IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 32323/22

In the matter between:

HELEN SUZMAN FOUNDATION	**First Applicant**
CONSORTIUM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA	**Intervening Applicant**

and

MINISTER OF HOME AFFAIRS	**First Respondent**
DIRECTOR-GENERAL OF HOME AFFAIRS	**Second Respondent**
ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA	**Intervening Respondent**

FILING SHEET

PRESENTED FOR SERVICE AND FILING:

1. The HSF's Replying Affidavit: Application for Interim Enforcement.

DATED at **JOHANNESBURG** on this the 14th day of **SEPTEMBER 2023.**

DLA PIPER SOUTH AFRICA (RF) INC.
Attorneys for the First Respondent
6th floor, 61 Katherine Street
Sandown, Sandton, 2196
Tel: (011) 302 0802

Email: Waseeqah.Makadam@dlapiper.com
chigo.mabila@dlapiper.com
Ref: W Makadam / C Mabila
c/o MACINTOSH CROSS & FARQUHARSON
834 Pretorius Street
Arcadia
Pretoria
Tel: (012) 342 4855
Email: al@macintoshcross.co.za
Ref: A Lotter

TO: **THE REGISTRAR OF THE ABOVE COURT**
PRETORIA

AND TO: **DENGA INCORPORATED**
Attorneys for the First and Second Applicant
7th Floor, Nedbank Building
85 Mian Street
Johannesburg **BY EMAIL AND BY HAND**
Tel: (011) 492 0037
Fax: (011) 492 0332
Red: Me A Denga/nm/AM17/23
Email: alpheus@dengainc.co.za
C/O Joubert Scholtz Inc
233 Lawley Street
Waterkloof
Pretoria
Rel: (o123) 346 0288
Fax: 087 231 3807
Email: lizeth@joubertscholtz.co.za

AND TO: **MJ MASHAO ATTORNEYS**
Attorneys for the Third Applicant
House No. 230 Orient Street
Acardia
Pretoria **BY EMAIL AND BY HAND**
Tel: 012 323 0122
Fax: 012 323 0125
Ref: Mr Mashao/MJ00279/MVA

AND TO: **NORTON ROSE FULBRIGHT SOUTH AFRICA INC.**
Attorneys for the Second Respondent
9th floor, 117 on Strand
117 Strand Street,
Cape Town **BY EMAIL**
8000
Tel: 021 405 1200
Email: jason.whyte@nortonrosefulbright.com
laura.macfarlane@nortonrosefulbright.com
Ref: PBO2646
c/o MACROBERT ATTORNEYS
MacRobert Building
1060 Jan Shoba Street, Brooklyn,
Pretoria, 0181
Email: nwessels@macrobert.co.za
rkaseke@macrobert.co.za

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 32323/22

In the matter between:

HELEN SUZMAN FOUNDATION	**First Applicant**
CONSORTIUM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA	**Intervening Applicant**

and

MINISTER OF HOME AFFAIRS	**First Respondent**
DIRECTOR-GENERAL OF HOME AFFAIRS	**Second Respondent**
ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA	**Intervening Respondent**

REPLYING AFFIDAVIT: APPLICATION FOR INTERIM ENFORCEMENT

I, the undersigned,

NICOLE FRITZ

state under oath as follows:

1 I am the Executive Director of the Helen Suzman Foundation (HSF), the applicant in this matter.

2 I was the deponent to the HSF's affidavits in its application under the above case number, which I will refer to as the "*main HSF / CORMSA application*".

3 The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct, to the best of my knowledge

NLF

and belief. Where I make submissions on the applicable law I do so on the advice of the applicant's legal representatives.

INTRODUCTION

4 I have read and considered the answering affidavit deposed to by Mr Makhode, the Director General of Home Affairs. This affidavit is filed in reply.

