12.3.76 13/3/76

G.P.-S.59968—1970-71—2 500 J 219

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE Provincial Division)
(Provinsiale Afdeling)

Appeal in Civil Case
Appèl in Siviele Saak

ISMAIL IBRAHIM *Appellant,*

versus

MINISTER OF THE INTERIOR *Respondent*

Appellant's Attorney / *Prokureur vir Appellant*	v.d.Merwe & Sorour
Respondent's Attorney / *Prokureur vir Respondent*	Dep. S.A. (Enftn.)
Appellant's Advocate / *Advokaat vir Appellant*	D.J. Shaw SC. H.J. Thalwitz
Respondent's Advocate / *Advokaat vir Respondent*	W.H. Baayens S.C. A.J. du P. Buys

Set down for hearing on 9
Op die rol geplaas vir verhoor op 11.3.76

Coram: Rumpff CJ Wessels, Jansen, Rabie JJ.A. et Joubert A.J.A.

9.45 am — 11.00 am.

(D.C.L.D.) C.A.V.

The Court allows the said appeal with costs, including those occasioned by the employment of two counsel. The Order of the Court a quo is replaced by one reading as follows:-

P.T.O.

Bills taxed—Kosterekenings getakseer

Date Datum	Amount Bedrag	Initials Paraaf

Writ issued
Lasbrief uitgereik

Date and initials
Datum en paraaf

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

ISMAIL EBRAHIM ..... Appellant (Applicant),

and

MINISTER OF THE INTERIOR .... Respondent.

Coram: Rumpff, C.J., Wessels, Jansen et Rabie, JJ.A., et Joubert, A.J.A.

Heard: 24 September 1976

Delivered: 30 November 1976

J U D G M E N T

JOUBERT, A.J.A.:

This is an appeal against the judgment of VAN HEERDEN, J., granted in the Durban and Coast Local Division whereby he dismissed an application brought by the appellant against the respondent for a declaratory order that he had not lost his South African citizenship by virtue of the

provision/.....

provisions of section 15(1)(a) of the South African Citizenship Act, 44 of 1949, as amended. The judgment of the Court a quo has been fully reported in Ebrahim v Minister of the Interior, 1976 (1) SA 878 (D). (Any references hereinafter to the judgment a quo are to the pages of the reported judgment.) The appeal is direct to this Court, the parties having lodged the required notice of consent.

The dispute arose in this way. The appellant was born in Durban in June 1930 and by reason of his birth he was a Union National in terms of section 1(a) of Act 40 of 1927. When the South African Citizenship Act 44 of 1949 (hereinafter referred to as "the Act") came into operation on 2nd September 1949 he became, by virtue of the provisions thereof, a South African citizen. He continued to live in Durban with his parents until 1952 when he commenced to follow a career at sea. He was a seaman from 1952 until 1972 except for three temporary interruptions, namely:

(i) from/.....

(i) from 1954 until 1956 during which period he lived in Durban,

(ii) from 1957 until 1959 while he lived in London, and

(iii) from 1959 until 1960 when he again lived in Durban.

As a seaman he served from 1952 until 1953 on a South African coaster travelling between Durban and Cape Town, from 1953 until 1954 on a British ship travelling in various parts of the world, from 1956 until 1957 on a British ship travelling between South African ports and Australian ports, during 1960 on two British ships travelling between South African, British and Australian ports and from 1961 until 1971 on various British ships of the Union Castle Mail Steamship Co. Ltd. travelling between South African and British ports. During 1963 he became the registered owner of a house and shop in Durban. In 1964 he married a South African woman in Durban. His wife and their four children have at all relevant times lived, and still live, in the said house, whereas he has been living with them there since June 1972.

During/.....

During December 1971 he had the good fortune to win £221,094 as a prize in a football pool in the United Kingdom. Approximately £200,000 of the prize was invested in the United Kingdom. The appellant averred that he never established any home in the United Kingdom or elsewhere than in Durban and that he never abandoned his domicile or residence in Durban.

On 5th June 1958 the appellant signed an application form for the purpose of acquiring United Kingdom citizenship, because he had been led to believe that as a citizen of the United Kingdom his prospects of obtaining employment as a seaman would be substantially enhanced. He accordingly instructed his solicitor in London to apply on his behalf for United Kingdom citizenship but before the application was lodged he learnt that as the Union of South Africa was within the Commonwealth, he ought not to have any difficulty in obtaining employment as a seaman. He thereupon instructed his solicitor not to lodge the application. During 1961 when he was again in London he learnt that he would be

regarded as an alien in the United Kingdom if the Union of South Africa left the Commonwealth and that it would be impossible or difficult for him to obtain employment as a seaman unless he acquired United Kingdom citizenship. He accordingly re-signed the previous application form on 10th February 1961 and instructed his solicitor to apply on his behalf for United Kingdom citizenship. Ex facie a copy of the application form he therein declared inter alia the following:

> "I am ordinarily resident in the United Kingdom and have been so ordinarily resident during the past twelve months as follows:....."

The requested particulars concerning the addresses at which he was ordinarily resident during the past twelve months and the periods during which he was thus resident at the said addresses were, however, not furnished by him.

On 29th March 1961 it was endorsed at the end of the copy of the application form that the appellant had been registered as a citizen of the United Kingdom and Colonies and that the original application form was being held by the Home Office in London. In a supporting affidavit the British

Vice-Consul in Durban deposed as follows in regard to the aforementioned endorsement:

> "The endorsement at the foot of the second page of the said Annexure, recording on the 29th March 1961 that the said Ismail Ebrahim had been registered as a citizen of the United Kingdom and Colonies, means that:
>
> (a) he was registered as a citizen of the United Kingdom and Colonies on the 29th March 1961;
>
> (b) he therefore acquired citizenship of the United Kingdom and Colonies on the 29th March 1961".

The appellant alleged in his founding affidavit that on 29th March 1961 he was in Port Elizabeth harbour with the "Durban Castle" as a member of its crew. In a supporting affidavit the Port Captain of Port Elizabeth verified that, according to the records in his custody and under his control, the "Durban Castle" entered the harbour of Port Elizabeth at 6.35 a.m. on 29th March 1961 and departed from it at 6.40 p.m. on 30th March 1961. From its arrival until its departure as aforementioned the "Durban Castle" remained continuously in the harbour of Port Elizabeth.

