STATE OF STATELESSNESS FOR DISPLACED PERSONS THROUGH THE DOCTRINE OF UBUNTU: SOUTH AFRICAN DOMESTIC PERSPECTIVE AND INTERNATIONAL LAW OBLIGATION THROUGH THE LENS OF *KHOZA V MINISTER OF HOME AFFAIRS* [2023] 2 All SA 489 (GP)

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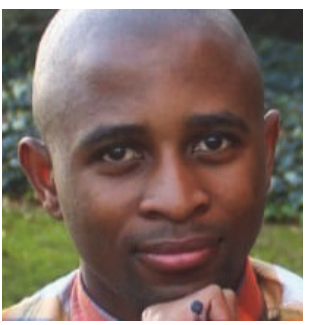

Abstract

The notion of statelessness and the positioning of the South African government in protecting its territorial integrity have been attributed to preserving its financial capability to cater for its nationals while imposing administrative and financial constraints on those who come to its shores seeking asylum due to instability in their respective regions, often leaving them displaced and undocumented. Subsequently, the criteria for defining statelessness remain contested, making the state privy to act unreasonably unjust in certain circumstances. Consequently, the government implicitly foreshadows its privy policy by scrutinising such applications as a programme that aims to ensure that it does not have an excess of foreigners who may negatively affect service delivery and cause unwanted issues like crime. As a result, stateless people are perceived as interfering with the allocation of the national fiscus. The notion of statelessness will, however, be explored as this paper progresses through the case of Khoza v Minister of Home Affairs and Others *by showing how a decolonised and transformative endeavour of ubuntu should be practised. As such, the idea of ubuntu will be affirmed through the international obligation of international human rights while simultaneously arguing that Africans have not*

become so assimilated as to regard other Africans as strangers, to such an extent that the systems in place today are based on national self-centred interests that hold Western influence. This influence, as the paper unfolds, will prove that stateless persons in South Africa tend to be subversively (implicitly) discriminated against when they apply for nationality. Therefore, a xenophobic stance from an institution such as the Department of Home Affairs gains enormous adherence when it processes applications, especially for Africans.

***Keywords**: statelessness, stateless persons, ubuntu, foreigners, national interests, identity crisis.*

1 Introduction

It is painful to see my daughter growing full of dreams and developing every day into a more clever person, knowing deep inside she has an uncertain future.[1]

> Once they had left their homeland, they remained homeless; once they had left their state, they became stateless; once they had been deprived of their human rights, they were rightless, the scrum of the earth. Nothing which was being done, no matter how stupid, no matter how many people knew and foretold the consequences, could be undone or prevented. Every event had the finality of a last judgment, a judgment that was passed neither by God nor by the devil, but looked rather like the expression of some unreedemably stupid fatality.[2]

Amid inequalities that persist in this world, there is a phenomenon of George Orwell's *Animal Farm* novel, and in his proclivity, he submits that 'all animals are equal, but some are more important than others'.[3] As such, following the George Floyd scandal, in Africa, and especially in South Africa, it was noted that black people are loathed ubiquitously, and there was a need for Africa to socially create a space for the provision of dignity for socio-economically disadvantaged people, particularly those from black African ancestry.[4] This was due to growing tensions permeating a perspective that Western and liberal nations tend to be unwelcoming to Africans

1 P Jessica et al *Promoting citizenship and preventing statelessness in South Africa: A practitioner's guide* (2014) at 5.

2 JS Wessel 'On the border subjects: Rethinking the figure of the refugees and the undocumented migrant' (2016) 23 *Constellations* at 47.

3 S Harkins & J Lugo-Ocando 'All people are equal, but some people are more equal than others' in J Servaes & T Oyedemi (eds) *The praxis of social inequality in media: A global perspective* (2016) at 3.

