Pro Bono & Human Rights

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SOUTH AFRICA

The right to belong: Judicial victory for stateless children

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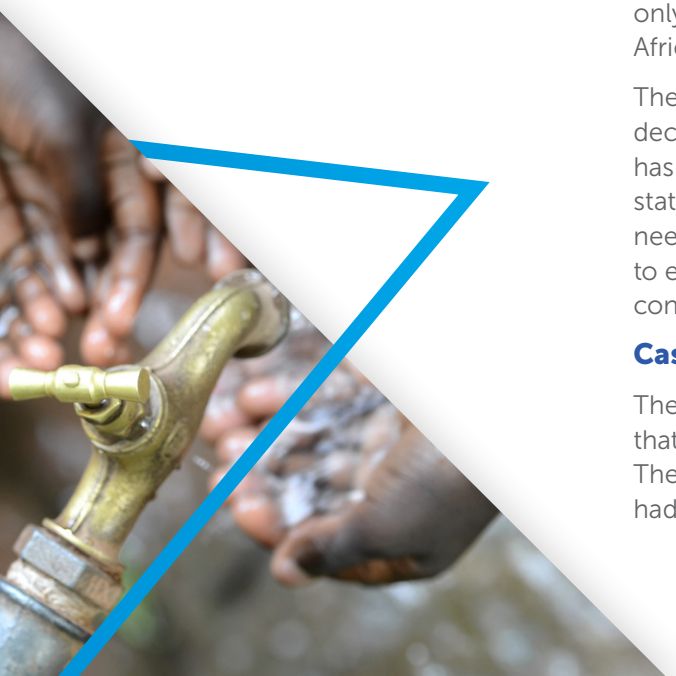
The right to belong: Judicial victory for stateless children

Citizenship in South Africa has long been a complex and evolving legal issue, particularly concerning children born to foreign nationals. The recent Gauteng High Court ruling in *M.M.E and Others v Director General, Department of Home Affairs and Another* (21970/2021) [2025] ZAGPPHC 202 (12 March 2025) represents a pivotal moment in reinforcing the constitutional rights of children.



This decision underscores the ongoing legal and administrative challenges surrounding the interpretation and application of the South African Citizenship Act 88 of 1995 (Citizenship Act). Historically, prior to 1 January 2013, children born in South Africa to permanent residents were automatically granted citizenship. However, legislative amendments have since restricted automatic citizenship to only cases where at least one parent is a South African citizen at the time of the child's birth.

The impact of these changes, coupled with inconsistent decision-making by the Department of Home Affairs (DHA), has resulted in numerous children being left at risk of statelessness. The judgment in *M.M.E* highlights the urgent need for legislative clarity and administrative consistency to ensure South Africa's citizenship laws align with constitutional and international human rights obligations.

Case background

The case concerned a Rwandan refugee family that had lawfully resided in South Africa for years. The applicants, married in Johannesburg in 2011, had two children – both born in South Africa.

Their firstborn, a daughter born in 2012, was granted South African citizenship under the pre-2013 provisions of the Citizenship Act, as both parents were permanent residents at the time of her birth. However, their younger daughter, born in 2015, was denied citizenship due to the legislative amendments that came into effect in 2013, which removed automatic citizenship for children of permanent residents.

Courts legal interpretation

Central to the court's deliberation was the interpretation of sections 2(2) and 2(3) of the Citizenship Act.

- **Section 2(2)** states that a person born in South Africa who is not a South African citizen is entitled to citizenship if they have no nationality or right to nationality elsewhere, provided their birth is registered in accordance with the Births and Deaths Registration Act 51 of 1992.
- **Section 2(3)** provides that a child born in South Africa to permanent residents, who is not a South African citizen at birth, may acquire citizenship upon reaching the age of majority, provided they have lived in the Republic continuously since birth and have had their birth registered in accordance with the Births and Deaths Registration Act 51 of 1992.

The court confirmed that section 2(2) is designed to prevent statelessness, ensuring that no child remains without a nationality. In this case, the minor child was left in legal limbo – neither automatically conferred South African citizenship nor able to claim Rwandan citizenship as a matter of right. This raised a fundamental question: could a child be forced to wait until adulthood to apply for citizenship while being functionally stateless in the interim?

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The court decisively ruled that this interpretation was untenable and contrary to South Africa's constitutional and international obligations, particularly in safeguarding the best interests of the child.

Rwandan citizenship

The respondents argued that the applicants had alternative remedies:

- They could register their child's birth with the Rwandan authorities and secure her citizenship.
- They could add her to the parents' refugee permits and wait until she reached adulthood before applying for South African citizenship under section 2(3).

The court rejected these arguments outright.

Firstly, Rwandan citizenship is not automatically granted to children born outside Rwanda; it requires an application process that offers no guaranteed outcome. The mere right to apply does not equate to actual citizenship.

Secondly, any attempt by the applicants to engage with the Rwandan Government would jeopardise their refugee status in South Africa. Under section 5(1)(a) of the Refugees Act 130 of 1998 (Refugees Act), a refugee loses their status if they voluntarily seek consular assistance or apply for citizenship from their country of origin. Thus, requiring the applicants to apply for Rwandan citizenship for their child would place them at risk of loss of protection and deportation.

