(IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) NOT REPORTABLE
(2) NOT OF INTEREST TO OTHER JUDGES
(3) REVISED

CASE NO: 60392/16

5/7/2018

In the matter between:

WU XIUGUO	First Applicant
BRUCE MILES MARSHALL	Second Applicant

and

THE DIRECTOR-GENERAL OF THE DEPARTMENT OF HOME AFFAIRS	First Respondent
THE MINISTER OF HOME AFFAIRS	Second Respondent

JUDGMENT

MPHAGA AJ;
HEARD ON: 11 OCTOBER 2017
JUDGMENT HANDED DOWN ON: 5 JULY 2018

NATURE OF THE APPLICATION

[1] The first applicant, a Chinese national, seeks an order to compel the respondents to consider and decide on an application to legalise her interim residence position in the Republic of South Africa ("the legalization application"). Further, jointly, the applicants seek an order directing the

respondents to register the birth of their child. As it will appear more fully hereunder, the second applicant is a South African citizen and a life partner of the first respondent.

RELIEF SOUGHT AGAINST THE RESPONDENTS

[2] The applicants initially couched the relief they sought against the first respondent as follows:

> **"2.1 That the First Respondent is directed to consider and decide the First Applicant's application for legalisation, dated 5 May 2014, as contemplated in section 32(1) of the Immigration Act, 13 of 2002, and Regulation 26 of the Immigration Regulations dated 27 June 2005 ("the legalisation application") within two (2) weeks from the date of this order;**
>
> **2.2 That the First Respondent is directed to consider and afford due weight to the particular circumstances of the Fir s t Applicant, which circumstances include, but which is not limited to the fact that the First Applicant is the mother of the South African born child of the Second Applicant and the fact that the First Applicant is the registered life partner of the Second Applicant, when deciding the legalisation application; and**
>
> **2.3 That the First Respondent is directed to forthwith register the birth of the child born of the life partnership of the Applicants, namely Kyle Cheng Marshall, born on 13 October 2013, at Roodepoort."**

[3] For reasons which will become apparent hereunder, the applicants subsequently, amended their notice of motion by adding the following prayers to the abovementioned prayers in paragraph 2, namely:

> **"1. That the Applicants are permitted to supplement their founding affidavit with the portion appearing in the attached affidavit and marked "SUPPLEMENTARY FOUNDING AFFIDAVIT", provided that the Respondents are permitted to file a further answering affidavit, should they so desire, within**

15 (fifteen) days from the date of delivery of the supplementary affidavit;

2. That the directive which was issued by the First Respondent on the 3r d February 2016, and in terms of which the First Respondent withdrew circular no 10 of 2008 confirming the 11 November 2003 Dabone Court Order, is declared in consistent with the Constitution of the Republic of South Africa, 1996 and invalid , and is set aside;"

[4] The respondents opposed the relief sought by the applicants and filed an opposing affidavit. However, the respondents neither objected to the amendment of the prayers of the notice of motion as set out above nor filed any affidavit in response to the allegations set out in the supplementary affidavit filed by the applicants.

[5] Heads of argument were duly filed on behalf of the applicants, however, the respondents failed to file any heads of argument. During the hearing of the application, counsel on behalf of the respondent s indicated that the attitude of the respondents was that the first applicant is invited to report at the offices of the respondent s for a formal meeting relating to her legalization application. The respondents were in short requesting that the applicants abandon their current application by responding to an invitation by the respondents to meet and discuss the legalization application and the related prayers in the notice of motion.

[6] On behalf of the applicants, it was argued that the invitation to discuss the legalization application has come too late as the first applicant has waited for approximately two years for her application to be considered by the first respondent to no avail. Counsel for the applicants quite correctly argued that the matter has to be argued and finalize d as the court was seized with it and would serve no purpose to engage in further discussions with the first respondent on the matter.

[7] Having ruled that the matter should proceed, it was indicated on behalf of the respondents that they would not make any further submissions on the relief sought by the applicants and counsel on behalf of the applicants

proceeded to make submissions why I should grant the relief sought by the applicants as per the amended notice of motion. I should indicate further that the respondent did not file any heads of argument.

RELEVANT BACKROUND TO THE DISPUTE

[8] The following facts informs the basis relevant to the dispute between the parties, namely;

8.1 that the first applicant arrived in South Africa during 2010 as an asylum seeker and the Respondents' department issued her with a temporary asylum seeker permit in term s of the Refugee Act 130 of 1998 ("the Refugee Act").

