

PRESS RELEASE FOR IMMEDIATE RELEASE

AC2 out to seek justice for Zambian Asylum Seeker rejected based on bias

8 August 2023

Pretoria, South Africa -Case Appearing on the 8th August 2023// Pretoria Magistrates Court Arnold Mulaisho vs Refugee Status Determination Officer, Standing Committee for Refugee Affairs, and Department of Home Affairs

In a groundbreaking legal battle set to take place on the 8th of August 2023, Access Chapter 2 is steadfastly pursuing justice and equality for LGBTI+ asylum seekers in South Africa. The case, featuring Anold Mulaisho from Zambia, is poised to challenge the denial of refugee status based on sexual orientation and gender identity (SOGI).

South African law unequivocally provides for asylum on the basis of persecution related to SOGI, as stipulated in Section 9 of the Constitution – a vital component of the Bill of Rights that secures equality for all, irrespective of nationality or documentation status. Discrimination based on sexual orientation is explicitly prohibited, underscoring the country's commitment to inclusivity and respect for human rights.

The Refugees Act further solidifies the legal basis for seeking protection based on SOGI. To qualify for refugee status, an individual must fear persecution due to their race, religion, nationality, political opinion, or membership in a particular social group, as defined by the act. Crucially, the act recognizes "persons of particular gender, sexual orientation, disability, class, or caste" as part of such a social group.

However, the case of Anold Mulaisho exposes the concerning challenges faced by LGBTI+ asylum seekers seeking protection in South Africa. The Refugee Status Determination Officer (RSDO) denied Anold's application, wrongfully dismissing his sexual orientation based on stereotypes and unfounded presumptions.

The RSDO's refusal to acknowledge Anold's sexual orientation based on community ignorance and the troubling claim that physical pain experienced during a traumatic event negates one's sexual identity showcases the dire need for corrective measures. This blatant disregard for PAJA (Promotion of Administrative Justice Act) and the Constitution's provisions for lawful, reasonable, and procedurally fair administrative action cannot be overlooked.

PAJA mandates that administrative decisions, including RSDO determinations, must be communicated in writing with clear and adequate reasoning. Denial of refugee status without proper explanation effectively hinders the appeal process, undermining the fundamental principles of justice and due process.

Access-Chapter 2 NPC is an organisation based on the South African Constitution which is the Bill of Rights Chapter 2.

VISION: A world where Women and Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI+) people in their diversity have equal Access to Human Rights.

Access Chapter 2 stands resolute in seeking justice for Anold Mulaisho and all other LGBTI+ asylum seekers who face unwarranted discrimination during the asylum application process. We eagerly anticipate the direction hearing before Magistrate Troutner on the 8th of August 2023, where we will fight for the recognition of the rights and dignity of all individuals within South Africa's borders.

The outcome of this case will have far-reaching implications, reinforcing South Africa's commitment to equality, inclusivity, and human rights for all, regardless of sexual orientation and gender identity.

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The name Access Chapter 2 (AC2) is based on the South African Institution – the Bill of Rights: Chapter. AC2 was first registered as a Section 21 Non-Profit Company (NPC) under the Companies Act 2008, then later as a Non-Profit Organisation (NPO) and Public Benefit Organisation (PBO). AC2 was initiated to promoting the human rights and empowerment of women and girls, and LGBTI+ people (Lesbian, Gay, Bisexual, Transgender and Intersex) in all their diversities, facilitate participation of civil society organisations at a local, national, regional and international level by creating space and coordinating platforms for engagement on governance, policy and accountability processes and by developing innovative and active empowerment for transformation knowledge for community systems strengthening and build solidarity within civil society and other various sectors.

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