The appellant maintains that he did not lose his South African citizenship in terms of section 15(1)(a) of the Act, as amended, in that he was physically present in Port Elizabeth, and therefore within the Union of South Africa, on 29th March 1961 when he acquired citizenship of the United Kingdom and Colonies. The respondent, however, avers that the appellant performed some voluntary and formal act outside the Union of South Africa as a result of which he acquired the citizenship of another country and that he thereby ceased to be a South African citizen in terms of section 15(1)(a), as amended.

In the documents of the application the parties erroneously assumed that section 15(1)(a) of the Act, as amended by section 10 of Act 64 of 1961, was operative as on 29th March 1961. The true position is, however, that section 10 of the Citizenship Amendment Act 64 of 1961, which substituted a new section for the original section 15 of the Act, came into operation on 4th August 1961 as appears

from/.....

from Proclamation No. 36, published in Gazette No. 53 of 4th August 1961, read with section 24(2) of Act 64 of 1961 which expressly provided, inter alia, that section 10 thereof was to come into operation on a date to be fixed by the State President in the Gazette. The Court a quo was therefore correct in holding, as appears from the judgment (p. 880 E - G), that the provisions of section 15 of the Act, prior to its amendment by section 10 of Act 64 of 1961, were in full operation on 29th March 1961.

At the hearing of the appeal counsel for the respondent rightly conceded that the appellant had acquired citizenship of the United Kingdom and Colonies on 29th March 1961 and that the appellant was at the time of the said acquisition in the Union of South Africa. It was also common cause that the appellant had already attained majority on the occasions when he applied for and acquired citizenship of the United Kingdom and Colonies.

Section 15 of the Act, in its original form, as it was in operation on 29th March 1961, provided as follows:

> "A South African citizen who whilst outside the Union, and not being a minor, by some voluntary and formal act, other than marriage, acquires the citizenship or nationality of a country other than the Union, shall thereupon cease to be a South African citizen."

The Afrikaans text, which is the signed one, read thus:

> „n Suid-Afrikaanse burger wat, terwyl hy buite die Unie is en nie n minderjarige is nie, die burgerskap of nasionaliteit van n ander land dan die Unie deur een of ander vrywillige en formele handeling, behalwe n huwelik, verkry, hou daarop op om n Suid-Afrikaanse burger te wees."

It was contended on behalf of the appellant that the clear meaning of section 15, in its original form, was that a South African citizen ceased to be such if he acquired the citizenship of another country while he was outside the Union of South Africa. That is to say, the acquisition of the citizenship of another country had to take place

while the South African citizen was outside the Union of South Africa. Inasmuch as the appellant was in the Union of South Africa when he acquired the citizenship of the United Kingdom and Colonies he did not lose his South African citizenship by virtue of section 15.

Counsel for the respondent relied upon the correctness of the ratio decidendi of the Court a quo, namely, that the dictionary meaning "to gain or to obtain by one's own exertions" had to be ascribed to the word "acquires" in section 15; that by so doing the word "acquires", as used in the context of section 15, did not connote the actual granting of citizenship but some positive act on the part of the person to whom citizenship was granted; that the appellant performed the formal and voluntary act to obtain United Kingdom citizenship outside the Union of South Africa and that, inasmuch as the appellant, according to his own application form, was ordinarily resident in the United Kingdom for the requisite period which entitled him to United Kingdom citizenship by registration, he acquired in

terms of section 15 such citizenship whilst he was outside the Union of South Africa.

The crucial issue to be determined is whether on a true and proper construction of section 15, in its original form, the appellant in the circumstances of the present case ceased to be a South African citizen when he acquired citizenship of the United Kingdom and Colonies on 29 March 1961.

It is a well-established principle of construction that in construing a statutory provision the object should be to ascertain from the language employed the intention which the Legislature meant to express. Venter v Rex, 1907 TS 910 at p 913; Rex v Detody, 1926 AD 198 at p 228. The approach to the mode of construction may be along either of two lines, namely, the rule of literal construction or the context rule, as enunciated by SCHREINER, J.A., in Jaga v Dönges, N.O., and Another, 1950 (4) SA 653 (A) at p 662 G - 663:

"Certainly/.....

"Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that 'the context', as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background. The second point is that the approach to the work of interpreting may be along either of two lines. Either one may split the inquiry into two parts and concentrate, in the first instance, on finding out whether the language to be interpreted has or appears to have one clear ordinary meaning, confining a consideration of the context only to cases where the language appears to admit of more than one meaning; or one may from the beginning consider the context and the language to be interpreted together".

The learned Judge of Appeal also pointed out that the result achieved by the two lines of approach should always be the same and that each line of approach had its own peculiar dangers, at p 664 B - F:

"No/.....

"No doubt the result should always be the same, whichever of the two lines of approach is adopted since, in the end, the object to be attained is unquestionably the ascertainment of the meaning of the language in its context. But each has its own peculiar dangers. While along the line approved by LORD GREENE there is the risk that the context may in a particular case receive an exaggerated importance so as to strain the language used, along the other line there is the risk of verbalism and consequent failure to discover the intention of the law-giver. The difference in approach is probably mainly a difference of emphasis, for even the interpreter who concentrates primarily on the language to be interpreted cannot wholly exclude the context, even temporarily; and even the interpreter who from the outset tries to look at the setting as well as the language to be interpreted cannot avoid the often decisive first impression created by what he understands to be the ordinary meaning of that language. Seldom indeed is language so clear that the possibility of differences of meaning is wholly excluded, but some language is much clearer than other language; the clearer the language the more it dominates over the context, and vice versa, the less clear it is the greater the part that is likely to be played by the context".