4 Eyewitness News, 'A black man is hated everywhere' — EFF protest in solidarity with 'Black Lives Matter' (2020), https://www.youtube.com/watch?v=KqrAa Ae4skU accessed 25 November 2023. See also, the case of *R (on the application of AAA (Syria) and others) v Secretary of State for Home Department (United Nations High Commissioner for Refugees intervening) and other appeals)* [2023] 4 All ER 253, is significant because it shows how Britain violated the law of refoulment, which prohibits a government from transferring or denying asylum seekers from its territory to another state of Rwanda. The Court thus dismissed the application.

due to exclusion, which is manifested through white supremacy, racism, xenophobia, and economic marginalisation worldwide.[5] Poignantly, it is more difficult for black Africans to travel in Africa than for persons of European ancestry.[6]

Despite these fictitious endeavours to dignify black Africans, South Africa harbours xenophobia against black immigrants from neighbouring African nations.[7] Individuals who apply for special permits, asylum, or are stateless continue to be harmed by unnecessarily lengthy waiting periods when processing their applications,[8] while individuals of European origin may readily settle in South Africa without hassles.[9] Moreover, the influence of the European Union ('EU') has further predisposed the South African government to impose sterner border control, to secure financial advantage over EU routes, after concerns were raised that African immigrants forge their documents and use South Africa as a passage to Europe.[10]

According to the Universal Declaration of Human Rights of 1948, specifically Article 15, everyone has the right to a nationality.[11] The right to nationality, however, is not always realised, just like any other right.[12] The juridical concept of nationality has two distinct aspects.[13] As it relates to the rights and obligations of both people and the State, it is governed by both domestic and international law standards.[14] The idea of nationality has been described as the most common and occasionally the sole connection between a person and a State, guaranteeing that the person's rights and duties under international law are honoured.[15] International law norms accept that it is very feasible for a person to find oneself without any nationality at all due to the vast differences in the domestic laws of many States, especially regarding the acquisition of nationality.[16] This may take

5 As above.
6 L Madowo, 'Why is it so harder for Africans to visit other African countries?', 8 October 2018 https://www.bbc.com/news/world-africa-45677447 (accessed 25 November 2023).
7 C Steenkamp 'Xenophobia in South Africa: What does it say about trust?' (2009) 1 *The Round Table* at 439.
8 A Umezurike & C Isike 'An analysis of the opinions of African immigrants on service delivery by the Department of Home Affairs, South Africa' (2013) 1 *Inkanyiso: Journal of Humanities and Social Sciences* at 59.
9 J Campbell *Travels in South Africa: Undertaken at the request of the Missionary Society* (1815) at 4, 31, 324.
10 L Landau & A Segatti, 'Human development impacts of migration: South Africa case study' (2009) Human Development Research Paper (HDRP) Series 5(1), 2 https://mpra.ub.uni-muenchen.de/19182/ (accessed 26 November 2023).
11 Dugard J et al *Dugard's international law: South African law perspective 5th edition* (2017) at 535.
12 As above.
13 P van Krieken 'Disintegration and statelessness' (1994) 12 *Netherlands Quarterly of Human Rights* at 23.
14 As above.
15 As above.
16 W Wilkinson 'Statelessness' (1916) 1 *International Law Notes* at 26.

place due to the person's own actions or through no fault of his own.[17] As a result, they can be stateless by birth.[18] According to the United Nations Human Rights Commission for Refugees, an international legal definition of a stateless person is:

> '[A] person who is not considered as a national by any State under the operation of its law'. In simple terms, this means that a stateless person does not have a nationality of any country. Some people are born stateless, but others become stateless.[19]

