

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

SCA CASE NO: 1051/2015
NGHC CASE NO: 38429/13

In the matter between:

MINISTER OF HOME AFFAIRS

First Appellant

DIRECTOR-GENERAL, DEPARTMENT OF
HOME AFFAIRS
Appellant

Second

DEPUTY DIRECTOR-GENERAL FOR CIVIC SERVICES

Third Appellant

RONEL KRUGER, N.O.

Fourth Appellant

and

D.G.L.R.

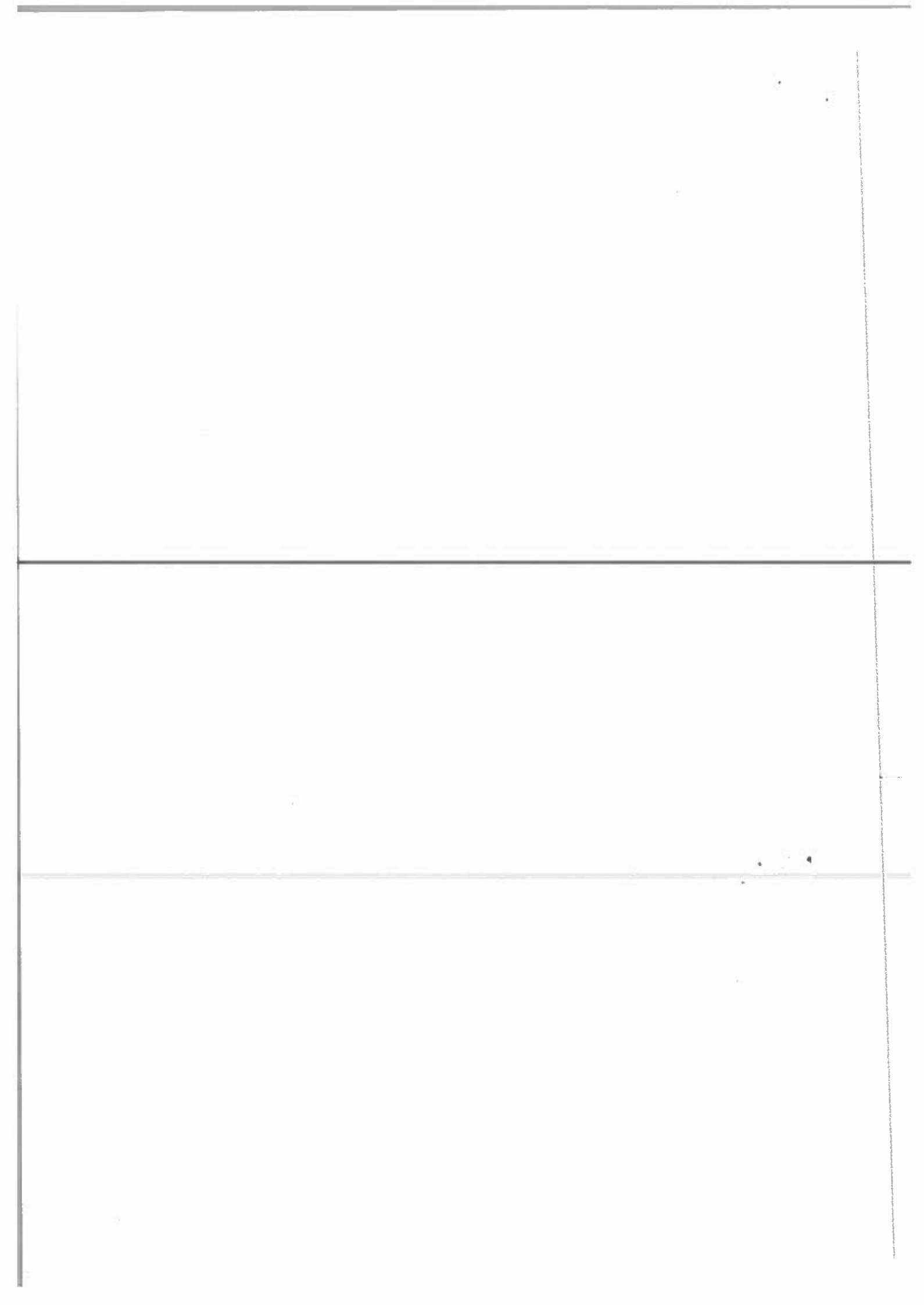
First Respondent

K.M.R.G

Second Respondent

RESPONDENTS' HEADS OF ARGUMENT

INTRODUCTION	2
BACKGROUND FACTS.....	4
THE LEGAL FRAMEWORK RELATING TO CITIZENSHIP	5
DGLR IS A CITIZEN IN TERMS OF SECTION 2(2) OF THE ACT	7
<i>The section 2(2)(a) requirement</i>	8
<i>The section 2(2)(b) requirement</i>	12
THE CONSTITUTIONAL AND INTERNATIONAL LAW IMPLICATIONS	14
<i>The effect of the Constitution</i>	15
<i>The effect of international law</i>	17
AN APPROPRIATE REMEDY.....	20
CONCLUSION.....	23



INTRODUCTION

- 1 This appeal concerns the persistent refusal of the Department of Home Affairs ("the Department") to recognise the legal entitlement of an eight year old girl to South African citizenship.

