

Cyriacus Omodi Agbarakwe

v

Attorney General

Minister for Home Affairs

Chief Immigration Officer

Commissioner of Police

Director of Public Prosecutions

Case No. 1027/98

Coram

S.W. Sapire, CJ

For Applicant
For Respondents

Mr. L. Mamba
Ms. K. Sikhondze

Judgment

(14/08/98)

This is an application made by the applicant to set aside a decision of the Minister of Home Affairs in regard to the renewal of a residence permit as it is commonly referred to. The papers set out that the applicant is a foreigner, who has lived in Swaziland in terms of a permit, which has expired. He has unsuccessfully sought extension of the permit. The applicant is entitled to appeal to the Minister of Home Affairs in order to have this decision set aside. He presently seeks an order preventing the authorities deporting him and his family pending the decision of the Minister on his appeal.

He has in this application sought and obtained interim relief in a form of a rule, operating as a temporary interdict. The interdict prevents the authorities from so deporting him and his family pending the outcome of this application. The grant of a rule in these circumstances is illogical. The relief he seeks is to set aside the decision refusing the extension of the residence

permit. If he is eventually successful in his appeal to the Minister and the refusal of the extension of the permit reversed it does not follow that automatically he can remain in the country or that he has any right for the time being to be present in Swaziland.

A rule cannot assist him, and this court has no power to legalize his stay or presence

Nothing has been shown which makes the decision of the Chief Immigration Officer not to extend his permit impeachable in any way. There is nothing irregular in the decision, which has been made, and there is nothing upon which the decision can be reviewed and set aside. More importantly there is no power in this court to confer residence rights, even temporarily on the applicant.

The rule is discharged and the application dismissed with costs

S.W. SAPIRE

CHIEF JUSTICE