5 Given the limits of time, I will respond thematically to the key allegations made in answer. Any allegation that is not addressed and which is inconsistent with the HSF's founding affidavit in this application and its papers in the main *HSF / CORMSA* application must be taken as denied.

6 In what follows, I address:

6.1 The respondents' contradictory stance on the application of section 18(2) of the Superior Courts Act;

6.2 Why declaratory relief is required in terms of section 18(2);

6.3 In the event that section 18(2) does not apply, why the requirements for interim enforcement under section 18(3) have been satisfied.

SECTION 18(2) AND THE RESPONDENTS' CONTRADICTORY STANCE

7 The respondents have adopted an contradictory stance on the status of this Court's temporary order and the effect of section 18(2) of the Superior Courts Act.

8 In our attorneys' letter, dated 21 August 2023, the HSF recorded that it regarded the temporary order in paragraph 147.4 of the *HSF / CORMSA* judgment to be an interlocutory order, to preserve the status quo, which is subject to section 18(2) of the Superior Courts Act. Thus, this order is not suspended and remains fully operational pending all appeals.

9 The respondents disagreed vehemently. Their attorneys' letter, dated 29 August 2023, stated: "*[w]e do not agree with your interpretation of section 18 (2) of the Superior Courts Act 1 0 of 2013 in relation to the judgements and orders made in the Helen Suzman Foundation ("HSF") and Magadzire matters*".[1]

10 On that basis, the respondents asserted that this Court's orders were suspended pending the outcome of all appeals and they refused to provide any undertakings to respect and comply with these orders pending the outcome of the appeals process.

11 Given the respondents' position, and their refusal to respect this Court's orders, the HSF had no option but to bring this application.

12 The respondents' answering affidavit now contradicts their attorneys' letter:

---

[1] Respondents' letter, p 066-139 para 3.

M

NJF

12.1 The Director General initially asserts that "*[i]t is clear that the HSF Order does not fall within the purview of section 18(2) of the Superior Courts Act.*"[2]

12.1 But in the very next paragraph, the Director General reverses course and accepts that the temporary order is subject to 18(2) of the Superior Courts Act.[3] He states that, by virtue of section 18(2), *"[t]he HSF order is also not suspended pending the decision of the application for leave or of an appeal*".[4]

12.2 Next, the Director General states that "*the order granted by the court in paragraph 147.4 is interim in nature and does not have the effect of a final order*".[5]

12.3 And he accepts that "*[t]he operation and execution of a decision that is an interlocutory order not having the effect of a final judgment which is a subject matter of an application for leave to appeal or an appeal is not suspended.*"[6]

13 Despite these concessions on the application of section 18(2), the respondents inexplicably assert that they are entitled to disregard this Court's order. The Director General states: "*I dispute that the order in the HSF judgement confers protections pending the conclusion of the appeal process.*"[7] (Emphasis added)

14 The HSF's attorneys wrote to the respondents' attorneys, noting the concessions on section 18(2). In that light, the HSF called upon the respondents to withdraw their

---

[2] AA p 066-156 para 9.
[3] AA p 066-157 para 10.
[4] AA p 066-157 para 10.
[5] AA p 066-159 para 27.
[6] AA p 066-169 para 79.
[7] AA p 066-178 para 127.

MF

opposition and to consent to an order confirming that this Court's temporary order remains in force and effect. I attach of copy of this letter, marked Annexure **"RA 1"**.

15 This letter specifically records that the HSF would not seek costs against the respondents in the event that they withdraw their opposition. The HSF does not wish this Court, or the public purse, to be further burdened with a further application, where that can be avoided.

16 However, on 14 September 2023, the respondents refused to withdraw their opposition and they continue to oppose. A copy of the respondents' letter setting out the basis for their refusal is attached as Annexure **"RA 2".**

17 The mess of contradictions in the respondents' stance, and their continued defiance of this Court's order, leaves the HSF with no option but to persist in seeking relief in this application.

