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

CASE NO: 21836/2021

In the matter between:

CLAIRE BREUKEL	First Applicant
ELISA SOFIA SAIN SERRANO	Second Applicant
and	
DEPARTMENT OF HOME AFFAIRS	First Respondent
MINISTER OF HOME AFFAIRS	Second Respondent

JUDGMENT

FRANCIS, J

INTRODUCTION

[1] The first applicant ("Ms Breukel") is a South African citizen who is in a permanent life partnership with the second applicant ("Ms Serrano"), a citizen of Venezuela.

[2] The first respondent is the Department of Home Affairs ("the department") and the second respondent is the Minister of Home Affairs ("the Minister"), the executive authority of the department.

[3] Both applicants are based overseas. They intended to visit Cape Town to spend 3 months together with Ms Breukel's family over the festive season. Ms Serrano was to stay in South Africa until 24 March 2022 and she has a ticket booked with American Airlines to leave South Africa for Madrid, Spain on that day. The applicants also planned to get married by entering a civil union during their 3 month stay in South Africa.

[4] Both Ms Serrano and Ms Breukel travelled separately to South Africa.

[5] Ms Serrano travelled on Ethiopian Airlines (ET 847) and arrived in Cape Town at around 14h00 on 24 December 2021. When she attempted to formally enter the country through immigration at Cape Town International Airport ("CTIA"), she was denied entry. The reason provided was "Manual Extended Passport".

[6] In their founding affidavit, the applicants explain that the Venezuelan government has for several years not issued new passports to replace expired passports. Instead, in order to save costs, it renews passports by inserting an extension document into the expiring passport. The extension document serves to extend

the validity of the passport. These extension documents are called “prorroga” in Spanish. This explanation is taken from the official website of the Venezuelan government and an extract from the website, in Spanish, was annexed to the founding affidavit.

[7] A statement was subsequently filed by an immigration lawyer practising in Venezuela, Mr Hernândez of the firm BellorinGuzman & Associados, who confirmed the position regarding the extension of passports as outlined by the applicants. He explained that the extension of passports is carried out electronically. Applicants for an extension must register on the Venezuelan government’s official web page. The system will indicate when the extension of the passport is approved. The applicant must then attend the office of the Administrative Service for Immigration Identification (SAMIE) where the applicant’s existing passport is stamped on a page with a sticker leaving the passport with an extension and ready to be used.

[8] Mr Hernândez stated that he had reviewed the web page submission of Ms Serrano. His investigation revealed that Ms Serrano’s extension of her passport was authentic and that the extension was issued in accordance with the laws of Venezuela.

[9] A copy of Ms Serrano’s passport was annexed to the founding affidavit from which it is apparent that her passport, which would have expired on 9 June 2019,

was renewed on 2 occasions through the insertion of an extension document. On the face of it, then, Ms Serrano's passport is validly extended to 7 April 2023 by way of an official extension document.

[10] According to the applicants, prior to Ms Serrano booking her flight to Cape Town, she called the South African embassy in the United States and enquired whether there were any additional requirements for Venezuelans to enter South Africa. She also enquired whether the South African government would recognise her passport as valid, given the extension document. The embassy said she was clear to enter South Africa and could do so as a tourist for 90 days. The tourist visa referred to by the applicants is a visa issued in terms of section 11(1)(a) of the Immigration Act 13 of 2002 ("the Immigration Act") and is valid for a period of 3 months.

[11] Since Ms Serrano intended to book her flight to Cape Town with Ethiopian Airlines, she also checked with this airline if she could travel to South Africa using her current passport and extension document. Ethiopian Airlines informed her that she would be able to enter South Africa with her current passport.

[12] The applicants stated that they had contacted the South African Embassy and Ethiopian Airlines because they understood that normally passports are renewed by issuing a new passport – not by an extension document. Had they known that South Africa would not recognise an extension document, they would not have

travelled to this country. They further aver that before Ms Serrano boarded the plane to South Africa, Ethiopian Airlines called the department in order to ensure that the department would recognise Ms Serrano's "extended" passport upon her arrival in Cape Town. The department confirmed that it would recognise the extension. Ms Serrano was then allowed to board the plane. The applicants submitted that Ethiopian Airlines would not have allowed Ms Serrano to board the plane if it was not certain that she could lawfully arrive in South Africa as the airline would be responsible for all costs associated with her removal from the Republic if she was refused entry.

[13] The applicants stated that Ms Serrano had previously travelled to the United States on the basis of the extension document and her passport was recognised by the United States as being valid.

[14] When Ms Serrano was denied entry, she was issued with a document, form 37. This document is issued pursuant to *inter alia* section 35(10) of the Immigration Act and stated that Ms Serrano was an "illegal foreigner" and that Ethiopian Airlines (ET 847) was responsible for her removal from the Republic. Ms Serrano was handed over to representatives of the airline and they accompanied her to the inadmissible facility situated at CTIA.

[15] The inadmissible facility is a facility established in terms of "Annex 9 – Facilitation" of the International Civil Aviation Organisation (ICAO). It embodies,

inter alia, the Standards and Recommended Practices and guidance material pertaining specifically to the facilitation of landside formalities for clearance of aircraft and passengers. Annex 9 provides a frame of reference for planners and managers of International Airport operations, describing the obligations of the industry as well as minimum facilities to be provided by governments.

[16] The ICAO was established in terms of article 43 of the Convention on International Civil Aviation drawn up in Chicago on 7 December 1944, as set out in Schedule 3, and includes any amendments and additions ratified and proclaimed in accordance with section 3(1)(b) ("*the Convention*" commonly known as "*the Chicago Convention*")[1]. The Convention has been given effect by Chapter 2 of the Civil Aviation Act 13 of 2009 which came into operation on 31 March 2010.

[17] The inadmissible facility is thus established in terms of international law. It serves as a transit facility utilised by airlines to accommodate passengers who are destined to be removed from the Republic for various reasons, including instances pertinent to Ms Serrano's situation.

[18] CTIA is a public premises that is administered, operated, and managed on a day-to-day basis by the Airport Company of South Africa ("ACSA").

[1] See, ***Havard and Another v Minister of Home Affairs and Others*** (case number: 33431/2011 SGHC) at paras [11] – [13].

[19] According to the applicants, when Ms Serrano was taken into the inadmissible facility, she was kept in what she describes as “a holding cell” in which she spent the entire night of 24 December 2021.

