



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 219/14

In the matter between:

MINISTER OF HOME AFFAIRS

First Applicant

DIRECTOR-GENERAL, HOME AFFAIRS

Second Applicant

MILLICENT MOTSI

Third Applicant

MARTIN JANSEN

Fourth Applicant

and

BRENT DERECK JOHNSON

First Respondent

LOUISE HENRIKSON EGEDAL-JOHNSON

Second Respondent

SAMUEL BARRY EGEDAL-JOHNSON

Third Respondent

And in the matter between:

MINISTER OF HOME AFFAIRS

First Applicant

DIRECTOR-GENERAL, HOME AFFAIRS

Second Applicant

and

CHERENE THERESE DELORIE

First Respondent

DAVID ROSS HENDERSON

Second Respondent

DYLAN JOURDAN HENDERSON

Third Respondent

LOGAN JED HENDERSON

Fourth Respondent

Neutral citation: *Minister of Home Affairs and Others v Johnson and Others; Minister of Home Affairs and Another v Delorie and Others* [2015] ZACC 8

Coram: Mogoeng CJ, Moseneke DCJ, Cameron J, Froneman J, Jappie AJ, Khampepe J, Madlanga J, Molemela AJ, Nkabinde J, Theron AJ and Tshiqi AJ

Judgments: The Court

Decided on: 24 March 2015

Summary: Appeal against a High Court order granting temporary relief — declaration of persons as “undesirable persons” — no requirements met to justify hearing an appeal against an order granting temporary relief — application for leave to appeal dismissed — no order as to costs

ORDER

On appeal from the Western Cape Division of the High Court, Cape Town:

1. The application is dismissed with costs.

JUDGMENT

THE COURT:

[1] This is an application for leave to appeal against an order granted on grounds of urgency by Yekiso J in the Western Cape Division of the High Court, Cape Town (High Court). The first and second applicants, the Minister of Home Affairs and

Director-General of Home Affairs (Minister and Director-General, respectively), contend that the order impermissibly encroaches on their executive authority, by effectively rendering the provisions of section 7(2) of the Promotion of Administrative Justice Act¹ obsolete and by creating a precedent that allows for internal remedies under the Immigration Act² (Act) to be bypassed.

[2] The High Court order does not, however, have these deleterious effects and it is thus not in the interests of justice to grant leave to appeal. This judgment briefly explains why not.

[3] The High Court order related to two applications with similar facts. The two applications concerned Louise Hendrickson Egedal-Johnson (Mrs Johnson) and David Ross Henderson (Mr Henderson), both of whom overstayed the periods their temporary residence permits granted them under the Act. Before the implementation of the new legal regime that declared each of them an “undesirable person” under the Act,³ they could have left the country and applied from outside for a fresh permit if they had failed to obtain a residence permit while in South Africa. The only consequence was an administrative fine.⁴ The new legal dispensation, however, precludes them from following that route.⁵ Being declared an “undesirable person” precludes each of them from being granted a temporary permit to return to South Africa.⁶

[4] In each application Mrs Johnson and Mr Henderson were holders of previous temporary residence permits. When leaving on an overseas trip, they were both issued with a notice at the airport passport control. These notices declared them each to be an “undesirable person” under the Act, although they were both married to South African citizens. The effect of all this was that both of them were prevented from

¹ 3 of 2000.

² 13 of 2002.

³ Section 30(1)(h) of the Act.

⁴ See section 50(1) of the Act and regulation 35(1) of the Immigration Regulations, GN R 616 GG 27725, 27 June 2005.

⁵ Regulation 39(1) of the Immigration Regulations, GN R 413 GG 37679, 22 May 2014.

⁶ Sections 10(4) and 30(1) of the Act.

returning to South Africa. In respect of Mrs Johnson, this included her very young child born of her marriage, who was then separated from the father. In respect of Mr Henderson, he found himself separated from his wife and two children.

[5] The relief sought in the applications consisted of two parts. In part A urgent relief was sought to allow the respective spouses and the child to return to the country and to direct the Minister and Director-General to accept and process the internal appeal against the declaration of undesirability, pending either its determination or the final determination of the relief sought in part B. In part B, the respondents sought declarations to invalidate the legal instruments by which the new legal dispensation relating to undesirability were brought into being, together with orders asking for the review and setting aside of the individual declarations of undesirability.

[6] Only part A of the relief sought was dealt with in the High Court order.⁷ In both matters the order suspended the operation of the directive allowing the declaration of undesirability and of the individual declarations relating to Mrs Johnson and Mr Henderson.⁸ The order allowed them to return to the country subject to reasonable conditions prescribed by the Director-General. Part B of the relief sought was postponed for later determination.

[7] The order was only temporary in nature and did not finally dispose of any factual or legal issues. The validity of the new legal dispensation was to be decided in part B of the relief sought in the applications. The temporary relief granted was specifically directed at Mrs Johnson and Mr Henderson and there was no general suspension of the new legal dispensation in respect of other persons. None of the requirements that would justify hearing an appeal against the granting of temporary

⁷ *Johnson and Others v Minister of Home Affairs and Others; In Re: Delorie and Others v Minister of Home Affairs and Another* [2014] ZAWCHC 101 at para 47.

⁸ *Id.*

relief set out by this Court in *OUTA*⁹ has thus been met.¹⁰ It is therefore not in the interests of justice to hear this matter.

Order

[8] The following order is made:

1. The application is dismissed with costs.

⁹ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (*OUTA*).

¹⁰ *Id* at paras 41 and 44-7.

CCT 219/14 Minister of Home Affairs and Others v Johnson and Others

For the Applicants: S Karjiker Attorneys instructed by the State Attorney.

For the Respondents: Craig Smith and Associates.

CCT 219/14 Minister of Home Affairs and Another v Delorie and Others

For the Applicants: S Karjiker Attorneys instructed by the State Attorney.

For the Respondents: Fairbridges Attorneys.