



**IN THE HIGH COURT OF SOUTH AFRICA**

**(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

③ REVISED.

12/11/2019  
DATE

SIGNATURE

Case Number: 66844/16

In the matter between:

**ANTHONY OKEY NWAFOR**

Applicant

and

**MINISTER OF HOME AFFAIRS**

First Respondent

**DIRECTOR-GENERAL: HOME AFFAIRS**

Second Respondent

**DEPARTMENT OF HOME AFFAIRS**

Third Respondent

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JUDGMENT

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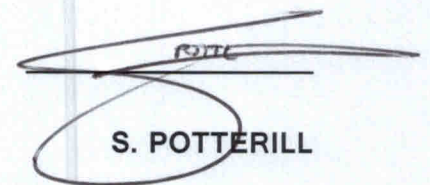
**POTTERILL J**

- [1] Before me is an application for leave to appeal.
- [2] In oral argument three main points with regard to why another court would come to another conclusion was raised.
- [3] Reliance was placed on the principle of legality with relevance to the delegation point raised. The delegation point was not raised as a ground of review in the application, but in the supplementary affidavit not before court. In oral argument a new point was raised; who in fact took the decision, the Minister or the Director-General. A further point was taken that no documentary delegation was before court. This is once again a new point raised, not raised as a ground of review or canvassed before the court. No issue is taken with the court's finding on whether the Minister could delegate the powers to the Director-General. The Director-General or the Minister could thus have taken the decision and this point has no merit, need not be addressed and is to be dismissed.
- [4] The next point raised was also not raised as a review ground or argued in court before me. This point was that the children's citizenship could not have been deprived. This new point cannot be raised on appeal for the first time and accordingly should be dismissed. In any event, no ground has been raised that section 18(2) of the

Constitution has not been complied with in that the children are not without care or that they cannot follow the father's citizenship.

[5] The further point raised was that the abandonment of Constantinides AJ's judgment is against public policy. This point is laboured. A party can abandon a judgment and specifically a judgment that ruled that the matter was referred to oral evidence. It could never be against public policy to abandon such non-appealable judgment. The applicant chose as the *dominus litis* party not to utilise *viva voce* evidence, but to use the application procedure. In no way can this be contrary to public policy.

[6] I am satisfied that no other court will come to another conclusion and accordingly the application for leave to appeal is dismissed with costs.



S. POTTERILL

JUDGE OF THE HIGH COURT

CASE NO: 66844/16

HEARD ON: 8 November 2019

FOR THE APPLICANT: ADV. D. MPOFU SC

INSTRUCTED BY: Tshuketana Loselo Inc

FOR THE RESPONDENTS: ADV. M.H. MHAMBI

INSTRUCTED BY: State Attorney, Pretoria

DATE OF JUDGMENT: 12 November 2019