

COURT ONLINE COVER PAGE

**IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg**

CASE NO: 2023-044685

In the matter between:

**Kopanang Africa Against
Xenophobia, South African Informal
Traders Forum**

Plaintiff / Applicant / Appellant

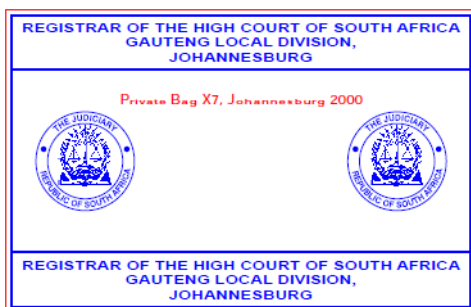
and

**Operation Dudula, Government of the
Republic of South Africa**

Defendant / Respondent

Notice of Motion (Long Form)

NOTE: This document was filed electronically by the Registrar on 12/5/2023 at 10:20:16 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

A handwritten signature in blue ink, appearing to be a stylized 'S' followed by a small flourish.

**Registrar of High Court , Gauteng
Local Division, Johannesburg**

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

Case No:

In the matter between:

**KOPANANG AFRICA AGAINST
XENOPHOBIA**

First Applicant

**SOUTH AFRICAN INFORMAL
TRADERS FORUM**

Second Applicant

INNER CITY FEDERATION

Third Applicant



**AB AHLALI BASEMJONDOLO
MOVEMENT SA**

Forth Applicant

and

OPERATION DUDULA

First Respondent

**GOVERNMENT OF THE REPUBLIC
OF SOUTH AFRICA**

Second Respondent

MINISTER OF POLICE

Third Respondent

**NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE**

Fourth Respondent

MINISTER OF HOME AFFAIRS

Fifth Respondent

**MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Sixth Respondent

**MEMBER OF THE EXECUTIVE
COUNCIL: GAUTENG DEPARTMENT
OF HEALTH**

Seventh Respondent

MINISTER OF HEALTH

Eighth Respondent

MINISTER OF BASIC EDUCATION

Ninth Respondent

**MEMBER OF THE EXECUTIVE
COUNCIL: GAUTENG DEPARTMENT
OF EDUCATION**

Tenth Respondent

ZANDILE DABULA

Eleventh Respondent



DAN RADEBE

Twelfth Respondent

**THE SOUTH AFRICAN HUMAN
RIGHTS COMMISSION**

Thirteenth Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE THAT the applicants intend to apply to this Honourable Court, on a date and time to be determined by the Registrar, for an order in the following terms:

PART A:

1. Dispensing with the forms and requirements of the Rules of Court and permitting the applicants to:

- 1.1. lodge a redacted version of the founding papers with the Registrar when issuing the application so as to preserve the anonymity of the deponents to affidavits for their personal safety;
 - 1.2. initially serve the redacted version on all respondents;
 - 1.3. file both a redacted and unredacted version with the allocated judge(s) in chambers.
2. Prohibiting the respondents from publishing the unredacted version of the founding papers or disclosing or publishing the names or identities of deponents to the founding, supporting and confirmatory affidavits;
 3. Directing the applicants to serve a copy of the unredacted papers on all respondents within 2 days of the date of this order;
 4. Declaring that no person, including the media, may publish the names, addresses and professional status of deponents to the founding, supporting and confirmatory affidavits in this matter or any other personal information likely to identify them;
 5. Granting such further and/or alternative relief as the court may deem appropriate;
 6. Ordering any party opposing the application to pay the costs.



PLEASE TAKE NOTICE FURTHER THAT the accompanying affidavit of [REDACTED], together with the annexures to that affidavit and the supporting and confirmatory affidavits filed with it, will be used in support of this application.

AND TAKE NOTICE FURTHER THAT the applicants have appointed as their attorneys the Socio-Economic Rights Institute (**THE SERI LAW CLINIC**) at the address set out below, where they will accept all further notices, documents and other process connected with these proceedings.

AND TAKE NOTICE FURTHER THAT if you intend opposing **PART A** of this application, in whole or in part, you are required -

(a) to deliver notice of your intention to do so within 15 days of service of this application upon you. Such notice must be in writing and filed with the Registrar of the above Court and a copy served on the applicants at the address set out at the foot of this notice. It must give an address (not being a post box or post restante) referred to in Rule 6 (5) (b) for the service upon you of all process in these proceedings; and

(b) within 15 days thereafter, to deliver your answering affidavits, if any.



