



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### Minister of Home Affairs v Abdul Rahim & Others

CCT 124/15

**Date of hearing: 26 November 2015**

**Date of judgment: 18 February 2016**

---

#### MEDIA SUMMARY

---

*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down judgment in a matter concerning the interpretation of section 34(1) of the Immigration Act 13 of 2002 (the Act) which provides that illegal foreigners must be detained in places determined by the Director-General of Home Affairs (Director-General).

The respondents, who are all foreign nationals, were immediately arrested and detained for deportation after their temporary asylum-seeker permits expired and their applications for asylum were unsuccessful. Pending deportation, they were detained in various facilities including St Albans and North End Prisons, KwaZakhele and New Brighton Police stations in Port Elizabeth. They remained at these places of detention for different periods, ranging from 4 days to 35 days, before they were released.

The respondents instituted an action against the applicant, the Minister of Home Affairs, in the High Court of South Africa, Eastern Cape Local Division, Port Elizabeth (High Court) for damages as a result of being detained in places which had not been determined by the Director-General, as required by section 34(1) of the Act. The High Court found, on an interpretation of section 34(1) of the Act, that places used for the detention of illegal foreign nationals did not have to be determined by the Director-General and that all prisons and police detention facilities could lawfully be used for this purpose.

On appeal, the Supreme Court of Appeal found that in terms of section 34(1) the places in which illegal foreigners are detained have to be expressly determined by the Director-

General. As a result of the absence of evidence that such determination had been made, the Court found that the detention of the respondents was unlawful. Consequently, it awarded damages ranging from R3 000 to R25 000 per individual depending on the duration of their detention.

In this Court, the applicant submitted that section 34(1) of the Act does not impose an obligation on the Director-General to determine specific places of detention of illegal foreigners. It was argued that it is sufficient to detain illegal foreigners in state-run or controlled facilities. However, the applicant contended that, should it be held that section 34(1) of the Act imposes an obligation on the Director-General to determine specific places of detention for illegal foreigners, the detention of the respondents absent such a determination, cannot give rise to a claim for damages. On the contrary, the respondents contended that illegal foreigners must be detained at places specifically determined by the Director-General under section 34(1). Such interpretation was supported by People Against Suffering, Oppression and Poverty (PASSOP) who were admitted as *amicus curiae*. In a cross-appeal, the respondents challenged the amounts of damages awarded by the Supreme Court of Appeal.

In a unanimous judgment, written by Nugent AJ, the Court found that section 34(1) makes it clear that the Director-General is required to apply his or her mind to what places are appropriate for the detention of illegal foreigners. Absent a determination having been made, the respondents were detained unlawfully and thus to damages. However, this Court did not interfere with the amounts for damages awarded by the Supreme Court of Appeal. Accordingly, the application for leave to appeal against the judgment of the Supreme Court of Appeal was dismissed, with costs. The cross-appeal was also dismissed.