



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**  
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**From:** The Registrar, Supreme Court of Appeal

**Date:** 13 June 2023

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*Democratic Alliance v The Minister of Home Affairs and another (67/2022) [2023] ZASCA 97 (13 June 2023)*

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Today the SCA upheld with costs, including costs of two counsel, an appeal against the decision of the Gauteng Division of the High Court of South Africa, Pretoria (the high court).

The appeal was concerned with the constitutional validity of s 6(1)(a) of the South African Citizenship Act 88 of 1995 (the Act) which provides that adult citizens automatically lose their South African citizenship when they 'freely and voluntarily' acquired citizenship or nationality of another country (except through marriage) without first applying for and obtaining a ministerial permission to retain their citizenship. It arises from the application which was brought by the appellant to the high court, in which it sought the following order: declaring that (a) s 6(1)(a) the Act was inconsistent with the Constitution and invalid from the date of 6 October 1995; (b) all persons who had lost the South African Citizenship in terms of s 6(1)(a) of the Act on or after 6 October 1995, are South African citizens; (c) all persons referred to in paragraph [b] may apply to the first respondent in terms of s15 of the Act for the appropriate certificate of citizenship.

The high court dismissed the application with no order as to costs. It rejected the contentions that s 6(1)(a) of the Act violated the principle of legality due to its irrationality and that it unjustifiably infringed certain constitutional rights. The high court dismissed the appellant's application for leave to appeal. The appeal was with leave of this Court.

Two main issues arose for determination. The first was whether s 6(1)(a) was inconsistent with the Constitution due to its alleged irrationality and the second, was whether the section infringed any right in the Bill of Rights and, if so, whether such infringement was justifiable under s 36(1) of the Constitution.

The SCA held that the high court erred in dismissing the application. It held that there is no rational nexus between s 6(1)(a) and the pursuit of a legitimate government purpose. It further held that while it was correct that the purpose of the Act was to provide for the acquisition, loss and resumption of South African citizenship, the rule of law required that the purpose sought to be achieved by the exercise of public power must be subject to the Constitution itself. The mere fact that the Constitution provided for its enactment cannot be used as a basis to justify its existence when its rationality is under scrutiny. Furthermore, it held that it was not enough to say the Act was enacted for the purposes of controlling or regulating the acquisition or loss of citizenship. A link must be established between the means deployed by s 6(1)(a) and that purpose. A clear rationale must be articulated as to why an individual adult citizen who acquired the citizenship of another political community must by operation of law lose their South African citizenship. The SCA found that the high court's reasoning did not provide an explanation as to why the State may legitimately automatically strip its citizens of their citizenship merely because they acquired another citizenship.

On whether s 6(1)(a) infringed constitutional rights, the SCA found that when a citizen lost his or her citizenship through the mechanism of s 6(1)(a) of the Act he or she faced the risk of being denied of the

constitutional guarantees and other rights under ss 19, 21 and 22 of the Constitution. The existence of these rights cannot depend on a decision of the Minister who may in the exercise of his wide and unconstrained discretion under s 6(2) allow or refuse a citizen to retain his or her South African citizenship.

The SCA set aside the order of the high court and replaced it with an order declaring that s 6(1)(a) of the South African Citizenship Act is inconsistent with the Constitution and invalid from its promulgation on 6 October 1995 and that those citizens who lost their citizenship by reason of s 6(1)(a) are deemed not to have lost their citizenship.

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