As part of their sovereign power, according to the UN Refugee Agency, States can define the rules for the attainment, amendment, and loss of nationality.[20] Nevertheless, duties arising from agreements to which they are parties, general legal principles, and customary international law all place restrictions on the discretion of States concerning nationality.[21] As such, according to international law norms, each State must decide who constitutes its citizens by using national law.[22] Insofar as it adheres to general international law principles, this decision will be accepted on a global scale.[23] Therefore, the State should not implement policies that go against universally accepted standards for how nationality is acquired, lost, or denied.[24] The Convention relating to the Status of Stateless Persons, for instance, was adopted in 1954, and it defines a stateless person as 'a person who is not considered as a national by any State by operation of its law'.[25] A system for the identification, protection, and naturalisation of state individuals is also established by this treaty.[26] These safeguards largely resemble those offered to refugees under the 1951 UN Convention.[27] To prevent situations of statelessness from occurring, a second convention, the Convention on the Reduction of Statelessness, was enacted in 1961.[28] This

17 As above.
18 As above.
19 UNHCR, 'Are you a stateless person', https://help.unhcr.org/southafrica/get-help/stateless/ (accessed September 2023).
20 The UN Refugee Agency, 'What is statelessness?', https://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf (accessed 14 October 2023).
21 The UN Refugee Agency (n 20).
22 C Batchelor 'Statelessness and the problem of resolving nationality status' (1998) 1 *International Journal of Refugee Law* at 156.
23 As above.
24 As above.
25 Dugard (n 11) at 535.
26 As above.
27 As above.
28 989 UNTS 175. Adopted on 30 August 1961 and entered into force on 13 December 1975. United Nations, *The Convention on the Reduction of Statelessness*, 30 August 1961 UNTC accessed on https://treaties.un.org/doc/Publication/UNTS/Volume%20989/v989.pdf (accessed 13 September 2024). See also, Yadav, '*Kiran Gupta v The State Election Commission & Ors* letters patent appeal no. 139 of 2020 in civil writ jurisdiction case no. 19109 of 2019, Patna H? C' (2021) *Jindal Global Law Review* 207.

agreement established guidelines for the conferment and non-withdrawal of citizenship.[29]

When it comes to citizenship or nationality,[30] there is an ontological tie between the State and the person.[31] Those who find themselves in a situation of statelessness are vulnerable to severe exclusion that frequently prevents them from taking advantage of the social, political, and economic leverage that the State has to offer.[32] After all, they are the least identified, understood, and noticeable.[33] Statelessness may put constraints on the fiscal plans that have been budgeted, according to Krause, because if the State must provide for more people than the actual population that has been identified, it may incur additional costs that were not originally budgeted for and may result in problems with service delivery.[34] A potential solution that might ameliorate the problem of financial constraints caused by stateless persons, asylum seekers or undocumented foreign nationals could involve emphasising domestic governance systems and prioritising African philosophy, such as ubuntu, which values communal responsibility and the well-being of all individuals by implementing social integration programmes,[35] regional cooperation,[36] continental policy frameworks,[37] intelligence gathering[38] and decentralised support systems.[39] By grounding the policy in African philosophical traditions like ubuntu, which focuses on shared humanity and responsibility, and using continental or local strategies, African States can address these issues in a way that does not rely solely on Western fiscal models.

29 989 UNTS 175. Adopted on 30 August 1961 and entered into force on 13 December 1975. See also, A Yadav '*Kiran Gupta v The State Election Commission & Ors* letters patent appeal no. 139 of 2020 in civil writ jurisdiction case no 19109 of 2019, Patna (n 28) 205.

30 Nationality is essentially a term of international law and denotes that there is a legal connection between the individual and the State for external purposes. See, for example, I Brownlie 'The relations of nationality in public international law' (1963) 39 *British Yearbook of International Law* at 299. On the other side, citizenship is a constitutional law term that describes individuals' internal status within a State. See, for example, J Shaw *Citizenship and Constitutional Law: An introduction* in J Shaw (2018) at 7.

31 A Warria & V Chikadzi, 'Statelessness, trauma and mental well-being: Implication for practice, research and advocacy' (2022) 8 *African Human Mobility Review* 47.

