REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

JUDGMENT

HC-MD-CIV-MOT-REV-2018/00006

In the matter between:

EDUARDO GUILLERMO DELGADO CASTAŇEDA **APPLICANT**

and

MINISTER OF HOME AFFAIRS AND IMMIGRATION **1ST RESPONDENT**

CHIEF OF IMMIGRATION, MINISTRY OF HOME AND IMMIGRATION **2ND RESPONDENT**

Neutral Citation: *Castaňeda v Ministry of Home Affairs and Immigration* (HC-MD-CIV-MOT-REV-2018/00006) NAHCMD 75 (25 February 2021).

CORAM: MASUKU J

Heard: **Determined on the papers**

Delivered: **25 February 2021**

Flynote: Legislation - Immigration Control Act 1993 – Acquisition of domicile whether unilateral – Article 81 of the Constitution – binding nature of Supreme Court judgments – Doctrine of *per incuriam* - its meaning and application - Section 38 certificate – its purpose and whether it has a bearing on the acquisition of domicile.

Summary: The applicant, in 2011, relocated to Namibia. The applicant had been resident in Namibia on the basis of work permits which have been subject to renewal, the last of which was set to expire on the 31 December 2019. It was however renewed.

Aggrieved by this position the applicant seeks an order declaring that he is domiciled within the court's jurisdiction. He further seeks an order reviewing and setting aside the respondents' decision not to renew his s 38 certificate as being in contravention of Article 18 of the Constitution. In support of his application the applicant submits that he has been in a same sex marriage with a Namibian citizen for more than ten years and they have a son born of their union through surrogacy. He further states that he and his spouse have a universal partnership which ought to work in favour of him being declared domiciled in the jurisdiction. It was also the applicant's contention that this court is not bound by the Supreme Court judgment in *Prollius* for the reason that the said judgment was made *per incuriam*. The Respondents opposing the application contend that the court is bound by the judgment of the Supreme Court in *Minister of Home Affairs and Immigration v Prollius* which states that a party wishing to be domiciled in Namibia may not make that unilateral decision to bind the State. The respondents further denied that the s 38 certificate has the effect of conferring domicile on the applicant.

Held: that the applicant had unilaterally formed a settled intention to make Namibia his permanent home, which is not binding on the State on the authority of *Prollius*.

Held that: this court is, in terms of Art 81 of the Namibian Constitution bound by the Supreme Court matter of *Prollius* where the court concluded that an immigrant who lands on Namibian shores and resides there only on the strength of a provisional permit, an employment permit or student's permit cannot lay claim to domicile as defined in the Act.

Held further that: the applicant's contention that the Supreme Court judgment was made *per incuriam* is incorrect as the present matter is on all fours with the reasoning of the Supreme Court and is as such, binding.

Held: that judgments made *per incuriam* are those where the court makes a judgment by mistake or carelessness, therefore not purposely or intentionally. It also applies where the court makes a judgment unaware of the existence of applicable law that if it had been aware of, would influence its decision otherwise.

Held that: the certificate issued in terms of section 38 of the Act cannot in law confer domicile on the applicant. It merely assists persons who are lawfully resident in and who are intent on leaving Namibia temporarily but have doubt that they will be admitted into Namibia on return.

Held further that: the renewal of the section 38 certificate previously held by the applicant is not expressly stated by the Act.
As result, the application for review and setting aside the decision was dismissed and declaratory order for domicile was refused.

ORDER

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1. The application for the review and setting aside of Respondents' decision rejecting the renewal or extension of the Applicant's identity certificate issued in terms of Section 38 of the Immigration Control Act, 1993, is hereby dismissed.
2. A *declarator* to the effect that the Applicant is domiciled in the Republic of Namibia, is refused.
3. The Applicant is ordered to pay the costs of the application.
4. The matter is removed from the roll and is regarded as finalised.

JUDGMENT

MASUKU J:

Introduction

[1] The applicant is a male adult of Mexican extraction. He is employed by the Namibia University of Science and Technology, based in Windhoek. He has brought this application essentially seeking the review and setting aside of a decision of the

above-named respondents refusing him a renewal or extension of his work permit in the Republic.

[2] The application is seriously contested, with the respondents conceding no inch of territory, hence the judgment that follows below. The major question for determination at the end of the day is whether the applicant is entitled to the order he seeks. Put differently, are the respondents on good legal ground in refusing the application?

