

Operation Dudula: Court Makes Ruling on Xenophobic Vigilantism

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INTRODUCTION

In the matter of *Kopanang Africa Against Xenophobia and Others v Operation Dudula and Others*¹ ("the Dudula case"), the Johannesburg High Court had to consider whether the Applicants were able to satisfy the requirements for a interdict in order to prevent Operation Dudula:

- from permitting foreign citizens to have access to social services such as public hospitals and schools;
- to refrain from harassing or intimidating foreign persons on producing their identity documentation to determine their right to access public services;
- to be restrained from making any public statements which may constitute "hate speech".²

CASE BACKGROUND

Operation Dudula is a voluntary organisation that primarily seeks to remove non-citizens from South Africa. Their conduct has ranged from shutting down foreign-owned businesses, conducting unlawful raids and evictions on residents, to preventing foreigners from accessing public hospitals and schools, followed by acts of intimidation and violence in order to remove private persons who were not South African.³

The South African Police Services ("SAPS") and the Department of Home Affairs ("DHA") were joined as Respondents to the *Dudula* case, as the Applicants had contended that both organisations must be interdicted from supporting and colluding with Operation Dudula, as well as taking steps to ensure that there were investigations into the unlawful activity of the organisation in its xenophobic conduct.⁴

The Applicants relied on section 41 of the Immigration Act 13 of 2002 ("the Immigration Act"), wherein it is prescribed that only an immigration officer or police officers are empowered to:

- request a private person to produce a form of identification in the event that there is reasonable suspicion that such person is unlawfully in South Africa;

- not conduct warrantless searches in private spaces of private persons and then only in limited to public spaces where authorised; and
- may not proceed with the interrogation, arrest or detention of a minor unless it is deemed to be a "last resort" and is in line with section 28 of the Children's Act 38 of 2005.⁵

REQUIREMENTS FOR AN INTERDICT

The Applicants in this case had to meet the following requirements in order to qualify for a final interdict to be granted:

1. Is there a clear right for the affected person?
2. Is there proof that the affected person has suffered or foresees irreparable harm as a result of the alleged wrongful conduct; and
3. Are there any alternative remedies available to the affected person?⁶

COURT'S FINDINGS

The Johannesburg High Court referred to the *Oak Valley Estates*⁷ case where it was established that:

- A court enforces legally recognised rights through the granting of an interdict;
- it intends on ending any conduct or omission that is in breach of the affected person's right; and
- protects the affected person from actual or foreseeable harm.

The Johannesburg High Court thus established that:

1. The Applicants relied on various clear rights such as right to equality, education, human dignity, healthcare and housing, where, if not for an interdict, would continue to be violated by Operation Dudula's members;
2. That Operation Dudula's prior conduct with incitement of violence and hate speech towards foreigners constituted "actual harm";
3. Despite being served with a cease and desist letter of demand by the Applicants, Operation Dudula and its members continued to act unlawfully towards

foreigners in intimidation, inciting violence, refusing access to public services and unlawfully evicting such persons from their homes. The Court held that without an interdict, there is foreseeable and irreparable harm towards foreigners by Operation Dudula.⁸

Accordingly, the grounds for a final interdict were satisfied by the Applicants.

In its judgment, the Johannesburg High Court addressed the issue of xenophobia and condemned SAPS in its omission to combat the unlawful conduct of Operation Dudula when foreigners were targeted in their homes and public spaces. Therefore it was held that SAPS had failed in its constitutional duties to investigate and prevent crimes committed by Operation Dudula.⁹

In respect of Department of Home Affairs (“DHA”), the Johannesburg High Court held that the Department is governed by the Immigration Act insofar as it concerns foreign person in South Africa. While it was not established that the DHA and Operation Dudula had colluded in the removal of foreign persons from the Republic, it was pertinent that the Department exercised caution in being involved in warrantless searches and raids.¹⁰

The Applicants submitted that SAPS and the DHA had utilised section 41 of the Immigration Act¹¹ to conduct warrantless search and raids in public spaces and private homes and businesses of foreigners indiscriminately, and that minor children have been subject to unlawful arrest and detention.

In the instance of the arrest and detention of minor children who are foreigners, the Johannesburg High Court held that the application of section 41 does not serve the best interests of children as envisaged in the Children’s Act 38 of 2005 or the Child Justice Act 75 of 2008. Furthermore, it was held by the court that subjecting minor children to warrantless arrests and detention was deemed to be unconstitutional.¹²

Therefore the court made the following order:

1. Operation Dudula, and its members were interdicted and restrained from:
 - 1.1 Intimidating, assaulting and harassing persons who were deemed to be foreign nationals;
 - 1.2 Making public statements which constituted hate speech at public gatherings or on social media;
 - 1.3 Interfering with foreign citizens’ right to access health care services or schools;
 - 1.4 Unlawfully evicting foreign citizens from their homes or businesses; and
 - 1.5 Inciting violence at public gatherings.

2. Operation Dudula and any other private person may not demand another private person to produce their identification documents and declared that only an immigration officer or police officer can do so in terms of section 41 of the Immigration Act.
3. That the Government of the Republic of South Africa, as a party to the case, is ordered to take steps to implement the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance policy; and
4. Immigration officers and police officers are only confined to public spaces to conduct warranted searches and request identification on reasonable suspicion, and must refrain from the interrogation, arrest and detention of minor children except as a last resort.

CONCLUSION

The *Operation Dudula* case has clearly illustrated that private persons - irrespective of nationality, are afforded protection under the cloak of the Constitution and cannot simply have their rights violated without consequences. This case affirms that immigrants have an opportunity to seek legal assistance in the event of intimidation, harassment and violence being incited against them for seeking public services or conducting their day-to-day operations in South Africa.

¹*Kopanang Africa Against Xenophobia and Others v Operation Dudula and Others* (2023/044685) [2025] ZAGPJHC 1102 (4 November 2025).

²<https://www.polity.org.za/article/sahrc-welcomes-ruling-against-operation-dudula-2025-11-06>.

³See *n1* above at paragraphs 27-32.

⁴See *n1* above at paragraph 8.

⁵Section 41(1) of Immigration Act (a)-(ix); see *1* above at paragraph 6(a)-(c).

⁶See *n1* above at paragraph 34.

⁷*Commercial Stevedoring Agricultural and Allied Workers’ Union and Others v Oak Valley Estates (Pty) Ltd and Another* (CCT 301/20).

⁸See *n1* above at paragraphs 22 to 45.

⁹See *n1* above at paragraphs 71 to 94.

¹⁰See *n1* above at paragraph 99- 101.

¹¹See *n5* above.

¹²See *n1* above at paragraphs 130 to 134.



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