

## **Khosa and Others v Minister of Social Development**

**CCT 12/03**

### **MEDIA SUMMARY**

*The following explanation is provided to assist the media in reporting these cases and is not binding on the Constitutional Court or any member of the Court.*

This case concerns an application for an order confirming the constitutional invalidity of certain provisions of the Social Assistance Act 59 of 1992 (the Act) granted by Claassen AJ in the Pretoria High Court. The challenged sections disqualify persons who are not South African citizens from receiving certain welfare grants. The applicants in this matter are indigent Mozambican citizens living in South Africa as permanent residents. They brought the application in their own names, on behalf of their minor children, other people who had joined the application but could not litigate personally, the class of permanent residents as a whole, and in the general public interest. If they had been South African citizens, all of them would have qualified to receive welfare grants in terms of the Act. The applicants argued in the High Court that the citizenship requirement infringed their Constitutional rights to equality, social security, and the rights of children. The application was unopposed in the High Court. The High Court found for the applicants and struck down the challenged provisions relating to child-support grants, care-dependency grants and old-age grants. In addition, the Director-General of Social Development and the MEC for Health and Welfare in the Northern Province were ordered to pay to the applicants the relevant grants, including certain arrears, and to receive and process applications for grants from the named persons on whose behalf the applicants acted. In this Court, Mokgoro J, writing for the majority, held that the Constitution vests the right to social security in “everyone” and that permanent residents are bearers of this right. The exclusion of permanent residents from the welfare scheme is not a reasonable way to achieve the realisation of the right to social security. Furthermore, the Court held that the exclusion of permanent residents from the scheme is discriminatory and unfair and infringes the right to equality. The Court read in the words “or permanent resident” after the word “citizen” in each of the challenged sections. One of the impugned provisions has not yet been brought into force by the President. Furthermore, another of the provisions is to be amended but only to correct grammar in the current section. This amendment has not yet occurred. The Court held that it was proper for it to consider the section not yet in force because the President is obliged to bring it into force at some stage, and at that point it would affect the applicants. The Court also held that it was necessary to direct its order to the section that will only change grammatically, to prevent the Court’s order from being frustrated should the new section be brought into force. In a dissenting judgment Ngcobo J with Madala J concurring, found that section 3(c) is a reasonable limitation of the right of access to social security. The state has insufficient resources to provide for everyone within its borders and is entitled to prioritise its citizens. The Act has the legitimate purpose of encouraging self-sufficiency in immigrants. Furthermore, it is important that the provision of these benefits does not create an incentive to immigrate to South Africa. The minority held further that the limitation is merely temporary since it is possible for permanent residents to naturalise after five years. The minority agreed that the provisions relating to children are unconstitutional. These sections established grants

for children whose parents are South African citizens but failed to provide for children who might be South African citizens but whose parents are not.