



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

**NOTICE BY THE JUDGE PRESIDENT: REFERRAL TO A FULL COURT,
MORATORIUM AND CASE MANAGEMENT DIRECTIVE**

1. Having considered the judgments in *Mnamo and Others v Minister of Home Affairs and Others* (2026/191123; 2026/193157; 2026/185840; 2026/185934; 2026/191120; 2026/191741; 2026/185842; 2026/185772; 2026/191102; 2026/190675; 2026/185670; 2026/185696; 2026/185723; 2026/191088; 2026/194068; 2026/191845; 2026/185857; 2026/191126; 2026/194239; 2026/192439) [2026] ZAGPJHC 948 (25 August 2026) and *Ered v Minister of Home Affairs and Another (Reasons)* (2026/163100) [2026] ZAGPJHC 970 (2 September 2026), it appears that conflicting approaches have emerged concerning the legal consequences of the decision of the Constitutional Court in *Scalabrini Centre of Cape Town v Minister of Home Affairs and Others* [2026] ZACC 30, particularly concerning the status and detention of undocumented foreign nationals who express an intention to apply for asylum.
2. The conflict concerns, inter alia, whether a person detained under section 34 or section 49(1) of the Immigration Act 13 of 2002 who expresses an intention to seek asylum must be released forthwith pending the processing of an asylum application, or whether such person may lawfully remain in detention pending facilitation of access to the asylum process.
3. In the interests of legal certainty, uniformity of judicial practice, the proper administration of justice, and consistent treatment of similarly situated litigants, the Judge President hereby directs as follows.

CONSTITUTION OF FULL COURT

4. Acting in terms of section 14(1)(b) of the Superior Courts Act 10 of 2013, the Judge President has referred to a Full Court of this Court, all matters enrolled on the

urgent court roll for 15 September 2026 in the Johannesburg High Court (annexed hereto marked “A”) in which any of the issues set out below arise for determination.

TERMS OF REFERENCE

5. The Full Court is requested to determine:
 - a. The proper interpretation and effect of the judgment of the Constitutional Court in *Scalabrini Centre of Cape Town v Minister of Home Affairs and Others* (CCT126/25) [2026] ZACC 30 (7 July 2026).
 - b. Whether, following *Scalabrini*, the legal position has reverted to that which prevailed under *Ruta v Minister of Home Affairs* 2019 (2) SA 329 (CC) and the line of authorities endorsed therein.
 - c. Whether a person detained in terms of section 34 and/ or section 49(1) of the Immigration Act 13 who expresses an intention to apply for asylum is entitled to immediate release pending the lodging and determination of an asylum application.
 - d. Whether any aspect of the reasoning and conclusions in *Ashebo v Minister of Home Affairs and Others* 2023 (5) SA 382 (CC), survives the Constitutional Court's judgment in *Scalabrini*.
 - e. Whether a court may direct that a detainee remains in custody while officials of the Department of Home Affairs facilitate access to refugee status determination procedures.
 - f. Whether the constitutional and statutory principle of non-refoulement prohibits or permits the continued detention of a prospective asylum seeker after an intention to seek asylum has been communicated.
 - g. The nature and extent of the obligations resting upon the Department of Home Affairs, Refugee Reception Offices and immigration officials once a detained person indicates an intention to seek asylum.

ANCILLARY ISSUES

6. In addition to the above issues, the Full Court is requested to determine the following ancillary issues:
 - a. Whether a foreign national who has been charged with an offence in terms of section 49(1) of the Immigration Act and who thereafter expresses an intention to apply for asylum is entitled to release from detention or any other relief affecting his or her custody, notwithstanding the institution of criminal proceedings, and, if so, the legal principles governing the relationship between the asylum process, the criminal process, and the prosecutorial powers exercised by the National Prosecuting Authority.

- b. Any ancillary, consequential or practical procedural directives required to regulate the processing of asylum applications by persons arrested and/or detained pending deportation.
7. The issues in paragraphs 5 and 6 above are conveniently referred to as “the referred issues”.

