

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC Case No.: CT 114 / 2018

In the matter between:

ROBINHA SARAH NANDUTU	First Applicant
JAMES FERRIOR TOMLINSON	Second Applicant
ILIAS DEMERLIS	Third Applicant
CHRISTAKIS FOKAS TTOFALLI	Fourth Applicant

and

MINISTER OF HOME AFFAIRS	First Respondent
DIRECTOR-GENERAL, HOME AFFAIRS	Second Respondent
VFS PROCESSING (SA) (PTY) LTD T/A VFS GLOBAL	Third Respondent

FIRST AND SECOND RESPONDENTS' PRACTICE NOTE

1. Respondents' counsel

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2. Applicants' Counsel

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3. Issue for determination

Whether it is necessary on the facts of this case to test the validity of Regulation 9(9) of the Immigration Regulation ("IR") 2014.

4. Summary of respondents' contention

4.1. The first applicant, a Ugandan national, applied for a visitor's visa at the South African Consulate in Kampala and was granted a month's visa on 19 February 2015. She arrived in South Africa on 20 February 2015. She was three months

pregnant and was joining the father of the expected child, the second applicant. The latter is a British citizen and a holder of a permanent residence permit in South Africa. On 21 April 2015, first applicant married second applicant.

- 4.2. The third applicant, a Greek national entered South Africa in February 2014 on a visitor's visa. He is in a life partnership with the fourth applicant, a South African citizen. He periodically revived his visitor's visa by leaving South African and re-entering on a section 11(i) visitor's visa.
- 4.3. Both foreigners having deliberately entered South Africa on a false pretence now seek, in this case, to avoid complying with the legislative framework to change their status. Clearly both of them are desirous of making South Africa their home. It is how they propose to do so is the subject matter of this application.
- 4.4. The law, as it is currently framed, requires visitors to South Africa who desire to change their status to achieve some form of permanent status to be in South Africa, to comply with their visa undertakings – to return to their country of origin and to apply for a change of status.

4.5. These two individuals, in contempt of the legislative framework thereby not respecting the dignity which South African citizens enjoy and in defiance of the constitutional sovereignty of the Republic of South Africa, wish this Court to allow them special status which they would not otherwise have.

4.6. There are good, rational and reasonable grounds why visitors to this country are not allowed to change their status whilst enjoying the privileges of a tourist. In the case of hardship, visitors are enabled to approach the Minister under section 31(2)(c) of the Immigration Act (“IA”) for leave to stay in South Africa pending any process to change their status. Otherwise such persons are illegal foreigners.

25. In terms of section 32 of the IA:

“32. Illegal foreigners

- (1) Any illegal foreigner shall depart, unless authorised by the Director-General in the prescribed manner to remain in the Republic pending his or her application for a status.
- (2) Any illegal foreigner shall be deported.”

4.7. The applicants refuse (it would appear on the advice of their legal representatives) to utilise the provisions of section 31(2) of the IA for relief pending their application for a change of status. This, we submit, is an abuse.

Nazeer Cassim SC

Adiel Nacerodien