8.2 Subsequent to the first applicant' s arrival in South Africa she was involved in a love relationship with the second applicant and from which relationship a child was born on the 13th October 2013.

8.3 By the time the applicants' child had been born in 2013 the first applicant's asylum permit had lapsed and she had by law become an illegal foreigner in South Africa.

8.4 The first applicant could legitimately remain in South Africa if she brought an application to the First Respondent who could authorise her remainder in South Africa in term s of section 32 of the Immigration Act 13 of 2002 ("the Immigration Act"), read with Immigration Regulations, 22 May 2014, and only thereafter apply for a residency permit.

8.5 The Applicants intended to marry in terms of the common law of South Africa, but as a result of an internal policy of the Department of Home Affairs the Applicants were prevented from marrying each other.

[8] On behalf of the Applicants, it was submitted that the First and Second Applicants initially held the view that they could not conclude a valid marriage in South Africa. This view or advice was legitimately held in particular when considering that in terms of section 12 of the Marriage Act

25 of 1991 a marriage officer may not solemnize a marriage without the parties producing South African identity documents or the prescribed affidavit. The prescribed affidavit is made on a so-called Form BI-31 ("Letter of no Impediment"). Furthermore, in terms of section 29A of the Marriage Act a marriage officer must transmit the marriage register and records concerned of all marriages performed by him/her to the regional or district representative designated as such as under section 21(1) of the Identification Act 72 of 1 9 86 (as amended) , having the effect that the Respondent has control over the registration of marriages.

[9] The impediment to marry adversely affected the prospects of the first applicant to apply for a relative visa in circumstances where her asylum permit had lapsed. The First Applicant as a foreigner could only qualify for a relative VISA only if she was a member of an immediate of a citizen or a permanent resident.

[10] The Applicants were advised that despite the impediment imposed by the Depa1tment of Home Affairs against their intended marriage there exists no prohibition against entering into a life partnership agreement which could then be notarially registered , a so-called co- habitation agreement.

[11] For purposes of the Immigration Act a "marriage " is one which must have been concluded in terms of the Marriage Act 25 of 1961, the Recognition of Customary Marriages Act 120 of I 998, the Civil Union Act 17 of 2006 or a marriage concluded in terms of the laws of a foreign country.

[12] However, in terms of section I of the Immigration Act a *"spouse"* means:

> *"(a) a person as defined in the Act: or*
> *(b) a permanent homosexual or heterosexual relationship as prescribed;...."*

[13] Immigration Regulation 3 prescribes the requirements for applying for a residence permit when the application for a section 18 relative's permit is founded on a permanent homosexual or heterosexual relationship. The Applicants rely on the existence of a permanent heterosexual relationship.

[14] Immigration Regulation 3(2) *inter alia* requires the submission of a notarial agreement signed by both parties attesting that the relationship has existed for at least two years prior to the conclusion of the agreement and that neither party is a spouse in a marriage or involved in a permanent homosexual or heterosexual relationship.

[15] *Exfacie* the Applicants ' notarial contract, it is apparent that:

15.1 the contract had been signed on 20 October 2014;

15.2 they had been involved in a permanent heterosexual relations hip for at least three and a half years before entering into the life partnership agreement; and

15.3 their relationship excluded other parties.

[16] Accordingly, it was argued before me that the First Applicant would meet the basic requirements to qualify for a section 18 relative' s permit once her interim residency posit ion had been regularised in accordance with section 32 of the Immigration Act.

[17] On the 9th May 2014 the First Applicant had made application to legalise her interim residence position (" the legalisation application"). The legalisation application had not been decided by the First Respondent as at the date of the hear in g of this application.

[18] After the birth of the Applicants' child the Respondents' department has refused to register the birth of their child.

[19] The refusal or failure by the Respondents to consider and decide the legalization application including the registration of the birth of the Applicants' child is the basis why the Applicants see k the relief as per the original and amended notice of motion.

THE AMENDED NOTICE OF MOTION AND SUPPLEMENTARY AFFIDAVIT:

[20] From the Respondents ' answering affidavit it is evident that the Respondents oppose the application on the basis that because the First Applicant initially assumed asylum seeker status in South Africa (as contemplated in the Refugee Act) she may not "switch" to apply for a

residence permit in terms of the Immigration Act.

