

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

Before the Honourable Justice Bozalek  
Cape Town, 19 June 2019

**Case No: 5242/2016**

In the matter between:

<b>SCALABRINI CENTRE OF CAPE TOWN</b>	First Applicant
<b>ROSEMARY NYADUMBU</b>	Second Applicant
<b>CAROLINE MURONZI</b>	Third Applicant
<b>NATSAI RONALD MURONZI</b>	Fourth Applicant
<b>DENSON SHONIWE MURONZI</b>	Fifth Applicant
And	
<b>THE MINISTER OF HOME AFFAIRS</b>	First Respondent
<b>THE CHIEF DIRECTOR OF ASYLUM SEEKER MANAGEMENT, MANDLA MADUMISA</b>	Second Respondent
<b>THE MANAGER OF THE CAPE TOWN REFUGEE RECEPTION OFFICE, THEMBI NDLOVU NO</b>	Third Respondent
<b>THE REFUGEE STATUS DETERMINATION OFFICER</b>	Fourth Respondent
<b>THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HOME AFFAIRS</b>	Fifth Respondent

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***DRAFT ORDER OF 19 JUNE 2019***

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The following Order is made:

1. The Standard Operating Procedure ('SOP') attached hereto marked 'X' satisfies the requirements of paragraph 6 of the Order given on 1 December 2017, which Order is attached marked 'Y'.
2. Until such time as any applications for refugee status and asylum brought by the persons named in the attached Annexure A are finally determined, those persons have the rights afforded to holders of section 22 asylum seeker permits (including the rights to work, attend school, receive basic and emergency healthcare) and may not be detained, arrested or deported.
3. The Respondents are ordered to pay two-thirds of the Applicants' party-party costs incurred subsequent to the making of the 1 December 2017 Order.

**By Order**

**Court Registrar**



11.06.2019

**DEPARTMENT OF HOME AFFAIRS**

**STANDARD OPERATING PROCEDURE:  
REFUGEE FAMILY UNIFICATION**

**REVIEWED BY: STANDING COMMITTEE FOR REFUGEE AFFAIRS**

**DATE:**

STANDING COMMITTEE FOR REFUGEE AFFAIRS
2019 -06- 19
RSA
CHAIRPERSON

**CONSOLIDATED BY: STANDING COMMITTEE FOR REFUGEE  
AFFAIRS**

**DATE:**

STANDING COMMITTEE FOR REFUGEE AFFAIRS
2019 -06- 19
RSA
CHAIRPERSON

**APPROVED BY:**

**DATE**

**IMPLEMENTATION**

**1 June 2019**

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## 1. BACKGROUND AND PURPOSE

Family unification refers to the procedure which a Refugee Status Determination Officer and, where applicable, a Refugee Reception Officer must follow when a person as contemplated in section 3(c), read together with sections 1, 21 and 22 of the Refugees Act (no. 103 of 1998) (the Act) applies for refugee status on the basis that he or she is a dependant of a recognised refugee or of an asylum seeker.

## 2. RELEVANT LEGISLATION

The Refugees Act, 1998 (Act No 130 of 1998) and all amendments thereto.

The Refugee Regulations (Forms and Procedures) 2000 and all amendments thereto.

The Immigration Act, 2002 (Act No 13 of 2002) and all amendments thereto.

The Immigration Regulations and all amendments thereto.

Relevant International Conventions.

## 3. DEFINITION/ABBREVIATIONS/ACRONYMS

"Child" means any person under the age of 18 years.

"Dependant" in relation to an asylum seeker or a refugee, means the spouse, any unmarried dependent child or any destitute, aged or infirm member of the family of such asylum seeker or refugee.

"Spouse" means any person, who is party to a marriage or same sex union, which is solemnized and registered in terms of either a civil or customary union.

"RRO" means a Refugee Reception Officer.

"RSDO" means a Refugee Status Determination Officer.

"SOP" means Standard Operating Procedure.

#### 4. APPLICABILITY

This SOP applies to the Centre Managers and all staff at Refugee Reception Offices as well as to the Chief Directorate: Asylum Seeker Management. All of the aforesaid persons are required to comply with the contents of this SOP as it provides guidance on the minimum requirements and procedures for family unification and this SOP replaces all previous SOPs relating to family unification.