The rule of literal construction to ascertain the meaning of the language used in a statutory provision is often/....

often referred to as the golden or general rule of construction, namely, that words must be given their ordinary, literal and grammatical meaning and if by so doing it is ascertained that the words are clear and unambiguous, then effect should be given to their ordinary meaning unless it is apparent from the context or such other considerations as a Court of law is justified in taking into account, that such a literal construction falls within one of those exceptional cases in which it would be permissible for a Court of law to depart from such a literal construction. See Rex v Venter, supra, p 913; Johannesburg Municipality v Cohen's Trustees, 1909 T.S. 811 at p 813 - 814; Aspeling, N.O., v Alexander, 1919 AD 139 at p 146 - 147; Volschenk v Volschenk, 1946 TPD 486 at p 487; President Insurance Co. Ltd. v Yu Kwan, 1963 (3) SA 766 (A) at p 779 C - D. The rule that it is permissible in exceptional cases for a Court of law to

depart/.....

depart from the clear and unambiguous language of a statutory provision, as set out by INNES, C.J., in Venter v Rex, supra p 914 - 915, was re-affirmed by DE VILLIERS, J.A., in Shenker v The Master and Another, 1936 AD 136 at p 142 as follows:

> "That rule is that, where the language of a statute is unambiguous, and its meaning is clear, the Court may only depart from such meaning 'if it leads to absurdity so glaring that it could never have been contemplated by the Legislature, or if it leads to a result contrary to the intention of Parliament, as shown by the context or by such other considerations as the Court is justified in taking into account'. (I quote from the judgment of INNES, C.J., in Rex v Venter)."

In Du Plessis v Joubert, 1968 (1) SA 585 (A) BOTHA, J.A., summarized the rule of literal construction as follows at p 594 - 595 B:

> „Dit is 'n primêre reël van wetsuitleg dat die woorde van 'n wetsbepaling in hul gewone, alledaagse betekenis verstaan moet word, tensy dit vasstaan dat daardie betekenis in stryd is met die duidelike bedoeling van die Wetgewer soos blyk uit die statuut as geheel en ander tersaaklike omstandighede. In so 'n geval kan van die gewone betekenis van woorde afgewyk word

ten einde aan die duidelike bedoeling van die Wetgewer gevolg te gee (Venter v Rex, 1907 T.S. 910 op bl. 913-915, 921, 924; Union Government v Mack, 1917 AD 731 op bl. 743). Slegs 'n duidelike en onbetwyfelbare bepaalde bedoeling van die Wetgewer, en nie bloot 'n veronderstelde bedoeling nie, kan 'n afwyking van die gewone betekenis van woorde regverdig, en dan alleen indien die woorde vir 'n ander betekenis vatbaar is (Vgl. Dadoo Ltd. & Others v Krugersdorp Municipal Council, 1920 AD 530 op bl. 554 - 5; Principal Immigration Officer v Hawabu and Another, 1936 AD 26 op bl. 34-5)."

According to the Oxford English Dictionary, Vol. 1, the meaning of the verb "acquire" is:

"1. To gain, obtain, or get as one's own, to gain the ownership of (by one's own exertions or qualities).

2. To receive, or get as one's own (without reference to the manner), to come into possession of."

The meaning of the Afrikaans verb „verkry" is according to HAT, Verklarende Handwoordeboek van die Afrikaanse Taal, 1965:

„1. Met inspanning bekom, verwerf; teweegbring; Eindelik het hy sy sin verkry.

2. Vir geld koop: Die boek kan daar verkry word. "

The verb „bekom" is stated to mean:

„1. Kry: Moeilik om te bekom.

2. Gevolge/....

2. Gevolge hê: Dit sal jou sleg bekom.

3. Regkom: Van my verbasing bekom."

And the verb „verwerf" means:

„Deur arbeid, verdienste, moeite verkry."

I accept that the word "acquires" in section 15 should be construed in the light of its dictionary meaning of "gains, obtains or gets by one's own exertions". From the context of section 15 it is also apparent that while a South African citizen as acquirer obtains the foreign citizenship by virtue of a voluntary and formal act performed by him, the process of acquisition is only completed when a foreign country actually confers the foreign citizenship on him. The acquisition of foreign citizenship consists in an act of acquisition performed by a South African citizen and an act of conferment by a foreign country of the foreign citizenship on him.

Reading/.....

Reading the wording of section 15 in its ordinary grammatical meaning and having regard to its words in the light of their context, section 15 can, to my mind, have only one meaning. In clear terms the Legislature states specifically that South African citizenship is lost automatically where a South African citizen (who is not a minor), whilst outside the Union of South Africa, by some voluntary and formal act (other than marriage) acquires (on completion of the process of acquisition as aforementioned) the citizenship or nationality of a country other than the Union of South Africa. In order to come within the clearly stated ambit of section 15 a South African must, while he is outside the Union of South Africa, acquire foreign citizenship as the result of some voluntary and formal act (other than marriage) performed by him. It is essential, for the purposes of applying section 15, that

the/.....

the acquisition of the foreign citizenship should take place while the South African citizen is outside the Union of South Africa. It is also worthy ~~of~~ note that in section 15 the Legislature refers to the voluntary and formal act in very wide terms, namely, "some voluntary and formal act, other than marriage". The Afrikaans text refers to „een of ander vrywillige en formele handeling, behalwe n huwelik". According to the Oxford English Dictionary, Vol. 10, the word "some" when used as an adjective with singular nouns denotes "one or other; an undetermined or unspecified". It is most significant that the Legislature did not refer to a specific type of voluntary and formal act, but rather to an undetermined and unspecified voluntary and formal act which could be any voluntary and formal act other than marriage. In fact the voluntary and formal act (other than marriage) whereby the foreign citizenship is acquired may include the making of a formal application in a foreign

country/.....

country for naturalization or the making of a declaration of allegiance to a foreign country. See May, The South African Constitution, 3rd Ed., 1955, p 233 footnote 31. It is accordingly self-evident why the Legislature requires the South African citizen to be outside the Union of South Africa when he acquires foreign citizenship as the result of some voluntary and formal act (other than marriage) performed by him. It also explains why the Legislature nowhere in the Act made residence of some kind in a foreign country a pre-requisite for the acquisition of foreign citizenship for the purposes of section 15. The Legislature expressly referred to an undetermined or unspecified voluntary and formal act (other than marriage) in order to make allowance for a formal application for naturalization in a foreign country as well as a formal declaration of allegiance to a foreign country. The requirements for these formal acts are regulated by the law of the foreign country in question and not by the South African Legislature.