- 2 The girl concerned ("**DGLR**") is the first respondent in this case and her mother is the second respondent. It is common cause that **DGLR** was born in Cape Town in 2008 to Cuban parents. It is also common cause that she has no Cuban citizenship nor any right to Cuban citizenship. **DGLR** therefore qualified as a South African citizen by birth in terms of section 2(2) of the South African Citizenship Act 88 of 1995 ("the Citizenship Act").

- 3 Yet, the Department has steadfastly refused to recognise her citizenship. This is despite the repeated efforts by **DGLR**'s mother to engage with and apply via the Department, which began as long ago as 2010.

- 4 In the High Court, **DGLR** and her mother sought to review and set aside the refusal of the Minister to recognise **DGLR**'s citizenship. They did so in terms of section 25 of the Citizenship Act (which allows for the review of any decision by the Minister) and in terms of PAJA.

- 5 The Department failed to file opposing papers for more than a year after the application was launched. The application was therefore ultimately decided by the High Court on an unopposed basis.

5.1 The Court upheld **DGLR**'s claim to citizenship and reviewed, set

aside and substituted the Minister's decision. It accordingly directed the Minister to take the necessary steps to reflect that **DGLR** is a citizen,

5.2 Lastly, and in the interest of future cases, the Court directed the Minister to enact regulations to enable the proper implementation of section 2(2) of the Citizenship Act.

6 The Department now appeals against the whole of the High Court judgment and order. It correctly does not complain that the matter was decided on an unopposed basis. However, it contends that, as a matter of law, the High Court erred and that there was no basis to uphold **DGLRs** claim to citizenship.

7 In what follows, we deal with the contentions advanced by the Department and demonstrate that they are without merit. Before doing so, however, we deal with the factual background to this matter.

8 We note that the Department requires condonation from this Court for the late filing of the record. The respondents abide the decision of the Court in this regard. Particularly given the importance of this issue for future cases and the fact that this matter was brought partly in the public interest,¹ the respondents respectfully submit that it would be preferable for this matter to be determined on the merits

¹ Record, pp 11-12, paras 15-17

BACKGROUND FACTS

- 9 In considering the background facts, it is of importance that the Department at no stage filed any answering papers. The facts as pleaded by the respondents must therefore be accepted.
- 10 **DGLR's** parents are Cuban nationals.² Her mother, the second respondent, came to South Africa in 2005 on a treaty programme to work as an engineer.³ Daniela's father joined her in South Africa in 2006.⁴
- 11 **DGLR's** mother was regarded as a "permanent emigrant" under Cuban law due to her absence from the country.⁵ She became a permanent resident of South Africa on 28 January 2011.⁶
- 12 **DGLR** was born in Cape Town on 3 September 2008. Her birth was registered with the Department of Home Affairs and she was issued with an unabridged birth certificate. However, she was not issued with an ID number as both her parents were foreigners.⁷
- 13 Her mother tried to obtain Cuban citizenship for **DGLR**.⁸ However, the Cuban Embassy in South Africa refused to register her birth⁹ stating in April

² Record, pp 12-3, paras 18-9; pp 31-2

³ Record, p 13, para 20

⁴ Record, p 13, para 22

⁵ Record, p 13, para 21

⁶ Record, p 17, para 38

⁷ Record, p 13, para 23

⁸ Record, p 14, para 24

⁹ Record, p 14, para 27;

2010 that **DGUR** did not qualify for Cuban citizenship as her mother had emigrated to South Africa.¹⁰

14 **DGUR**'s mother then tried to get her South African citizenship in terms of the Citizenship Act. After five applications and no response¹¹, the relevant official (the fourth appellant) ultimately indicated on 24 December 2012 merely that *"At this point and time and time the child is not regarded as 'Stateless" and that instead, "the child qualifies to be issued with a Permit for Permanent Residence through the Mother. Once the Permit has been issued to the child the mother can apply for a certificate of Naturalisation for the child."*¹²

15 Further attempts to explain that this was not correct as a matter of law proved fruitless.¹³ Accordingly, the review application was launched on 21 June 2013. After numerous delays due to a lack of response by the appellants¹⁴, the unopposed order was granted on 3 July 2014.¹⁵

¹⁰ Record, p 15, para 31; p 37

¹¹ Record, p 27, para 85

¹² Record, p 20, para 53; p 68

¹³ Record, pp 20-21, paras 54, 55 and 57

¹⁴ Record, pp 81-5

¹⁵ Record, pp 94-6

THE LEGAL FRAMEWORK RELATING TO CITIZENSHIP

16 Section 3 of the Constitution deals with citizenship. It reads:

- "(1) There is a common South African citizenship.*
- (2) All citizens are -*
 - (a) equally entitled to the rights, privileges and benefits of citizenship; and*
 - (b) equally subject to the duties and responsibilities of citizenship.*
- (3) National legislation must provide for the acquisition, loss and restoration of citizenship."*

17 The acquisition of citizenship in South Africa is regulated by the Citizenship Act. The Citizenship Act provides that citizenship can be acquired in three ways:

17.1 Section 2 deals with citizenship by birth. It sets out a number of different situations in which a child attains South African citizenship by means of her birth.