[20] By the following morning, on 25 December 2021, Ms Breukel had arrived in South Africa and she and the applicants’ attorney, Mr Schneider, went to the airport.

[21] Ms Serrano was summoned by immigration officials and allowed to consult with Mr Schneider.

[22] After consulting with Ms Schneider, Ms Serrano lodged an application in terms of section 8 of the Immigration Act to review the department’s decision denying her entry into the Republic. The relevant parts of section 8 states as follows:

> “*(1) An immigration officer who refuses entry to any person or finds any person to be an illegal foreigner shall inform that person on the prescribed form that he or she may in writing request the Minister to review that decision and -*
>
> *(a) If he or she arrived by means of a conveyance which is on the point of departing and is not to call at any other port of entry in the Republic, that request shall without delay be submitted to the Minister, or*

(b) In any other case than the one provided for in paragraph (a), that request shall be submitted to the Minister within three days after that decision.

(2) A person who was refused entry or was found to be an illegal foreigner and who has requested a review of such a decision –

(a) in a case contemplated in subsection (1) (a), and who has not received an answer to his or her request by the time the relevant conveyance departs, shall depart on that conveyance and shall await the outcome of the review outside the Republic; or

(b) in a case contemplated in subsection (1) (b), shall not be removed from the Republic before the Minister has confirmed the relevant decision."

[23] It is common cause that Ms Serrano did not fall under section 8(1)(a) because the aircraft on which she arrived in South Africa – Ethiopian Airlines (ET 847) – was not at the point of departure. Her position was thus governed by section 8(1)(b) read with section 8(2)(b). Having filed a review, Ms Serrano could not be removed from the Republic until such time as her request for her review had been dealt with by the Minister. Ms Serrano was advised by immigration officials

that she would not be released pending the finalisation of the Minister's decision and would, instead, be kept in the inadmissible facility.

THE MAIN APPLICATION

[24] The applicants then launched an application on an urgent basis to have Ms serrano released from custody, and for her to be allowed into South Africa pending the Minister's decision ("the main application"). According to the applicants, the immigration officials at the airport told Ms Breukel and her attorney that they could serve the papers *via* e-mail and provided the email addresses of Mr Goeieman (an immigration officer employed at the CTIA), Mr Kemp (the Deputy Director: Immigration at CTIA and the most senior immigration official at CTIA), Mr Fester (an immigration official employed at CTIA), and the Minister. In addition, the applicants' junior counsel attempted to contact the State Attorney's office *via* all the numbers publicly advertised. No one answered the calls.

[25] Mr Goeieman delivered an affidavit in which he confirmed that either him or another immigration official, Mr Grobbelaar, provided the e-mail addresses to Mr Schneider. However, according to him, the e-mail addresses provided were for the purposes of lodging the section 8 review and not the court application papers. Thus, there is some dispute as to the purpose for which the e-mail addresses were provided. The fact remains, however, that these e-mail addresses were

provided by immigration officials and it was at these addresses that the papers in the main application were served.

[26] The section 8 review application was served on the respondents at about 12h15 on 25 December 2021. They were also forewarned that the applicants intended lodging the main application. The papers in the main application were served on the respondents on 25 December 2021 at around 14h35.

[27] The matter was set down for hearing before this court at "*16h00 or soon thereafter on Saturday, 25 December 2021*". The application was heard at approximately 18h30 on 25 December 2021. Mr Cohen, a pupil at the Cape Bar, appeared on behalf of the applicants. At the commencement of the hearing, he advised the court that his leader, Mr Katz SC, had assisted with drafting the papers but was unavailable due to family commitments. Given the exigencies of the situation, I had no difficulty permitting Mr Cohen to represent the applicants. There was no appearance for the respondents.

[28] The relief requested by the applicants is framed in the notice of motion, in part, as follows:

> "*2. Pending the finalisation of the second applicant's review under section 8(1) of the Immigration Act 13 of 2002, the second applicant must be released from custody and allowed interim entry into the Republic of South Africa.*

3. *the second applicant must report to the respondent on Wednesday 29 December 2021, failing which she must leave the Republic.*"

[29] The issue before the court was whether Ms Serrano should be allowed into South Africa to reside with her life partner while she waited for the Minister's decision. The issue was not whether Ms Serrano's passport was valid which is an issue that would have to be determined by the Minister. Of course, at the time the main application was launched, the Minister had not yet made his decision.

[30] The court granted the interim order. It was satisfied that adequate attempts had been made to serve the papers on the respondents. It was also satisfied that a case had been made out for the interim relief sought. The court was persuaded *inter alia* by the averments contained in the founding affidavit that Ms Serrano was denied entry into the Republic and was being held in a holding cell in circumstances where, on the face of it, her passport appeared to be valid. The immigration officials did not even make the most basic of enquiries to ascertain the status of her passport and the extension thereof. They did not have any regard to, or for, Ms Serrano's personal circumstances and her constitutionally guaranteed right to dignity and freedom. If relief was not granted to the applicants, there was a real possibility of imminent harm. The court was satisfied that the balance of convenience favoured the applicants and that adequate arrangements had been made for Ms Serrano's stay in South Africa pending the decision of the Minister. Ms Breukel stated in the founding affidavit to the main

application that Ms Serrano could be released into her care and reside with her and her family in Cape Town. Ms Breukel also undertook to personally ensure that Ms Serrano followed any court decisions relating to the latter's ongoing stay in South Africa.

[31] Having been satisfied that a case was made out for the relief sought, I granted an order in the following terms:

> "*1. The rules relating to forms and service are dispensed with and this application is heard as a matter of urgency.*
>
> *2. The second applicant is immediately released from custody.*
>
> *3. The second applicant is permitted to enter South Africa and reside with the first applicant in Cape Town pending the finalisation of her review under section 8(1) of the Immigration Act 13 of 2002 and any further appeals or reviews in respect of that decision.*
>
> *4. The Respondents are called upon to show cause on 17 January 2022 why the order set out in paragraphs 2 and 3 should not be made a final order of the above Honourable Court.*
>
> *5. The respondents are entitled to anticipate the return date on seventy-two hours' notice.*

6. *Paragraphs 2 and 3 shall serve as an interim order against the respondents until the return date.*

7. *The applicants shall effect service of this order on the State Attorney on behalf of the respondents.*

8. *Costs to stand over for later determination on the return date.*"

THE CONTEMPT APPLICATION

[32] Ms Breukel returned to the airport with the order at around 20h00 on 25 December 2021. She presented the order to an immigration official who refused to accept it or to release Ms Serrano. The applicants were then forced to bring a contempt application.

