

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

(1)	REPORTABLE: ☒ YES / NO
(2)	OF INTEREST TO OTHER JUDGES: ☒ YES / NO
(3)	REVISED.
<u>12.6.2013</u> DATE	
 SIGNATURE	

12/6/2013

Case number: 58855/2012

In the matter between : -

BUSANGANI PETROS SIBUSISO NHLABATHI

Applicant

and

DEPARTMENT OF HOME AFFAIRS
MINISTER OF HOME AFFAIRS

First Respondent
Second Respondent

JUDGEMENT

JANSE VAN NIEUWENHUIZEN AJ

[1] The applicant claims the following relief against the respondent:

- "1. That the first and second respondent be ordered to restore the applicant's status as a South African citizen;
2. That the first and second respondent be ordered to issue the applicant with a new identity book;
3. That the first and second respondent be ordered to issue the applicant with a new identity book;(sic!)
4. That the first and second respondent pay the applicant's costs of this application;
5. Further and/or alternative relief."

FACTS AND APPLICABLE LEGISLATION

[2] It is clear from the affidavits filed herein that the applicant was born in South Africa and that his mother was at the time, a South African citizen.

- [3] In terms of the provisions of section 2 (1)(a) of the South African Citizenship Act, 88 of 1995 ("the Act"), the applicant was, in the circumstances, a South African citizen by birth.
- [4] The applicant lost his citizenship in or about 1983, in terms of section 6(1) of the Act, when he became a citizen of Swaziland. His status is confirmed on a "Fingerprint Form: Foreign Black Males" dated 15 September 1989, attached to the respondent's answering affidavit.
- [5] The applicant explains that employment agencies in South Africa during the 1980's, preferred labourers from neighbouring countries, which resulted in his change of status.
- [6] The applicant returned to South Africa in or about 1984 and has been living in South Africa ever since.
- [7] In the premises, the applicant may, in terms of the provisions of section 13 of the Act, apply to the second respondent for the resumption of his former South African citizenship.

CONCLUSION

[8] The application is therefore premature.

COSTS

[9] Ordinarily, a successful party will be awarded the costs of the application. A court, however, has a discretion to make any cost order it deems fit. The conduct of the parties prior to and during the litigation are factors to be taken into account in considering an appropriate cost order.

[10] The applicant's journey to rectify his status started during May 2010 at the Home Affairs offices in Carltonville. I pause to mention that the first respondent did not see it fit to advise the applicant of the change in his status.

[11] The applicant, being unaware of the change in his status, therefore, proceeded to the Carltonville offices to obtain a new passport. After scanning his thumb, he was told that, according to the system, he is an illegal immigrant.

[12] No one at the Carltonville offices could provide any reason for the change in the applicant's status and he was referred to the offices in Piet Retief, where he obtained his first identity document.

- [13] At the Piet Retief offices, the applicant was advised of the reason for the change in his status and was referred to the first respondent to reverse "the freezing" of his citizenship.
- [14] The applicant applied and was issued with a birth certificate and armed with his birth certificate the applicant returned to the Carltonville offices. He was given the assurance that the officials at Carltonville Home Affairs will look into the matter and told to visit the offices regularly to check his status.
- [15] Notwithstanding frequently visits to the Carltonville offices, the applicant's problem was not solved. The applicant became understandable desperate and decided to address a letter to the Director-General of the first respondent. In the letter, dated 12 August 2010, the applicant explained his predicament and requested urgent help from the first respondent. He did not receive the courtesy of a reply.
- [16] In early 2011, the applicant sent an e-mail to the offices of the first respondent and was advised that the matter is receiving attention. Nothing transpired.
- [17] In order to speed up the process, the applicant was given the telephone number of a certain Mr Mkhize. Mr Mkhize promised to report back to the

applicant. This never happened. The applicant wrote a letter to Mr Mkhize, which, once again, went unanswered.

[18] Some time thereafter the applicant was interrogated by officials of the first respondent at the Carltonville offices. Subsequent to the interrogation, the applicant was provided with a toll free number and told to call the number in order to solve his status problem.

[19] His problem was not resolved and he turned to the Wits Law Clinic for assistance. Wits Law Clinic, once again, addressed a letter to the first respondent. Not surprisingly, the letter, went unanswered.

[20] Due to the first respondent's absolute disregard for the applicant's predicament, this application was launched on or about 12 October 2012.

[21] In the application, the applicant explained that he transport people cross-boarder and without a passport he was without an income and could not support his family. In view of his status as an illegal immigrant, the applicant's presence in South Africa is precarious and he lives with the daily threat of deportation.

- [22] The applicant's right to freedom of movement, dignity, security of tenure and ability to earn an income is violated by the first respondent's flippant disregard for his plight.
- [21] To make matters worse, the first respondent admits all these facts without tendering any explanation, whatsoever, for its dismal behaviour.
- [23] I am dismayed at the treatment meted out to the applicant by the first respondent. Every person in the Republic is entitled to be treated with the necessary respect. Officials at the respondent are appointed to serve the public at large. It should not be necessary for any person to approach the court, because officials do not do their work.
- [24] Lastly, the first respondent's conduct in the present litigation left much to desire.
- [25] Notwithstanding the applicant's baptismal certificates, his mother's evidence under oath, the wealth of copies of identity documents and passports issued by the first respondent to the applicant in the past, the first respondent maintains that the applicant was never a South African citizen. This averment is without any factual basis and demonstratively wrong.

[26] The Act is one of the pieces of legislation that prescribes the functions of the first respondent. Yet, no one in the employment of the first respondent, advised the applicant of his remedies in terms of the Act.

[27] As a mark of my displeasure with the first respondent's conduct, I am not granting a cost order in favour of the respondents.

ORDER:

The application is dismissed.


N Janse van Nieuwenhuizen
Acting Judge of the North Gauteng High Court, South Africa

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