18 As explained in the founding affidavit, the relief sought in the notice of motion covers both of the respondents' contradictory positions on the status of this Court's temporary order:

18.1 If the temporary relief is interlocutory in nature, and is not suspended, it would be in the interests of justice to declare that it remains enforceable, in accordance with section 18(2) of the Superior Courts Act.

18.2 If the temporary relief is final and is suspended, it would be necessary to direct that it nevertheless be enforced in terms of section 18(3).

A DECLARATORY ORDER UNDER SECTION 18(2)

19 On the assumption that section 18(2) applies to this Court's temporary order, the declaratory order sought in the notice of motion is both competent and necessary to resolve the contradictory positions adopted by the respondents. This is because:

19.1 There remains a live dispute between the parties as to whether this Court's temporary order continues to bind the respondents pending the conclusion of the appeals process;

19.2 The respondents shifting stances reflect that they, themselves, are confused as to the true status of the order and its binding effect;

19.3 The uncertainty over this question has severe consequences for ZEP-holders, who are required to make consequential decisions about their lives, careers, their families and their children and require certainty on the status and effect of this Court's order;

19.4 Such an order would have a practical effect, in putting an end to further confusion and uncertainty and preventing the respondents from continuing to pursue a contradictory and inconsistent approach in their engagement with ZEP-holders and the public;

19.5 It will also provide the respondents with necessary guidance on their obligations going forward.

20 Only if the temporary order is not covered by section 18(2) would it then be necessary for the Court to consider the requirements for interim enforcement under

section 18(3). I now turn to address the respondents' allegations on these requirements.

THE REQUIREMENTS UNDER SECTION 18(3)

Exceptional circumstances

21 I repeat that this matter is exceptional, for all the reasons addressed in this Court's judgment and the founding affidavit. The respondents' denial of these exceptional circumstances is, in effect, an impermissible attempt to relitigate key issues that this Court has already decided. These matters have been addressed in detail in this Court's *HSF / CORMSA* and *Magadzire* judgments.

Irreparable harm

22 The respondents dispute any irreparable harm to ZEP-holders. This is again an impermissible attempt to relitigate issues that have been decided by this Court.

23 First, it is claimed that the Department and the Minister are processing waiver and visa applications from ZEP-holders. The Director General claims that some 11,509 waiver applications have been approved by the Minister so far, out of a total of 74,630 applications.[8]

23.1 In HSF's founding affidavit and replying affidavit in the main application, I explained in detail the legal and practical obstacles facing ZEP-holders in

[8] AA p 066-170 para 83.

JJ
NLF

obtaining alternative visas and permits in time. I specifically identified the crippling backlogs and incapacity in these processes, which remain uncontested.[9]

23.2 I further explained that a waiver is not a permit or visa. It confers no rights by itself. It is merely ministerial permission to waive some of the requirements for obtaining other visas, as a prelude to a ZEP-holder submitting a further visa application, of uncertain prospects.

23.3 In any event, the Director General's latest numbers illustrate the challenge: out of some 178,000 ZEP-holders, he suggests that less than 6% have received waiver approvals so far.

23.4 It has taken the Minister more than a year to decide these 11,509 applications. No information is forthcoming as to how tens of thousands of further applications are to be decided in just four months before the 31 December 2023 deadline.

23.5 Yet again, the respondents have failed in their duties of transparency and candour in these proceedings by not disclosing precise information as to how they are addressing the backlogs in visa and waiver applications.

24 Second, it is claimed that, even if ZEP-holders are to be stripped of documentation by 31 December 2023, and thus denied all existing rights they enjoy as holders of

[9] HSF FA p 001-43 from para 59ff; FA p 001-48 para 69. Bald and evasive denials AA p 010-101 – 102 paras 341 – 347.

ZEPs, their deportation is not automatic as they may exhaust internal processes, appeals and reviews under the Immigration Act.[10] This is cynical, to say the least.