17.2 Section 3 deals with citizenship by descent. It provides for children to attain South African Citizenship upon their adoption.

17.3 Sections 4 and 5 deal with citizenship by naturalisation. They provide for circumstances in which adults (not children) can become citizens by naturalisation. The granting of such citizenship by naturalisation involves a discretion to be exercised by the Minister.

18 In the present case, what is primarily at issue is section 2(2) of the Citizenship Act. It provides as follows:

"Any person born in the Republic and who is not a South African citizen by virtue of the provisions of subsection (1) shall be a South African citizen by birth, if-

- (a) he or she does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality; and*
- (b) his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992 (Act 51 of 1992)."*

19 Section 2(2) therefore provides that a child will be a South African citizen by birth when she meets four requirements:

19.1 She must be born in the Republic;

19.2 ~~She must not be a citizen in terms of section 2(1) (which applies to~~
child whose parent is a South African citizen);

19.3 She must not have the citizenship or nationality of any other country, or a right to such citizenship or nationality; and

19.4 Her birth must have been registered in the Republic in accordance with the Births and Deaths Registration Act.

20 The Department concedes that the first two requirements are met.¹⁶ The case turns therefore on the remaining two requirements. As we explain in what follows, **DGLR** satisfies both requirements.

¹⁶ Appellants' heads, paras 7 and 17

IS A CITIZEN IN TERMS OF SECTION 2(2) OF THE ACT

The section 2(2)(a) requirement

- 21 Section 2(2)(a) provides that a child can only qualify for citizenship under the section if *"he or she does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality"*.
- 22 The section therefore envisages a consideration of whether the child has a the citizenship or nationality *"of any other country"*. It is thus a provision designed to guard against statelessness and to ensure that children born within South Africa and who do not have citizenship claims in other countries are not rendered stateless.
- 23 In considering the position in such other countries, the section refers to *"citizenship or nationality"*. Neither word is defined in the Act.
- 23.1 However, it is clear that the use of both words was to cater for the practical reality that while some foreign countries refer to *"citizenship"*, others prefer to use the term *"nationality"*.
- 23.2 For example, the UNHRC Guidelines on Statelessness state as follows under the heading *"Concept of Nationality"*:

"In assessing the nationality laws of a State it is important to bear in mind that the terminology used to describe a "national" varies from country to country. For example, other labels that might be applied to that status include "citizen", "subject", "national" in French, and "nacional" in Spanish."¹⁷

¹⁷ UNHCR Guidelines on Statelessness No. 1, dated 20 February 2012 at para 45

23.3 Similarly, in dealing with statelessness, the African Committee of Experts on the Rights and Welfare of the Child has stated:

*"Note that the countries with English as an official language often have laws that refer to 'citizenship' rather than 'nationality'. In the context of this General Comment and in international law, the terms citizenship and nationality are used interchangeably."*¹⁸

23.4 For present purposes, therefore, the words "citizenship" and "nationality" have the same meaning.

24 The Department contends that **DGLR** does not meet the condition in section 2(2)(a) because "she does have a right to South African nationality in terms of the Immigration Act because she qualifies for permanent residence and thereafter her mother could apply for her naturalisation."¹⁹

25 This is incorrect in a series of respects.

26 First, the wording of section 2(2)(a) makes clear that the question is whether the applicant has the citizenship or right to citizenship of "any other country" – that is a country other than South Africa.

26.1 It is therefore incorrect to focus, as the Department does in its heads, on whether she has a right to South African citizenship. The whole point of section 2(2) of the Act is to obtain South African citizenship upon birth by showing that the child does not have the

¹⁸ General Comment on Article 6 of the African Charter on the Rights and Welfare of Children", 16 April 2014 at footnote 5

¹⁹ Appellants' heads, paras 22-4

citizenship of another country.

26.2 In the present case, it is common cause that **DGRL** does not have Cuban citizenship or a right to Cuban citizenship. That ought to be the end of the section 2(2)(a) enquiry.

27 Second, even if section 2(2)(a) contemplated looking at whether **DGRL** had some form of or right to South African citizenship, the fact that she may qualify to be a permanent resident does not equate to citizenship or a right to citizenship.

27.1 Permanent residence is dealt with by sections 25 to 28 of the Immigration Act 13 of 2002. Permanent residence is a status that is afforded only to a "foreigner",²⁰ that is "an individual who is not a citizen".²¹

27.2 Moreover, section 25(1) of the Immigration Act provides that:

"The holder of a permanent residence permit has all the rights, privileges, duties and obligations of a citizen, save for those rights, privileges, duties and obligations which a law or the Constitution explicitly ascribes to citizenship."

27.3 A person who has permanent residence in South Africa is thus not a South African citizen or national. Such a person is a foreigner who happens to have been afforded the status of permanent resident.

28 Third, the Department raises the spectre of some future application by

²⁰ Sections 25(2), 26 and 27 of the Immigration Act

²¹ Section 1 of the Immigration Act

DGLR for citizenship by naturalisation. Again, even if section 2(2)(a) contemplated looking at whether **DGLR** had some form of or right to South African citizenship, this is no answer.