[21] Insofar as the refusal by the Respondents to register the birth of the Applicants' South African child is concerned the Respondents aver in paragraphs 38 of their opposing affidavit thatt:

> *" When the mother of a child born in South Africa is an illegal refugee or illegal immigrant, the child will only be issued with a hand-written recognition of birth certificate , as the child is not a South African citizen.*
>
> *When one of the parents is an illegal refugee or illegal immigrant, the child cannot be registered on the South African Birth registry as the system would then automatically issue the child with a South African Identity number which it (sic) does not meet the requirements."*

[22] It is this stance of the respondents that led the Applicant s to supplement their founding affidavit , and the amend their notice of motion in compliance with the provisions of Uniform Rule of Court 16A.

[23] The Applicants proceeded to file the supplementary affidavit and amended their notice of motion and the Respondents did not file any responding affidavit or objected to such. The Applicants argued that the Respondents had acquiesced to the delivery of the amended notice of motion and supplementary founding affidavit because:

23.1 Since the 27th October 2016, when the amended notice of motion and supplementary affidavit had been delivered, the Respondents had not filed opposition thereto or a supplementary answering affidavit ;

23.2 From an analysis of the Respondents' existing answering affidavit it further appears that insofar as the merits of the application are concerned the

Respondents had disclosed their entire defence to the claims of the Applicants; and

23.3 The Constitutional challenge to the retraction of Circular 10 of 2008 (dealt with here in below) is a matter of law and should be addressed through legal argument.

EXPLAINING THE AMENDMENT AND SUPPLEMENTATION:

[24] It is common cause that the First Applicant applied for legalisation of her residency status in South Africa, after her asylum permit had lapsed.

[25] Once the asylum permit had lapsed the First Applicant became an "illegal foreigner" within the meaning of the Immigration Act. It is submitted that in such an event the First Applicant first had to apply for the legalisation of her interim residency status before she could apply for the appropriate residence permit, which would then legitimise her further stay in South Africa.

[26] On behalf of the Applicants, it was brought to my attention that on 11 November 2003 the Western Cape High Court decided the case of **Moustapha Dabone and 12 Others v Minister of Home Affairs & Another,** an unreported judgment by Blignault J **("Dabone").** In this case it was found that asylum seekers could apply for a residence permit in terms of the Immigration Act.

[27] It is common cause that following **Dabone** the First Respondent issued Circular No 10 of 2008 (dated 18 April 2008) which confirmed the court order in **Dabone** ("the 2008 Circular").

[28] The order which was granted in **Dabone** included that:

> *"1. The Respondents will henceforth (and in relation to pending applications) no longer require that an asylum seeker cancel his or her asylum seeker temporary permit issued in terms of Section 22 of the Refugees Act 130/1998 of the Immigration Act 13 of 2002 ("the Immigration Act").*
>
> *2. The Respondents will henceforth (and in relation to pending*

applications) no Longer require that an asylum seeker or refugee possess a valid passport in order to be issued a temporary residence permit, or to apply for and be issued an amendment to a temporary residence permit, issued in terms of Section 26 of the Immigration Act.

3. The Department of Home Affairs ("the Department") will henceforth (and in relation to pending applications) process applications by asylum seekers an refugees for permanent residence in accordance with Section 26 and 27 of the Immigration Act without requiring asylum seekers to cancel their asylum seeker temporary permits and without requiring refugees lo give up their refugee status.

4. *The Department will henceforth (and in relation to pending applications) process applications by asylum seekers or refugees for temporary residence permits or for the amendment thereof, without requiring the production of a valid passport by any person applying for such permit.*

5. ....."

[29] Following the order in **Dabone** the Respondents confirmed their acceptance that an asylum seeker may apply for a permanent or temporary residence permit in terms of the Immigration Act.

[30] However, during February 2016 and contrary to **Dabone** and the acceptance of the principle that an asylum seeker may " switch" between the remedies which are respectively offered in the Refugee and Immigration Acts, the First Respondent issued a directive on the 3rd February 20 I 6 which retracted the 2008 Circular ("the 2016 Directive").

[31] In terms of the 2016 Directive the First Respondent's motivation for the retraction of the 2008 Circular was that:

"Section 22 of the Refugee Act, No. 130 of 1998 provides the conditions under which a section 22 Asylum Seeker Permit may be issued. These conditions at all times should not be in conflict with the Constitution of the

Republic of South Africa, 1996 or international law are determined and endorsed by the Standing Committee for Refugee Affairs (SCRA).