24.1 The HSF has always been clear that the irreparable harm to ZEP-holders lies in the devastating disruption of lives, families and careers in South Africa, which would all occur even if ZEP-holders are not immediately deported from South Africa.

24.2 This is because the condition of being rendered undocumented in South Africa, for extended periods, is itself a severe deprivation, exposing ZEP-holders and their children to a life of precarity and indignity.

24.3 Without valid documentation, they would face the constant risk of arrest, detention and harassment. They would also be unable to secure basic services, such as accessing healthcare, keeping their bank accounts open, or enrolling their children in schools. They would also be denied their existing rights to work and to operate their businesses.

24.4 Moreover, the administrative processes for contesting detention and deportation are extraordinarily difficult, costly and precarious. As the main *HSF / CORMSA* papers demonstrated, ZEP-holders do not generally have access to the skilled immigration lawyers,[11] meaning that many will face arrest, detention and deportation without recourse.

---

[10] AA pp 066-161 – 162 paras 36 – 37.
[11] FA p 001-69 – 71; Bald and evasive denials AA p 010-101 – 102 paras 341 – 347.

25 Third, the Director General continues to rely on the mere possibility that the Minister may issue further directives in future, to extend the validity of ZEPs. He states that "*[t]he Minister is not closed off from considering and issuing further Directives should circumstances dictate so.*"[12]

26 This is a familiar response. There is no assurance that the Minister will use this power before the 31 December 2023 deadline, that he will do so timeously, to allow ZEP-holders adequate time to prepare, or that he will do so based on a fair and transparent process.

27 This Court's temporary order was designed to prevent precisely these cat-and-mouse games and the precarity that last-minute announcements have caused for ZEP-holders and their families.

28 Vague assurances that the Minister may consider further directives are no replacement for the certainty of this Court's temporary order. When so much is at stake for ZEP-holders – lives, families, businesses and future plans –uncertainty is itself an irreparable harm.

No irreparable harm to the respondents

29 The respondents allege that they will suffer irreparable harm because they will be unable to deport ZEP-holders during the appeals process.

---

[12] AA p 066-178.

30 This again demonstrates utter disregard for the rights of ZEP holders, this Court's orders, and the protective purpose for which they were granted. Restraining the respondents from a course of action intentionally designed to subvert that protective purpose, pending the conclusion of the appeals process, could never be considered to be "irreparable harm".

31 Moreover, the temporary relief granted does no less than to preserve the protection already provided by the Minister in his various directives. There can be no suggestion that those directives have caused the state irreparable harm.

32 The HSF further rejects, in the strongest terms, the respondents' suggestion that this temporary order would somehow create "lawlessness". The HSF has always been clear that the temporary relief sought is narrowly confined to existing ZEP-holders: those who possess permits affording them the rights to live, work, run businesses, and study in South Africa. They have, at all times, followed the rules, paid the necessary fees, and presented proof of clean criminal records. The relief does not extend to undocumented foreign nationals, nor does it restrain the respondents from upholding the law.

33 There is therefore no irreparable harm to the Minister or the Department if this Court's order is immediately operative.

Alleged variation of the temporary order

34 The Director General repeatedly alleges that this application for interim enforcement would somehow result in a variation of this Court's temporary order. The suggestion

appears to be that this Court never contemplated that the temporary order would apply pending appeals.

35 I have difficulty understanding this complaint. This Court gave an order to preserve the status quo, pending the Minister's further decision on the fate of the ZEP programmes, following a fair process. In bringing an application for leave to appeal, the Minister has set his face against conducting a fair process. Until such time as the respondents' rights of appeal are exhausted, and this fair process is conducted, it is necessary for the temporary protections to be given full force and effect. This section 18 application is merely designed to give effect to the protective purpose of this Court's order. This will be addressed further in argument.

URGENCY

36 The respondents do not appear to dispute the primary grounds of urgency: that substantial redress will be denied if this application is heard in the ordinary course.

