



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION – GQEBERHA)**

CASE NO.: 2979/2018

Matter heard on: 25 April 2023

Judgement delivered on: 9 May 2023

In the matter between: -

MINISTER OF HOME AFFAIRS

1st Applicant

THE DIRECTOR-GENERAL OF THE

2nd Applicant

DEPARTMENT OF HOME AFFAIRS

and

NILESH RAMJI PIPALIYA

1st Respondent

KIRAN NILESH PIPALIYA

2nd Respondent

DHROOV NILESH PIPALIYA (a minor child)

3rd Respondent

ISHWARLAL MONANIAL BHAGWAN

4th Respondent

MANJULA BHAGWAN

5th Respondent

In re:

CASE NO.: 2979/2018

In the matter between: -

NILESH RAMJI PIPALIYA	1st Applicant
KIRAN NILESH PIPALIYA	2nd Applicant
DHROOV NILESH PIPALIYA (a minor child)	3rd Applicant
ISHWARLAL MONANIAL BHAGWAN	4th Applicant
MANJULA BHAGWAN	5th Applicant

and

MINISTER OF HOME AFFAIRS	1st Respondent
THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HOME AFFAIRS	2nd Respondent

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
.....
Signature
.....
Date

LEAVE TO APPEAL JUDGMENT

SMITH J:

[1] The respondents seek leave to appeal against my judgment delivered on 31 January 2024 and rescinding the order granted by Bloem J on 20 November 2018 (issuing a rule nisi) and the confirmation of the rule by Pickering J on 4 December 2018. In terms of those orders the respondents were granted permanent residence in the Republic.

[2] The applicant contends that the judgment is not appealable since it does not have a final effect and does not dispose of a substantial portion of the relief claimed by the respondents.

[3] I am of the view that this is a good point. In *Tswane City v Afriforum* 2016 (2) SA 276 (CC), the Constitutional Court held that the decisive question in the determination of the appealability of an interim order is no longer whether it has final effect or disposes of a substantial portion of the relief sought in the main application, but whether it would be in the interests of justice to grant leave to appeal. Although those factors remain germane and important, it is just as important to assess whether the temporary order has immediate and substantial effect, including whether the harm that flows from it is 'serious, immediate, ongoing and irreparable.' (*National Treasury and others v Opposition to Urban Tolling and others* 2012 (6) SA 223 (CC), at para 35)

[4] The effect of the judgment rescinding the abovementioned orders is that the *lis* between the parties in the main application remains extant. It is accordingly interlocutory in nature, does not have final effect and does not dispose of a substantial portion of the relief sought by the respondents. There can also not be any conceivable harm to the respondents since they remain entitled to pursue the relief sought in the main application. I am accordingly not persuaded that it will be in the interests of justice to grant the leave to appeal.

[5] For these reasons I am of the view that the judgment is not appealable. Because of this finding it is not necessary for me to consider whether the respondents have been able to show reasonable prospects of success.

[6] In the result the application for leave to appeal is dismissed with costs.

JE SMITH
JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicants : Adv. G. Appels
: The State Attorneys
29 Western Road
Central
GQEBERHA
(Ref.: MN Swartz/1773/2018/TS)

Counsel for the Respondents : Adv. RG Buchanan SC
: Lessing, Heyns, Keyter & Van Der Bank
Inc.
172 Cape road
Mill Park
GQEBERHA
(REF: Mr. Heyns/SN/P1455)