[3] These questions will be answered in the course of the judgment, determining in the process, who is the victor and the vanquished.

Background

[4] The applicant deposes that he arrived in Namibia in 2011 and relocated to this country, following a decision by his lover and partner, Philip Luehl, a Namibian citizen, to return home. They are involved in a same sex marriage. The latter had completed his studies in the Netherlands and had been in a stable relationship with Mr. Luehl for a period of two and a half years.

[5] Upon arrival in Namibia, the applicant worked for the Labour Resources and Research Institute from September 2011 until May 2015. From May 2015, the applicant was employed by the Namibia University of Science and Technology (NUST). It is his case that he obtained work permits throughout the period until the one expiring on 31 December 2019 expired. He deposes that his employment with NUST is in jeopardy as a result of the respondents' decision not to renew his work permit.

[6] The refusal to renew his work permit triggered this application. The applicant brought an application in two parts. The first was an urgent application seeking the maintenance of the *status quo,* as it were, pending the determination of the application review, whose terms are set out briefly above.

[7] On 20 January 2020, the parties entered into a settlement agreement in terms of which the respondents allowed the applicant to enter the Republic on a tourist visa, ordinarily applicable to Mexican nationals. The respondents further undertook to

expedite the consideration of the applicant's employment permit application, which he had submitted on 16 January 2020, to enable him to resume work as soon a possible. Lastly, the parties agreed to allow the review to proceed in the normal course. The settlement agreement was made an order of court.

The applicant's case

[8] The applicant deposes that he and Mr. Luehl were married to each other in South Africa in 2014. There, he states, same sex marriages are recognised by law. 'Whereas I appreciate that Namibian law does not recognise same sex marriages (yet), I submit that when it comes to the determination of whether I have established domicile in Namibia the fact that Phillip and I have been in a stable relationship for more than 10 years is a relevant factor.

[9] The applicant deposes further that he and his spouse welcomed their son Yona Delgado Luehl on 6 March 2019 in South Africa. This child, the applicant states, was born to the union through surrogacy, which is allowed in South Africa. The applicant thus states that he has, from the information recounted above, made Namibia his home and further applied for a domicile certificate to be issued in terms of s 38 of the Immigration Control Act, 1993, ('the Act').

[10] The applicant further states that his legal practitioner penned a letter to the respondents confirming that the applicant had established domicile in Namibia and that he had entered into a universal partnership with Mr. Luehl, which is an arrangement recognised by the common law of Namibia.

[11] The applicant further deposes that on 7 January 2020, his sister who was visiting him intended taking a day trip to the Victoria Falls with him. On arrival at the Ngoma border, near Katima Mulilo, they were informed that the applicant's sister had a single entry visa for Namibia and would not be able to return if she exited the country. The trip was abandoned.

[12] The Immigration official on duty on the day, Mr. Josef Simataa then perused the applicant's papers and established that the applicant and Mr. Luehl were in a same sex relationship and he asked to confirm the validity of the documents in the

applicant's possession with his head office. Upon his return, he informed the applicant that he had been informed that the application for the renewal of the certificate in terms of s 38 of the Act had been refused. Pleas for the official to show them a copy of the decision drew a blank, Mr. Simataa contending that his word was sufficient. He stamped the applicant and his sister's passport thus expelling them from the country without further ado.

[13] Efforts to persuade him to allow the applicant back proved futile. He however relented and allowed the applicant's sister back. The applicant proceeded to South Africa, where he lodged the application. It is his case that other than the *ipse dixit* of Mr. Simaata, there is no evidence by way of a letter confirming that his application was rejected, neither was there telephonic communication in that regard.

[14] The applicant contends that he has established that he is domiciled in the Republic, having spent the last 9 years of his life here. He deposes further that he has entered into a universal partnership with Mr. Luehl. Furthermore, he has a son from whom he was forced to be separated. The applicant contends that he has a right in terms of Art. 18 of the Constitution to be heard before any decision adverse to him is made. In this regard, the respondents were not entitled to refuse the extension of his certificate without affording him a hearing.

[15] The applicant further punched holes in the manner in which he was ejected from the country by Mr. Simaata. He was entitled to due process if his application for renewal had been refused. A further process would have had to be followed to eject the applicant out of the country, he states. It is the applicant's case that the rejection of his application to renew the domicile certificate stands to be set aside due to the respondents' failure to comply with the provisions of Art 18.