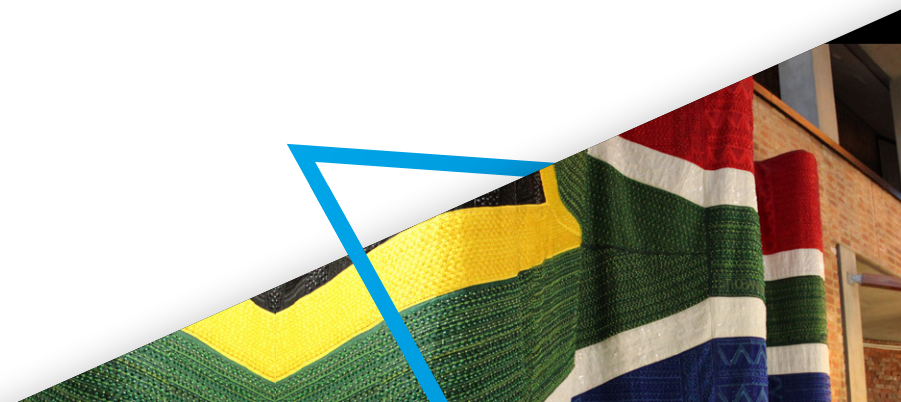
The court aptly noted that a right that cannot be exercised is no right at all. Therefore, section 2(2) of the Citizenship Act had to be applied in these circumstances, ensuring that the minor child did not remain stateless.

Refugee status

The DHA proposed an alternative solution: granting the minor the same refugee status as one of the applicants. However, this would not resolve her statelessness.

Even with refugee status, she would not be recognised as a citizen of any country. Upon reaching adulthood, she would have to apply independently for recognition as a refugee, and only if that application succeeded, could she then apply for naturalisation in terms of the Citizenship Act. This would leave her in a precarious legal position for years.

The court found this proposed course of action constitutionally deficient. The minor child was entitled to a nationality from birth, as enshrined in section 28(1)(a) of the Constitution of the Republic of South Africa, 1996 (Constitution), which guarantees every child the right to a name and nationality. The state's failure to grant her citizenship would prolong her statelessness indefinitely – an outcome that the Constitution and section 2(2) expressly seek to prevent.



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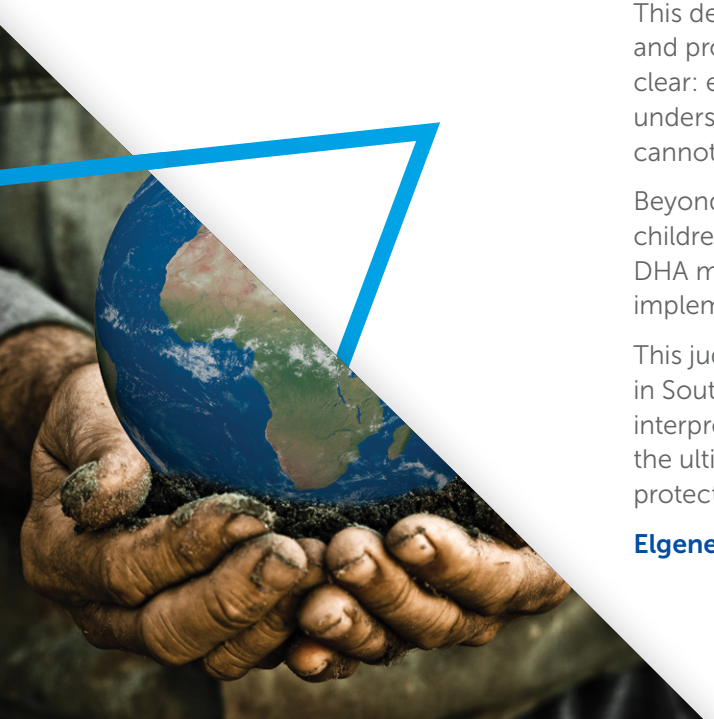

Court decision

The court held that the minor child did not hold citizenship of any country and that the DHA had failed to consider the best interests of the child when interpreting the Citizenship Act. Given that South Africa has recognised and domesticated the principles of the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, even without formally ratifying them, it was incumbent upon the state to prevent statelessness in line with these international obligations.

Accordingly, the court ordered the DHA to:

- Register the minor child as a South African citizen.
- Enter her details into the National Population Register.
- Issue her with a South African identity number.
- Amend her birth certificate to reflect her South African citizenship.

Implications of the judgment

This decision reaffirms South Africa's constitutional duty to prevent statelessness and protect children's right to nationality. Section 28(1)(a) of the Constitution is clear: every child has the right to a name and nationality from birth. The judgment underscores that bureaucratic obstacles and rigid interpretations of the law cannot be used to strip children of their fundamental rights.

Beyond this specific case, the ruling serves as a powerful precedent for other children born to refugees or stateless parents in South Africa. It confirms that the DHA must do more than mechanically apply legislation – it must interpret and implement the law in a manner that upholds the best interests of the child.

This judgment is a significant victory in the fight against childhood statelessness in South Africa. It signals that no child should be left in legal limbo due to arbitrary interpretations of the law. It is a firm reminder that the Constitution remains the ultimate safeguard against statelessness and a powerful instrument in the protection of vulnerable children.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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