MORATORIUM

8. Pending the determination of the referred issues by the Full Court, and with effect from 16h00 on Thursday 10 September 2026 a moratorium is hereby placed on the hearing of applications in the Pretoria and Johannesburg seats of this Division in which the referred issues arise and/or applicants seek substantially related relief, including:
- a. release from detention under section 34 and/ or section 49(1) of the Immigration Act arising from the applicant's expressed intention to apply for asylum;
 - b. orders founded principally upon the alleged effect of the Constitutional Court judgment in *Scalabrini* on the continued detention of undocumented foreign nationals.
9. Nothing in this directive prevents a litigant from approaching the Court where exceptional circumstances, including demonstrable urgency relating to health, safety, imminent deportation or other grave prejudice, are established.

INVITATION TO AMICI CURIAE

10. Given the constitutional importance of the issues and their implications for the administration of the asylum and immigration systems, interested persons and organisations are invited to apply for admission as **amici curiae**.
11. Any application for admission as amicus curiae shall:
- a. identify the applicant and the interest sought to be advanced;
 - b. describe the submissions the applicant seeks to place before the Court;
 - c. indicate whether the submissions raise factual, legal, constitutional, comparative or international law issues not otherwise likely to be addressed by the parties.

12. Applications for admission as amicus curiae shall be delivered by **23 September 2026**.

13. The Secretary in the Office of the Deputy Judge President, Johannesburg shall draw this notice to the attention of:

- a. Office of the State Attorney Pretoria and Johannesburg;
- b. the Minister of Home Affairs;
- c. the Minister of Police;
- d. the Director-General of Home Affairs;
- e. the National Police Commissioner;
- f. the National Director of Public Prosecutions;
- g. Director of Public Prosecutions, Johannesburg
- h. Director of Public Prosecutions, Pretoria
- i. Lindela Repatriation Centre, Krugersdorp
- j. the Legal Resources Centre;
- k. Lawyers for Human Rights;
- l. Scalabrini Centre of Cape Town;
- m. the United Nations High Commissioner for Refugees (UNHCR); and
- n. any other person or organisation who may have a demonstrable interest in the issues before the Court.

CASE MANAGEMENT OF MATTERS ENROLLED FOR 15 SEPTEMBER 2026

14. The parties in matters pending before the Johannesburg High Court enrolled for hearing on the urgent court roll on **15 September 2026** in which the referred issues arise and/or substantially similar relief is sought are granted leave to supplement their founding papers.

15. The following timetable shall apply:

- a. Supplementary founding affidavits, 16 September 2026
- b. Notice of intention to oppose, 21 September 2026
- c. Opposing affidavits, 28 September 2026
- d. Replying affidavits, 5 October 2026
- e. Applicants' practice notes and heads of argument, 9 October 2026

- f. Respondents' practice notes and heads of argument, 16 October 2026
- g. Amici's practice notes and heads of argument, 21 October 2026
- h. Joint practice note, chronology and list of authorities, 23 October 2026
- i. Hearing before the Full Court, 29 October 2026

CONSTITUTIONAL ISSUES AND COMPLIANCE WITH UNIFORM RULE 16A

- 16. The Court notes that the questions referred to the Full Court may implicate constitutional rights, constitutional obligations, and the interpretation and application of constitutional principles.
- 17. To the extent that any party has raised, or intends to raise, a constitutional issue as contemplated in Uniform Rule 16A, such party is directed to comply with the provisions of Uniform Rule 16A by 28 September 2026, including the filing and publication of a notice containing a clear and succinct description of the constitutional issue(s) relied upon.
- 18. Upon receipt of any notice filed in terms of Uniform Rule 16A, the Chief Registrars in Pretoria and Johannesburg are directed to deal therewith in accordance with the requirements of Rule 16A(c) and (d).