<u>The respondents' riposte</u>

[16] The respondents' case was placed before court via the answering affidavit deposed to by the 2nd respondent, Mr. Nehemia Nghishekwa, the Chief of Immigration. He filed an affidavit on his behalf and that of the 1st respondent, the Minister of Home Affairs and Immigration.

[17] The first issue raised by the respondents relates to the applicant's alleged failure to exhaust local remedies provided under the Act. They state that because of the applicant's failure to invoke and exhaust local remedies, he must be non-suited.

[18] The respondents further took issue with the applicant's absence from the country at the time of launching the application. I will not devote any time or attention to this aspect in view of the settlement agreement entered into by the parties. The applicant, it is plain, is now lawfully in the Republic, pending the delivery of this judgment and other recourse he may have if the application does not succeed.

[19] The respondents state that they were previously unaware of the applicant's employment with NUST and only became aware of it through the urgent application. As the said permit expired on 31 December 2019, the applicant, so contend the respondents, had a duty to apply for a new permit as required by the Act and in terms of the employment agreement with NUST. The respondents denied that the applicant was forcefully expelled from the country. He, the respondents state, had not valid permit to remain in Namibia.

[20] The respondents proceed to deny that the applicant acquired domicile in Namibia. It is their contention that domicile can be acquired and is regulated by sections 22 and 23 of the Act. The respondents further contend that same sex marriages are not recognised in Namibia as the applicant himself states. The respondents further rely on the provisions of s 24(a) of the Act. These provisions and others referred to, shall be adverted to in the course of the judgment.

[21] Regarding the issue of the minor child referred to, the respondents state that there is no law in Namibia regarding surrogacy. It is their further contention that the issue of the citizenship of the child is pending before this court at present. Furthermore, the respondents deny that the applicant applied for a domicile certificate.

[22] It is the respondents' case that the applicant applied for a certificate of identity, which was issued to him in terms of s 38 of the Act. This certificate was, however issued due to an oversight on their part. This occurred as a result of the respondents operating under the misapprehension that the applicant and his spouse were lawfully married as husband and wife. In any event, the respondents further contend, the said

certificate was valid for one year and was subsequently not renewed. A party wishing to apply for issue thereof, should submit a fresh application therefor.

[23] The failure to communicate the decision concerning the applicant's application in writing is conceded by the respondents. They contend however, that such decision was verbally communicated to the applicant by Mr. Simaata in January 2020, albeit belatedly. It is their case that a decision had been made as early as August 2019 but they are not certain whether a copy of the letter containing the decision was forwarded to the applicant.

[24] The respondents in their answering affidavit deny that the applicant has fulfilled the requirements of s 22 and 26 of the Act regarding the question of domicile. They deny that the applicant was domiciled in Namibia. His certificate of identity had been issued in error, they further contend. The applicant's case for domicile is further compounded, the respondents content further, because he should have applied for permanent residence in terms of s 27 of the Act, and if successful, be issued with such a permit. He thus did not satisfy the requirement of lawful residence to be granted a certificate of identity.

[25] The respondents further deny that the applicant was forced to leave Namibia as claimed. He, they contend, rather had no valid permit or lawful document to reside in Namibia. He was also at large to apply for a work visa to avoid losing employment with NUST the respondents further argue.

Issues for determination

[26] It would appear to me from the above rendition that two particular issues present themselves for determination by the court. The first relates to the question of whether the applicant, as he claims, is domiciled within the jurisdiction of the court. If the court finds for the applicant in this regard, it would stand to reason that the applicant is entitled to the relief he seeks. The second issue relates to the question whether the respondents, in refusing the applicant's application for renewal or extension of the s 38 certificate, acted in accordance with the Art 18 of the Namibian Constitution.

[27] I should pertinently mention that the issue of the same sex marriage and the propriety of how it is viewed by the respondents is not a question that falls for determination in this matter. There are no allegations made for the court to declare the country's approach to same sex marriages unconstitutional. If anything, it would appear that the applicant, in his papers acknowledges that 'Namibian law does not recognise same sex marriages (yet), I submit when it comes to the determination of whether I have established domicile in Namibia the fact that Phillip and I have been in a stable relationship for more than 10 years is a relevant factor.'[1]

Determination

[28] It is now opportune that I deal with the questions identified above and to determine whether the applicant has made out a case for the relief he seeks. In this connection, the first issue to be dealt with relates to whether the applicant has made out a case at law for the proposition that he is domiciled in this Republic. I will, after dealing with that issue, proceed to deal with the s 38 certificate.