#### 5. FORMS

All forms applicable for registering an asylum seeker:

BI Official Departmental forms

BI-1590 Eligibility Determination for Asylum Seekers

BI-1693 Formal Recognition of Refugee Status in the RSA (Section 24 Permit)

#### 6. GUIDELINES AND PROCEDURES: REFUGEE FAMILY UNIFICATION (JOINING)

##### Phase 1: RRO

If a dependant of a recognised refugee or asylum seeker applies for refugee status in terms of section 3(c) of the Act (or the recognised refugee or asylum seeker upon whom that person claims to be dependent applies on his or her behalf), the following process must be followed:

- 6.1 A written application for refugee status under section 3(c), read together with sections 21 and 22, of the Act, must be submitted to an RSDO Manager on Form BI 1590;
- 6.2 The application by a dependant contemplated in section 3(c), read together with sections 21 and 22, of the Act, must be accompanied by the following documents:
  - a certified copy of the section 24 permit of the recognised refugee or section 22 permit of the asylum seeker upon whom he or she claims to be dependent;

- if available and as applicable, certified copies of any birth certificate of any dependant children, marriage certificate or certificate of registration of any dependant spouse and/or other supporting documents verifying dependency (which must be translated into English);
- if available and as applicable, certified copies of documents proving dependency if the alleged dependant is over 18 years of age, such as a medical certificate or proof of school enrolment or any other acceptable document proving dependency (which must be translated into English).

6.3 An alleged dependant of a recognised refugee or asylum seeker who applies for asylum is entitled to be issued with a permit under section 22 of the Act, pending the outcome of his or her application (on the same basis as applicants under section 3(a) and 3(b) of the Act).

6.4

6.4.1 A dependant of a recognised refugee is entitled to refugee status and asylum in South Africa, and a dependant of an asylum seeker is entitled to be joined as a dependant of the asylum seeker and issued with a section 22 asylum seeker permit, pending the determination of the said asylum seeker's application for refugee status, in each case irrespective of any of the following:

- whether the recognised refugee or asylum seeker declared the existence of such dependant when making application for refugee status and asylum;
- when such dependant applied for refugee status and asylum; or
- where such dependant was married, or born, to the recognised refugee or asylum seeker.

6.4.2 Subject to what is stated in paragraph 6.6.3 below, neither an RSDO nor an RRO may regard the failure of a recognised refugee or asylum seeker to declare the existence of a dependant when making application for refugee status and asylum, *per se* as an exclusionary factor.

## Phase 2-RSDO

6.5 The RRO must submit the application for refugee status contemplated in section 3(c) of the Act, including the documents mentioned above, to the RSDO, who shall make a decision in terms of section 3(a),(b) or (c) after conducting a hearing in terms of para 6.6.1 below.

6.6 The RSDO must:

6.6.1 conduct separate confidential hearings with the dependant asylum seeker and the recognised refugee or asylum seeker, as the case may be, unless there are compelling reasons to indicate that separate hearings would not be appropriate or constructive;

6.6.2 verify the dependant asylum seeker's relationship to the recognised refugee or asylum seeker in accordance with the procedures and requirements set out below;

6.6.3 if satisfied (each case must be assessed on its merits, taking into account, *inter alia* and where applicable, the recognised refugee's or asylum seeker's explanation for his or her failure to mention a dependant on his or her DHA-1590 Form and any documents furnished to support the claim, including affidavit evidence), grant the dependant refugee status as contemplated in section 3(c) of the Act or join him or her as a dependant of the asylum seeker pending the determination of the said asylum seeker's application for refugee status;

6.6.4 inform the applicant in writing of the outcome of the application and, where the application is refused, furnish written reasons for the decision, in each case within a reasonable time;

6.6.5 issue a section 24 permit to a successful dependant of a recognised refugee;

6.6.6 continue to extend the section 22 permit of a successful dependant of an asylum seeker in terms of clause 6.3 above;

6.6.7 make a copy of the section 22 or section 24 permit, as applicable, and, until such time as the Department migrates to a paperless system, place the copy in the file of the recognised refugee or asylum seeker;



- 6.6.8 until such time as the Department migrates to a paperless system, submit the file to the RSDO Manager for quality control.
- 6.7 In applying regulations 11(2) and 16(3) in the process of determining an asylum claim in terms of section 3(c) of the Act, an RSDO may accept sworn affidavits or credible statements as a substitute for missing or inadequate documents.
- 6.8 In dealing with an asylum claim under section 3(c) of the Act, the RSDO must seek to establish whether the claim is based on a biological link or upon cultural or other grounds. In this regard, the RSDO must inform the applicant in terms of section 3(c) that a claim for dependency is not restricted to a biological relationship, but may include a person connected by cultural or other ties.
- 6.9 In circumstances where the RSDO has reason to believe that the claim may be fraudulent or abusive, he or she may:
- refer the matter to a social worker of the Department of Social Development or the Children's Court for an inquiry; and/or
  - require a DNA test in accordance with the procedure in paragraph 6.10 below, if the claim is that the asylum seeker is the biological child of the refugee or asylum seeker; and/or
  - undertake further investigations, provided these are completed within a reasonable time.
- 6.10 DNA Testing Procedures:
- 6.10.1 In determining whether a DNA test is required, the RSDO must have due regard to the UNHCR Note on DNA Testing to Establish Family Relationships in the Refugee Context, June 2008 which stipulates that a DNA test to verify family relationships "*may be resorted to only where serious doubts remain after all other types of proof have been examined, or, where there are strong indications of fraudulent intent and DNA testing is considered as the only reliable recourse to prove or disprove fraud*";
- 6.10.2 If an RSDO has determined that a DNA test is required, the dependant asylum seeker, together with the recognised refugee or asylum seeker as the case may be, must be referred to the UNHCR for the purposes