FILLING AND ENROLMENT

- 19. The first Matter on the dedicated Home Affairs Matters Urgent Court roll for 15 September 2026, being Abenezzer Jekamo v Minister of Home Affairs (case number 2026-220414) is designated as the consolidated electronic case file for the purpose of Full Court proceedings.
- 20. The Registrar in the Urgent Court Section, Johannesburg, Mr T Mabilu (the "Registrar"), is directed to:
 - a. Upload this notice to the consolidated electronic case file and all affected matters.
- 21. The secretary in the Office of the Deputy Judge President, Johannesburg, is directed to enrol the matters before the Full Court, Johannesburg on **29 October 2026** as specially allocated matters.
- 22. Any interested party who seeks to intervene and/or apply for admission as amicus curiae shall send an email to the Registrar, Urgent Court, Johannesburg, Mr T

Mabilu at TMabilu@judiciary.org.za requesting to be invited to the consolidated electronic case file.

PUBLICATION

23. Upon the issuing of this notice, the Secretary in the Office of the Deputy Judge President in Johannesburg and Pretoria are directed to ensure that it is circulated to the relevant professional bodies and interested stakeholders.

24. The Registrar is directed to assist any interested party to register on Court Online for the purpose of filing any documents in relation to this Notice.

EFFECTIVE DATE

25. The effective date for this Notice is 10 September 2026.

Electronically transmitted, therefore no signature

A P LEDWABA
JUDGE PRESIDENT, GAUTENG DIVISION

DATED AT JOHANNESBURG ON THIS 10th DAY OF SEPTEMBER 2026.

CC: Acting Deputy Judge President, Pretoria, Ms B Neukircher
Acting Deputy Judge President, Johannesburg, Ms LT Modiba
All Judges in Pretoria and Johannesburg
The Chief Registrar, Johannesburg, Mr T Musana
The Acting Chief Registrar, Pretoria, Ms N Mohale

DATE ISSUED: 10 September 2026

ANNEXURE SCHEDULE

Annexure A - Department of Home Affairs Matters Urgent Court Roll for 15 September 2025.

ANNEXURE “A”

URGENT COURT ROLL (14th -18th SEPT 2026)
DEPARMENT OF HOME AFFAIRS MATTERS ROLL

ALLOCATIONS

Number on the combined urgent court roll	Case number	Parties' Names	Notes	Date of Hearing
1	26-220414	ABENEZER JEKAMO v. THE MINISTER OF HOME AFFAIRS # 2026-220414 # ABENEZERJEKAMO		15/08/2026
2	26-220325	AKILU AYANO v. THE MINISTER OF HOME AFFAIRS # 2026-220325 # AKILUAYANO		15/08/2026
3	26-197340	Christopher Hakizimana v. Department of Home Affairs # 2026-197340 # 26Aug08D		15/08/2026
4	26-215991	DANIEL DESDA v. MINISTER OF HOME AFFAIRS # 2026-215991 # DANIELDESDA		15/08/2026
5	26-216001	DAVID LAMA v. MINISTER OF HOME AFFAIRS # 2026-216001 # DAVIDLAMA		15/08/2026
6	26-218993	DAVID LAUTE v. THE MINISTER OF HOME AFFAIRS # 2026-218993 # LAUTE09CVL		15/08/2026