- 28.1 Citizenship by naturalisation is governed by sections 4 and 5 of the Citizenship Act.
- 28.2 But a person can only obtain citizenship by naturalisation upon becoming an adult. This is made clear by sections 4(3) and 5(1)(a) of the Citizenship Act.
- 28.3 In other words, the Department's argument is in effect that **DGLR** must spend the next ten years of her life without any nationality and only become a citizen upon turning 18. That is inconsistent with the clear wording and intent of section 2(2) of the Citizenship Act. As we demonstrate below, it is also inconsistent with **DGLR** rights under sections 28(1)(a) and 28(2) of the Constitution and with the international law on statelessness.
- 28.4 Indeed, it appears that the naturalisation approach is not even open to a person who lacks citizenship of any country, as **DGLR** would do on the Department's approach. Section 5(1)(h) of the Citizenship Act provides that a person may only be granted citizenship by naturalisation where she is a citizen of country that allows dual citizenship or where the person renounces citizenship of the country concerned. It contemplates that one must first have citizenship of another country.

28.5 Lastly, and in any event, no person has a "right" to citizenship by naturalisation. Sections 4 and 5 of the Citizenship Act both provide merely for a right to "apply" to the Minister for citizenship by naturalisation and then confer on the Minister a discretion regarding whether to grant such naturalisation by taking into account factors such as whether the applicant "is of good character".²² This cannot be regarded as a right to citizenship as contemplated in section 2(2)(a).

29 We therefore submit that **DGLR** satisfies the requirements of section 2(2)(a) of the Act.

The section 2(2)(b) requirement

30 Section 2(2)(b) of the Citizenship Act provides that a child only qualifies for citizenship if "his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992."

31 The Department contends that **DGLR** does not satisfy this requirement because, although her birth was duly registered and an unabridged birth certificate was issued, that birth certificate had no identity number.²³

32 However, there is nothing in the Birth and Deaths Act that requires that, to be valid, the registration of a birth involves the allocation of an identity number.

²² Section 5(1)(d)

²³ Appellants' heads, para 26

32.1 On the contrary, the Births and Deaths Act expressly applies to children born of all citizens and non-citizens, including non-citizens whose children would have no claim to South African citizenship at all. Section 2 of that Act provides:

"The provisions of this Act shall apply to all South African citizens, whether in the Republic or outside the Republic, including persons who are not South African citizens but who sojourn permanently or temporarily in the Republic, for whatever purpose."

32.2 It deals with such non-South African citizen parents as follows in section 5(3):

"In the case of a non-South African citizen who sojourns temporarily in the Republic, particulars obtained from documents mentioned in subsection (1)(a) shall not be included in the population register and the issuing of a certificate in respect of such particulars is the registration thereof."

32.3 Thus, when the Department issued **DGUR** with an unabridged birth certificate in 2008, it constituted proof of the registration of her birth and complied with the formalities of the Act.

32.4 Moreover, section 9 of the Births and Deaths Registration Act deals with the duty of a parent to register the birth of a child. It contains no provision at all which requires the issuing of an identity number. Rather, the registration of births in section 9 is focussed on the child having a forename and surname assigned to him or her.²⁴ The assigning of identity numbers is instead dealt with under the Identification Act 68 of 1997.

²⁴ Section 9(6) of the Births and Deaths Registration Act

- 33 Therefore, the absence of an identity number cannot change the fact that **DGLR**'s birth was duly registered in terms of the Births and Deaths Act.
- 34 Lastly, it hardly lies in the Department's mouth to rely on the absence of the identity number. It was the self-same Department that registered **DGLR**'s birth. If it ought to have issued an identity number and failed to do so, this cannot render lawful its later refusal to acknowledge Daniela's citizenship.
- 35 We therefore submit that **DGLR** satisfies the requirements of section 2(2)(b) of the Act.

THE CONSTITUTIONAL AND INTERNATIONAL LAW IMPLICATIONS

36 As we have explained above, on the clear wording of section 2(2) of the Citizenship Act and on the common cause facts, **DGRL** is entitled to citizenship.

37 However, were there any doubt on this score, it is resolved by reference to the Constitution and international law. It is trite that wherever reasonably possible, all statutes must be interpreted in a manner that best promotes the provisions of the Bill of Rights²⁵ and the principles of international law.²⁶

The effect of the Constitution

38 Section 28(1)(a) of the Constitution is emphatic. It provides that "*Every child has the right ... to a name and a nationality from birth.*"

38.1 Yet, the effect of the Department's approach and interpretation would be to deny **DGRL** that right. The Department's case appears to be that **DGRL** must continue without any nationality until she turns 18, at which point the Minister will exercise his discretion regarding whether to grant her citizenship by naturalisation.

38.2 That is patently inconsistent with section 28(1)(a) of the Constitution. **DGRL** is entitled to a nationality "*from birth*". She cannot be

²⁵ Section 39(2) of the Constitution and *Arse v Minister of Home Affairs* 2012 (4) SA 544 (SCA) at para 10

²⁶ Section 233 of the Constitution and *National Commissioner of Police v South African Human Rights Litigation Centre* 2015 (1) SA 315 (CC) at para 15

expected to wait until 18, still less to wait for nothing more than a mere right to apply for naturalisation.

