

SOCIETY OF ADVOCATES OF NAMIBIA

Member of the International Bar Association
Member of the International Council of Advocates and Barristers

1st Floor
Namlex Chambers
333 Independence Avenue
WINDHOEK
NAMIBIA

P O Box 1323
WINDHOEK
NAMIBIA

International Code +264 61
Tel: 231 151
Fax: 230 162
socadv@mweb.com.na

PRESS RELEASE

BY THE SOCIETY OF ADVOCATES OF NAMIBIA

PARLIAMENT'S CHALLENGE TO THE SEPARATION OF POWERS AND THE RULE OF LAW IN NAMIBIA

Last month the Namibian Supreme Court, in the *De Wilde* case, in interpreting Article 4 of the Namibian Constitution, ruled that a child born in Namibia to non-Namibian citizens would be a Namibian citizen by birth where the child's father or mother was ordinarily resident in Namibia at the time of the birth. In so doing the Supreme Court was exercising its powers in terms of Article 79(2) of the Constitution to interpret, implement and uphold the provisions of the Namibian Constitution. This clear constitutional interpretation of Article 4(1) should have been the final word on the topic.

However, last week the National Assembly passed the Namibian Citizenship Amendment Bill with the express intention of overriding the Supreme Court judgment. The Bill provides that a child born under the circumstances of the *De Wilde* child would only obtain Namibian citizenship where both parents were permanent residents at the time of the birth. As if this was not enough,

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Parliament went further to legislate that “*no rights may arise as result of the decision of the Supreme Court*” in the De Wilde case.

In effect Parliament is seeking to impose its will by negating the interpretation given to Article 4(1) of the Constitution by the Supreme Court. The only way to lawfully achieve this result would have been to amend the Constitution, a route Parliament has not followed. The Society of Advocates is deeply concerned about the impact of the Bill. This legislation constitutes the most serious challenge since independence to the supremacy of the Namibian Constitution, the rule of law and the separation of powers within our constitutional democracy.

Namibia has a jealously guarded reputation as a constitutional democracy which upholds the doctrine of the separation of powers and the rule of law. We cannot do any better than quote a recent judgment of the Namibian Supreme Court, where the Court stated that “*these principles presuppose a culture of mutual respect between the executive, legislature and the judiciary*”. Unfortunately the Bill disrespects the separation of powers and undermines the rule of law.

In the light of the very fundamental issues at stake, we call on His Excellency the President to exercise his powers in terms of Article 64 of the Constitution in withholding his assent to the Bill on the basis that its adoption would conflict with the provisions of the Constitution. This would then entitle the Attorney General to take the appropriate steps to have the question of the constitutionality of the Bill referred to the Supreme Court for final determination.

ADV E M SCHIMMING-CHASE

PRESIDENT

28 July 2016