



# PRO BONO AND HUMAN RIGHTS ALERT

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### IMPROPERLY CONSTITUTED REFUGEE APPEAL BOARD DECISIONS HELD TO BE NULL AND VOID

The Pro Bono and Human Rights Practice recently obtained a favourable and noteworthy judgment from the Pretoria Division of the Gauteng High Court on behalf of one of our asylum seeker clients, in which the High Court has reaffirmed that decisions of an improperly constituted panel of the Refugee Appeals Board (RAB) are null and void.

# IMPROPERLY CONSTITUTED REFUGEE APPEAL BOARD DECISIONS HELD TO BE NULL AND VOID

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*Judge Msimeki found that in terms of s15 (5) of the Refugees Act at least two members had to be present at the hearing in order for a quorum to be constituted. In the instant case the record reflected that the RAB panel which entertained the matter consisted only of the same single member.*



*The Pro Bono and Human Rights Practice recently obtained a favourable and noteworthy judgment from the Pretoria Division of the Gauteng High Court on behalf of one of our asylum seeker clients, in which the High Court has reaffirmed that decisions of an improperly constituted panel of the Refugee Appeals Board (RAB) are null and void.*

Our client, who is an asylum seeker from the Democratic Republic of Congo (DRC) and a mother to minor children, came to South Africa over 10 years ago, to seek asylum after fleeing political and ethnic violence in the DRC. Her application for asylum was dismissed by the Refugee Status Determination Officer (RSDO) who decided her application on the grounds that she did not have a well-founded fear of persecution and had never considered relocating within the DRC before fleeing to South Africa. Our client lodged an appeal against this decision with the RAB in terms of s24 of the Refugees Act. The one member RAB panel that heard her appeal dismissed the appeal based on what it claimed were 'material credibility concerns' without apparently considering all the information and numerous submissions placed before it.

With the assistance of our practice and Advocate Paul Slabbert from the Johannesburg Bar, our client took the decision of the RAB on review on various grounds including failure by the RAB to comply with the requirements of procedural fairness, failure to consider relevant facts, that its decision infringed the constitutional rights of the applicant and her children, and the fact that the RAB had been improperly constituted.

In a judgment handed down on 1 April 2016 Judge Msimeki concluded that if indeed the RAB had been improperly constituted, this would be dispositive of the case and it would be unnecessary to consider the other issues raised by the matter.

On the question of the composition of the RAB, the learned Judge then went on to find that in terms of s13(1) read with s15(5) of the Refugees Act, the RAB must consist of a Chairperson and at least two other suitably qualified and experienced members appointed by the Minister. Further, in terms of s13(2) at least one of the members had to be legally qualified. Agreeing with the decision of Davis J in *Harerimana v Chairperson of the Refugee Appeal Board and Others* 2014 5 SA 550 (WCC), Judge Msimeki found that in terms of s15(5) of the Refugees Act at least two members had to be present at the hearing in order for a quorum to be constituted. In the instant case the record reflected that like in *Harerimana*, the RAB panel which entertained the matter consisted of only one member (in fact the very same member).

Finding that s13(1) was preemptory, Judge Msimeki went on to hold further that the improperly constituted RAB was incapable of taking valid decisions, and that the

# IMPROPERLY CONSTITUTED REFUGEE APPEAL BOARD DECISIONS HELD TO BE NULL AND VOID

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*Given that in our experience there have been a number of instances where an RAB has been improperly constituted, we hope that this judgment will contribute to building awareness among the asylum seeker community of the invalidity of a RAB decision taken by a one member panel.*

decision of the RAB was *ultra vires* and had to be reviewed and set aside. The learned Judge ordered that the applicant's appeal and asylum application should be referred back to the RAB to be heard *de novo*. The respondents were ordered to bear the costs of the application.

Given that in our experience (and as the case law shows) there have been a number of instances where an RAB has been improperly constituted, we hope that this judgment will contribute to building

awareness among the asylum seeker community of the invalidity of a RAB decision taken by a one member panel. This is particularly important given that asylum seekers often go unrepresented. We hope also that another adverse finding against it on this issue, will encourage it in future to comply fully with the provisions of the Refugees Act.

*Jacquie Cassette and  
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