

**IN THE MAGISTRATES COURT FOR THE MAGISTRAL DISTRICT OF TSHWANE  
CENTRAL HELD AT PRETORIA**

**CASE NUMBER: 30272/2016**

In the matter between:

**CONGO PEACE WITHOUT BORDERS**

**APPLICANT**

and

**HILDA MOHALE N.O.**

**1<sup>ST</sup> RESPONDENT**

**ALFOBSO MATARO N.O.**

**2<sup>ND</sup> RESPONDENT**

**CHIEF OF THE TSHWANE METROPOLITAN**

**POLICE DEPARTMENT**

**3<sup>RD</sup> RESPONDENT**

**GEORGE KUCHIO: UNITED NATIONS HUMAN RIGHTS**

**COMMISSIONER FOR REFUGEES**

**4<sup>TH</sup> RESPONDENT**

**MINISTER OF THE DEPARTMENT OF HOME AFFAIRS**

**5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**INTRODUCTION**

The Applicant has lodged an application seeking the Court to review and set aside the decision made by the first, second and third Respondents and declare it to be inconsistent with the resolution of gatherings act and to authorise the notice of gathering dated 12 July 2016.

**FOUNDING AFFIDAVIT**

- Applicant declares that he is a male Congolese national and chairperson of Congo Peace Without Borders who is the Applicant.
- That he is the conveyor of the proposed gathering as contemplated in Section 2(1) of the Regulation of Gather Act 205 of 1993.

- That CPWB intends to hold the gathering at 11h00 on Friday 29 July 2016, it will proceed from the United Nations Commissioner for Refugees to the department of Home Affairs at 351 Francis Baard Street.
- That the purpose is to show displeasure with the treatment of Congolese nationals at UNHCR and DHA and Department of Home Affairs as well as to highlight issues pertaining to the green paper on international migration GG40088.
- That the matter is urgent as the gathering has been arranged by CPWB for 29 July 2016 and the gathering was prohibited on 21 July 2016 at 9h25 by the first Respondent.
- That all attempts to negotiate with the Respondents have failed.
- Notice in terms of Section 3 of the RGA was served on the Respondents on 12 July 2016 at 08h03.
- That on 14 July 2016 at 12h00 a representative of TMPD requested telephonically that the march move to the 26<sup>th</sup> July 2016 or 5 August 2016 claiming that there was another march scheduled on 29 July 2016 at Union Building and that this gathering will create inconvenience.
- On 15 July 2016 a motivation letter was written to the TMPD. On Monday 18 July 2016 TMPD called to ask if they had chosen an alternative date and their response was that they are keeping their date of 29 July 2016.
- Further that he was contacted by several people suggesting that the march should be held after the elections.
- That on 21 July 2016 the LRC received an e-mail from TMPD advising that the protest could not occur due to the elections.
- That on 21 July 2016 Ms. Kropman received an e-mail from Hilda Mohale stating that all the Act 205 gatherings are on hold until local elections are done.
- Ms. Kropman then send a letter demanding the withdrawal of the prohibition.
- Applicant believe that there is political will to suppress his constitutional right to protest in terms of Section 17 of the constitution of the RSA 1996 – everyone has a right, peacefully, unarmed to assemble, to demonstrate, to picket and to present a petition.
- That CPWB has complied with all requirement of RGA.
- That the gathering does not pose a risk to anyone.
- Prays for the orders in the notice of motion.

## **OPPOSING OR ANSWERING AFFIDAVIT**

Respondents filed a notice of intention to oppose but did not file an answering affidavit.

### **DISCUSSION**

Section 6(1)a states whenever a condition is imposed in regard to a gathering in terms of Section 4(4)(b) or when a gathering is prohibited in terms of Section 5(2) the conveyer of such gathering may apply to an appropriate Magistrate for the setting aside of such prohibition or the setting aside or amendment of such condition and the magistrate may refuse or grant the application.

6(3)(a) An application in terms of subsection 1(a) or (b) shall be made within 24 hours after the responsible officer has given notice in terms of Section 4(5)(a) of the imposition of, or the refusal to impose the condition in question or the prohibition of, or the refusal of the prohibition in question and under no circumstances later.