37 Instead, the respondents simply assert that the urgency is somehow self-created, because the application was not launched immediately after the application for leave to appeal was delivered.

38 I repeat that the HSF trusted that the Minister would comply with the temporary protections granted in the *HSF / CORMSA* judgment and the interim interdict granted in the *Magadzire* matter. It was always clear to us that these orders were not suspended, by virtue of section 18(2) of the Superior Court's Act.

JJ
NLF

39 The respondents evidently now agree that these orders are not suspended, yet they persist in contending that they are entitled to disregard this Court's orders.

40 The inexplicable, shifting and contradictory positions adopted by the respondents have necessitated this application and make it urgent. Without clarity on the status of this Court's orders, the rights of ZEP-holders will be irreparable harmed.

41 The alleged prejudice to the respondents is entirely of their own making. It would have been a simple matter for the respondents to accept that this Court's orders are not suspended and to provide the requested undertakings to respect this Court's orders. Yet the respondents continue to adopt an attitude of outright defiance.

42 The Director General faintly suggests that this application, together with automatic appeals in terms of section 18(4), could somehow be disposed of in the ordinary course, before 31 December 2023. This is patently incorrect, particularly as the courts enter the busiest period before the end of the year. Moreover, any automatic appeal in terms of section 18(4) would have to be heard by the SCA which, I am advised, would take several months to determine this matter. I note that the respondents have not renounced any rights of an automatic appeal.

43 Moreover, I submit that it remains convenient for this application to be heard by this Court, together with the application for leave to appeal, or on a date to be determined by this Court shortly thereafter. This Court is steeped in the matter and is best placed to decide this issues, rather than burdening another judge or set of judges who would be coming to this matter cold. This Court, in preparation for the leave to appeal application, would also have read the papers and refreshed its memory

M NLF

pertaining to the factual and legal matrix of the matter; to adequately deal with this application.

44 In the premises, the matter is urgent and ought to be enrolled and heard together with the application for leave to appeal.

PERSONAL COSTS

45 The respondents oppose the personal costs award against the Minister on two primary bases: (1) they allege that the Minister has not been cited in his personal capacity; and (2) the respondents suggest that, in any event, no case has been made out for such an order.

46 First, it is sufficient that the party against whom a personal costs order is sought is informed that the order will be asked for and has an opportunity to advance reasons why the order should not be granted. The Minister is joined as a party, he has been given notice that this personal costs order is sought, and he has been given ample opportunity to respond, explaining his conduct. Formal joinder of the Minister in his personal capacity is unnecessary. This will be addressed further in argument.

47 Second, the respondents make bald and general allegations that the Minister did not act in bad faith or with gross negligence, without addressing the HSF's allegations that (1) this application was necessitated by the Minister's refusal to provide undertakings, (2) the Minister has shown utter disregard for the rights of ZEP-holders and their children, (3) in circumstances where this Court has already held that the Minister failed to give consideration to the impact of his decision on the

rights of ZEP-holders and their children, and (4) the Minister's stance towards the interim order, which is clearly designed to preserve the status quo pending the final determination of the matter, amounts to an attempt to frustrate that order. These deserve an explanation from the Minister and in the absence of explanation, a personal costs order is warranted.

48 Third, the Minister has not provided any explanation on affidavit. Instead, the Minister has now, for the first time in this litigation, filed a pro forma confirmatory affidavit, with no further explanation for his conduct.

49 Fourth, the Minister's belated concession that this Court's temporary order is not suspended, by virtue of section 18(2), makes matters worse. There can be no lawful basis for the Minister to continue to refuse to comply with this Court's order. The applicants have afforded the respondents the opportunity to withdraw their opposition, in which event no personal costs would be sought. But, at the time of filing this affidavit, the respondents persist in their opposition.