[33] At 23h00 on 25 December 2021, I heard the contempt application brought by the applicants. This application was opposed by the respondents who were represented by Ms Shireen Karjiker ("Ms Karjiker"), a State Attorney. Mr Kemp was also in attendance at the hearing. It transpired that he first became aware of the main application after 17h00 on 25 December 2021. He immediately contacted Ms Karjiker to alert her of the application and the application papers were sent to her *via* WhatsApp. According to Mr Kemp, Ms Karjiker only saw the WhatsApp message after 19h00 that evening. Until then, she was unaware of the application. Mr Kemp became aware of the court order at approximately 20h18

and he immediately forwarded it *via* WhatsApp to Ms Karjiker. She then contacted Mr Schneider to inform him that the department would take the necessary steps to deliver a reconsideration application that same night.

[34] The order was not effected when it came to the attention of Mr Kemp and/or Ms Karjiker. Mr Kemp stated in an affidavit filed in support of the respondents' reconsideration application that Ms Serrano was not released immediately "*given that Ms Karjiker was trying to appoint counsel to have the order set aside and to have the matter reconsidered*". At the hearing of the contempt application, Ms Karjiker continued with her stance that the order was unlawful and, in effect, could not be implemented.

[35] Ms Breukel was called to give oral evidence with regard to the contempt application. During her testimony, she also gave evidence on the conditions under which Ms Serrano was being held in the inadmissible facility.

[36] Ms Breukel's uncontested testimony, based on cellphone and WhatsApp messages exchanged between herself and Ms Serrano, was that Ms Serrano was kept in custody in a locked room. Ms Serrano had to request permission to leave the room. At some point, the guard monitoring her did not respond to her calls to when she wanted to use the bathroom. Ms Serrano was effectively forced to urinate in a Zip-lock bag because she was not allowed out. She was also kept in a facility housing males, with her being the only woman.

[37] During her oral testimony, Ms Breukel shared some of the WhatsApp texts Ms Serrano sent to her, which include the following:

> "*There's a guy in a cell next to me who won't stop trying to send me photographs over AirDrop. He wanted to talk to me and keeps on asking me my phone number. I keep on saying no and now he's tried to AirDrop me six times."*
>
> *"I don't want to worry you, but I'm really scared. Today they put me in a cell which was compared to – which was not the same as where I was. It's an actual cell and I'm the only woman there. I'm so sorry. I wouldn't say anything if I wasn't really scared."*
>
> *"I'm so sorry, I can't keep going. I just don't know what to do.*"

[38] One of the difficulties with the contempt application was that the order was not served on an appropriate immigration official, such as Mr Kemp or Mr Fester. Nor was it served in terms of the court order which provided that the order must be served "*on the State Attorney on behalf of the respondents*". Mr Cohen indicated that their efforts to contact the State Attorney had been futile. In the circumstances, and given that a representative of the office of the State Attorney and Mr Kemp were present in court, I suggested that the order be served on Mr Kemp. The order was subsequently served by Mr Schneider on Mr Kemp. Notwithstanding the service of the order on Mr Kemp, Ms Karjiker continued to

register her strong objection with regard to the legality of the order and stated that Mr Kemp would still have to take instructions from the respondents on what to do with the order.

[39] I found the response of the State Attorney to be totally at odds with what one would expect of an officer of the court and of an official of the State when directed to implement an order. As Pillay AJ stated in the Constitutional Court judgment of ***Municipal Manager O.R. Tambo District Municipality and Another v Ndabeni***[2], court orders must be respected and "*no one should be left with the impression that court orders – including flawed court orders – are not binding, or that they can be flouted with impunity*". The attitude of Ms Karjiker and the department to court orders is not unique. Various courts have on occasion had cause to decry the attitude of the department with regard to the enforcement of court orders in immigration matters[3].

[40] Suffice to say, as a consequence of Ms Karjiker's somewhat dismissive attitude to the court order, Ms Serrano was kept a further six hours in the holding cell under very difficult conditions – she left the airport the following morning at approximately 02h00.

THE RECONSIDERATION APPLICATION

[2] **[2022] ZACC 3** at para [23]. See also, ***Department of Transport v Tasima (Pty) Ltd*** **2017 (2) SA 622 (CC)**.

[3] See, for example, ***Mukhamadiva v Director General of Home Affairs and Another*** (case number: 22621/11 WCHC), and ***Lin Gui Lan v OR Tambo International Airport and Others*** (case number 70261/2009 NGHC).

[41] As noted, the interim order was granted in the absence of the respondents. Having been alerted to the order, the respondents lodged a reconsideration application in terms of rule 6(12)(c) of the Uniform Rules of Court. This sub-rule provides that a person against whom an order was granted in his or her absence in an urgent application may set the matter down on notice for reconsideration. The sub-rule does not prescribe how an application for consideration is to be pursued. The absence of prescription was intentional and, as the Supreme Court of Appeal ("the SCA") observed in ***Afgri***[4], "*the procedure will vary depending on the basis on which the party applying for a reconsideration seeks relief against the order granted ex parte and in its absence*".

[42] There are various options open to a party who wishes to have an order set aside. In this regard, the SCA in ***Afgri*** set out what options are available to a party wishing to have an order reconsidered as well as the options available to the other party depending on the course of action adopted by the party lodging the reconsideration application. Thus,

> "*[12] …(A) party wishing to have the order set aside, on the ground that the papers did not make a case for that relief, may deliver a notice to this effect and set the matter down, for argument and reconsideration, on those papers. It may do the same if it merely wishes certain provisions in the order to be amended, or qualified, or supplemented. The matter is*

[4] ***Afgri Grain Marketing (Pty) Ltd[4] v Trustees for the time being of Copenship Bulkers A/S (in liquidation) and Others*** **[2019] All SA 321 (SCA)** at para [12].

then argued on the original papers. It is not open to the original applicant, save possibly in the most exceptional circumstances, or where the need to do this has been foreshadowed in the original founding affidavit, to bolster its original application by filing a supplementary founding affidavit.

[13] The party seeking reconsideration is not confined to this route. It may file an answering affidavit, either traversing the entire case against it, or restricted to certain issues relevant to the reconsideration. In many instances such an affidavit will be desirable. Even if an affidavit is filed, however, it does not preclude the party seeking reconsideration arguing at the outset, on the basis of the application papers alone, that the applicant has not made out a case for relief. That is a well-established entitlement in application proceedings and there is no reason why it should not be adopted in reconsideration applications.