of enabling the UNHCR to assess whether it will be prepared to fund the costs of a DNA test;

6.10.3 If a DNA test is required, the RSDO must inform the dependant asylum seeker and recognised refugee or asylum seeker, as the case may, that they have the opportunity to decide whether they accept to undergo the test or not and, if they choose not to do so, the application will be determined in the absence thereof;

6.10.4 If a DNA test is required and it is not provided within 3 months from the date of the referral referred to in paragraph 6.10.2 above, the RSDO may proceed to determine the application and any other application in terms of section 3 of the Act, in the absence of such a test.

6.11 An RSDO should not confine his or her enquiries to whether the applicant qualifies for refugee status under section 3(c) of the Act, but should also consider whether the applicant satisfies the requirements of section 3(a) and/or 3(b) of the Act.

6.12 The RSDO should inform an applicant for asylum based on dependency that he or she may – independently from claiming asylum as a dependant – claim refugee status in terms of section 3(a) and/or 3(b) of the Act.

6.13 The fact that a person claiming to be a dependant has made an independent application for refugee status relying upon the grounds set out in section 3(a) or 3(b) of the Act must not preclude a claim for refugee status under section 3(c) of the Act.

## 7. QUALITY CONTROL AND QUALITY ASSURANCE

The RSDO Manager will be responsible for quality control and assurance and to this end, he or she must ensure that, until such time as the Department migrates to a paperless system:

- the application under section 3 of the Act is placed in the file of the recognised refugee or asylum seeker;
- all documents and interview notes relating to the application are placed in the file of the recognised refugee or asylum seeker.

The RSDO will, until such time as the Department migrates to a paperless system, be responsible for ensuring that all documents and file contents are completed in accordance with departmental procedures.

#### 8. TRAINING AND QUALIFICATIONS REQUIREMENTS FOR RSDOS

Immigration Training programmes / modules / Working Documents.

Knowledge of the Refugees Act, Regulations and SOPs, including this SOP. As a once off process, all RROs and RSDOs will be trained in the application of this SOP, which shall be rolled out over the next three months following the implementation date stipulated above.

Knowledge of the Immigration Act, as amended and Regulations.

Interviewing skills.

Computer Literacy.

#### 9. RISK MANAGEMENT GUIDELINES

In implementing this SOP there should be constant vigilance against human and more particularly, child trafficking.

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

Case No: 5242/16

*Before the Honourable Justices Davis and Fortuin  
Cape Town, 1 December 2017*

In the matter between

SCALABRINI CENTRE OF CAPE TOWN

First Applicant

ROSEMARY NYADUMBU

Second Applicant

CAROLINE MURONZI

Third Applicant

NATSAI RONALD MURONZI

Fourth Applicant

DENSON SHONIWA MURONZI

Fifth Applicant

and

THE MINISTER OF HOME AFFAIRS

First Respondent

THE CHIEF DIRECTOR OF ASYLUM SEEKER  
MANAGEMENT, MANDLA MADUMISA N.O.

Second Respondent

MANAGER OF THE CAPE TOWN REFUGEE  
RECEPTION OFFICE, THEMBI NDLOVU N.O.