32 As above.

33 As above.

34 M Krause 'Stateless people and undocumented migrants: An Arendtian perspective' (2011) *Statelessness in the European Union: Displaced, Undocumented, Unwanted* at 82. See also, M Krause 'Undocumented migrants: An Arendtian perspective' (2008) 1 *European Journal of Political Theory* at 331-332.

35 Developing long-term initiatives to reintegrate stateless people into the economy, such as small business incentives or vocational training, to help them transition from being financial liabilities to contributors. See, for example, *Koyabe and Others v Minister of Home Affairs* 2010 (4) SA 327 (CC); *Tafira and Others v Ngozwane and Others*, 12960/06, South Africa: High Court, 12 December 2006, https://www.refworld.org/jurisprudence/caselaw/zafhc/2006/en/75332 (accessed 25 September 2024); *Minister of Home Affairs and Others v Somali Association of South Africa & Another* [2015] 2 All SA 294 (SCA).

The case of *Khoza and Minister of Home Affairs and Another (Khoza)*,[40] which was heard at the Pretoria High Court, set forth an essential component of international law, specifically statelessness. It is submitted that Maritz AJ's commentary further strengthened the existential possibility of how a nexus is formed between domestic law and international law. In this matter, the Court took into consideration the circumstances of a person who was born in South Africa but who, since no nation recognised him as its citizen, was functionally stateless. The Court considered whether the South African government's arbitrary denial of nationality to Mr Khoza was in line with its duties under international law, which includes statelessness-related treaties and conventions.

This paper presents novelty in international law by covering the significance of what ubuntu means for stateless persons in the domestic context of South Africa. In other words, the novelty of this paper is its attempt to prove how other governments and countries may align with and appreciate the relevance of ubuntu's contribution to humanity globally. This is carried out by personifying ubuntu in international law through steps aimed at making jurisprudence more humanly inclusive for persons who become stateless because of

36 In order to solve the concerns of statelessness and migration, African governments should collaborate more closely. To lessen the financial strain on individual nations, this may entail pooling funds for the continent's response to displaced people or those who are stateless. After the fall of the Soviet Union, individuals within the former Soviet republics were not considered stateless, based on the principle that anyone residing in these countries was not classified as a foreigner. Consequently, the Soviet States worked collectively to manage migration and prevent statelessness. See, for example, S Lezgiyeva 2018 'Without a Country: Stateless Armenian Refugees in the U.S.S.R and Russia, 1987-2003' (Master of Arts, University of Maryland, Baltimore County) at 6.

37 Promoting African Union ('AU') policies that assist member States in better managing their stateless people. Pre-emptive budgeting or group insurance plans that provide for unforeseen circumstances related to migration trends may be used in this situation. See, for example, African Union. *Protocol to the African Charter on Human and People's Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa*. https://au.int/sites/default/files/newsevents/workingdocuments/35139-wd-pa22527_e_originalexplanatory_memorandum.pdf Adopted by the African Union, February 2018.

38 Implementing artificial intelligence technology at the borders, utilising biometric identification systems capable of detecting undocumented individuals in a timely manner, even before officials arrive on site. See, for example, GSA Plumptre 'Time out of joint: Temporal rupture and migration management' (Unpublished Master of Arts thesis, McGill University (Canada) 2019) at 4-5.

39 Integrate migration management into decentralised government systems so that local communities contribute to supporting stateless or asylum persons. This would ease the fiscal burden on the national government while encouraging community involvement. A practical example of ubuntu can be seen when the European Union assisted Ukrainians who were fleeing their State as a result of Russian bombardment. See, for example, V Astrov et al 'Russia's invasion of Ukraine: Assessment of the humanitarian, economic, and financial impact in the short and medium term' (2022) 19 *International Economics and Economic Policy* at 361.

40 [2023] 2 All SA 489 (GP).

migration caused by geopolitical conflicts and socioeconomic inequities.