KINDLY TAKE NOTICE THAT the applicants intend to apply to this Honourable Court, subsequent to the determination of Part A of this application, on a date and time to be determined by the Registrar, for a further order in the following terms:

PART B:

1. Declaring that only an immigration officer or police officer has the power in terms of section 41 of the Immigration Act 13 of 2002 to demand that another private person produce their passport or other identity documents to demonstrate their right to be in the Republic and that no private person has the power to do so unless expressly so authorised by law;

2. Interdicting and restraining the first respondent and the eleventh and twelfth respondents from demanding that any private person produce their passport or other identity documents to demonstrate their right to be in the Republic;
3. Declaring that members of the first respondent who publicly wore clothing resembling the uniform of the South African Defence Force without authorisation in terms of the Defence Act 42 of 2002 have contravened section 8(6) of the Regulation of Gatherings Act 205 of 1993 and section 104(5) of the Defence Act 42 of 2002.
4. Declaring that the South African Police Service breached its constitutional duties to combat and investigate crime and to uphold and enforce the law by failing to reasonably investigate and/or charge members of the First Respondent who publicly, and in some instances in the presence of members of the South African Police Service, wore clothing resembling the uniform of the South African Defence Force in contravention of the section 8(6) of the Regulation of Gatherings Act 205 of 1993 and section 104(5) of the Defence Act 42 of 2002.
5. Interdicting and restraining the first respondent and the eleventh and twelfth respondents from:
 - 5.1. Intimidating, harassing or assaulting and/or individuals that they identify as being foreign nationals;
 - 5.2. Making public statements that constitute hate speech on the grounds of nationality, social origin or ethnicity at public gatherings, on social media platforms or in any other way;



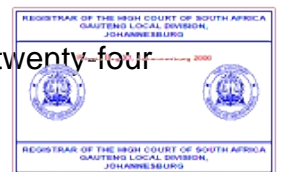
- 5.3. Wearing, or authorising office-bearers or members of the first respondent to wear, apparel that resembles the uniforms worn by members of the security forces, including the South Police Service and the South African National Defence Force, in public;
- 5.4. Interfering with the access of foreign nationals to health care services;
- 5.5. Interfering with access to, or the operations of, schools and intimidating or harassing learners, teachers or parents at schools;
- 5.6. Unlawfully evicting foreign nationals from their homes;
- 5.7. Unlawfully removing foreign nationals from their trading stalls or interfering with the employment of foreign nationals in shops and businesses;
- 5.8. Instigating, encouraging or inciting any other person to perform any of the acts prohibited by this order, on social media, at gatherings in terms of the Regulation of Gatherings Act 205 of 1993, or in any other way;
6. Directing the first respondent to communicate this order to all of its office-bearers and members;
7. Directing the second respondent to take reasonable steps to implement the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, including by:
 - 7.1. taking steps to establish an early warning and rapid response mechanism regarding threats of xenophobic hate speech and hate crimes;



- 7.2. collating and publishing disaggregated data in respect of xenophobic hate speech and hate crimes, including the prosecution and conviction of persons who commit such offences.
8. Declaring that the South African Police Service, by failing to reasonably investigate complaints against members of the first respondent arising from allegations of criminal conduct aimed at foreign nationals, has breached its constitutional duties to combat and investigate crime, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.
9. Interdicting and restraining the South African Police Service from supporting or colluding with Operation Dudula, its office-bearers and members, including in particular (but without limiting the generality of this order) conducting police raids targeting whole communities at the instigation of the first respondent or any of its office-bearers or members in the absence of a warrant or a reasonable suspicion that identified individuals have committed a criminal offence;
10. Interdicting and restraining the Minister of Home Affairs and the Department of Home Affairs from supporting or colluding with the first respondent, its office-bearers and members, including in particular (but without limiting the generality of this order) conducting raids, with or without the police, targeting whole communities at the instigation of the first respondent or any of its office-bearers or members in the absence of a warrant or a reasonable suspicion that identified individuals have committed a criminal offence;
11. Declaring section 41 of the Immigration Act 13 of 2002 inconsistent with the Constitution and invalid to the extent that:



- 11.1. it is not confined to public places, but authorises warrantless searches in private places that include the home and places of study, work or business; and,
- 11.2. that the provision does not require that an immigration officer or police officer hold a reasonable suspicion that a person is unlawfully in South Africa in order to request them to identify themselves as a citizen, permanent resident or foreigner.
12. Suspending the order of invalidity in paragraph 17 for a period of twenty-four (24) months to enable Parliament to remedy the unconstitutionality;
13. Directing that, during the period of suspension referred to in paragraph 9, the words “*on reasonable suspicion*” and “*in a public place*” be read into section 41 of the Immigration Act, so that it shall provide:
- “When so requested on reasonable suspicion by an immigration officer or a police officer in a public place, any person shall identify himself or herself as a citizen, permanent resident or foreigner, and if on reasonable grounds such immigration officer or police officer is not satisfied that such person is entitled to be in the Republic, such person may be interviewed by an immigration officer or a police officer about his or her identity or status, and such immigration officer or police officer may take such person into custody without a warrant, and shall take reasonable steps, as may be prescribed, to assist the person in verifying his or her identity or status, and thereafter, if necessary detain him or her in terms of section 34.”*
14. Referring the order in paragraphs 14 to 16 to the Constitutional Court for confirmation.



15. Directing the first to thirteenth respondents and any of the other respondents that oppose the application, jointly and severally, to pay the applicants' costs.
16. Granting such further and/or alternative relief that the court may deem appropriate.

PLEASE TAKE NOTICE THAT if you intend opposing PART B of this application, in whole or in part, you are required -

- (c) to deliver notice of your intention to do so within 15 days of service of the unredacted version of this application upon you. Such notice must be in writing and filed with the Registrar of the above Court and a copy served on the applicants at the address set out at the foot of this notice. It must give an address (not being a post box or post restante) referred to in Rule 6 (5) (b) for the service upon you of all process in these proceedings; and



- (d) within 15 days thereafter, to deliver your answering affidavits, if any.

SIGNED AND DATED AT JOHANNESBURG ON THIS THE 12th DAY OF MAY 2023

SERI LAW CLINIC
Applicants' attorneys
6th Floor, Aspern House
54 De Korte Street

Braamfontein, 2001

Tel: 011 356 5860

Fax: 011 339 5950

Email: khululiwe@seri-sa.org

info@seri-sa.org

**TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT,
JOHANNESBURG**

AND TO: OPERATION DUDULA
First Respondent
2230 Saffron Street,
Lufhereng, Johannesburg



AND TO: GOVERNMENT OF SOUTH AFRICA OF SOUTH AFRICA
Second Respondent
Care of the State Attorney
85 Albertina Sisulu Road,
Johannesburg

AND TO: MINISTER OF POLICE
Third Respondent
Telkom Towers,
North Wing, 24th Floor,
152 Johannes Ramokhoase Street

**AND TO: NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE**
Fourth Respondent

Hallmark Building,
230 Johannes Ramokhoase Street,
Pretoria

AND TO: MINISTER OF HOME AFFAIRS

Fifth Respondent
7th Floor, 231 Pretorius Street,
Wachthuis Building,
Pretoria

**AND TO: MINISTER OF JUSTICE AND
CORRECTIONAL SERVICE**

Sixth Respondent
Poyntons Building (West block),
124 WF Nkomo Street,
Pretoria

**AND TO: MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF HEALTH**

Seventh Respondent
45 Commissioner Street,
Johannesburg

AND TO: MINISTER OF HEALTH

Eighth Respondent
AB Xuma Building,
1112 Voortrekker Road,



Pretoria

AND TO: MINISTER OF BASIC EDUCATION

Ninth Respondent
Sol Plaatjie House,
222 Struben Street,
Pretoria

**AND TO: MEMBER OF THE EXECUTIVE COUNCIL:
GAUTENG DEPARTMENT OF EDUCATION**

Tenth Respondent
6 Hollard Building,
Talis House,
Johannesburg



AND TO: ZANDILE DABULA

Eleventh Respondent
2362A Ngwenya Street,
Zone 2, Diepkloof
Care of the State Attorney
85 Albertina Sisulu Road,
Johannesburg

AND TO: DAN RADEBE

Twelfth Respondent
Care of Operation Dudula
2230 Saffron Street,

Lufhereng, Johannesburg

AND TO: THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Thirteenth Respondent

27 Stiemens Street,

Braamfontein,

Johannesburg