Third Respondent

THE REFUGEE STATUS DETERMINATION OFFICER

Fourth Respondent

THE DIRECTOR-GENERAL OF THE  
DEPARTMENT OF HOME AFFAIRS

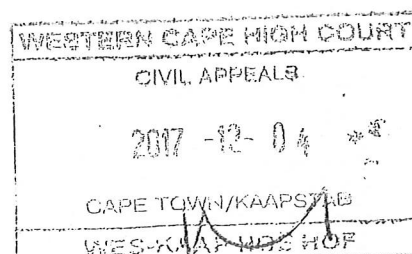
Fifth Respondent

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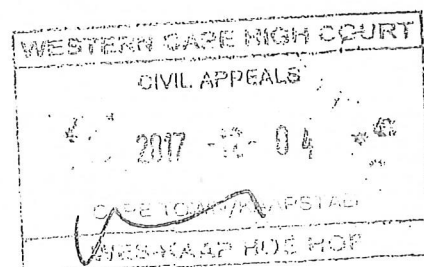
DRAFT ORDER

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Having heard counsel and read the papers filed of record the following Orders are made:



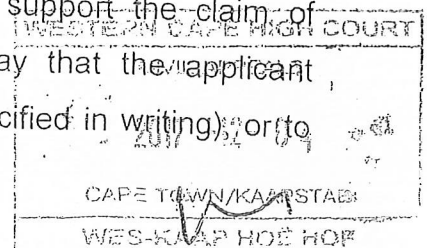
1. The Respondents' failure to assess and determine the refugee status of the Second, Third and Fourth Applicants on the ground of dependency is reviewed and set aside.
2. Second, Third and Fourth Applicants are refugees who are entitled to refugee status and asylum in South Africa by virtue of section 3(c) of the Refugees Act, because they are the dependant spouse and children of the Fifth Applicant.
3. Second Respondent is directed to issue to the Second, Third and Fourth Applicants written recognition of refugee status in terms of section 27 of the Refugees Act within forty-eight hours of the date of this Order.
4. It is declared that the dependant spouse and children of a recognised refugee are entitled to refugee status and asylum in South Africa irrespective of any of the following:
  - 4.1. whether the recognised refugee declared their existence when making application for refugee status and asylum,
  - 4.2. when they applied for refugee status and asylum; or
  - 4.3. where they were married to, or born to, the recognised refugee.
5. In giving effect to the law as set out in paragraph 4 above the Respondents are entitled to adopt appropriate policies and procedures which facilitate the reception and assessment of claims by dependants of refugees.
6. Respondents must file an affidavit with this Court by 31 January 2018 describing national policies, administrative procedures and training of staff necessary to ensure that the dependants of refugees are properly received and assessed in terms of section 3(c) of the Refugees Act, and documented, within a reasonable time.



7. The First Applicant is given leave to re-enrol this matter for a hearing after 31 January 2018, on written notice to the Respondents (who shall be afforded ten court days to file answering papers), on the papers already filed in this matter, amplified where necessary.
8. The Respondents are directed to receive and assess applications from the dependants of recognised refugees nationally (irrespective of whether or not their claims to recognition have already been considered on other grounds) provided that the Cape Town Temporary Refugee Facility ('CTTRF') is not required to accept new claims on this ground until the Constitutional Court has finally pronounced on the status of the Refugee Reception facility in Cape Town.
9. Regulation 16(1) of the Regulations issued under the Refugees Act, 130 of 1998, properly construed, does not preclude applications for asylum by dependants who arrive in South Africa after the arrival of the refugee upon whom they are dependant. 17
10. Regulation 16(5), properly construed, requires the claimant, together with the recognised refugee upon whom he or she claims to be dependant, to attend a hearing before a Refugee Status Determination Officer.
11. The Respondents are directed to assess the claims to refugee status, alternatively to reassess the applications for refugee status and asylum, of the persons listed in column 1 of Annexure A with due regard to the Refugees Act and Regulations, and to the Guidelines and Handbook issued by the UNHCR at the CTTRF (regardless of where the relevant physical 'files' are presently located) in respect of which:

11.1. Respondents must provide each such applicant with a receipt for his or her claim under section 3(c) of the Act; and

11.2. if there is insufficient documentation available to support the claim of dependency, Respondents must, on the same day that the applicant applies, invite him or her to submit documents (specified in writing) or to



attend such interview as is necessary within 30 days of the date they apply; and

11.3. Respondents must, having assessed (or reassessed) them, provide to them, within 90 days of the date on which they apply:

11.3.1. written recognition of refugee status if their claims are successful; or

11.3.2. written reasons for refusing to recognise them as refugees, if unsuccessful.

~~12. Alternatively to paragraph 11 above,~~ the relief sought in paragraph 8 of the Applicants' notice of motion is postponed for later determination on the same papers, as may be supplemented, after the Respondents have complied with paragraph 6 above.

13. Pending final determination of their claims in terms of paragraphs ~~11 and 12~~ above, the Respondents are restrained from detaining, arresting or deporting the persons named in column 1 of Annexure A annexed to the Applicants' Notice of Motion.

14. The First and Fifth Respondents are ordered to pay the costs of this application.

By Order

  
Court Registrar