[14] If an affidavit is filed in support of the application for reconsideration then the party that obtained the order is entitled to deliver a reply thereto, subject to the usual limitations applicable to replying affidavits. When that is done, and the party seeking reconsideration does not argue a preliminary point at the outset that the founding affidavit did not make out a case for relief, the case must be argued on all the factual material before the judge dealing with the reconsideration proceedings. That material may be significantly more extensive and the nature of the issues may have changed as a result of the execution of the original ex parte order." (footnotes omitted).

[43] In this matter, the respondents have chosen to deliver additional affidavits. The applicants were thus entitled to deliver a response, which they did. The respondents' approach to the reconsideration application, however, led to a somewhat anomalous and confusing situation. Instead of filing an answering affidavit, the respondents asserted that they were "*dominis litis*". The affidavits filed by them in support of the reconsideration application, accordingly, took the place and the form of a founding affidavit. The applicants then filed supplementary affidavits in answer to the reconsideration application and the respondents, thereafter, filed a replying affidavit together with a supplementary affidavit. In addition, the respondents also lodged an application for condonation as well as an application to strike out.

[44] Given the trajectory which the reconsideration application took, the affidavits delivered canvassed issues that were more extensive than the issues addressed in the founding affidavit in the main application. In addition, by the time all the papers were finally delivered, the Minister had made his decision on the section 8 review application. This decision was adverse to Ms Serrano and the applicants then lodged a separate application in this court to review the Minister's decision under case number 21843/21 ("the constitutional review application").

[45] The contents of the affidavits are largely relevant to the issues relating to the main application. None of the parties opposed the manner in which the matter

proceeded or the admission of the affidavits. In my view, the admission of these affidavits will not prejudice any of the parties. Accordingly, all the affidavits are admitted. I will consider the factual material placed before me as well as those events that occurred subsequent to the interim order being granted, provided that the factual material and issues to be considered are germane to the relief sought and the case made out by the applicants in the main application. It is not the remit of this court to consider issues that fall within the purview of the court hearing the constitutional review application. Nor, strictly speaking, should this court consider any new issues of substance raised by the applicants that were not part of the main application. Nonetheless, it is difficult to ignore issues that may, at the very least, have an impact on the order to be granted.

[46] Whether one considers this matter through the prism of the reconsideration application or the return date of the rule *nisi*, the issues that the court is ultimately faced with are the same - whether the applicants have made out a proper case for the relief sought in the main application and whether the interim order granted was appropriate in the circumstances.

[47] Before considering the substantive merits of the main application, it is necessary to consider some of the technical issues raised by the respondents in their reconsideration application. In this regard, the respondents submitted that the main application was not urgent; that it was materially defective in that the applicants did not comply with the provisions of section 35 of the General Law

Amendment Act 62 of 1955 by not providing the respondents with at least 72 hours' notice of the proceedings to be instituted; that service was not effected at all or, alternatively, was so defective that the application was in effect an *ex parte* application; that the main application was defective in that Ethiopian Airlines was not joined as an interested party; and that the application was lodged prematurely because the Minister had not yet decided on Ms Serrano's section 8 review application when the main application was lodged and that this review provided alternative relief in the context of interim interdictory relief.

[48] All the foregoing issues raised by the respondents in the reconsideration application are inter-related:

[48.1] I am satisfied that the matter was indeed urgent, involving as it did the liberty of one of the applicants. Ms Serrano was held in a holding cell under guard and under conditions that were extremely unpleasant. The only response in this regard from the respondents was that if there was any urgency, it was self-created because Ms Serrano's passport had expired in 2019. Objectively, this is not the case in terms of Venezuelan law and Ms Serrano had taken all reasonable steps, as outlined above, to ensure that she could enter South Africa legally. Mr Kemp testified that he had only seen the application at around 17h00 and that he thought that the matter was over by then. If Mr Kemp perused the notice of motion properly, he would have seen that this matter was set down for "*16h00 or*

so soon thereafter". He could quite easily have contacted Mr Schneider, whose details were provided in the notice of motion, in order to enquire about the status of the application. While there might have been difficulties with the notice period given, the respondents were obliged to act within the time periods set by the applicants and then take issue with the notice period during the course of opposing the application, if necessary.[5]

[48.2] While section 35 of the General Law Amendment Act is peremptory, a court is given the discretion to allow a lesser period of notice depending on the circumstances[6]. In this case, the papers in the main application were served on the respondents on the afternoon at around 14h35 which provided the respondents with about 4 hours' notice. The applicants were also forewarned at around midday, when the section 8 review application was filed, that this application would be launched. Ms Serrano was held in a holding cell under guard and, as it subsequently transpired, the conditions were extremely unpleasant. Given the urgency which I found to have existed, I consider the period of notice given to the respondents to have been reasonable in the circumstances.

[48.3] The respondents submitted that the order was effectively obtained *ex parte* given the short notice and the fact that it was not served on the Office of the State Attorney, particularly Ms Karjiker. I have set out in

[5] Cf. ***Cathay Pacific Airways Ltd and another v HL and another*** **[2017] 2 All SA 722 (SCA)**.
[6] See, ***Maharaj Brothers v Pieterse Bros Construction (Pty) Ltd & Another*** **1961 (2) SA 232 (N)**.

paragraphs [24] and [26] above the steps taken to serve the papers on the respondents. I am satisfied with the attempts made. The fact that Ms Karjiker was not personally served with the papers, in my view, is of no consequence. In this regard, it is noteworthy that Mr Goeieman, in his affidavit in support of the reconsideration application, did not mention Ms Karjiker when describing the procedure, and the persons to be contacted, when the department receives an urgent court application. Indeed, none of the officials with whom Mr Schneider interacted indicated that Ms Karjiker was the respondents' representative and ought to be contacted. I, therefore, find no substance in the submission that the order should be treated as having been obtained *ex parte*.

[48.4] The respondents have also submitted that the main application was defective because of the non-joinder of Ethiopian Airlines which was an essential interested party to the proceedings as Ms Serrano was in the care and custody of this conveyance. However, as the applicants have noted, by the time the main application was launched, Ethiopian Airlines (ET 847) had departed. In any event, at the stage when the main application was launched, in my view, Ms Serrano was in the custody and under the control of the Department. I will return to this issue later in the judgment.