I am therefore of the opinion that the meaning of section 15 is clear and unambiguous, namely, that to come within the ambit of section 15 a South African citizen must be outside the Union of South Africa when he acquires foreign citizenship as the result of some voluntary and formal act (other than marriage). I find the construction which counsel for the respondent seeks to place on section 15 untenable and in conflict with the clear and unambiguous meaning of section 15 as stated. Once the meaning of a statutory provision is found to be clear and unambiguous it is the function of a Court of law to give effect thereto. It is not then permissible to have recourse to pre-existing legislation for the purpose of construing the statutory provision. See Collie, N.O., v The Master, 1972 (3) SA 623 (A) at p 629 H and the authorities there referred to. Nor can subsequent amendments of the Act be relied upon as an aid to the construction of section 15, in its original form. See Clan Transport Co (Pvt) Ltd v Road Services Board and Others, 1956 (4) SA 26 (SR) at p 33 - 34. No case

has been made out to depart from the clear and unambiguous meaning of section 15 in the exceptional instances as set out in Venter v Rex, supra, and re-affirmed in Shenker v The Master and Another, supra. I am satisfied from the context and the language of section 15 that the aforementioned construction, which I have placed on section 15, does not lead to an absurdity or to a result contrary to the intention of the Legislature as expressed in the wording of the said section.

A The appeal is accordingly allowed with costs, including those occasioned by the employment of two counsel.

B. The order of the Court a quo is replaced by one reading as follows:

(1) It is declared that the Applicant has not ceased to be a South African citizen by virtue of section 15 of Act No. 44 of 1949.

(2) The Respondent is ordered to pay the costs of this application, including the fees consequent upon the employment of two counsel.

C.P. Joubert.

C.P. JOUBERT.

WESSELS, J.A.)
RABIE, J.A.) Concur.

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(APPÈLAFDELING)

In die saak tussen:

ISMAIL EBRAHIM Appellant

en

DIE MINISTER VAN BINNELANDSE SAKE Respondent

CORAM: RUMPFF, HR., WESSELS, JANSEN, RABIE, ARR. et JOUBERT, Wnd. AR.

VERHOOR: 24.9.1976. GELEWER: 30.11.1976.

U I T S P R A A K

RUMPFF, HR. :

Die appellant kom in hoër beroep, by ooreenkoms direk in hierdie hof, teen 'n bevinding van regter van Heerden in Durban, dat hy nie geregtig is op 'n bevel dat hy nie sy Suid-Afrikaanse burgerskap kragtens die bepalings van Wet 44 van 1949 verloor het nie. Die uitspraak van die hof a quo verskyn in Ebrahim v. Minister of the Interior, 1976 (1) S.A. 878 (D). In sy aansoek voor die hof a quo het appellant beweer dat hy in

1930/.....

1930 in Durban gebore is en dat hy kragtens die bepalings van Wet 46 van 1927 Unieburger was en kragtens die bepalings van Wet 44 van 1949 'n Suid-Afrikaanse burger geword het. Tot 1952 het hy in sy ouerlike huis in Durban gewoon. Daarna het hy seeman geword, vanaf 1952 tot 1971, met drie onderbrekings. Van 1954 tot 1957 het hy in Durban gewoon, van 1957 tot 1959 het hy in Londen gewoon en van 1959 tot 1960 het hy weer in Durban gewoon. Sy reise as seeman het hy soos volg aangedui: van 1952 tot 1953 op 'n Suid-Afrikaanse kusvaarder tussen Durban en Kaapstad, van 1953 tot 1954 op 'n Britse boot in verskillende dele van die wêreld, van 1956 tot 1957 op 'n Britse boot tussen Suid-Afrikaanse en Australiese hawens, gedurende 1960 op twee Britse bote tussen Britse, Australiese en Suid-Afrikaanse hawens en van 1961 tot 1971 op verskillende Britse bote van die Union Castle Steamship Company Limited tussen Britse en Suid-Afrikaanse hawens. In 1964 is appellant in Suid-Afrika getroud en sy vrou en vier kinders leef in Durban in die huis van appellant by 'n winkel, wat hy in

1963 van sy vader gekoop het. 'n Pikante faset van appellant se lewensverhaal is dat hy in 1971 'n bedrag van £224,094 in 'n sg. „football pool" in Engeland gewen het. Van hierdie bedrag is £200,000 nog in Engeland belê. Appellant beweer dat hy nooit in Engeland woonagtig was nie maar dat hy altyd permanent woonagtig en gedomisilieer in die Republiek van Suid-Afrika was. Geen probleem sou ontstaan het nie as appellant nie op 5 Junie 1958 'n vorm met behulp van 'n prokureur in Engeland voltooi het nie waarvolgens hy aansoek doen om geregistreer te word as Britse burger. Appellant beweer dat hy dit gedoen het om makliker werk as seeman te verkry. In hierdie aansoek, waarvan 'n afskrif voor die hof is, het hy o.a. beweer dat hy in Suid-Afrika gebore is, en dat sy vader in Indië gebore is. Hy het ook die volgende beweer: „I am ordinarily resident in United Kingdom and have been so ordinarily resident during the twelve months as follows:" Gevraagde besonderhede oor o.a. adresse het hy oënskynlik nie ingevul nie. Aan die einde van die aansoek verskyn die

volgende:/....

volgende: „I, (full name) Ismail Ebrahim do solemnly and sincerely declare that the foregoing particulars ... 'illegible' ... true, and I make the solemn declaration conscientiously believing the same to be true". Na sy handtekening is daar die volgende:

„Made and subscribed this 5th day of June, 1958

Made and resubscribed this 10th day of February, 1961."

Appellant het verduidelik dat hy na voltooiing van die aansoek in 1958 van besluit verander en die aansoek terug gehou het. In 1961 het hy egter besluit om met die aansoek voort te gaan omdat hy gehoor het dat Suid-Afrika uit die Britse Gemenebes sou of kon tree en dit vir hom as vreemdeling in die Verenigde Koninkryk moeilik of onmoontlik sou wees om werk te kry. Onder die aansoekvorm verskyn die volgende: „The abovenamed Applicant has been registered as a citizen of the United Kingdom and Colonies. Declaration duly attested on the original application form held by the Home Office". Dan volg 'n handtekening as „illegible" aangegee en die datum

„29th/...