39 Section 28(2) of the Constitution provides that "A child's best interests are of paramount importance in every matter concerning the child."

39.1 It is now well established that this provision fulfils two separate roles. The first is as a guiding principle in each case that deals with a particular child. The second is as a standard against which to test provisions or conduct which affect children in general.²⁷

39.2 In the present matter, the Department's stance and its interpretation of the Citizenship Act is not in the best interests of **DGLR**. On the contrary, it has a range of negative impacts on her.

39.2.1 Because she is not a citizen of South Africa, **DGLR** does not benefit from the constitutional right to a passport and to enter, remain in and reside anywhere in the Republic.²⁸

39.2.2 Indeed, because she is not a citizen of any country, **DGLR** cannot obtain a passport at all. She therefore cannot travel outside the country.

39.2.3 This has an immediate practical impact. When **DGLR's** mother is required to travel outside the country, she is prevented from fulfilling her role as primary caregiver and

²⁷ *Teddy Bear Clinic for Abused Children & Another v Minister of Justice & Constitutional Development & Another* 2014 (2) SA 168 (CC) at para 69

²⁸ Sections 21(3) and (4) of the Constitution

she and **DGLR** must be separated, as she is unable to take **DGLR** with her.

39.2.4 **DGLR** is in a legally precarious position. If her parents were to die, **DGLR** would be left stateless and with no country to protect her fundamental rights.

40 The approach and interpretation urged by the Department are therefore not consistent with sections 28(1)(a) and 28(2) of the Constitution.

The effect of international law

41 South Africa ratified the UN Convention of the Rights of the Child ("the CRC") on 16 June 1995.²⁹

41.1 The CRC is the foremost international treaty that governs that rights of children.

41.2 Article 7 is of particular importance. It provides:

"1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."³⁰

²⁹ See: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsq_no=IV-11&chapter=4&lang=en. Accessed on 25 February 2016

³⁰ Emphasis added

42 South Africa is also bound by its obligations in terms of the African Charter on the Rights and Welfare of the Child ("the African Children's Charter").

42.1 South Africa ratified the African Children's Charter on 7 January 2000.³¹

42.2 Article 4 deals with the right to a name and nationality. It states that:

1. *Every child shall have the right from his birth to a name.*
2. *Every child shall be registered immediately after birth.*
3. *Every child has the right to acquire a nationality.*
4. *States Parties to the present Charter shall undertake to ensure their Constitutional legislation recognise the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.*

43 The effect of these obligations is demonstrated further by a decision handed down by the African Committee of Experts on the Rights and Welfare of the Child.³²

43.1 The case³³ concerned children of Nubian descent in Kenya who were unable to be registered at birth which prevented them from accessing nationality and often left them stateless.

43.2 The complainants alleged that even when birth certificates were issued, they did not confer nationality. They alleged that children of

³¹ See: <http://www.achpr.org/instruments/child/ratification/>. Accessed on 25 February 2016

³² ACERWC monitors the African Charter on the Rights and Welfare of the Child. It is the only child rights treaty monitoring body with the mandate to hear and determine cases of violations of children's rights.

³³ *IHRDA & OSJI (On Behalf of Children of Nubian Descent in Kenya) v Kenya – Decision: No 02/Com/002/2009*

Nubian descent were often left to wait until they turned 18 to apply to acquire nationality.

43.3 The African Committee held that this was a violation of the African Children's Charter:³⁴

"A purposive reading and interpretation of [Article 6.1] strongly suggests that, as much as possible, children should have a nationality beginning from birth. Moreover, this interpretation is further supported by the UN Human Rights Committee that indicated: "States are required to adapt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born".... [T]he practice of making children wait until they turn 18 years of age to apply to acquire a nationality cannot be seen as an effort on the part of the State Party to comply with its children's rights obligations."

43.4 The African Committee went further to add:³⁵

"Although states maintain the sovereign right to regulate nationality ... states are limited in their discretion to grant nationality by their obligations to guarantee equal protection and to prevent, avoid, and reduce statelessness."

44 The position under international law is therefore clear. South Africa was and is obliged to enact legislative measures to prevent children becoming stateless. In particular, it was and is obliged to ensure that a child born in South Africa who had no other nationality attained South African nationality and that she did so upon her birth – not when she turned 18.

45 Parliament quite properly fulfilled its obligations in this regard by enacting section 2(2) of the Citizenship Act.

³⁴ At para 42 of the judgment

³⁵ At para 48

46 Regrettably and inexplicably, the Department has now failed to adhere both to its statutory obligations and its international obligations. Its failure to do so is unlawful.

