



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: 30 March 2017  
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.*

**MINISTER OF HOME AFFAIRS & OTHERS**

**v**

**SAIDI & OTHERS**

Asylum seeker permits are issued when persons apply to be recognized as refugees in South Africa. A decision is made on the application for asylum. If it is adverse to the asylum seeker, an internal right of review and an internal right of appeal is available. If these remedies fail, some asylum seekers apply to a court for a judicial review of the refusal of asylum. The official who issues an asylum seeker permit is the Refugee Reception Officer. The permit is issued for a fixed period. This official is given power in section 22(3) of the Refugees Act 130 of 1998 to extend the permit from time to time and to amend the conditions to which the permit is subject. In May 2015, the new incumbent Refugee Reception Officer at the Cape Town Refugee Facility refused to extend permits if the internal review and internal appeal had been rejected, even if the asylum seeker had made application in court for the judicial review of the refusal. The Refugee Reception Officer took the view that the power given to extend under section 22(3) terminated when the internal remedies had been finalised.

Without a permit, an asylum seeker is subject to deportation. Because the refusal to extend the permits made them vulnerable to deportation, a number of asylum seekers approached the Western Cape High Court. They sought a declaration that the power given to extend a permit under section 22(3) endured beyond the finalisation of the internal remedies. In addition, they sought the review and setting aside of the decision of the Refugee Reception Officer refusing to extend their permits. Finally, they requested the court to order the Refugee Reception Officer to do so.

The high court granted the first two aspects sought but refused to order the Refugee Reception Officer to extend the permits, instead remitting the applications for extension to that official for a proper decision to be made. The Minister of Home Affairs appealed the first two orders and the asylum seekers cross-appealed the refusal to order the official to extend the permits.

Today the Supreme Court of Appeal handed down a unanimous judgment dealing with section 22(3) of the Refugees Act 130 of 1998. In the appeal, the Supreme Court of Appeal found that the power given in section 22(3) to a Refugee Reception Officer to extend the permits of an asylum seeker endures beyond the time that the internal remedies have been finalised. It thus upheld the orders of the Western Cape High Court and dismissed the appeal with costs.

Two bases were relied on for the relief in the cross appeal. First, that there was a substantive legitimate expectation that such a permit would be extended in those circumstances. Secondly, that if this was not the case, the court should substitute its discretion for that of the Refugee Reception Officer. The Supreme Court of Appeal disagreed with this. It supported the finding of the Western Cape High Court that it was not an appropriate case to order the Refugee Reception Officer to extend the permits. It therefore dismissed the cross-appeal.