[48.5] The respondents further stated that the application was premature as the Minister had not yet made a decision on the section 8 review at the time the application was launched, and that the application provided an alternative remedy in the context of interim interdictory relief. The short answer is that the relief sought and granted was temporary in nature and did not finally dispose of any factual or legal issues. The validity or otherwise of Ms Serrano's passport still had to be determined by the Minister. All that was sought was temporary relief pending the Minister's decision. The relief sought was directed solely at Ms Serrano and, at that stage, there was no challenge to any provision of the Immigration Act or regulations which may have affected the general operation of these statutory enactments.[7]

RELEVANT LEGAL PRINCIPLES

[49] Before turning to the main application, I set out hereunder some of the relevant provisions of the Immigration Act and regulations which provides context to the discussion that follows.

[50] The Immigration Act provides for the regulation of the admission of persons to, their residence in, and their departure from, the Republic, and for matters connected therewith. The Immigration Act, like all legislative enactments in South

[7] Cf. ***Minister of Home Affairs v Johnson***; ***Minister of Home Affairs v Delorie*** **[2015] (6) BCLR 707 (CC)** at para 7.

Africa, must be read against the backdrop of the Bill of Rights in the Constitution. The Bill of Rights enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality, and freedom. It applies to foreigners as well unless the contrary emerges from the Bill of Rights.[8]

[51] According to its preamble, the Immigration Act aims at putting in place a new system of immigration control and ensures *inter alia* that the security considerations of the State are fully satisfied; that the State retains control over the immigration of foreigners to the Republic; that immigration laws are efficiently and effectively enforced; that immigration control is performed with the highest possible standards of human rights protection; that xenophobia is prevented and countered; that a human rights based culture of enforcement is promoted; and that the international obligations of the Republic are complied with.

[52] Section 9 of the Immigration Act deals with the admission to and departure of persons from the Republic. In terms of section 9(3), no person shall enter or depart from the Republic –

> *"(a) unless he or she is in possession of a valid passport;*
>
> *(b) except at a port of entry, unless exempted in the prescribed manner by the Minister;*

[8] ***Lawyers for Human Rights & another v Minister of Home Affairs & another*** **2004 (4) SA 125 (CC)** at para 25 and 26.

(c) unless the entry or departure as recorded by an immigration officer in the prescribed manner; and

(d) unless his or her interest admission documents have been examined in the prescribed manner and he or she has been interviewed in the prescribed manner by an immigration officer."

[53] When a person is refused entry at a port of entry, the review procedure set out in section 8 is available. In essence, as already noted, the section 8 procedure involves a review of the refusal of entry. The person requesting a review must submit the request without delay or within three days, depending on whether it is a situation contemplated in section 8(1)(a) or section 8(1)(b). In the latter instance, which applies to Ms Serrano, the person may not be removed until the Minister has conveyed his decision.

[54] When Ms Serrano was refused entry into the country, she was provided with a form 37 which is headed "**NOTIFICATION TO A PERSON AT A PORT OF ENTRY THAT HE OR SHE IS AN ILLEGAL FOREIGNER AND IS REFUSED ADMISSION**". This form is issued in terms of section 7(1)(g) read with sections 34(8) and 35(10), and regulations 33(10) and (14).

[55] Section 7(1)(g) is merely an enabling provision which states that the Minister may make regulations. The reference to regulation 33(14) is a mistake as there is no such regulation.

[56] Section 34(8) and regulation 33(10) should be read together as they cross-reference each other. These provisions, in the main, refer to persons who are classified as "illegal foreigners" and who are to be deported. An "illegal foreigner" is defined as "a foreigner who is in the Republic in contravention of" the Immigration Act. By definition, then, an illegal foreigner must be a person who is in the Republic[9] in contravention of the Immigration Act and cannot refer to someone who is yet to be formally admitted into the Republic. Accordingly, section 34(8) and regulation 33(10) have no application to Ms Serrano.

[57] Form 37 is clearly a generic form which is meant for people classified as illegal foreigners as well as for persons such as Ms Serrano who are not illegal foreigners but who have been refused formal admission into the Republic.

[58] The section of the Immigration Act that is directly applicable to Ms Serrano is section 35 and, more particularly, section 35(10). I quote hereunder the relevant provisions of this section which apply directly to Ms Serrano's situation:

> "***35 Duties with regard to conveyances[10]***
>
> *(1) Save for exceptional circumstances necessitating otherwise, no person in charge of a conveyance shall cause that conveyance to enter the Republic at any place other than at a port of entry.*"

[9] See the comments of Ponnan JA in the minority judgment in ***Jeebhai v Minister of Home Affairs and Another*** **[2009] 3 ALL SA 103 (SCA)** at para [59].

[10] A "conveyance" is defined in the Immigration Act as "*any ship, boat, aircraft or vehicle, or any other means of transport*".

(2) …

(3) (a) The owner or person in charge of a conveyance entering into, departing from or in transit through the Republic by air or conveying persons on domestic flights within the Republic, shall comply with the provisions of this section by enabling electronic transmission of the prescribed passenger name record information in respect of all persons booked to travel on his or her conveyance to the Director-General in the prescribed manner.

(b) The owner or person contemplated in paragraph (a) shall, within the prescribed period prior to the scheduled time of departure of his or her conveyance, electronically transmit the prescribed passenger name record information to the Director-General in the prescribed manner.

(4) – (9) ….

(10) A person in charge of a conveyance shall be responsible for the detention and removal of a person conveyed if such person is refused admission in the prescribed manner, as well as for any costs related to such detention and removal incurred by the Department." (Own emphasis).

[59] If one conducts a textual and contextual analysis of section 35 read with section 8, the following is evident:

[59.1] A distinction is made between the owner of a conveyance and the person in charge of the conveyance. In some instances, there are certain duties which a person in charge of a conveyance has to perform whilst in other

instances, either the owner or the person in charge of the conveyance may perform the duty;

[59.2] Either an owner or the person in charge of a conveyance is responsible for ensuring that the prescribed passenger information is conveyed to the Director-General before the conveyance concerned departs for the Republic and before it leaves the Republic;

[59.3] The person in charge of the conveyance is responsible for the detention and removal of any person who was on the conveyance but is refused admission into the Republic, and for any costs associated with the detention and removal of the foreigner concerned;

[59.4] The person in charge of the conveyance is also responsible for any costs of detention and removal that might be incurred by the department. This assumes that at some stage the foreigner must be in the custody and control of the department. This surely must happen once the conveyance has left and the foreigner remains behind whilst the Minister is seized with the review application;

[59.5] If the foreigner exercises a right to review in terms of section 8(1)(a) and the conveyance is about to depart from the Republic, the airline concerned is responsible for such a person until the flight departs. The review

initiated by the foreigner can then be pursued from outside the Republic; and

[59.6] If section 8(2)(a) applies, the foreigner cannot be removed from the Republic and once the airline departs, the department assumes responsibility for the person concerned but at the cost of the conveyance which brought the passenger to the Republic.