The Applicant's attorney submitted that the Applicant has complied with the Regulation of Gatherings Act. That a gathering can only be prohibited in terms of Section 5 of RSA. That the reason furnished by the Respondents is vague and inconsistent with the constitution.

There is no legislation which enables them to prohibit a gathering. Submit that the Court in terms of Section 6(1)(a) set aside the decision to prohibit the gathering and make an order as prayed for on the notice of motion.

The counsel for the first, second and third Respondent submitted that the application did not comply with rule 55(5)(b) which provides that the application brought as a matter of urgency must be supported by an affidavit which sets out explicitly the circumstances which Applicant avers render the matter urgent and the reasons why Applicant claims that he or she could not be accorded substantial redress at a hearing in due course.

Secondly that the application was not brought within 24 hours as envisaged by the RGA therefore submits that the Court should dismiss the application. That in the event the Court allow the application to proceed they seek an opportunity to draft their opposing affidavit and give their evidence before Court in response the Applicant's attorney referred counsel for the Respondent to paragraph 13 of the founding affidavit and to Section 6 (3)(a) of the Regulation and Gatherings Act.

On the 22<sup>nd</sup> of July 2016 the Court was seized with the Applicant's application and postponed it to the 25<sup>th</sup> of July 2016 for proper service on the Respondent, therefore the argument that the application was not brought within 24 hours is unfounded. Secondly on the none compliance with Rule 55(5)(a) in paragraph 13 of the founding affidavit clearly state the reason for urgency and also Applicant's attorney submitted that Section 6(3)(a) of RGA provided that the application shall be made within 24 hours after the responsible officer has given notice of prohibition. Both questions of law raised by the counsel for the Respondent are dismissed.


The notice was issued and served on the 12<sup>th</sup> July 2016 and Applicant received the prohibition notice on 21 July 2016 and served electronically the application on the Respondent on 21 July 2016 which was set down for the 22<sup>nd</sup> July 2016.

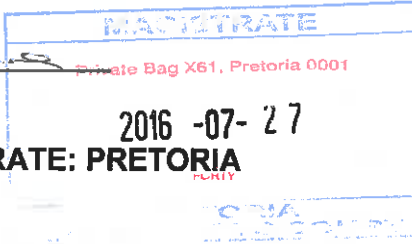
On 22 July 2016 the application was postponed till the 25<sup>th</sup> of July 2016. The matter was heard on 26 July 2016. The Respondent had ample time to appoint a legal representative and to draft their papers. They cannot come to Court and claim that the Respondent, specifically the Municipality, has many sections and departments and therefore it was unable to consult with relevant parties and draft documents. Clearly the respondents are using the delaying tactics to frustrate the applicant. Court finds that the decision of the Respondents was irrational and inconsistent with the RGA.

**Having considered the arguments by both parties and all relevant circumstance the Court makes the following order:-**

- 1. The decision made by the first, second and third Respondents prohibiting the gathering is hereby set aside;**
- 2. That notice of gathering dated 12 July 2016 is hereby authorised;**
- 3. In terms of Section 7(2)(a) of RGA number 205 of 1995, I hereby grant the permission for CPWB to hold a peaceful march subject to the following conditions –**
  - 1. Date: 29 July 2016**  
**Time: 11h00 to 12h00**  
**Place: Metropark building, 351 Francis Baard Street to Hallmark Building, 230 Johannes Ramokhoase Street.**
  - 2. The march may not be accompanied by any unreasonably loud noise or other means of disturbance.**

3. The right of any persons wishing to walk along the streets affected by the march and traffic in any streets may not be unduly interfered with, obstructed or hindered in any way;
4. Participants must keep clear of all entrances and exit point and in no way obstruct the general public from entering or leaving buildings in the streets concerned;
5. The number of persons participating in the march may not exceed three hundred at any given time;
6. Placards or banners used during the march must not be fixed to any structure or to the security fence, gates or walls surrounding buildings;
7. Any litter of whatever nature introduced to the areas affected by the march participants must remove before they disperses and/or
8. Subject to any required conditions by the Municipality or TMPD this authority does not exempt you from obtaining any other authorisation required in terms of the abovementioned Act.

  
**L.M. MOKOENA**  
**ADDITIONAL MAGISTRATE: PRETORIA**

  
MAGISTRATE  
Private Bag X61, Pretoria 0001  
2016 -07- 27  
CNA