„29th March, 1961". In n beëdigde verklaring van die Britse Vise-konsul in Durban word o.a. gesê in verband met appellant se aansoek vorm:

> „The endorsement at the foot of the second page of the said Annexure, recording on the 29th March, 1961 that the said Ismail Ebrahim had been registered as a citizen of the United Kingdom and Colonies, means that:
> (a) he was registered as a citizen of the United Kingdom and Colonies on the 29th March, 1961
> (b) he therefore acquired citizenship of the United Kingdom and Colonies on the 29th March, 1961."

Wat betref hierdie datum, nl. 29 Maart 1961, beweer appellant dat hy op die „Durban Castle" was, n boot wat op reis was tussen hawens van die Verenigde Koninkryk en Suid-Afrika en dat hy op daardie dag fisies in die hawe van Port Elizabeth was. Hierin word hy gestaaf deur die verklaring van die hawekaptein van Port Elizabeth wat verklaar dat volgens sy registers die „Durban Castle" in die hawe van Port Elizabeth was vanaf 6.35 vm. op 29 Maart 1961 tot 6.40 nm. op 30 Maart 1961.

Respondent het beweer dat, nieteenstaande hierdie feit, artikel 15 van Wet No. 44 van 1949, soos dit was voor 'n wysiging in 1961, van toepassing is, en dat appellant sy burgerskap verbeur het. Hierdie houding het aanleiding gegee tot die aansoek van appellant in die hof a quo wat respondent gelyk gegee het. Artikel 15 van Wet 44 van 1949 het ten tyde van appellant se registrasie as Britse burger bepaal:

> „15. 'n Suid-Afrikaanse burger wat, terwyl hy buite die Unie is en nie 'n minderjarige is nie, die burgerskap of nasionaliteit van 'n ander land dan die Unie deur een of ander vrywillige en formele handeling, behalwe 'n huwelik, verkry, hou daarop op om 'n Suid-Afrikaanse burger te wees."

Die Engelse teks het gelui:

> „A South African citizen who whilst outside the Union, and not being a minor, by some voluntary and formal act, other than marriage, acquires the citizenship or nationality of a country other than the Union, shall thereupon cease to be a South African citizen."

Hierdie artikel is later in 1961 vervang deur 'n artikel met meer uitgebreide bepalings maar die wesenlike inhoud van die oorspronklike artikel 15 is daarin behou.

Die hof a quo het o.a. beslis dat „in the context in which it is here used, ‚acquires' does not denote the actual granting of citizenship but something positive on the part of the person to whom citizenship is granted". Ook het die hof a quo die volgende bevind:

„I/....

„I have accordingly, on the facts of this case and indeed as the applicant himself solemnly declared in his application, come to the conclusion that he was ordinarily resident in the United Kingdom for the requisite period which entitled him to United Kingdom citizenship by registration and that being so resident he ‚acquired', within the meaning of that word in section 15, such citizenship whilst he was ouside the Union of South Africa. It follows, in my view, that he thereby lost his South African citizenship and that the application must fail."

Die betoog namens die appellant in hierdie hof is 'n heel eenvoudige betoog, en daar is nie gesteun op wat in die hof a quo aangevoer is omtrent die grammatikale konstruksie van artikel 15 (a) nie. Die woorde van artikel 15 is duidelik, so word aangevoer, die appellant was op 29 Maart 1961 toe die aansoek om Britse burgerskap goedgekeur is, in die hawe van Port Elizabeth, en derhalwe nie „buite die Unie" en gevolglik is artikel 15 nie op appellant van toepassing nie. 'n Simplistiese benadering van artikel 15 sou ongetwyfeld die appellant gelyk moet gee, maar daar is m.i. iets wat skort met so 'n benadering. Dit kon beswaarlik die bedoeling van die wetgewer gewees het dat 'n persoon, wat buite die Unie geleef het en wat vrywillig en formeel aansoek doen om burgerskap van 'n ander land, nie sy burgerskap sou verbeur nie indien so

'n persoon toevallig vir een dag in die Unie was en daarna weer die Unie verlaat het en dit sou blyk dat die sertifikaat van sy nuwe burgerskap die datum dra van die dag waarop so 'n persoon toevallig in die Unie was.

Gestel 'n Suid-Afrikaanse burger het die Unie permanent verlaat en besluit om in Engeland te gaan woon. Daar doen hy, na verloop van tyd, aansoek om Britse burgerskap en terwyl hy daarna vir 'n week in Johannesburg is om sy sake finaal af te handel, word sy sertifikaat in Engeland geteken. Hy gaan terug en kom weer na 'n jaar na die Unie op besoek. Indien artikel 15 letterlik vertolk word, sou Suid-Afrika kon aanvoer dat die persoon nie sy burgerskap verloor het nie, en hom gelas om bv. verpligte militêre diens te doen. Die vraag ontstaan of dit ooit die bedoeling kon gewees het dat die man nie sy Suid-Afrikaanse burgerskap verloor nie maar in sulke fratsomstandighede onderhewig sou wees aan alle voorregte en verpligtinge wat op 'n Suid-Afrikaanse burger mag rus?

~~Die/....~~

Aan/....

Aan die ander kant sou 'n Suid-Afrikaanse burger wat Britse burgerskap wil verkry en nie sy burgerskap van die Republiek wil verloor nie, in Engeland kon gaan woon en daar aansoek doen om burgerskap deur registrasie, en na sy aansoek aldaar tydelik terugkom na die Republiek, om sodoende te sorg dat hy nie buite die Republiek is wanneer sy sertifikaat in Engeland geteken word nie. 'n Letterlike vertolking van artikel 15 sou hom toelaat om dit te doen hoewel dit m.i. duidelik die werklike bedoeling van die wetgewer was om Suid-Afrikaanse burgerskap te ontneem aan persone wat die burgerskap van ander lande aanvaar.

Die/.....