AN APPROPRIATE REMEDY

47 The Department argues that the High Court ought not have granted an order of substitution and ought instead have remitted the matter back to the Department for consideration.³⁶ It advances two main contentions:

47.1 An absence of exceptional circumstances in terms of section 8 (1)(c)(ii)(aa) of PAJA; and

47.2 That section 25 of the Citizenship Act does not allow the court a quo to decision of the Minister with that of its own.³⁷

48 This submission is without merit. The order of substitution and declaratory relief was perfectly correct.

48.1 Section 2(2) of the Citizenship Act does not vest in the Department any discretion regarding whether to grant citizenship. On the contrary, the section makes clear that a child who meets the requirements of the section "*shall be a South African citizen by birth*". There was accordingly, no need to refer the matter back to

³⁶ Appellants' heads, p 33, para 48-

³⁷ Appellants' heads, p 34, para 51

the Minister and no separation of powers concern that arose from the order.

48.2 Moreover, even if there were any Ministerial discretion, this case meets the classic requirements for substitution – a lengthy and prejudicial delay caused by the administrator; the court being in as good a position as the administrator to decide the matter; and the matter being a foregone conclusion.³⁸ As the Constitutional Court explained recently in respect of the test under section 8(1)(c)(ii)(aa) of PAJA:

*"[T]here are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. These may include delay, bias or the incompetence of an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a consideration of fairness to all implicated parties."*³⁹

48.3 It cannot be seriously contended that in this case, involving the constitutional rights of a vulnerable child, it would be "just and equitable" to refer the matter back to the Department and cause further delay.

48.4 It is accordingly unnecessary for **DGLR** to rely on section 25 of the Citizenship Act for the remedy granted by the High Court. But in any

³⁸ See: *Gauleng Gambling Board v Silverstar Development Ltd and Others* 2005 (4) SA 67 (SCA)

³⁹ *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* 2015 (5) SA 245 (CC) at para 47

event, that section is sufficiently broad to allow for the order granted, given that it empowers a court to “confirm, vary or set aside” a decision of the Minister.

49 Lastly, the High Court directed the Department to enact regulations to give effect to section 2(2) of the Citizenship Act. That order was justified.

49.1 Section 23(f) of the Citizenship Act permits the Minister to make regulations on all matters which are required or permitted to be prescribed or which he considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved or that this Act may be effectively administered.

49.2 It is, however common cause, that despite the importance of section 2(2):⁴⁰

49.2.1 There is no clear application procedure and form to obtain recognition of the citizenship conferred by the section; and

49.2.2 There is a real lack of awareness and knowledge of this provision by officials at the Department.

49.3 This impedes the proper carrying out of section 2(2) of the Citizenship Act and prevents people from properly exercising their rights. The Department should therefore be directed to enact at least the necessary form to enable people to obtain recognition of their citizenship under section 2(2).

⁴⁰ Record, pp 11-12, para 15 and pp 27-28, paras 84-89

49.4 The High Court did not specify a time period for the making of the regulations,⁴¹ but its order must be read as requiring this to be done within a reasonable time. To the extent necessary, this Court can impose a specific time period in this regard.

CONCLUSION

50 We therefore submit that the appeal falls to be dismissed with costs, including the costs of two counsel.

STEVEN BUDLENDER
USHA DAYANAND-JUGROOP
Counsel for the Respondents

Chambers
Johannesburg
2 March 2016

⁴¹ It required the regulations to be made "*within a time period that the Court deems reasonable*" – see Record, p 95, para 4(d)

LIST OF AUTHORITIES

South African cases

Arse v Minister of Home Affairs 2012 (4) SA 544 (SCA)

National Commissioner of Police v South African Human Rights Litigation Centre 2015 (1) SA 315 (CC)

Teddy Bear Clinic for Abused Children & Another v Minister of Justice & Constitutional Development & Another 2014(2) SA 168 (CC)