The management and issuance of asylum seeker permits is administered through the Refugee Act while the management and the regulation of the admission of other foreigners, their residence in, and their departure from the Republic and for matter connected therewith is done through the Immigration Act, No. 13 of 2002.

It is the considered view of the Department that no change of condition or status should be premised on the provisions of the Immigration Act for a holder of an asylum seeker permit before whose claim to asylum has been formally recognized by the SCRA.

Section 27(c) of The Refugee Act stipulates that a Refugee is entitled to apply for an immigration permit after five years' continuous residence in the Republic from the date on which he or she was granted asylum, if the Standing Committee certifies that he or she will remain a refugee indefinitely.

The immigration permit referred to in the Refugee Act is the permanent residence permit of Section 27(d) of the Immigration Act. It therefore follows that a holder of an asylum seeker permit who has not been certified as a Refugee may not apply for a temporary residence visa or permanent residence permit....."

[32] The effect of the 2016 Directive is that an asylum seeker is no longer allowed to "switch" between the remedies provided for in the Refugee and Immigration Acts. It is the case of the Applicants that the Respondents ' la test approach to the issue is contrary to the court order in **Dabone** and inconsistent with the Constitution of the Republic of South Africa , 1996 ("the Constitution").

[33] As per the original notice of motion , the Applicants initially approached their application on the basis that because of the inordinate lengthy time which had lapsed since the First Applicant's legalisation application had been submitted, the First Respondent must now be directed by a court order to consider the legalisation application.

[34] Secondly, the Applicants took the position that due to the fact that their

child was born in South Africa and that he had one South African parent, there was no reason why the First Respondent should refuse to register the child's bi1th and hence the First Respondent should be directed to register the birth.

[35] The Applicants had consistently demanded feedback on the progress of the First Applicant's legalisation application since 12 May 2014 to 30 May 2016 without any response from the Respondents ' department.

[36] It has only been after the delivery of the Respondents' answering affidavit that it became clear that the Respondents approached the legalisation application on the basis that the First Applicant could not "switch" between the remedies which are respectively offered by the Refugee and Immigration Acts.

[37] The approach which the First Respondent had adopted in the 2016 Directive means that the First Applicant ' s changed circumstances, since she have arrived in South Africa as an asylum seeker, to the present, must be ignored in favour of a formalistic interpretation of the Refugee and Immigration Acts.

[38] When the First Applicant had first arrived in South Africa as an asylum seeker she had no certain prospects or expectations about her future. Whilst she had lived in South Africa she met her husband and became a mother of a South African born child.

[39] The dispensation which followed after **Dabone** recognised the merit of the principle that once an asylum seeker' s circumstances changes so that he/she is no longer a refugee, and if he/she could otherwise quailify for a residence permit in terms of the Immigration Act, then such a person should be allowed to apply for a residence permit.

[40] The present formalistic approach of the Respondents completely ignores the First Applicant's changed circumstances and would cause her and her family to suffer the indignity of being separated if she is now forced to leave South Africa because her refugee permit had lapsed.

[41] On behalf of the Applicants, it was argued that the solution lie s in the setting aside of the 2016 Directive and recognising the effect of the court

order in **Dabone.**

[42] In the circumstances the Applicants in the light of the 2016 Directive, were compelled to deal with the retraction of the 2008 Circular and to raise a constitutional objection thereto. Hence the notice of motion had to be amended and the Applicants had to supplement their founding affidavit.

[43] What follows are the legal submissions which motivate the relief that is sought by the Applicants.

PRESUMPTION AGAINST RETROSPECTIVE EFFECT OF THE 2016 DIRECTIVE:

[44] The First Applicant's application was delivered to the First Respondent *before* the 2016 Directive had been issued. There is no doubt that the 2016 Directive had the adverse effect on the First Applicant that the principle underlying the court order in **Dabone,** namely that a refugee could switch between the remedies of the Refugee Act to those provided for in the Immigration Act, no longer applied to the First Applicant.

[45] If the 2016 Directive does not have retrospective effect then the First Respondent would be compelled to decide the First Applicant's pending legalisation application on the basis of the **Dabone** court order.