Domicile

[29] The leading authority on this subject in this jurisdiction is the judgment of the Supreme Court in *Minister of Home Affairs and Immigration v Prollius*.[2] The court dealt with the applicable provisions of the Act, including s 22 thereof and concluded that:

> 'The effect of the underlined provisions (i.e. s 22(1) (d)) is that an immigrant who lands on our shores and resides here "only" on the strength of a provisional permit, an employment permit or a student's permit cannot lay claim to domicile as defined under the Act.'[3]

[30] The Supreme Court in *Prollius,* proceeded to make other findings and I wish, for purposes of completeness, to quote some of them. In discussing the provisions of s 26(3) of the Act, the majority of the court said the following:

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[1] Paragraph 11 of the applicant's founding affidavit.
[2] SA 76/2017 [2020]NASC (19 March 2010).
[3] *Ibid*, para 7 and 8 of the judgment.

'[33] The significance of this provision is that a person such as the respondents may, whilst on a work permit, apply for permanent residence in Namibia. That places the Namibian authorities in a position to satisfy themselves as to the suitability of such person in terms of the criteria set out in s 26(3) of the ICA.'

[31] At para 36 and 37, the majority of the court proceeded to reason as follows on the subject:

'[36] Were we to find in favour of the respondents about how domicile is acquired, Namibian authorities would be effectively precluded from enforcing the provisions of section 26(3). That section is important for the protection of the country's vital security interests. Therefore, the respondents' contention has far-reaching implications for Namibia's immigration policy, the public interest and Namibia's national security interests which s 26(3) is clearly intended to serve. I will demonstrate.

[37] It bears mention that since by virtue of s 2(1)(b), Part VI of the ICA is not applicable to a person holding Namibian domicile, s 49 of the ICA which falls under Part VI does not apply to such a person. Therefore, on the approach contended for by the respondents, even if the Board has credible information on which the propositus not only entered Namibia with an improper motive (say to use it as a conduit for nefarious activities) but actually does so, they would be powerless to deploy the coercive machinery of Part VI of the ICA on such person while they had no say whatsoever whether a propositus should acquire domicile in Namibia.'

[32] I am of the considered view that the applicant's case falls within the very net of the *ratio decidendi* in *Prollius*. The applicant's counsel implored this court not to follow the judgment of the majority in *Prollius* on the basis that it was issued *per incuriam.* In arguing this aspect, Ms. Katjipuka reasoned that the Act distinguishes two concepts, namely, 'domicile' and 'permanent residence', which are not identical. It was argued that the Supreme Court implied that the only way to acquire domicile is by applying for permanent residence, which cannot be correct.

[33] It is now settled law that a decision of the Supreme Court 'shall be binding on all Courts of Namibia and all persons in Namibia unless it is reversed by the Supreme Court itself, or is contradicted by an Act of Parliament'.[4]

[4] Article 81 of the Namibian Constitution.

[34] The binding nature of Supreme Court decisions has been the subject of judicial interpretation. In *Likanyi v S*[5] the Supreme Court dealt with the issue in the following terms at para 30:

'There are two nuances to the "binding nature' of the Supreme Court's decisions: the *res judicata* sense and the *stare decisis* sense. In the first, as a general rule, once this court has taken a decision in a case it is final, binds the parties to the dispute and the court becomes *functus officio*. In other words, a party to the dispute in which the court has rendered a decision cannot come back to reopen the case. In the second sense, this court must follow a legal principle established by it after due deliberation, if similar facts occur in the future. It can only depart from such principle if later facts are distinguishable, it was arrived at *per incuriam* or is found to be clearly wrong.'

