



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 12 March 2010

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

M A ARSE v MINISTER OF HOME AFFAIRS & OTHERS

On 24 February 2010 and after the conclusion of argument the Supreme Court of Appeal ordered the immediate release of Mr Mustafa Aman Arse, an Ethiopian citizen, who was detained as an 'illegal foreigner' under the Immigration Act 13 of 2002, from the Lindela Holding Facility. The Court indicated that it would furnish reasons for its order. The Supreme Court of Appeal today gave those reasons. Mr Arse, who claims to have left his country of birth due to political and tribal persecution, was issued with an asylum transit permit on his entering South Africa 8 December 2008 so that he could proceed to a Refugee Reception Office to apply for

asylum. He was arrested after expiry of his asylum transit permit. While in detention, an asylum seeker permit was issued to him. His application for asylum was refused but an appeal to the Refugee Appeal Board is pending. He brought an urgent application to the Johannesburg High Court for his release and the re-issue to him of a valid asylum seeker permit. His application was dismissed the Johannesburg court holding that the detention of an asylum seeker was compatible with the right given by the Refugees Act 130 of 1998 to 'sojourn' in the country temporarily. The Supreme Court of Appeal disagreed and emphasised that a person illegally detained had a right to be released unconditionally. An asylum seeker in possession of an asylum seeker permit is not an 'illegal foreigner' as contemplated by the Immigration Act. Pending finalisation of the application for asylum and an appeal or review he or she may not be detained.