[60] In the matter at hand, when Ms Serrano was denied formal entry into the Republic, she was placed in the custody of the person in charge of Ethiopian Airlines (ET 847) to be held until escorted out of the country. At some point in time, the aircraft departed from the Republic and the immigration officials of the department then formally took control and custody of Ms Serrano. On the facts before this court, Ms Serrano was removed from the custody of the person Ethiopian Airlines (ET 847) when she was summoned by the immigration officials to consult with Mr Schneider. Thereafter, according to WhatsApp messages sent to Ms Breukel, Ms Serrano was placed in another cell and her conditions changed quite dramatically from then onwards.

[61] There was some suggestion that ACSA controls the inadmissible facility but, in my view, this does not take the matter further. In terms of section 35(10), it is either the person in charge of the aircraft or the department that had custody and

control over Ms Serrano; it is they who are responsible for the conditions under which she was held, *albeit* during different time periods.

[62] Ms Golden, who appeared for the respondents, argued strongly that a person who is refused entry into South Africa and who is not an illegal foreigner, such as Ms Serrano, becomes the responsibility of the conveyance and may not leave the inadmissible facility until the decision of the Minister is made. Support for this position can be found, for example, in cases such as ***Zong Fei Ye v The Department of Immigration/Home Affairs***[11], ***Arslan v Minister of Home Affairs and Others***[12], ***Mahlekwa v Minister of Home Affairs and Others***[13] ("***Mahlekwa***"), ***Fenuka Khan v Minister of Home Affairs and Others***[14] ("***Fenuka Khan***"), and ***Louise and Another v Minister of Home Affairs and Others***[15].

[63] Indeed, Ms Golden argued that I was bound by the judgment in this division of Savage AJ in ***Mahlekwa***. This case involved a Mr Khan, a Pakistani national in South Africa on a spousal visa who undertook a trip to Pakistan. On his return to South Africa, he was denied entry at CTIA. It was discovered that he had obtained his spousal visa by misrepresenting to immigration officials that he was in a permanent relationship with a South African national (Ms Mahlekwa) when in fact he was also married to a Pakistani national who resided in Pakistan.

[11] Case number: 3056/14 WCHC.
[12] Case number: 4551/2015 WCHC.
[13] Case number: 9798/14 WCHC.
[14] Case number: 8231/2014 WCHC.
[15] Case number: 8326/216 WCHC.

[64] Mr Khan lodged an application in terms of section 8(1) with the Minister challenging the decision to deny him entry into the Republic. He also instituted legal proceedings for an order preventing the department from deporting him, and an order that he be released from custody.

[65] Savage AJ in ***Mahlekwa*** held that Mr Khan had instituted a ministerial review under section 8 and was expressly advised that he would remain in the inadmissible facility pending the finalisation of his review. Therefore, it was not necessary for the court to grant the order preventing his deportation.

[66] The court also refused to order Mr Khan's release from custody. In essence, the court held that Mr Khan was not being detained because he was free to leave the facility and return to his country of origin or some other country where he could continue to pursue his ministerial review; this aspect of the judgment was endorsed by Rogers J in an *obiter dictum* in ***Fenuka Khan***[16]. According to Savage AJ, persons such as Mr Khan, exercise an election to remain in the inadmissible facility as they are free to return to their country of origin or some other country. With respect, I differ with the view that a person held in an inadmissible facility is not "detained" for the purposes of section 8.

[67] The word "detention" is used in section 35(10). As Savage AJ stated in ***Mahlekwa***, ***"****detention implies that the person is held in custody, restricted in*

[16] ***Fenuka Khan v Minister of Home Affairs and Others*** at para [64].

their physical ability to leave such custody"[17]. This mirrors the reality of foreigners held in an inadmissible facility. They do not have freedom of movement and are restricted to a confined area, under guard, until they are ready to depart from the Republic. This was certainly the position which Ms Serrano found herself in; a position that is not unique[18].

[68] I also respectfully disagree with the finding of Savage AJ in ***Mahlekwa*** that foreigners are not "detained" in the inadmissible facility because they have the freedom to leave if they so wish. Firstly, this approach undermines an aggrieved person's right not to be removed from the Republic pending the finalisation of the Minister's decision. The prohibition against removing an affected person from the country, as provided for in section 8(2)(b), is a procedural safeguard which operates to diminish any possible deleterious effects of the actions taken by the immigration officer[19]. Secondly, the logical corollary of Savage AJ's finding is that foreigners in the inadmissible facility are faced with a Hobson's choice, a choice where both alternatives may be equally objectionable – either leave the Republic or endure the conditions of detention. Thirdly, by placing a foreigner in the invidious position of having to "choose" to leave the country may operate to his or her prejudice. If a foreigner left the Republic and continued with his or her review outside the country, it would mean that he or she would be liable for the costs of travelling out of the country and then, if the review was successful, travelling

[17] At para [23].
[18] See, for example, ***Chen and Another v Director-General, Home Affairs and Others* 2014 [ZAWCH] 181**.
[19] See, ***Patel and One Other v Chief Immigration Officer, OR Tambo International Airport and others*** (case number: 26953/09 NGHC), at para [41].

back to the Republic. The foreigner would also be deprived of the advantage of direct consultation with his or her South African legal representatives.

[69] Whilst the courts have generally confirmed that there is no automatic right to liberty while a foreigner awaits a decision on the section 8 review, the applicants concerned in those cases were either prohibited persons or persons "detained" for the purpose of section 34(2) of the Immigration Act[20]; the conditions under which these foreigners were kept in the inadmissible facility, and the effect of the detention on their right to dignity and family life, and their right to freedom and security of the person, were not explored or considered.