[35] It has not been alleged or proved that the decision of the Supreme Court is clearly wrong. I am also of the considered view that there are no new facts established in this case which could influence a departure from the judgment in *Prollius*. As in *Prollius,* the applicant seeks domicile on the basis of his extended stay in the Republic on employment permits coupled with his settled intention to permanently reside in the country. This does not, in my considered view, distinguish the instant facts from those under consideration in *Prollius.*

[36] In rejecting the argument advanced before it, the same as that being argued in this case, the Supreme Court expressed itself as follows at para 40 and 41:

'[40] If the respondents are correct in their interpretation of s 22, domicile is acquired independently of the wishes of those carrying the burden and responsibility of administration and the protection of the public interest and the nation's vital national security interest. In other words, once the propositus had formed settled intention to make Namibia his or her permanent home and unbeknown to the authorities, embarks on a course of action in furtherance of the settled intent, only one outcome is possible: domicile of choice which places the holder of it beyond the reach of the coercive machinery of the ICA. That begs the obvious question: With such a generous domicile regime, why would anyone bother to apply for permanent residence and stand the risk of being rejected or being booted out of the country? Not only that: why would the legislature make any effort to make the law regulating immigration?

[5] (SCR 2/2016) [2017] NASC 10 (07 August 2017).

[41] As I will presently demonstrate, the proposition that a subjective choice an immigrant makes binds the State in a way that infringes its sovereign choice concerning which immigrants to admit or not, has no basis either under the international law or the Namibian Constitution. That is an important factor the High Court should have had regard to when considering whether the legislature in enacting s 22(1)(d) intended to change the common law.'

[37] I am of the considered view that there is no basis for this court, in the circumstances, not to follow the binding authority of the Supreme Court in *Prollius*. I am of the further considered view that to this extent, and in conformity with the Supreme Court judgment, the applicant has unilaterally formed a settled intention to make Namibia his permanent home, which is not binding on the State, as the Supreme Court held. I would therefor dismiss the applicant's case on the issue of domicile as it follows the same contours as in *Prollius*.

[38] According to Classen,[6] *per incuriam* means, 'By mistake or carelessness, therefore not purposely or intentionally.' It is also used where the court makes a judgment unaware of the existence of applicable law that would, had it been aware of, have influenced its decision, resulting in it having reached a different outcome.

[39] I have considered the Supreme Court judgment and I am of the considered view that the argument that the judgment was made *per incuriam* is not borne out by the text. The Supreme Court was thorough and deliberate in its findings. The fact that one may not agree with the reasoning of the court is not necessarily tantamount to the judgment having been delivered *per incuriam*.

[40] In view of the above conclusions on this aspect, I am of the considered view that the applicant is not entitled to the declarator that he seeks, namely, that he is domiciled within the jurisdiction of this court. In view of the binding nature of *Prollius,* I find it unnecessary to consider the argument advanced by the applicant regarding the universal partnership and how it impacts on the question of domicile in his case.

Section 38 Certificate

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[6] Dictionary of Words and Phrases, Vol 3, Butterworths, 2nd edition, 2003,p-32.

[41] I now turn to deal with s 38 certificate. Section 38 of the Act provides the following:

'The Minister may authorize the issue of a certificate of identity to any person who is lawfully resident in Namibia and who desires to leave Namibia temporarily but is for any reason in doubt whether he or she will be able to lawfully enter Namibia on his or her return.'

[42] The applicant argues that the granting of this certificate would also apply to persons who are domiciled in this country. This, it is argued, is so because persons domiciled in Namibia do not bear any kind of endorsement in their passports indicating their domicile in Namibia. In that connection, the said certificates would assist persons in the applicant's shoes to identify themselves when presenting themselves at points of entry into Namibia, to show that they are domiciled in this country.

[43] It is not clear to me why the certificate in terms of s 38 of the Act is called a 'domicile certificate'. Whatever name has attached to it, it must be made very clear that the intention of its issue is evident from the section quoted above. It is to assist persons who are lawfully resident in and who are intent on leaving Namibia temporarily but have a doubt that they will be admitted into Namibia on return. In terms of the law, it is not a domicile certificate and one cannot properly rely on it as a basis for arguing that one is domiciled in this country. To the extent that the applicant is acting under the misapprehension that this certificate signifies his domicile in Namibia, he appears to be on a wrong legal trail.

[44] I have read the applicant's founding affidavit again and it is not clear to me what case he seeks to make regarding the s 38 certificate. A reading of his notice of motion, however, makes plain that he, in the main challenges the decision of the respondents not to renew the s 38 certificate. From my reading, there are no clear grounds proffered by the applicant for the review of the decision not to renew.

