

TAX

The Supreme Court of Appeal steps in to protect the rights of dual-citizens

5 July 2023 2 min read

Many South Africans were unaware that, until 13 June 2023, if they acquired citizenship in another country (other than by birth) they would lose their South African citizenship. It was possible for them to apply to the Department of Home Affairs (“**DHA**”) to retain their citizenship, before acquiring citizenship in the other country, but many did not make this application because they did not know that they would lose their citizenship.

This is exactly what happened to Phillip Plaatjes, who married a British citizen, and obtained British citizenship after completing two years’ residence in the United Kingdom. He was the subject of an application by the Democratic Alliance (“**DA**”) to declare section 6(1)(a) of the Citizenship Act unconstitutional. On 13 June, the Supreme Court of Appeal in *Democratic Alliance v The Minister of Home Affairs* and another (67/2022) [2023] ZASCA 97 (13 June 2023) declared section 6(1)(a) of the Citizenship Act invalid, finding that the section:

- was irrational, because the government gave no justification for the automatic loss of South African citizenship, just because a person has acquired citizenship in another country;
- the loss of citizenship also unjustifiably impacted other rights associated with citizenship (such as residency, the right to vote and freedom of trade, occupation and profession).

In making its order, the Supreme Court of Appeal also took the positive step to retrospectively reinstate the citizenship of any person who was deprived of their South African citizenship because of this section.

The Constitutional Court will have to confirm the Supreme Court’s invalidation of section 6(1)(a) of the Citizenship Act. This is not a foregone conclusion given that the High Court had initially dismissed the DA’s application. In my view, High Court erred in ruling that section 3(3) of the Constitution, which requires that national legislation must regulate loss of citizenship, authorises the loss of citizenship, and without regard to the normal protections afforded by the Bill of Rights. My hope is that the invalidity of section 6(1)(a) of the Citizenship Act is confirmed by the Constitutional Court.



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