERS FORUM
AND ALLIED SOUTH AFRICA**

Third Respondent

DRAFT ORDER

Having read the papers, heard the parties' counsel and considered the matter, it is ordered that:

- 1 The First Respondent's decision to terminate the Zimbabwean Exemption Permit (ZEP), to grant a limited extension of ZEPs of only 12 months, and to refuse further extensions beyond 30 June 2023, as communicated in:

- 1.1 The public notice to Zimbabwean nationals on 5 January 2022;

- 1.2 Directive 1 of 2021, published as GN 1666 in *Government Gazette* 45727 of 7 January 2022 (Directive 1 of 2021);
- 1.3 The First Respondent's press statement on 7 January 2022; and
- 1.4 Directive 2 of 2022, published on 2 September 2022, and the accompanying press statement.

is declared unlawful, unconstitutional, and invalid.

- 2 The First Respondent's decision referred to in paragraph 1 is reviewed and set aside.
- 3 The matter is remitted back to the First Respondent for reconsideration, following a fair process that complies with the requirements of sections 3 and 4 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).
- 4 Pending the conclusion of a fair process and the First Respondent's further decision, it is directed that:
 - 4.1 Existing ZEPs shall be deemed to remain valid;
 - 4.2 ZEP-holders will continue to enjoy the protections afforded by Immigration Directive 1 of 2021, namely that:

"1. No holder of the exemption may be arrested, ordered to depart or be detained for purposes of deportation or deported in terms of the section 34 of the Immigration Act for any reason related to him or her not having any valid exemption certificate (i.e permit label / sticker) in his or her passport. The holder of the exemption permit may not be dealt with in terms of sections 29, 30 and 32 of the Immigration Act

2. The holder of the exemption may be allowed to enter into or depart from the Republic of South Africa in terms of section 9 of the Act, read together with the Immigration Regulations, 2014, provided that he or she complies with all other requirements for entry into and departure from the Republic, save for the reason of not having valid permit indicated in his or her passport; and

3. No holder of exemption should be required to produce-

(a) a valid exemption certificate;

(b) an authorisation letter to remain in the Republic contemplated in section 32(2) of the Immigration Act when making an application for any category of the visas, including temporary residence visa.”

5 In the event that the First Respondent's further decision is to terminate the ZEP, such decision must allow for a period of at least 12 months from the date of the decision, during which the regime in prayer 4 will apply.

6 The First Respondent, and any other parties opposing this application, are directed to pay the costs, jointly and severally, the one paying the other to be absolved, including the costs of three counsel.

7 Further and / or alternative relief.

BY ORDER OF THE COURT

REGISTRAR