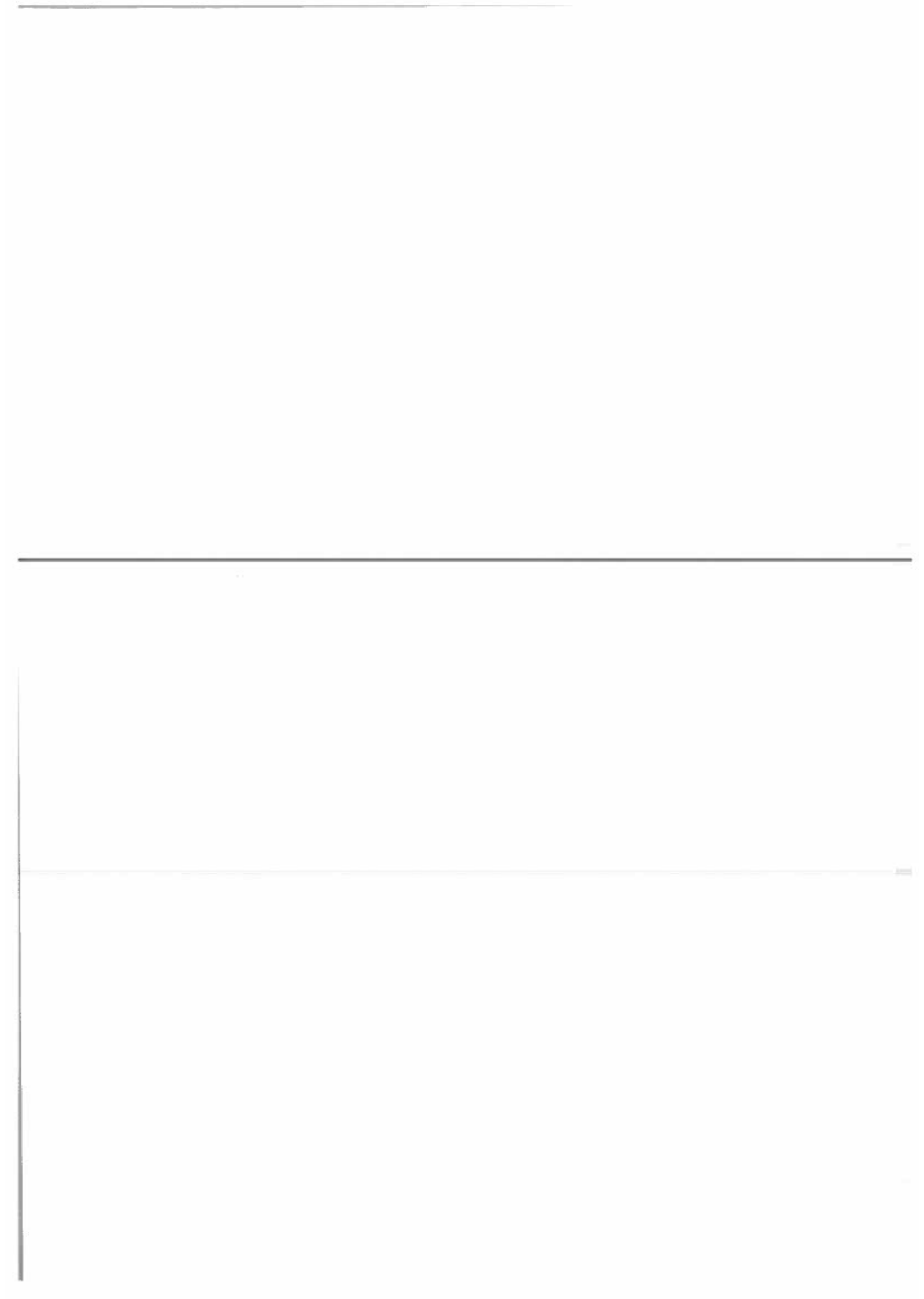
Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd & Another 2015 (5) SA 245 (CC)

Other authorities

General Comment on Article 6 of the African Charter on the Rights and Welfare of Children", 16 April 2014

IHRDA & OSJI (On Behalf of Children of Nubian Descent in Kenya) v Kenya – Decision: No 02/Com/002/2009

UNHCR Guidelines on Statelessness No. 1, 20 February 2012



IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

SCA CASE NO:

NGHC Case No: 38429/13

In the matter between:

MINISTER OF HOME AFFAIRS

First Appellant

**DIRECTOR-GENERAL, DEPARTMENT OF
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Second Appellant

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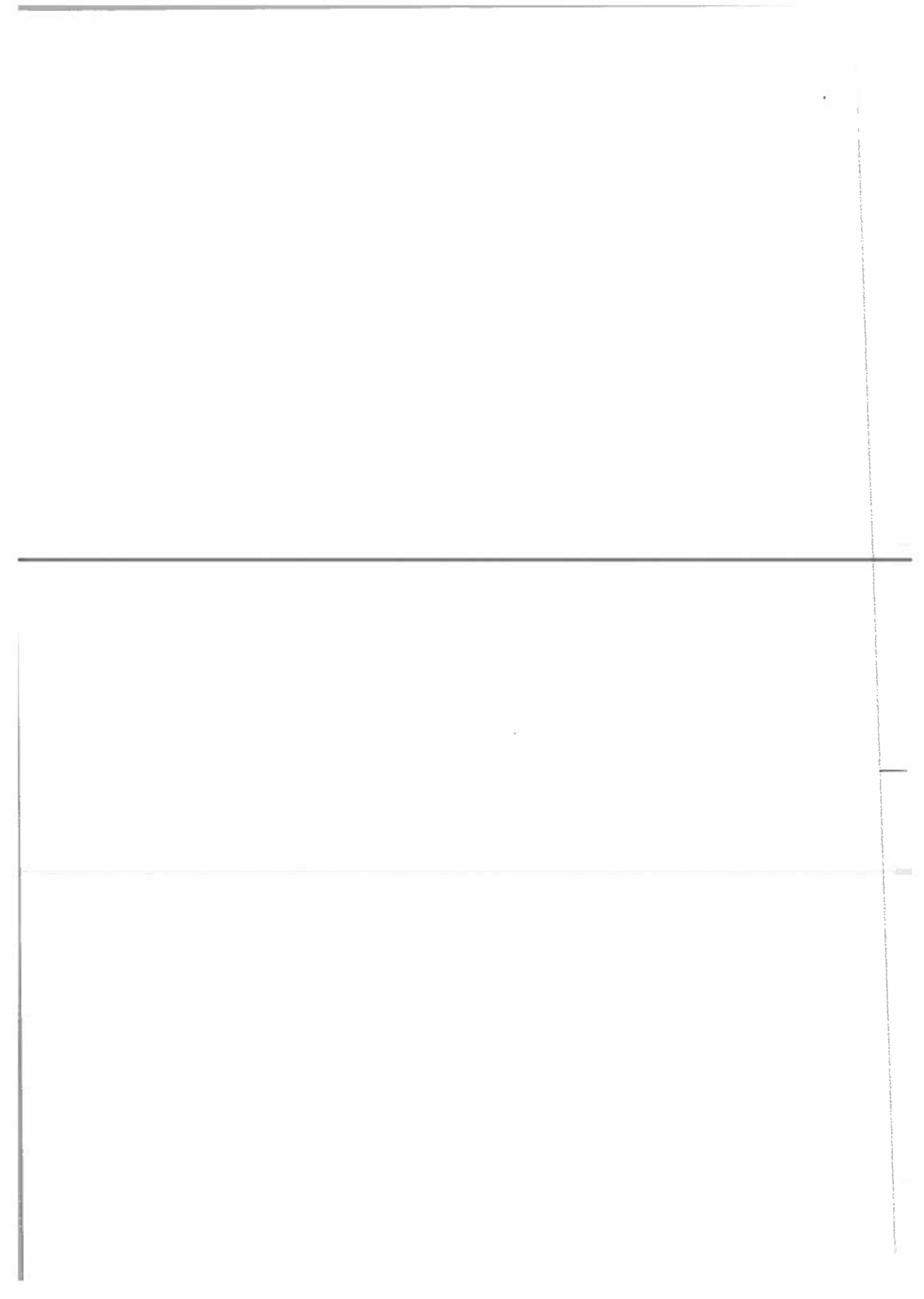
D.G.L.R.