7	26-220384	DESTA BAYANE v. THE MINISTER OF HOME AFFAIRS # 2026-220384 # DESATABAYANE		15/08/2026
8	26-218856	GHEAHNDIE RAPHAEL v. THE MINISTER OF HOME AFFAIRS, THE MINISTER OF POLICE, THE CHIEF MAGISTRATE RANDBURG MAGISTRATE COURT & OTHERS # 2026-218856 # GHEGHEX2		15/08/2026
9	26-128977	HAILE LEGESE WEID v. THE MINISTER OF HOME AFFAIRS # 2026-218977 # LEGESE09CVL		15/08/2026
10	26-196312	Kebru Coredro v. Department of Home Affairs # 2026-196312 # AugA0826		15/08/2026
11	26-195851	Kubru Coredro v. Department of Home Affairs # 2026-195851 # AuguA263		15/08/2026
12	26-220364	MESAY MULGETA v. THE MINISTER OF HOME AFFAIRS # 2026-220364 # MESAYMULGETA		15/08/2026
13.	26-197562	Methode Niyondezi v. Department of Home Affairs # 2026-197562 # 26Aug08A		15/08/2026
14	26-086326	MICHAEL OKUNDULA LUKUKE v. MINISTER OF HOME AFFAIRS AND OTHERS # 2026-086326 # MOL2303		15/08/2026
15	26-075731	Mihingo Jeanne Antoitnette v. Minister of Hone Affairs and Others # 2026-075731 # MAJ30032026		15/08/2026
16	26-216004	MUDE NAGASH v. MINISTER OF HOME AFFAIRS # 2026-216004 # MUDENAGASH		15/08/2026
17	26-216020	MUSE AYIRE v. MINISTER OF HOME AFFAIRS # 2026-216020 # MUSEAYIREANDOTHERS		15/08/2026
18	26-197584	Ndayikingunukiye Yoyaga v. Department of Home Affairs # 2026-197584 # 26Aug08B		15/08/2026

19	26-216036	NURIYE ABDO ZAHIN v. MINISTER OF HOME AFFAIRS # 2026-216036 # NURIYEABDUZAHIN		15/08/2026
20	26-197646	Omar Mussa v. Department of Home Affairs # 2026-197646 # 26Aug08C		15/08/2026
21	26-216359	PRINCE FRIDAY OGBODO v. MINISTER OF HOME AFFAIRS # 2026-216359 # OGBODO		15/08/2026
22	26-197666	Proper Dan Yumba v. Department of Home Affairs # 2026-197666 # 26Aug08		15/08/2026
23	26-216377	SHADRACK NEKIM OBI v. MINISTER OF HOME AFFAIRS # 2026-216377 # OBI		15/08/2026
24	26-220436	SUH WALTER AMBESI v. THE MINISTER OF HOME AFFAIRS # 2026-220436 # SUHWALTERAMBESI		15/08/2026
25	26-220448	TAMENA ASSEFA v. THE MINISTER OF HOME AFFAIRS # 2026-220448 # TAMENAASSEFA		15/08/2026
26	26-216300	TOCHUKWU EMEKE NWAZUBELU v. MINISTER OF HOME AFFAIRS # 2026-216300 # LINDELA019		15/08/2026
27	26-207913	YISIHACK GODEBO v. THE MINISTER OF HOME AFFAIRS # 2026-207913 # GODEBO09CVL		15/08/2026
28	26-220746	TERRFA AYELE ALEMU v. THE MINISTER OF HOME AFFAIRS THE MINISTER OF HOME AFFAIRS # 2026-220746 # MOKABARENEILWE		15/08/2026
29	26-220756	DAVID AYELE EJAMO v. THE MINISTER OF HOME AFFAIRS THE MINISTER OF HOME AFFAIRS # 2026-220756 # MOKABARENEILWE		15/08/2026
30	26-220760	GIDEON AYELE ABABA v. THE MINISTER OF HOME AFFAIRS THE MINISTER OF HOME AFFAIRS # 2026-220760 # MOKABARENEILWE		15/08/2026

31	26-220851	MAKHOSAZANA NKOSI v. THE MINISTER OF HOME AFFAIRS # 2026-220851 # HSWARTNKOSI		15/08/2026
32	26-221505	DISONAMA NENETJIE v. THE MINISTER OF HOME AFFAIRS # 2026-221505 # NENETJIE09CVL		15/08/2026
33	26-221520	DANIEL WODUMO v. THE MINISTER OF HOME AFFAIRS # 2026-221520 # WODUMO09CVL		15/08/2026