[70] On the other hand, there are cases decided in this division which supports the grant of interim relief permitting entry into the country by a foreigner pending the ministerial review. In ***Johnson***[21], Yekiso J granted interim relief to the applicants who were foreign spouses of South African citizens. They were declared undesirable persons for overstaying their respective visas. On the particular facts of that matter, the court granted an interim order to the effect that the applicants could enter the Republic pending finalisation of the ministerial review. The court ruled that it had jurisdiction to grant the foreigners entry in South Africa in circumstances where the right to dignity and the right to a family life was at stake

[20] See, for example, ***Director-General, Department of Home Affairs and Another v Islam and Others* (459/2017) [2018] ZASCA 48**.

[21] ***Johnson and Others v Minister of Home Affairs and Others***; ***Delori and Others v Minister of Home Affairs and Another*** (case numbers 103/10/2014 and 10452/2014 WCHC).

while the section 8 review was being processed. This judgment was endorsed by the Constitutional Court.[22]

[71] A similar position was adopted by Riley AJ in ***Chen and Another***. In *casu* the applicants were granted an order permitting Chen to enter and remain in the Republic of South Africa, subject to reasonable terms and conditions prescribed by the Director-General: Home Affairs, pending the final determination of Chen's application for the judicial review of the decision to refuse her entry into the Republic. The learned Judge's decision was primarily based on the conditions faced by Chen whilst being held in the inadmissible facility at CTIA.[23]

[72] I do not consider myself bound by the decision of Savage AJ in ***Mahlekwa*** because, in my view, it is distinguishable from the facts of the matter before this court. In addition, in my respectful view, the decision in ***Mahlekwa*** is clearly wrong with regard to the finding that a foreigner held in an inadmissible facility is not detained. The other cases cited in support of the respondents are distinguishable in that those cases dealt either with section 34(2) illegal foreigners, or persons who were declared as undesirable or prohibited persons. None of the cases cited by the respondents considered the issue of the detention of a foreigner by the department in terms of section 35(10). Nonetheless, I agree with the general proposition that a person being held in an inadmissible facility at an airport pending the determination of a ministerial review is not necessarily

[22] ***Minister of Home Affairs v Johnson and Others***; ***Minister of Home Affairs and Another v Delori and Others*** **[2015] ZACC 8.**
[23] ***Chen and Another*** at para [55].

entitled, without more, to be released into the Republic pending the Minister's decision. However, this is not a fixed and immutable principle, and the application of this principle depends on factors such as the conditions of detention and the personal circumstances of the foreigner concerned.

DISCUSSION

[73] It is against the foregoing discussion of the applicable legal principles that I now address the issue of whether there was, and is, legal justification for permitting Ms Serrano to enter the Republic while she persists with her section 8 review.

[74] The order granted by the court was interim in nature. While the order had an immediate and substantial effect in that Ms Serrano was allowed to enter the country, it was not final in effect and it could still be altered by the court which granted it. The order was not definitive of the rights of the parties. Nor was the order dispositive of the issue of Ms Serrano's status as a foreigner who sought entry into this country.

[75] The test for the grant of an interim interdict is trite. The applicant must establish:

(a) a *prima facie* right even if it is open to some doubt;

(b) a reasonable apprehension of irregular, irreparable and imminent harm to the right if the interdict is not granted;

(c) the balance of convenience must favour the grant of the interdict; and

(d) the applicant must have no other available remedy.[24]

[76] Because the relief in this matter is sought against the exercise of statutory power, a court may only grant it in the clearest of cases where a strong case for that relief has been made out.[25]

[77] The applicants relied essentially on two *prima facie* rights in the main application: the constitutional right to dignity[26] and the right to freedom and security of person[27]. They asserted that if Ms Serrano was unlawfully detained over the festive season, and perhaps for an indeterminate period, pending the finalisation of the review, Ms Breukel would be separated from her life partner and Ms Serrano from her intended family. The applicants submitted that, in these circumstances, their respective rights to dignity will be unjustifiably limited. The applicants further submitted that detention is an invasive, forceful measure taken by the State and if these measures were effected unlawfully, then Ms Serrano's rights to freedom and security of the person would be unjustifiably limited.

[78] The respondents, on the other hand, submitted that Ms Serrano was denied entry into the Republic for good cause because her passport was not machine readable and South Africa does not recognise the extension document inserted

[24] ***Setlogelo v Setlogelo* 1914 AD 221; Webster v Mitchell 1948 (1) SA 1186 (W)**.
[25] ***Good v Minister of Justice & Another* 1955 (2) SA 682 (C); *National Treasury & Others v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC)**, at paras 44 and 45.
[26] Section 10 of the Constitution.
[27] Section 12 of the Constitution.

in her passport. It was also submitted that at all material times, Ms Serrano was under the custody and control of Ethiopian Airlines and was not detained. As a consequence, the applicants could not legitimately assert any rights.

[79] Given the undisputed fact that Ms Breukel and Ms Serrano are life partners, that they have chosen a family life together and given the undisputed conditions under which Ms Serrano was held by the department in the inadmissible facility, it is difficult not to agree with the applicants' that their right to dignity, which includes the right to a family life[28], was infringed and that Ms Serrano's freedom and security was severely compromised. In addition, given the conditions in the inadmissible facility which Ms serrano had to endure, there was more than a reasonable apprehension of harm if she was not released. The violations to the applicants' right to dignity and Ms Serrano's freedom and security could not be redeemed if Ms Serrano was continued to be detained and it subsequently turned out that the decision of the respondents was unlawful

[80] The applicants averred that the balance of convenience favoured the granting of interim relief. Mr Katz, on behalf of the applicants, submitted that the prospects of success were high on review since the department's decision, and subsequently that of the Minister, not to recognise the validity of Ms Serrano's passport was irrational, unlawful, and unreasonable. Although it is not for this court to adjudicate the merits of the review application, it seems to me that there is some

[28] See, ***Dawood v Minister of Home Affairs***; ***Shalabi v Minister of Home Affairs***; ***Thomas v Minister of Home Affairs*** **2000 (3) SA 936** at para 37.

substance in the applicants' submissions in this regard. For example, it was not disputed that Ms Serrano's passport was officially extended by the Venezuelan government which had been renewing passports in this fashion for several years. Indeed, various other countries have recognised this form of extension. As Mr Katz argued, there is nothing in the Immigration Act or regulations that prevented immigration officials from recognising Ms Serrano's passport as valid given the extension document. It was certainly not disputed by the department that the extension document in Ms Serrano's passport was extended electronically and that all the information that one would expect in a passport was not altered in any way; the passport is machine readable.