[46] The presumption against legislation having retrospective effect is well known. In **Nkabinde and Another v Judicial Service Commission and Others** 2016 (4) SA (SCA) Navsa ADP summarised the law on this issue as follows:

> *[60] The development of the law in relation to the presumption against retrospectivity, stretching back to Roman times, is usefully set out in the decision of this court in Adampol (Pty) Ltd v Administrator, Transvaal 1989 (3) SA 800 (A) ([1989} ZASCA 59) at 805E- 807F. As far back as 440 AD the Emperors Theodosius and Valentian enacted a decree, recorded in Cod 1.14.7, the translation of which reads as follows:*
>
> *'It is certain that the laws and decrees give shape to future matters and*

are not applied to acts of the past, unless express provision is made for past time and for matters which are still pending.'"

[47] In the cases of **Camps Bay Residents and Ratepayers Association and Others v Hartley and Others** [2010] ZAWCHC 215 (WCC 3430/2010; 16 November 2010) and **Nelson Mandela Bay Metro v Georgiou t/a Georgiou Guesthouse & Spa and Others** 2016 (2) SA 394 (ECP) the presumption was also recognised to apply to administrative decrees and/or actions.

[48] The decision of the First Respondent 's decision to issue the 2016 Directive constitute an administrative action in terms of section I of the Promotion of Administrative Justice Act should not have retrospective operation and therefor it is irrelevant for purposes of Act No 3 of 2000 ("PAJA"). It follows that the presumption against retrospectivity applies to the issuing of the 2016 Directive in so far as it relates to pending legalization application submitted approximately two years prior to the issuing the 2016 Directive.

[49] There is no justifiable reason therefore, why the First Applicant cannot benefit from the findings in **Dabone** which should forthwith also apply to her legalisation application. The conduct of the Respondents' department in failing to consider the First Applicant's legalization application for almost two years is inconsistent with the principle of "Batho Pele" and "Ubuntu". Batho pele , which means 'People First' in Sotho, requires that public administration should serve the best interests of the public by enabling the achievement of individual rights encompassed in the provisions of the Constitution (See **Van der Merwe and Another v Taylor NO and Others 2008 (1) SA 1 (CC) (2007 (11) BCLR 1167; [2007] ZACC 16) at 71.)** In practice this requires that the administration work towards achieving high standards of professional ethics and responsiveness to the needs of people; the provision of service which is impartial, fair, equitable and without bias; and the utilisation of resources in an efficient and effective manner, in order to create an accountable, transparent , and development-

oriented public administration (See the Batho Pele Handbook available on the Department of Public Service and Administration website http://www.dpsa.gov.za/batho-pele/docs/BP_HB_optimised.pdf accessed 17 August 2009. See also Cloete & Mokgoro (eds) **Policies for Public Service Transformation** (Juta, 1995)at 7 - 8).

[50] In **S v Makwanyane and Another** 1995 (3) SA 391 (CC) (1995 (2) SACR I ; 1995 (6) BCLR 665; [I 995] ZACC 3) at paras 223 - 225; 263 and 307, especially para 308 the Constitutional Court defined ubuntu as including the fundamental values of respect, hu ma n dignity and conformity with basic norms, with an emphasis on conciliation, as opposed to confrontation.

[51] It was not necessary at all for the Applicant s to incur costs to bring this application if the Respondents' department's officials had embraced the principle of "Batho Pele" and "Ubuntu" in simply considering and deciding on the First Applicant 's legalization application. The belated effort to afford the First Applicant a hearing after two years cannot be justified. It is not necessary to burden the courts with these kind of applications which can be avoided if officials do what they are employed and paid to do.

[52] The question that needs to be answered is who should be responsible to pay the costs incurred by the Applicants in bringing this application. My view is that National Treasury and the Office of the Auditor General should actively begin to deal with such matters where the officials of the organs of state deliberately or negligently cause the state to incur unnecessary litigation costs. The costs incurred in such litigation are not negligible and cumulatively, runs into millions of rands which are not only carried by the taxpayers but its money that could be utilized to better the lives of the poor.

[53] It is my considered view and finding that the Applicants ' application to compel the First Respondent to forthwith consider and decide the First Applicant' s legalization application should there fore succeed.