In addressing that novelty, this paper covers international law jurisprudence of statelessness, and it brings forth some foreign case laws. This endeavour attempts to universalise the concept of ubuntu globally by infusing existing literature on how international law may be interpreted in the domestic context of South Africa. Poignantly, this paper does not criticise Maritz AJ's judgment but looks to mediate its significance to the South African context and, as such, simplifies how the philosophy of ubuntu may be perceived in that judgment. This paper looks to pinpoint stereotypes, biases, racism, and xenophobia that overshadow national interests. These national interests, as the paper unfolds, will show that national government policies are dictated by unfounded concerns that pinpoint a person as foreign or inclined to external relations, which, to a certain extent, influences the State to protect its territorial integrity in defence of its citizens to the disadvantage of undocumented persons unjustly. It is submitted that the national government's policy, regrettably, imposes limitations on the publication, further undermining the legitimacy of international human rights norms concerning citizenship, immigration, and refugee protection (including stateless persons).[41] In denying blameless stateless persons, such as Mr Khoza, recognition of their status, the concept of statelessness is integrated with ubuntu to demonstrate that when one among a community faces an identity crisis, a collective obligation arises to support and care for that individual.

In outlining the *Khoza* case, this paper will first lay out the framework of the facts and background information of the case. Secondly, a jurisprudential analysis will be made, considering procedural technicalities and whether the applicant was a South African and entitled to nationality. Thirdly, this paper will explore the doctrine of ubuntu and its impact on how Africans tend to be receptive to a stateless person. In other words, the international law concept of statelessness will be decolonised to Africanism. This decolonisation, as the paper unfolds, will show how Mr Khoza, like any rightless person, ought to be sheltered, rather than choosing the trajectory of isolation and deprivation of nationality based on unsound, unreasonable, and arbitrary procedures.

The last segment will focus on statelessness at an international and regional level. This international regionalism, it is submitted, will be paved using the case of *Khoza* and personifying it with foreign

41 South African Department of Home Affairs. 2024. *White Paper on Citizenship, Immigration and Refugee Protection: Towards a Complete Overhaul of the Migration System in South Africa*. Government Gazette No. 50530, Notice No 432, 17 April 2024.

judgments that were dealt with in the African Court on Human and Peoples Rights, the Permanent Court of International Justice and the European Court of Human Rights. In simple terms, statelessness will be comparatively analysed to demonstrate that ubuntu, though traditionally an African customary practice, is in fact a global phenomenon that has long existed but has not been widely recognised as such. It can be assessed at both regional and global levels.

2 Khoza: Facts and litigation background

The *Khoza* case centred on a comprehensive report, which, incidentally, is disputed. This report was prepared by the Department of Home Affairs[42] and other involved parties. Their role was to determine whether Mr Khoza, the applicant, was eligible for South African citizenship,[43] even though he did not meet the criteria to be classified as a 'stateless person'.[44] Maritz AJ noted that according to Mr Khoza's testimony, he was born in South Africa on 17 April 1997 and has spent his whole life there. This serves as more proof that he has never left South Africa, nor was he identified by his parents' native state. Mr Khoza currently resides in Thaba Nchu in Limpopo.[45]

Before his birth was formally recorded by his biological parents to the Department of Home Affairs, Mr Khoza's mother, Ms Martha Nthane ('the applicant's mother'), passed away when Mr Khoza was six years old.[46] The applicant was nine years old on 12 December 2006, when his grandmother, Ms Lucy Ndlovu ('the applicant's grandmother'), brought him to the Thabang Youth Centre ('the Centre') in Limpopo. The applicant's mother and grandmother both lived at the 'Small Block' informal settlement.[47]

The Centre provided support for them.[48] The municipality provided the mother of the applicant with a pauper's burial after her death.[49] The applicant had no South African identification, nor did his mother or grandparents.[50] According to the applicant, two workers from the Centre's home-based care programme took care of his mother throughout her sickness and until her passing.[51] These workers arranged for his mother's burial with the municipality, but because