50 The public should not be made to pay the costs of such reckless, contradictory and ill-advised opposition to this application. In the circumstances, the Minister's conduct is indefensible, warranting that he pay a portion of the costs, from his own pocket.

CONCLUSION

51 For these reasons, the applicants persist in seeking an order in terms of the notice of motion.

NICOLE FRITZ

Signed and sworn before me at Johannesburg on this the 14th day of September 2023, the deponent having acknowledged that she knows and understands the contents of the affidavit, that she has / have no objection to taking the prescribed oath and that she considers such oath to be binding on her conscience.

COMMISSIONER OF OATHS

TITLE / OFFICE:
FULL NAMES:
ADDRESS:

NJF

DLA PIPER

DLA Piper South Africa (RF) Incorporated
Private Bag X17, Benmore 2010
6th Floor, 61 Katherine Street
Sandton 2196
South Africa
T: +27113020800
F: +27113020801
dlapiper.com

"RA1"

Attention: Alpheus Denga
Denga Incorporated Attorneys
35 Pritchard Street
2001 Johannesburg - Joubert Park
Gauteng

Your reference
AM Denga
Our reference
CM/CM/442879/1W Makadam / C Mabila
UKM/121121803.1

12 September 2023

By Email: alpheus@dengainc.co.za

WITH PREJUDICE

Dear Sir

HELEN SUZMAN FOUNDATION / MINISTER OF HOME AFFAIRS ("MINISTER") AND OTHERS – ZEP

1 We refer to the above matter, your clients' answering affidavit received on 11 September 2023, and our previous correspondence.

2 In your letter dated 29 August 2023, you asserted that section 18(2) of the Superior Court Act does not apply to the temporary order granted in the HSF / CoRMSA matter or the interim interdict in the *Magadzire* matter. In this regard:

> *"We do not agree with your interpretation of section 18(2) of the Superior Courts Act 10 of 2013 in relation to the judgements and orders made in the Helen Suzman Foundation ("HSF") and Magadzire matters"*

3 On that basis, your clients refused to provide any undertaking to respect and comply with these orders pending the outcome of the appeals process.

4 Your clients' answering affidavit, filed on 11 September 2023, directly contradicts your previous letter.

5 Your client, the Director-General for the Department of Home Affairs, now accepts that the temporary order in the *HSF / CORMSA* matter is subject to 18(2) of the Superior Courts Act and is therefore fully operative and enforceable pending the outcome of the appeals process. Your client states, *inter alia*, that:

5.1 By virtue of section 18(2), "*[t]he HSF order is also not suspended pending the decision of the application for leave or of an appeal*" (p 066-157 para 10);

NWF

5.2 "*[T]he order granted by the court in paragraph 147.4 is interim in nature and does not have the effect of a final order*" (066-159 para 27);

5.3 "*The operation and execution of a decision that is an interlocutory order not having the effect of a final judgment which is a subject matter of an application for leave to appeal or an appeal is not suspended.*" (066-169 para 79)

6 In light of these concessions, there can be no lawful basis for your clients' continued refusal to respect and comply with the temporary order in the *HSF / CORMSA* matter pending the conclusion of all appeals processes.

7 We accordingly invite your clients to withdraw their opposition to our clients' section 18 application and to consent to an order in terms of prayers 1 to 3 of the notice of motion thereto (attached as Annexure A). In that event, our client will not persist in seeking costs against your clients in this application.

8 Your unconditional, written consent to this order is required by no later than **17h00 on Thursday 14 September 2023**, failing which we will have no option but to proceed with this application on 18 September 2023 and all accompanying prayers for costs.