First Respondent

K.M.R.G

Second Respondent

RESPONDENTS' CHRONOLOGY



DATE	EVENT	RECORD
2005	Second respondent comes to South Africa on a treaty programme	Record: p 13, para 20
2006	Second respondent dismissed from treaty programme. Remains in South Africa. Husband joins her.	Record: p 13, paras 21-2
3 September 2008	First respondent is born in Cape Town. Her birth is registered with Home Affairs.	Record: p 13, para 23; Annexure "DR3", p 33
18 August 2009	Second respondent goes to Cuban embassy to obtain citizenship for first respondent. Embassy refuses to register her	Record: p 14, para 27
8 April 2010	Letter from Cuban embassy stating that first respondent cannot obtain Cuban citizenship	Record: p 15, para 31; Annexure "DR6", p 37
26 April 2010	Second respondent applies for citizenship for first respondent	Record: p 15, para 33
9 June 2010	Second respondent makes second application for citizenship for first respondent	Record: p 16, para 35; Annexure "DR7", p 38
28 January 2011	Second respondent becomes a permanent resident	Record: p 17, para 38; Annexure "DR9", p 40
30 April 2011	Second respondent applies for permanent residence for first respondent	Record: p 16, para 37
February 2012	Second respondent makes second application for permanent residence for first respondent	Record: p 17, para 39; Annexure "DR10", pp 41-2
7 July 2012	Application for citizenship by naturalisation is rejected. Second respondent appeals decision.	Record: pp 17-8, paras 41-2; Annexure "DR11" p 43; Annexure "DR12", p 44
16 July 2012	Second respondent makes third application for permanent residence for first respondent	Record: p 18, para 43; Annexure "DR13", p 45
14 August 2012	First respondent is issued with a transit travel document by Cuban embassy to travel to Cuba	Record: p 18, para 44; Annexure "DR14", pp 46-7
5 December 2012	Respondents' attorneys send	Record: p 20, para 52;

	letter to appellants requesting that she be registered as SA citizen	Annexure "DR16", pp 49-67
24 December 2012	Decision by fourth appellant stating that first respondent is not stateless	Record: p 20, para 53; Annexure "DR17", p 68
18 January 2013	Attorneys write to fourth appellant	Record: p 20, para 54; Annexure "DR18", p 69
6 February 2013	Attorneys request meet with citizenship section officials	Record: p 21, para 55; Annexure "DR19", pp 70-2
19 March 2013	Attorneys send letter of demand to appellants	Record: p 21, para 56; Annexure "DR20", pp 73-5
2 April 2013	Appellants' write that matter has been referred to third appellant.	Record: p 21, para 57; Annexure "DR21", p 76
21 June 2013	Respondents issue review application	Record: p 1
19 July 2013	Appellants file notice to oppose	Record: p 82, para 3
25 July 2013	Attorneys write to state attorney to file Rule 53 record	Record: p 84; para 9
November-December 2013	Respondents' attorney meets with Home Affairs officials. Told that they won't implement section 2(2) of Act.	Record: pp 82-3, paras 5-6
27 January 2014	Rule 30A order served on appellants compelling them to file Rule 53 record	Record: p 83, para 7
3 July 2014	Unopposed order granted by Matojane J	Record: pp 94-6
18 July 2014	Appellants apply for leave to appeal	Record: pp 97-101
21 July 2014	Appellants request written reasons for order made	Record: pp 105-6
11 March 2015	Matojane J hands down reasons given for order .	Record: pp 137-42
19 March 2015	Order granting leave to appeal	Record: p 143