42 See, for example, the type of service the Department of Home Affairs provides on its website. Department of Home Affairs, Republic of South Africa, https://www.dha.gov.za/ accessed 23 September 2023.
43 Citizenship and nationality will be interchangeably used.
44 *Khoza* (n 40) para 4.
45 As above.
46 As above.
47 *Khoza* (n 40) para 5.
48 As above.
49 As above.
50 As above.
51 As above.

she was undocumented, he has struggled to find her grave, and neither he nor the Centre was able to secure a copy of her death certificate.[52] He says he has no idea where she was interred.[53]

His placement in the Centre's custody during 2007 was affirmed by several Children's Court orders.[54] The Children's Court determined that the applicant, who was an orphan, required care and protection.[55] Unfortunately, the Children's Court was unable to make copies of any court orders from 2006 to 2012.[56] Only copies of the 2012 court orders were available.[57] The applicant included a copy of the Centre's registration proving his arrival on 12 December 2006 in it.[58] The applicant, who reached 21 years of age, has not been officially placed by a court order at the Centre, but he is a participant in Thabang's Independent Living Programme, which helps young adults obtain skill training and find jobs.[59]

Mr Khoza sought a birth certificate and an identification document at his local Home Affairs office in 2013, when he was sixteen.[60] His dealings with Home Affairs during this time are summarised in a copy of a report from the Centre dated 7 September 2015.[61] According to Maritz AJ, as she studied the investigation conducted by Home Affairs, it was clear from this report that Mr Khoza completed ninth grade in 2013 and entered the Itereleng Skills Training Centre in 2014.[62] There, he took welding and sewing courses before the year was through.[63] He was enrolled in a learnership programme for general labourers and game rangers in 2015 at a nearby game farm.[64] Maritz AJ noted that, according to the investigation, he is still there and making good progress.[65]

The following segment of this paper will attempt to draw an inference of ubuntu and statelessness. In doing so, the segment's paper will draw on the reasoning presented in the judgment to show how the African philosophy of ubuntu becomes significant in showing that Africans have never been isolated by geographic boundaries and by epistemological reflections of *uti possidetis*.[66] Nevertheless,

52 As above.
53 As above.
54 *Khoza* (n 40) para 6.
55 As above.
56 As above.
57 As above.
58 As above.
59 As above.
60 *Khoza* (n 40) para 7.
61 As above.
62 As above.
63 As above.
64 As above.
65 As above.
66 Dugard defines *uti possidetis* as an international law principle of respecting colonial boundaries, even though they were arbitrarily drawn by colonial powers. See, for example, Dugard (n 12) at 186.

Maritz AJ's interpretation of statelessness will be highly commended for furthering the ideology of compassion and showing gratitude for those who, like the applicant, find themselves facing identity crises.

3 Ubuntu and statelessness

There is a well-known African adage called 'ubuntu' that is widely used in South Africa and other parts of the continent of Africa.[67] It destroys the idea of individualism and encourages individuals to interact with others efficiently rather than living in solitude.[68] As such, people's behaviours and inactions are partially influenced by their interpersonal connections.[69] According to this African doctrine, a person in an African community reaches their potential through relationships with other individuals.[70] Ubuntu implies 'I am because we are, and because we are, therefore I am'.[71] In connecting this proverb with statelessness in an African context, this is centrally fundamental around an obligation owed by claiming that when one person is in a state of nothingness and is destitute, ubuntu will naturally compel humility to compassionately endow those resourced as a society to offer refuge and open doors.[72] As such, humanism's 'ubuntu' fosters sanctuary as this door opens and is given a figurative expression, which comes as a measure of protecting an individual who is declared stateless from experiencing the punitive actions associated with an identity crisis.[73] In this segment, the significance of the *Khoza* judgment will be analysed within the ambit of ubuntu and statelessness. In addressing two previously mentioned factors, 'ubuntu and statelessness', it is submitted that the importance of Critical Race Theory will be advanced provocatively and, as such, international law's formality will be dismantled/decolonised in a manner that may be alien-like to a conventional international law bibliophile.