Die voorbeelde hier genoem, trouens die feite van die onderhawige saak self, toon aan dat 'n letterlike toepassing van artikel 15 tot onsekere toestande lei en wel op 'n gebied, nl. burgerskap, waarop 'n mens kan verwag dat die wetgewer 'n redelike mate van sekerheid wil stel. Dit wil my voorkom of sulke onsekerhede, wat sal afhang van blote toevallighede, onbestaanbaar is met die bedoeling van die wetgewer. Wet 44 van 1949, soos gewysig, handel oor Suid-Afrikaanse burgerskap en wat hierdie onderwerp betref, kan aanvaar word dat enige beskaafde staat wetgewing het wat handel oor die verkryging en verlies van burgerskap. Die besondere uitdrukking in artikel 15 „terwyl hy buite die Unie is" het sy ontstaan ~~klaarblyklik~~ waarskynlik te danke aan die bepalings van 'n Britse Wet, „The Naturalization Act, 1870", wat destyds die Engelse reg aansienlik verander het. In daardie Wet verskyn ook die gebruiklike twee kante van die munt nl. verkryging van burgerskap en verlies van burgerskap. Artikel 7 van daardie Wet handel oor „Naturalization and

resumption/....

resumption of British Nationality" en die eerste paragraaf van die artikel lui soos volg:

> „An alien who, within such limited time before making the application herein-after mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of no less than five years, or has been in the service of the Crown for a term of no less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization."

Vereis word o.a. dat die appellant „has resided in the United Kingdom for five years".

Verlies van burgerskap word in artikel 6 behandel. Artikel 6 met die eerste voorbehoud lees soos volg:

> „6. Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under any disability voluntarily become naturalized in such state, shall from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien; Provided,-

(1)/.....

(1) That where any British subject has before the passing of this Act voluntary become naturalized in a foreign state and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration, that he is desirous of remaining a British subject, and upon such declaration herein-after referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect."

Die tweede voorbehoud wat in artikel 6 verskyn, is nie van belang vir doeleindes van hierdie uitspraak nie. Dit mag aanmatigend skyn om te probeer om 'n Britse Wet te vertolk maar dit is nodig omdat die uitdrukking wat in daardie Wet gebruik word „when in any foreign state" ~~klaarblyklik~~ waarskynlik die oorsprong van die frase „whilst outside the Union" in ons wetgewing is. In die eerste plek neem ek aan dat om daardie uitdrukking betekenis te gee na die Wet as geheel gekyk moet word asook die

onderwerp/....

onderwerp waaroor dit gaan. By naturalisasie word „residence" vereis maar by verlies van burgerskap word nie na „residence" verwys nie maar alleen waar na „when in any foreign state". Ek dink dat die redes hiervoor is dat die Britse wetgewer destyds reeds aanvaar het dat om genaturaliseer te word in n „foreign country" wetgewing van die vreemde land een of ander vorm van „residence" sal voorskryf. Sien bv. Francois: Grondlijnen van het Volkenrecht, waar op bl. 238 gesê word dat dit nagenoeg algemene gebruik is dat naturalisasie ~~xiiem~~ verleen word na verblyf gedurende n paar jaar op die grondgebied van die nuwe staat. Wat die voorskrif sou wees, kon die Britse wetgewer nie skeel nie en dit sou geheel en al ondoenlik en onnodig wees om dit in die artikel te noem. Met opset word daar dus nie na een of ander vorm van „residence" in die vreemde land verwys nie. Al wat die wetgewer gesê het, was dat indien n Britse burger in n vreemde land is, en vrywillig genaturaliseer word, dit geag word dat hy sy Britse burgerskap verloor. Dat die Britse wetgewer wel

wetgewing van die vreemde land in gedagte het, blyk duidelik uit die laaste sin van die eerste voorbehoud van art. 6. Na my mening het die Britse wetgewer dus met opset nie na enige vereistes van „residence" in die vreemde land verwys nie maar het eenvoudig aanvaar dat die Britse burger sy land verlaat het en wil verlaat en in die vreemde staat sal wees wanneer hy daar aansoek doen om naturalisasie en daar sal wil bly. Vanselfsprekend was dit vir die Britse wetgewer nie van belang waar presies die burger fisies sou wees wanneer die sertifikaat van naturalisasie in die vreemde land gedateer is nie. Normaalweg sou aansoek gedoen word en sou die aansoek deur die kanale van die staatsdiens moes gaan, waar dit miskien met spoed, miskien met slakkegang, afgehandel sou word. Die presiese datum van naturalisasie sou natuurlik onvoorspelbaar wees. Wat wel van belang was, is dat die Britse burger in n vreemde staat aansoek gedoen het om naturalisasie en genaturaliseer is. Die woorde „when in any foreign state ..... become naturalized in such state"

aanvaar/...

aanvaar dus by implikasie 'n vereiste van daardie staat omtrent verblyf, maar vir sover dit die Britse wetgewer betref, word dit in 'n „negatiewe" lig beskou, word „residence" in die vreemde staat nie genoem nie, en word alleen gestipuleer dat naturalisasie in 'n vreemde land moet plaasvind. Indien die Britse burger in 'n vreemde staat dus aansoek doen om naturalisasie en enkele weke daarna tydelik vir 'n dag na 'n ander naburige vreemde staat sou gaan en na sy terugkeer sou vind dat naturalisasie goedgekeur is op die dag toe hy in die naburige vreemde staat was, sou dit sy naturalisasie nie affekteer nie, en sou dit ook nie in die Verenigde Koninkryk kon aangevoer word, na my mening, dat, vir doeleindes van artikel 6, hy nie sy Britse burgerskap verbeur het nie. Artikel 7 van die 1870-Wet bepaal o.a. dat na aansoek om naturalisasie 'n sertifikaat gegee kan word maar ook dat: „such certificate shall not take effect until the appellant has taken the oath of allegiance". Hieruit blyk dat kragtens die Wet van 1870 'n vreemdeling wat vir ten minste vyf jaar in die Verenigde Koninkryk woonagtig was, aansoek kon doen om naturalisasie, en in afwagting op sy sertifikaat, tydelik die Verenigde Koninkryk kon verlaat en na sy terugkeer en ontvangs van sy sertifikaat, die eed

van getrouheid kon aflê. Daar is geen sprake dat hy in die Verenigde Koninkryk moet wees op dieselfde dag as wat sy sertifikaat geteken is nie. Onderhewig aan die eed van getrouheid is n vreemdeling dus wel in die Verenigde Koninkryk wanneer hy genaturaliseer word, en wanneer die wetgewer in artikel 6 melding maak dat n Britse burger „when in any foreign state" genaturaliseer word, het daardie uitdrukking, myns insiens geen ander betekenis nie as wat deur artikel 7 ten opsigte van n vreemdeling in die Verenigde Koninkryk weergegee word. Dieselfde bepalings omtrent naturalisasie en verlies van Britse burgerskap verskyn wesenlik in die British Nationality and Status of Aliens Act, 1914. Artikel 2 van daardie Wet handel oor naturalisasie en in artikel 13 verskyn die volgende bepaling:

> „A British subject, who, when in any foreign state and not under disability, by obtaining a certificate of naturalization or by any other voluntary and formal act, becomes naturalized therein, shall thenceforth be deemed to have ceased to be a British subject."

