

**SABWIL HUMAN RIGHTS COURT AFRICA ROOM, AFSA CHAMBERS,SANDTON**

**CASE NO: 1112/2019**

In the matter between:

PERSON,Donald

First Applicant

PERSON, Mila

Second Applicant

and

MINISTER OF HOME AFFAIRS

Respondent

and

UBUNTU NOW

Amicus Curiae

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**AMICUS CURIAE SUPPLEMENT HEADS OF ARGUMENTS**

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The Amicus Curiae has identified a few submissions and adjustments that should be made to assist both the Amicus Curiae with their argument and the Honourable court with factors that are relevant.

Firstly, the Amicus Curiae in their main Heads of arguments omitted to set out both the introduction and the background of the case and a few other arguments.

**i. INTRODUCTION**

1. The pertinent issue in this Application is whether the section 6(1) of the South African Citizenship Act is applicable in this matter and if so, what are the consequences thereof, in respect of Rachel and her minor child, Mikael.
2. Secondly, if section 6(1) is not applicable, whether the Respondent is empowered under section 8(2) of the South African Citizenship Act to revoke the citizenship of Rachel and her minor child.
3. The Applicants brought this matter to court on behalf of Rachel as their child and Mikael as their grandchild. Both the first and second Applicants have the locus standi to bring this matter before the Honourable court.

**ii. BACKGROUND**

4. Ubuntu Now as the amicus curiae agree with the Applicants that section 6(1) is not applicable in this matter and that the Respondent did not act constitutionally when applying his mandate under section 8(2). Ubuntu Now represents the interests of the youth of South Africa by preventing radicalisation of the youth and that each person must be treated with dignity as envisaged by the Constitution.
5. Ubuntu Now is also concerned about with the best interests of the child involved, Mikaela. Should the Respondent revoke the citizenship of Rachel, Mikaela's rights will be prejudiced and that raises concerns about Mikaela's wellbeing, the adult he will grow up and the effects it will have on the society

at large. Ubuntu Now therefore, sets out reasons why the court should take a different approach concerning the minor child.

6. The judgement of this case will also have an effect on all the other South Africans who might have joined the NAR. There are both adults and children who stay in refugee camps due to the military campaigns against the NAR and this judgement is of importance as it will determine their livelihood.

### **iii. THE AGE OF MINORITY AND A MINOR'S CAPACITY TO ACT**

7. Under the Children's Act,<sup>1</sup> a child means a person under the age of 18 years, while a major is a person who attained the age of 18 years, in terms of the South African Amended Act.<sup>2</sup> The consent of a person who has not reached the age of majority is not non-existent however, it is limited. The Children's Act in terms of section 10 provides that a child, depending on his maturity and stage of development is granted the right to participate in any matter concerning the child in an appropriate manner and that the views expressed by such child must be given due consideration.
8. As mentioned in 6(1) of the South African Citizenship Act, a minor child can lose citizenship be either getting married to a person who holds citizenship in a different country or by some voluntary and formal act. Rachel neither got married to anyone from a different country while she was a minor nor did she make any formal application for citizenship in Cairo, Egypt or any other country, for that matter. This therefore, limited Rachel's capacity of losing her South African citizenship.

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<sup>1</sup> Children's Act 38 of 2005.

<sup>2</sup> South African Citizenship Amendment Act 17 of 2010.

9. Rachel therefore, retains her South African citizenship as she has acquired by birth in terms of section 2(1) which provides that any person who immediately prior to the date of commencement of this Act, was a South African citizen by birth or who is born in the Republic on or after the date of commencement of this Act, shall be a citizen by birth.