[45] The applicant, in his supplementary affidavit states that the following at para 14:

'I repeat that the issue of a Section 38 certificate amounts to and is equivalent to accepting and confirming the applicant's status. Once the respondents have done so, they

cannot reverse the recognition of an applicant's status without affording the applicant an opportunity to address them on why recognition should not be withdrawn.'

[46] The respondents, in answer, deny that the s 38 certificate is, as alleged by the applicant, equivalent to accepting and confirming the applicant's residence status in the country. The respondents point out that the issuance of the certificate, is not designed to confer or confirm the holder's acquisition of domicile in the Republic, 'but to allow the Applicant wishing to leave Namibia temporarily but is for any reason in doubt whether he will be able to lawfully enter Namibia on his return to travel in and out of Namibia.' Finally, the respondents state that the certificate is not indefinite. It may be cancelled or denied to any person who fails to meet requirements of the Act.

[47] I am of the considered view that the understanding and import, including the consequence of the issue of the certificate, by the applicant, is seriously ill conceived. There is no provision in the Act that underpins the interpretation that the applicant wishes the court to attach to the certificate. Once there is that false premise at the beginning, the whole edifice of the applicant's argument therefor falls inevitably to the ground.

[48] As I understand the said provision, this is a document that is applied for by a person who intends to leave the Republic temporarily but has a shadow of doubt, for whatever reason, that he or she may be allowed back. It is to confirm that the person in question, is legally resident in Namibia and will be displayed to the Immigration officials on return at a port of entry. It does not amount to a certificate showing that a person is domiciled in Namibia. That would be at odds with the plain language of the Act, which is clear and unambiguous.

[49] Whereas the applicant claims that the said certificate may be renewed, that is not clear from wording of the Act. The certificate appears to have served a temporary purpose of assisting a resident in doubt of being allowed back into the country before exit. It does not appear to have been meant by the Act to be a document that every resident whose status may be doubtful, should always have in his possession whenever that person leaves the Republic.

[50] It therefore appears to me that the applicant seeks the review of the respondents' decision based on the erroneous understanding of the true import of the document in question. As far as he is concerned, it is a certificate that shows that he is domiciled in the Republic, which as I say, is clearly a notion that is inconsistent with a proper reading of the said provision. Its non-renewal does not, as I see it, have a detrimental effect on his domicile. The acquisition of domicile, it appears to me, is not dependent on or certified by a certificate in terms of s 38 of the Act.

[51] It is a matter of regret that the respondents, as it so often happens, did not convey the fact of the refusal to renew the said certificate. This is a matter that has been pointed out time and again by the court, in reference to the same respondents. It appears they are not willing to change in this regard. Regardless of how hopeless an application may be considered to be, that is no licence to the authorities not to advise the applicant of the decision and its reasons. Such conduct is not in line with the ethos of our Constitution. It is actually at odds with them.

[52] For the above reasons, it appears to me that the misunderstanding of the import of the certificate in question actuated the application for review in relation to the s 38 certificate. Having found that the applicant's premise is not in line with the Act, I am of the considered view that the application for the review of the decision relating to the certificate, is liable to fail.

[53] It would appear to me that nothing precludes the applicant from applying again for the granting of the certificate for the purpose intended by law, namely, for him, where appropriate and when he labours under a doubt on leaving the Republic that he will not be allowed back into the country. As observed above, the applicant does not require the certificate for its intended purpose of dealing with any doubt he has. In his view, its possession equates to a certificate of domicile, which is inconsistent, as I have said, with language employed by the legislature.

Conclusion

[54] In view of the discussion above, considered *in tandem* with the conclusions stated above, it would appear to me that the applicant is not entitled to any of the orders he seeks. The application appears, in my considered view, destined to failure.

Order

[55] The order that presents itself as being appropriate in the circumstances, is the following:

1. The application for the review and setting aside of the Respondents' decision to reject the renewal or extension of the Applicant's identity certificate issued in terms of Section 38 of the Immigration Control Act, 1993, is hereby dismissed.

2. A *declarator* to the effect that the Applicant is domiciled in the Republic of Namibia, is refused.

3. The Applicant is ordered to pay the costs of the application.

4. The matter is removed from the roll and is regarded as finalised.

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T.S. Masuku

Judge

APPEARANCES:

APPLICANT:	U Katjipuka Of Nixon Marcus Public Law Office
RESPONDENTS:	W R Uakuramenua Of the Government Attorney's Office