Wat /.....

Wat my mening is oor die begrip „when in any foreign state" in artikel 6 van die 1870-Wet, geld ook ten opsigte van hierdie Wet. In ons eie Wet No. 18 van 1926, wat voorsiening maak vir Britse Nasionaliteit in die Unie, word o.a. deel II van die Britse 1914-Wet, soos gewysig, in ons wettereg geïnkorporeer. In artikel 2 van die 1926-Wet, wat handel oor naturalisasie, word ook o.a. vereis dat n vreemdeling n periode van minstens vyf jaar in die gebied van Sy Majesteit woonagtig moes wees (waarvan ten minste vier jaar in die Unie moes wees) en word ook bepaal dat „n Sertifikaat van naturalisasie mag nie uitgereik word nie voordat die aanvraer die eed van getrouheid afgelê het".

Verlies van Britse nasionaliteit word in artikel 15 van die 1926-Wet soos volg beskryf in die Engelse teks:

> „A British subject who, when in any foreign state and not under disability, by obtaining a certificate of naturalization or by any other voluntary and formal act, becomes naturalized therein, shall thenceforth in the Union be deemed to have ceased to be a British subject."

Wat die betekenis van die frase „when in any foreign state" betref, geld myns insiens presies dieselfde oorwegings as wat geld t.o.v. die oorspronklike Britse Wet van 1870. As gevolg van verdere konstitusionele ontwikkeling kom in 1949 die British Nationality Act, 1948, met o.a. nuwe bepalings aangaande „Citizenship by registration" en 'n reeks nuwe bepalings oor „Renunciation and Deprivation of Citizenship". Die bepalings omtrent outomatiese verlies van burgerskap word nie meer in daardie Wet herhaal nie. Die bepalings omtrent burgerskap deur registrasie het betrekking op burgers van sekere lande, o.a. Suid-Afrika, en maak voorsiening vir aansoeke op 'n voorgeskrywe wyse, en 'n vereiste aangaande verblyf. Artikel 9 van die 1948-Wet bepaal:

> „A person registered under any of the last three foregoing sections shall be a citizen of the United Kingdom and Colonies by registration as from the date on which he is registered."

In ons Wet 44 van 1949 word voorsiening gemaak vir o.a. Suid-Afrikaanse burgerskap en ook hier maak die begrip „burgerskap deur registrasie" sy verskyning,

hoewel dit in 1962 herroep word. In hierdie verband is ook 'n periode van verblyf in Suid-Afrika vereis en o.a. 'n voorneme om in hierdie land te bly. Ook wat naturalisasie betref, word o.a. 'n periode van verblyf vereis. Wat wel in Wet 44 van 1949 bly bestaan, is die bepaling omtrent verlies van burgerskap soortgelyk aan die wat in die Britse 1870-Wet en 1914-Wet was en wat nou in artikel 15 van ons Wet 44 van 1949 verskyn. Ek dink nie dat daar enige twyfel kan wees oor wat die bedoeling van die wetgewer in artikel 15 (en die Engelse wetgewer in die 1870-Wet en 1914-Wet) was nie. Die wetgewer het in artikel 15 beoog dat wanneer 'n Suid-Afrikaanse burger in 'n vreemde land is en formeel aansoek doen om burgerskap van daardie land, en sodanige burgerskap verkry, hy sy Suid-Afrikaanse burgerskap verloor. Implisiet is die beginsel dat dié Suid-Afrikaanse burger nie meer in Suid-Afrika bly en wil bly nie en dat hy voldoen aan die verblyfvereiste van die vreemde land. Indien dit die bedoeling van die wetgewer was, is dit nie van belang of die Suid-Afrikaanse burger, na hy in die vreemde land aansoek gedoen het om

burgerskap/....

burgerskap, tydelik daardie land verlaat het nie en 'n ander land besoek het, of selfs weer tydelik in die Unie was nie, selfs al was hy tydelik in daardie ander land of toevallig tydelik in die Unie toe die sertifikaat van burgerskap in die vreemde land geteken is. Wat betref die oogmerk van die wetgewer in artikel 15 van die Wet, is dit interessant om te sien hoe die wetgewer homself uitgedruk het in artikel 19bis, wat aanvanklik deur artikel 13 van Wet 64 van 1961 ingevoeg is. Hierdie artikel lees soos volg:

> „19bis. (1) Die Minister kan 'n Suid-Afrikaanse burger wat nie 'n minderjarige is nie, sy Suid-Afrikaanse burgerskap deur bevel ontneem indien hy oortuig is dat so 'n burger -
>
> (a) te eniger tyd ná die inwerkingtreding van hierdie Wet die burgerskap of nasionaliteit van 'n ander land as die Unie verkry het deur een of ander vrywillige en formele handeling in die Unie, behalwe 'n huwelik; of
>
> (b) te eniger tyd ná die inwerkingtreding van hierdie Wet, binne of buite die Unie-
>
> (i) 'n eed of ander verklaring van getrouheid aan 'n ander land as die Unie afgelê het; of

(ii)/.....

(ii) 'n verklaring afgelê het waarin hy van sy Suid-Afrikaanse burgerskap afstand gedoen het met die doel om 'n ander burgerskap of nasionaliteit te aanvaar.

(2) Indien die Minister ingevolge sub-artikel (1) 'n Suid-Afrikaanse burger sy burgerskap ontneem, hou sodanige burger op om 'n Suid-Afrikaanse burger te wees."