9 This is a "*with prejudice*" letter and your response will be placed before the Court.

10 Our client's rights remain fully reserved.

Yours faithfully

DLA Piper South Africa (RF) Incorporated
(*sent electronically, without signature*)

"A"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 32323/22

In the matter between:

HELEN SUZMAN FOUNDATION	**First Applicant**
CONSORTIUM FOR REFUGEES AND MIGRANTS IN SOUTH AFRICA	**Intervening Applicant**

and

MINISTER OF HOME AFFAIRS	**First Respondent**
DIRECTOR-GENERAL OF HOME AFFAIRS	**Second Respondent**
ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA	**Intervening Respondent**

NOTICE OF MOTION: APPLICATION FOR INTERIM ENFORCEMENT

KINDLY TAKE NOTICE THAT the First Applicant, the Helen Suzman Foundation (HSF), will apply at the hearing of the application for leave to appeal on 18 September 2023, alternatively a date to be determined by the Full Court (the Honourable Justices Collis J, Malindi J & Motha AJ), for an order in the following terms:

1 To the extent necessary, the forms, time limits and service provided for in the Rules of Court are dispensed with and the matter is to be heard on an expedited basis in terms of Rule 6 (12) of the Rules of this Court.

2 The operation and execution of paragraph 147.4 (including sub-paragraphs) of the order of the Full Court, dated 28 June 2023, under case number 32323/22, is not suspended by any application for leave to appeal or any appeal, and these paragraphs of the order continue to be operational and

enforceable and will be executed in full until the final determination of all present and future leave to appeal applications and appeals.

3 It is accordingly directed that until the final determination of all present and future leave to appeal applications and appeals:

3.1 Existing ZEPs shall be deemed to remain valid;

3.2 ZEP-holders will continue to enjoy the protections afforded by Immigration Directive 1 of 2021 and Immigration Directive 2 of 2022, namely that:

> *"1. No holder of the exemption may be arrested, ordered to depart or be detained for purposes of deportation or deported in terms of the section 34 of the Immigration Act for any reason related to him or her not having any valid exemption certificate (i.e permit label / sticker) in his or her passport. The holder of the exemption permit may not be dealt with in terms of sections 29, 30 and 32 of the Immigration Act*
>
> *2. The holder of the exemption may be allowed to enter into or depart from the Republic of South Africa in terms of section 9 of the Act, read together with the Immigration Regulations, 2014, provided that he or she complies with all other requirements for entry into and departure from the Republic, save for the reason of not having valid permit indicated in his or her passport; and*
>
> *3. No holder of exemption should be required to produce-*
>
> *(a) a valid exemption certificate;*
>
> *(b) an authorisation letter to remain in the Republic contemplated in section 32(2) of the Immigration Act when making an application for any category of the visas, including temporary residence visa."*

4 The first respondent is, in his personal capacity, ordered to pay 50% of the costs of this application, including the costs of three counsel.

M

NLF

5 Any party opposing this application is ordered to pay the balance of the costs of this application, jointly and severally, including the costs of three counsel.

6 Further and/or alternative relief.

TAKE NOTICE FURTHER that the applicant will rely of the affidavit of **NICOLE FRITZ** in support of this application.

TAKE NOTICE FURTHER that if any of the respondents intends to oppose this application, such respondent must:

(a) File a notice of intention to oppose by no later than Tuesday, 5 September 2023.

(b) File an answering affidavit, if any, by no later than Friday, 8 September 2023.

(c) Thereafter, the applicant will file its replying affidavit by Tuesday, 12 September 2023.

DATED at **JOHANNESBURG** on this the 1st day of **SEPTEMBER 2023.**

DLA PIPER SOUTH AFRICA (RF) INC.
Attorneys for the First Applicant in the main application
6th floor, 61 Katherine Street

Sandown, Sandton, 2196
Tel: (011) 302 0802
Email: Waseeqah.Makadam@dlapiper.com
chigo.mabila@dlapiper.com
Ref: W Makadam / C Mabila
c/o MACINTOSH CROSS & FARQUHARSON
834 Pretorius Street
Arcadia
Pretoria
Tel: (012) 342 4855
Email: al@macintoshcross.co.za
Ref: A Lotter

