



CONSTITUTIONAL COURT OF SOUTH AFRICA

Cishahayo Saidi and Others v Minister of Home Affairs and Others
CCT 107/2017

Date of hearing: 21 November 2017

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.

On 21 November 2017 at 10h00 the Constitutional Court will hear an application for leave to appeal and an application for leave to cross-appeal against an order of the Supreme Court of Appeal (SCA). The SCA upheld the decision of the High Court of South Africa, Western Cape Division, Cape Town (High Court), which interpreted section 22(3) of the Refugees Act 130 of 1998 (the Act) to empower a Refugee Reception Officer (RRO) to extend an asylum seeker permit pending the outcome of judicial review proceedings, after an asylum seeker has exhausted internal review and appeal remedies. The SCA also upheld the High Court's decision not to direct the RRO to extend the applicants' permits but to remit the decision to the RRO for consideration.

The applicants each applied for refugee status in South Africa and were issued a permit allowing him or her to temporarily reside in South Africa pending the finalisation of that asylum application. Their applications were refused. The applicants made use of the internal review or appeal remedies provided for in the Act, to no avail. They subsequently launched applications in the High Court for the review and setting aside of the decisions refusing them refugee status under the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

The RRO refused to extend the applicants' permits pending finalisation of the applicants' PAJA review. Section 22(1) of the Act authorises the RRO to grant an asylum seeker a permit "pending the outcome of an application". Section 22(3) of the Act provides that the permit, which must be for a limited duration, may be extended by the RRO from time to time. The RRO took the view that the power to extend permits under section 22(3) of the Act did not apply beyond the finalisation of the internal remedies and that only the

High Court has the power to grant an order to extend or re-issue permits in these circumstances.

In 2015 the applicants approached the High Court on an urgent basis to compel the RRO to renew the permits pending the finalisation of the PAJA review process. The High Court declared that section 22(3) of the Act does confer on the RRO the discretion to extend an asylum seeker permit even after the internal appeal and review processes have been exhausted. It set aside the RRO's decision not to extend the applicants' permits. The High Court further considered whether the applicants were entitled to extensions based on a legitimate expectation. It found that since the RRO's predecessor had historically granted extensions pending judicial review as a matter of course, the applicants' reliance on a legitimate expectation was well-founded. However, the Court refused to direct the RRO to re-issue or extend the permits and remitted the matter to the RRO for re-consideration.

On appeal, the SCA held that the RRO is vested with a true discretion, rather than an obligation, to extend the applicants' permits. The SCA further rejected the applicants' argument concerning reliance on legitimate expectations on the basis that the previous RRO could not bind future RROs. It refused to direct the RRO to extend the applicants' permits, reasoning instead that the RRO did not bring her mind to bear on the merits of the extensions since she acted purely on a misinterpretation of the law.

In this Court, the applicants' primary argument is that a permit must automatically be renewed until the PAJA review process is finalised. Alternatively, they argue that renewal must be a default from which departure is possible only in special circumstances. According to the applicants, there are four possible interpretations of the relevant provisions, firstly the automatic renewal interpretation; secondly the default renewal interpretation; thirdly the discretionary renewal interpretation (adopted by the High Court and the SCA); and lastly the no renewal interpretation. They argue that, when the proper principles of statutory interpretation are applied, the automatic renewal interpretation must be adopted as it better fits with the text and purpose of the Act; it best promotes constitutional rights; it is consistent with international law; and it is the most practical.

The respondents contend that the SCA erred in finding that an RRO has the power in terms of section 22(3) of the Act to extend a permit pending a PAJA review and that the text of the Act supports the no renewal interpretation. The respondents, however, argue in the alternative, that this Court should find that the SCA was correct in holding that an RRO is vested with the power to extend a permit after all internal remedies are exhausted and was furthermore correct in holding that an RRO has a discretion in that regard. Thus, the SCA was correct in upholding the High Court's order to defer to the discretion granted to the RRO and to remit the decisions for extension for her reconsideration and not simply to direct her to extend the permit.