Hier word verwys na 'n vrywillige en formele handeling „in die Unie", en na 'n verklaring „binne of buite die Unie" afgelê. Hierdie is weliswaar latere wysigings maar is natuurlik in pari materia, en dit dui aan dat die wetgewer konsekwent is vir sover dit die werklike oogmerk van ~~art.~~ artikel 15 betref. Artikel 19bis is later gewysig en in 1971 deur 'n nuwe artikel 19bis vervang, maar die inhoud van die oorspronklike sub-artikels 19bis (1) (a) en (b) en (2) het wesenlik bly bestaan. Artikel 19bis (1) dui aan dat dit die oogmerk van die wetgewer is om die reg toe te ken om die burgerskap te ontneem wanneer die formele handeling, anders as in ~~art.~~ artikel 15, in die Unie, plaasvind, en die wetgewer is nie geinteresseerd in waar die burger

is/.....

is wanneer die ander land die aangevraagde burgerskap of nasionaliteit aan hom toeken nie. In die lig van wat hierbo gesê is, is dit my mening dat die wetgewer in artikel 15 in gedagte gehad het 'n persoon wat die Unie verlaat het, en terwyl hy in 'n ander land verkeer, besluit om hom in daardie land te vestig en burgerskap van daardie land aan te vra en dit dan ook verkry. Dit was die bedoeling van die wetgewer dat daardie man outomaties sy burgerskap sou verloor. In die lig van hierdie bedoeling van die wetgewer, is dit my mening dat die woorde „terwyl hy buite die Unie is ... die burgerskap .... van 'n ander land verkry...." 'n begrip behels wat bestaan uit die totaliteit van afwesig wees uit die Unie, die kwalifikasie om nasionaliteit van die ander land te verkry, die formele handeling om nasionaliteit te verkry en die gevolg van die formele handeling, nl. die verkryging van nasionaliteit. Om na vereiste verblyf en aansoek om burgerskap tydelik buite daardie land te wees, wat toevallig 'n kort tydelike aanwesigheid in die Unie self mag wees, verander m.i. nie daardie

begrip wat die bedoeling van die wetgewer weergee nie. Gevolglik is die presiese moment waarop die sertifikaat onderteken word, en die presiese plek waar die aansoekdoener hom toevallig en tydelik op daardie moment sou bevind, nie van deurslaggewende belang nie. Na my mening moet artikel 15 so vertolk word dat die Suid-Afrikaanse burger „buite die Unie" is selfs al het hy tydelik die Unie besoek, en selfs al is sy burgerskapsertifikaat geteken op die dag toe hy tydelik in die Unie was. Dat die woord „reside" in meer as een betekenis gebruik kan word, blyk uit vele beslissings van ons howe, etlike waarvan vermeld word in Ex parte Minister of Native Affairs, 1941 A.D. 53. Hoewel appellant nou beweer dat hy nie in die Verenigde Koninkryk woonagtig was nie, het hy op grond van sy verklaring dat hy wel daar woonagtig was Britse burgerskap verkry. Klaarblyklik wil appellant daardie burgerskap nie prysgee nie maar wil ook terselfdertyd sy Suid-Afrikaanse burgerskap behou. Vir doeleindes van die aansoek van appellant is dit nie van belang of hy nou beweer

dat/.....

dat hy altyd in Suid-Afrika woonagtig was nie. Van belang is dat hy Britse burgerskap verkry het en alleen op grond van die feit dat hy op 29 Maart 1961 toevallig in die Unie was, beweer dat artikel 15 van Wet 44 van 1949 hom nie outomaties sy Suid-Afrikaanse burgerskap laat verloor nie. Wesenlik was die bedoeling van die wetgewer om deur artikel 15 die burgerskap te laat verloor deur verkryging van burgerskap van 'n vreemde staat. Die breë beginsel word, in verband met naturalisasie, in Oppenheim's International Law, 8ste uitgawe, soos volg gestel op bl. 659: „According to the law of many States, the nationality of their subjects is extinguished ipso facto by their naturalization abroad". In artikel 15 word geen onderskeid getref tussen verlies van burgerskap as gevolg van naturalisasie of van registrasie nie, en die toevallige tydelike aanwesigheid van appellant in Suid-Afrika op 29 Maart 1961, is, soos reeds hierbo aangedui, geen aanduiding dat appellant nie „buite die Unie was" nie toe hy as Britse burger geregistreer is. In hierdie verband verwys

ek/.....

ek na die interessante artikel van prof. Cowen: Prolegomenon to a Restatement of the Principles of Statutory Interpretation, in die Tydskrif vir die Suid-Afrikaanse Reg, 1976 (2) bl. 131, en veral waar op bl. 160 die volgende gesê word: „Statutes are <u>always</u> passed to achieve a <u>purpose</u>. They have as some of the civilian writers put it, a <u>ratio</u> - and the detailed commands or prescription of the legislation stand in relation to the <u>ratio</u> or <u>purpose</u> as means to an end", en ook wat in die voetnoot op bl. 159 en 160 verskyn as 'n opsomming van die „elemente" wat by interpretasie oorweeg word en veral „element" (vi) wat lui:

> „The practical consequences of various interpretations; that is to say, the interpreter should evaluate the consequences of various possible interpretations - the idea being that the legislature must be presumed to have a sensible, fair and workable result."

In die onderhawige saak meen ek dat die duidelike oogmerk van die wetgewer die vertolking van artikel 15, soos hierbo gedoen, vereis, maar selfs al sou

daar/....

daar 'n balans wees (wat m.i. nie bestaan nie) tussen taal en „nie-taalkundige faktore", sou ek met prof. Cowen saamstem, waar hy op bl. 162 omtrent die duidelike oogmerk van die wetgewer sê:

> „If we are to remain loyal to the Roman Dutch Law, it is necessary I submit, to recognize that the factor which should tip the balance, where the competing claims of language and of 'non-linguistic factors' are equal, is precisely the ratio or purpose of the legislation."

Na my mening moet die appèl afgewys word met koste, insluitende die van twee advokate.

HOOFREGTER.

JANSEN, AR. Stem saam.