[81] The decision to deny Ms Serrano entry into the Republic and to detain her appears to be unreasonable. Even if there was some doubt about the validity of Ms Serrano's passport, the reasonable decision-maker would not have automatically denied her entry and detained her but would have instead made enquiries from the Venezuelan embassy or more senior Home Affairs officials with regard to the validity of the passport by virtue of the extension document. Ms Serrano provided exacting details on the lengths that she went through to ensure that her document would be acceptable when she arrived in South Africa. The enquiries were made personally by her as well as by Ethiopian Airlines directly to the department. There was no serious objection by the respondents to Ms Serrano's submissions in this regard. Clearly, there is some confusion on the status of Ms Serrano's passport and the extension thereof. A simple enquiry by

the immigration officials at the port of entry may well have cleared up this confusion in favour of Ms Serrano.

[82] While the applicants will suffer significant harm if no interim relief is granted, the respondents, on the other hand, would suffer no harm at all if Ms Serrano remained in South Africa until the review is finalised. As Mr Katz argued, the power exercised by the department, and subsequently the Minister, in refusing Ms Serrano entry into the Republic was "a-run-of-the-mill" administered power. It is not a polycentric executive or legislative power. The separation of powers, in this matter, would not be unduly affected. The interim order granted affected a single individual and is based on Ms Serrano's particular circumstances. Ms Serrano poses no discernible threat to the public or to any individual. From the outset, she has taken every possible step to ensure compliance with the department's requirements.

[83] Although I am of the view that the interim order was correctly granted, the initial order was perhaps defective in that it was far wider than what was requested by the applicants in the main application. In the notice of motion, the applicants requested that Ms Serrano be released from custody and allowed interim entry into the Republic pending the finalisation of her review under section 8(1). At that stage, the Minister's decision was still pending. Ms Serrano had also indicated in her founding papers that she would in any event leave South Africa by 24 March 2022, which is the date of her return ticket. The order granted was thus

impermissibly wider than the relief sought. However, the relief sought was overtaken by events. The Minister made his decision which was adverse to Ms Serrano and this decision is now the subject of a review in this court. This change in circumstances simply cannot be ignored but will have to be taken into account when an order is fashioned in relation to any relief granted in this matter.

[84] On a conspectus of the evidence before me, I am satisfied that a case has been made out for Ms Serrano's release from the inadmissible facility and her entry into South Africa pending the finalisation of the court proceedings in relation to the section 8 review application.

CONDONATION APPLICATION AND APPLICATION TO STRIKE OUT

[85] The respondents lodged an interlocutory application to condone the late filing of the service affidavit of Mr Goeieman and the late delivery of the respondents' supplementary note. The applicants filed an affidavit by Mr Schneider in response to the condonation application wherein the applicants indicated that they did not oppose the grant of the condonation application. However, the response went much further by canvassing issues that were not entirely relevant to the condonation application. The respondents then brought an application to strike out the entire affidavit of Mr Schneider on the grounds that the affidavit constituted frivolous and vexatious material that was irrelevant and inadmissible.

The respondents also requested that the applicants pay the costs of the application on an attorney-client-scale.

[86] The application was to strike out the entire affidavit and not only certain portions thereof. Quite clearly, the affidavit contains uncontentious material, such as the submission by the applicants that they did not oppose the application. Ms Golden was requested to address the court on this issue. She persisted with the argument that the respondents sought an order that the entire affidavit of Mr Schneider be struck out.

[87] An application to strike out any matter from an affidavit is regulated by rule 6(15) of the Uniform Rules of Court, which reads as follows:

> "*The court may on application order to be struck out from any affidavit in any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client. The court may not grant the application unless it is satisfied that the applicant was prejudiced in his case if it be not granted.*"

[88] It is necessary for an applicant to, firstly, identify those paragraphs which ought to be struck out as scandalous, vexatious or irrelevant and, secondly, the applicant must satisfy the court that he or she will be prejudiced if the matter is not struck out. The respondents have failed to overcome the first hurdle in that they have not specified which paragraphs ought to be struck out and what

prejudice they would suffer if the specified paragraphs were not struck out. As indicated, there were clearly paragraphs which were uncontentious and, therefore, did not fall to be struck out. This much appears to have been conceded by Ms Golden. In the circumstances, I ruled that the application to strike out could not succeed. Given that the applicants sought an indulgence with regard to the condonation application and were unsuccessful with the application to strike out, I see no reason why they should not be ordered to pay the applicants' costs in respect of both applications.

COSTS

[89] The applicants have been substantially successful in the main application, notwithstanding the difficulties with regard to the scope of the original interim order. In my view, there is no good reason why costs should not follow the result.

[90] Both parties urged the court to consider a punitive costs order against the other. The court seriously considered imposing a punitive costs order on the respondents, alternatively Ms Karjiker personally, to mark its displeasure with regard to their conduct in this matter. However, Ms Karjiker emphasized that she was always acting on the instructions of the respondents. I have no reason to disbelieve her assertions in this regard. In the circumstances, to mulct the respondents with a punitive costs order would impose an unnecessary burden on the taxpayers. It is nonetheless hoped that the Minister will seriously reflect on

the behaviour of his officials, and those instructed to represent his department, when it comes to the treatment of foreigners such as Ms Serrano and the implementation of court orders.

ORDER

I make the following order:

1. Condonation is granted to the respondents for the late filing of the affidavit of Mr Jack Goeieman and the respondents' supplementary note.

2. The respondents' application to strike out is dismissed.

3. Pending the final determination of the second applicant's application for judicial review under case number 21843/21, the first and second respondents are directed to permit the second applicant to enter and remain in the Republic of South Africa, subject to such reasonable terms and conditions, as may be prescribed by the first respondent.

4. Any of the parties may approach this court for further directions on the same papers, supplemented in so far as may needs be, in the event that agreement cannot be reached on reasonable terms and conditions if the second respondent

wishes to continue to stay in the Republic after 24 March 2022 while she awaits the outcome of the court proceedings under case number 21843/21.

5. The respondents are directed, jointly and severally, to pay the applicants' costs, including those costs relating to the applications referred to in paragraphs 1 and 2 above, and such costs shall include the costs of two counsel where so employed.

FRANCIS J

JUDGE OF THE HIGH COURT

CASE INFORMATION

Dated 23 March 2022 and transmitted electronically to the Legal Representatives for service on all the relevant parties.

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Date of judgment	:	23 March 2022
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