THE REFUSAL TO REGISTER THE BIRTH OF THE CHILD:

[54] It is not in dispute that the Second Applicant is a South African citizen and the father of the child born from the relationship with the First Applicant at the Flora Clinic, Weltevreden Park on the 11th October 2013 and that the First Respondent refuse to register the birth of the child because of an internal policy. The practical effect of this internal policy is to refuse the child the recognition as a South African citizen, to which he is entitled to as of right.

[55] Section 2(1)(b) of the South African Citizenship Act 88 of 1995 ("the Citizenship Act") determines that:

> *"2(1) Any person -*
> *(a)* ....
> *(b) Who is born in or outside the Republic, one of his or her parents, al the time of his or her birth, being a South African citizen,*
> *shall be a South African citizen by birth."*

[56] In terms of section 9(1) the Births and Death Registration Act 51 of 1992 ("the Births and Deaths Registration Act")

> *"9(1) In the case of <u>any child born alive</u>. any one of his or her parents or. if neither of his or her parents is able to do so. the person having charge of the child or a person requested to do so by the parents or the said person. shall within 30 days after the birth give notice thereof in the prescribed manner to any person contemplated in section -4."* (Emphasis added.)

[57] The person referred to in section 4 of the Births and Deaths Registration Act is a person duly designated by the First Respondent. The person to whom the birth is repo1ted must act in terms of section 9(4) of the Births and Deaths Registration Act which requires that:

> *"9(5) The person to whom notice of birth was given in terms of*

subsection (1), shall furnish the person who gave that notice with a birth certificate, or an acknowledgement of receipt of the notice of birth in the prescribed form, as the Director-General may determine".

[58] Accordingly, in the light of the above, there can be no valid reason for the First Respondent to rely on an internal policy which effectively refuses to recognise the South Africa citizenship of the Applicants' child.

UNCONSTITUTIONALITY OF THE 2016 DIRECTIVE:

[59] In arguing the question of the unconstitutionality of the 2016 Directive, counsel for the Applicants relied on the Western Cape Division of the High Court, case of **Ahmed and Others v Minister of Home Affairs and Another** (3096/2016) [2016] ZAWCHC **("Ahmed")** as reported by SAFLLI, where similar disputes as those appearing *in casu* had been decided.

[60] Due to the similarity in facts with the present matter the facts in **Ahmed** are quoted as follows:

"[8] Second, third and fourth applicants are failed asylum seekers. Second applicant, Arifa Fahme, is an Indian citizen who was issued with an "asylum seeker's temporary permit" on or about 3 June 2009, in terms of s 22 of the Refugees Act, which permit was subsequently extended 12 times. The last extension, which was valid for 5

constitutionality of the 2016 Directive, which based on my finding cannot apply retrospectively so as to have any effect on the consideration of the First Applicant's legalization application. I therefore does not deem it necessary to grant the prayers as introduced by the amendment to the notice of motion.

COSTS

[64] As indicated above, the Respondents have not provided any reason why they failed to consider and decide the legalization application of the First

Applicant within a reasonable time . A period of two years to consider and decide an application of this nature is unacceptable and clearly is a clear betrayal to the principle of " Batho Pele" and "Ubuntu" . The Respondents only came to court to request a further indulgence to consider the legalization application and not to argue the case. The conduct of the Respondents' officials clearly requires this court to express its disquiet by ordering a punitive cost order.

Consequently I make the following order:

1. **That the directive issued by the First Respondent dated 3 February 2016 to retract Circular No 10 of 2008 (dated 18 April 2008) does have retrospective application and effect on the consideration and determination of the First Applicant's legalization application dated 12 May 2014 by the First Respondent.**

2. **That the First Respondent is directed to consider and decide the First Applicant's application for legalization , dated 5 May 2014, as contemplated in section 32(1) of the Immigration Act, 13 of 2002, and Regulation 26 of the Immigration Regulations dated 27 June 2005 within two (2) weeks from the date of this order;**

3. **That the First Respondent is directed to consider and afford due weight to the particular circumstances of the First Applicant, which circumstances include, but which is not limited to the fact that the First Applicant is the mother of the South African born child of the Second Applicant and the fact that the First Applicant is the registered life partner of the Second Applicant, when deciding the legalization application; and**

4. **That the First Respondent is directed to forthwith register the birth of the child born of the life partnership**

of the Applicants, namely Kyle Cheng Marshall, born on 13 October 2013, at Roodepoort.

5. **That the First and Second Respondents pay the costs of this application on a scale of attorney and own client.**

M MPHAGA AJ