



Immigration Law

13 July 2026

South Africa

Department of Home Affairs found to be in contempt for defying court order to grant citizenship



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In the recent decision of *Minister of Home Affairs and Another v Sakharov* (2024-044391) [2026] ZAGPPHC 648 (22 June 2026), the Pretoria High Court had to determine whether the Department of Home Affairs (DHA) could rescind a Court Order directing it to grant citizenship to Mr Mikhail Sakharov, a Russian national in possession of South African permanent residence permit, and whether the DHA's continued refusal to comply with the relevant Court Order amounted to contempt of court.

Facts

Sakharov was granted permanent residence in South Africa in December 2013. It was common cause that he was also married to a South African citizen for more than five years. In November 2023, Sakharov attended the DHA's offices to enquire about the requirements for applying for South African citizenship. He was informed that only an application to verify his permanent residence permit could be submitted at that stage and his citizenship application was refused outright.

In April 2024, Sakharov instituted a review application in the High Court to challenge the DHA's refusal of his citizenship application. The matter was heard on the unopposed motion roll on 9 September 2024, and the court granted an order, amongst other things, declaring him a South African citizen by naturalisation (Court Order). The Court Order also directed the DHA to register his birth, issue him with written confirmation of his citizenship, and provide him with an identity document within 30 days.

Despite being served with the Court Order, the DHA did not comply. Instead, the DHA applied to have the Court Order set aside (rescinded), arguing that Sakharov's review application had not been properly served on it. In a counter-application, Sakharov sought to have the DHA held in contempt of the Court Order.



Applicable law

Citizenship by naturalisation for foreign nationals is governed by the Citizenship Act 88 of 1995 (Citizenship Act).

Application of the law to the facts

The court dealt with three issues: condonation, rescission and contempt.

Condonation

The DHA applied for condonation for the late filing of its rescission application, which was launched more than 11 months after the Court Order had come to its attention. The court found the DHA's explanation wholly inadequate as the DHA had merely referred to internal consultations and meetings without properly accounting for the full period of the delay. As a result, condonation was refused.

Rescission

Even though condonation was refused, the rescission application would have failed on the merits.

The court found that Sakharov's review application, including the notice of set down, had in fact been properly served on the State Attorney and the DHA in May 2024. The DHA's claim that it was unaware of the proceedings was, therefore, rejected.

As for the DHA's substantive defence that Sakharov had failed to first have his permanent residence permit verified before applying for citizenship, the court dismissed this too. Relying on the Supreme Court of Appeal's earlier decision in *Minister of Home Affairs v Jose and Another* 2021 (6) SA 369 (SCA), the

court confirmed that once the requirements of the Citizenship Act are met (i.e. five years of permanent residence and marriage to a South African citizen in this instance), the DHA has no discretion – it must issue citizenship. An internal standard operating procedure (SOP) requiring the prior verification of permanent residence cannot override a statutory entitlement.

As a result, the DHA's rescission application was dismissed.

Contempt

The court then turned to Sakharov's contempt application.

The requirements for a finding of contempt of court are well established: (i) the existence of a Court Order; (ii) knowledge of the order; (iii) non-compliance; and (iv) that the non-compliance was wilful and in bad faith. Once the first three elements are proven, wilfulness and bad faith are presumed, and the burden then shifts to the alleged contemnor to rebut the presumption.

In this case, the DHA admitted knowing about the Court Order and confirmed that it had deliberately not complied, on the basis that it believed it was unenforceable where Sakharov had not first complied with its internal SOP. The court found this admission sufficient to establish contempt.

Therefore, the DHA was found to be in contempt of the Court Order, with adverse consequences to follow in the event that it was not complied with within a period of 15 days of receipt of the court's judgment.

Key takeaways

- Citizenship is a right, not a discretion. Therefore, once a foreign national holds a permanent residence permit and qualifies for South African citizenship by naturalisation based on the requirements in the Citizenship Act, the DHA is legally obliged to grant citizenship in terms thereof. It cannot impose additional procedural hurdles (such as its internal SOPs) that are not prescribed by the Citizenship Act or its regulations.
- Where an act of Parliament confers a right, a government department's internal processes cannot be used to frustrate or delay that right.
- This is a step in the right direction for permanent residence holders who have tried to apply for South African citizenship, but whose applications have either not been accepted or have been rejected based on their non-compliance with the DHA's own internal requirements, which do not stem from any piece of legislation.

Lee Masuku and Taryn York

OUR TEAM

For more information about our Immigration sector and services in South Africa, Kenya and Namibia, please contact:



Sammy Ndolo

Managing Partner | Kenya

T +254 731 086 649

+254 204 409 918

+254 710 560 114

E sammy.ndolo@cdhlegal.com



Alex Muchira

Partner | Kenya

T +254 731 086 649

+254 204 409 918

+254 710 560 114

E alex.muchira@cdhlegal.com



Frieda Kishi

Director | Namibia

T +264 (0)83 373 0100

E frieda.kishi@cdhlegal.com



Imraan Mahomed

Director:

Employment Law

T +27 (0)11 562 1459

E imraan.mahomed@cdhlegal.com



Lee Masuku

Senior Associate:

Employment Law

T +27 (0)11 562 1213

E lee.masuku@cdhlegal.com



Abednego Mutie

Senior Associate | Kenya

T +254 731 086 649

+254 204 409 918

+254 710 560 114

E abednego.mutie@cdhlegal.com



Taryn York

Senior Associate:

Employment Law

T +27 (0)11 562 1732

E taryn.york@cdhlegal.com



Mapaseka Nketu

Paralegal:

Employment Law

T +27 (0)11 562 1178

E mapaseka.nketu@cdhlegal.com

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

ONGWEDIVA

Shop No. 94, Oshana Mall, Ongwediva, Namibia

T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

WINDHOEK

2nd Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.

PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020

T +264 833 730 100 E cdhnamibia@cdhlegal.com

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