TO: **THE REGISTRAR OF THE ABOVE COURT**
PRETORIA

AND TO: **DENGA INCORPORATED**
Attorneys for the First and Second Respondents
7th Floor, Nedbank Building
85 Mian Street
Johannesburg **BY EMAIL AND BY HAND**
Tel: (011) 492 0037
Fax: (011) 492 0332
Red: Me A Denga/nm/AM17/23
Email: alpheus@dengainc.co.za
C/O Joubert Scholtz Inc
233 Lawley Street
Waterkloof
Pretoria
Rel: (o123) 346 0288
Fax: 087 231 3807
Email: lizeth@joubertscholtz.co.za

NLF

AND TO: **NORTON ROSE FULBRIGHT SOUTH AFRICA INC.**
Attorneys for the Intervening Applicant
9th floor, 117 on Strand
117 Strand Street,
Cape Town **BY EMAIL**
8000
Tel: 021 405 1200
Email: jason.whyte@nortonrosefulbright.com
laura.macfarlane@nortonrosefulbright.com
Ref: PBO2646
c/o MACROBERT ATTORNEYS
MacRobert Building
1060 Jan Shoba Street, Brooklyn,
Pretoria, 0181
Email: nwessels@macrobert.co.za
rkaseke@macrobert.co.za

AND TO: **MJ MASHAO ATTORNEYS**
Attorneys for the Intervening Respondent
House No. 230 Orient Street
Acardia
Pretoria **BY EMAIL AND BY HAND**
Tel: 012 323 0122
Fax: 012 323 0125
Ref: Mr Mashao/MJ00279/MVA

"RA2"

Denga Incorporated
Reg. No. 2003/021402/21
legal art

Your ref: CM/CM/442879/1W Makadam/
Our ref: A DENGA/nm/AM17/23
Date: 13 September 2023

DLA PIPER SOUTH AFRICA (RF) INCORPORATED

Attention: Ms C Mabila

Emails: Chigo.Mabila@dlapiper.com

waseegah.makadam@dlapiper.com

Dear Madam

RE: HELEN SUZMAN FOUNDATION / MINISTER OF HOME AFFAIRS

1. We acknowledge receipt of your letter dated 12 September 2023, and we have taken instructions on its contents. First, we should place it on record that it is inappropriate for parties in a pending litigation to litigate through correspondence, especially where pleadings have been exchanged and the court already seized with the matter. For this reason, our client will not respond to the contents of your letter in detail nor do so in a particular sequence. Our client's failure in this letter to engage with specific allegations made in your letter should be accepted as being denied by our client, and such

allegations can only be responded to at an appropriate forum suited for such circumstances.

2. Your letter of 12 September 2023 is intended to extend the scope of the issues falling for determination or to narrow such issues extra curial in the section 18(3) application. Your client has misconstrued our client's position in the answering affidavit and the previous correspondence.

3. The issue of the interim or final nature of the orders granted by the court is determinative on whether your client's section 18(3) application is legally competent to be adjudicated by the court. This is the very live issue before the court and has to be determined by the court when the application is heard.

4. You are aware that your client has broadened the ambit of the section 18(3) application by seeking further substantive orders not germane to the orders granted by the court. This is not permissible in the section 18(3) application.

5. There is no merit in your suggestion that our client has made concession which render its opposition of the section 18(3) academic. There is no basis for your client's demand that our client should withdraw its opposition of the section 18(3) application. The opposition of the application by our client as foreshadowed in the answering affidavit presents a live controversy which requires a determination by the court. Those issues will be fully ventilated at court when the application is heard.

6. We accept that your letter is written with prejudice and that your client wishes to place it before the court when the matter is heard. We have no objection to the said inclination as long as you will comply with the ethical duty of also placing our response to your letter as well.

7. Our client's rights are reserved.

Yours faithfully

Alpheus Denga

DENGA INCORPORATED