There was an unwritten but well-known 'customary' practice in Africa that when strangers approached a foreign territory that they were not familiar with, they were customarily compelled to introduce

67 T Coleman 'Reflecting on the role and impact of the constitutional value of ubuntu on the concept of contractual freedom and autonomy in South Africa' (2021) 24 *Potchefstroom Electronic Law Journal* at 8.
68 As above.
69 As above.
70 As above.
71 D Bilchitz et al *Jurisprudence in an African context* (2020) at 23.
72 J Kanamugire 'Historical development of refugee framework in Africa' (2020) 10 *Tribuna Juridică* at 322 & 324.
73 M Mogoboya 'Repurposing African humanism as a catalyst for peace through Mphahlele's The Wanderers: An (auto) biographical approach' (2019) 8 *Ubuntu: Journal of Conflict and Social Transformation* at 125.

themselves to the monarch or chief,[74] especially if they were seeking refuge or passing.[75] For example, when King Shaka Zulu ruled over the eastern part of South Africa, the idea of ubuntu caused some controversy.[76] He had built up an impenetrable military force, and as a result, he was able to grant people the status of becoming Zulu citizens, provided they could prove they shared the same language, allegiance, culture, and ancestry as the Zulus.[77] Furthermore, given that Europeans drew borders without any Africans present at the Berlin Conference,[78] Pan-Africanism and left-wing African philosophers hold a strong belief that Africans cannot be strangers in Africa and that to suggest that someone is stateless is to curse a proclivity that makes Africans more interconnected than any other continent globally.[79] It is submitted that the relevance of the *Khoza* case and its premise stems from the fact that a child's birthright reflects an obligation to be granted nationality, and that identity awareness and belonging, rather than politicised ideas centred on hate against outsiders, influence this obligation.[80]

Thus, statelessness has never been exclusively associated with Western interpretations of international law norms; rather, it rose to prominence as it was codified into domestic law, where it had previously only been practised through customary norms that were oral rather than written,[81] and as customary practice and cooperation among those States was widely acknowledged as opposed to those in

74 Currently, the practice has lost relevance but permits from the government and local tribal leaders are still endorsed for introducing themselves and stating the purpose that brought them to their land, especially when a person is doing academic work or wants to purchase land that is owned by a tribal authority. See, for example, G Schutte 'Tourists and tribes in the "new" South Africa' (2003) 50 *Ethnohistory* at 474.

75 D Hughes *From Enslavement to environmentalism: Politics on a Southern African frontier* (2011) at 29.

76 M Mahoney *The other Zulus: the spread of Zulu ethnicity in colonial South Africa* (2012) at 23-24.

77 As above. See also, for example, M Olivier et al *Liber Amicorum: Essays in honour of Professor Edwell Kaseke and Dr Mathias Nyenti* (2020) at 203.

78 M Ramutsindela 'African boundaries and their interpreters' (1999) 4 *Geopolitics* at 180. For example, persons from Europe or America, hold a belief that Africa is a single country and, as such, cannot consist of many countries.

79 L Mabundza & B Seepamore 'Gender and healthy relationships' in *Promoting Healthy Human Relationships in Post-apartheid South Africa: Social work and social development perspectives* (2021) at 42. See also, for example, A Ajala 'The nature of African boundaries' (1983) 18 *Africa Spectrum* at 178; S Michalopoulos & E Papaioannou 'The long-run effects of the scramble for Africa' (2016) 106 *American Economic Review* at 5.

80 K Joon et al 'Genderacing immigrant subjects: 'Anchor babies' and the politics of birthright citizenship' (2018) 24 *Social Identities* at 312.

81 Byrness submits that because of Shaka Zulu's massive territorial conquest he made to mobilise tribal states to a central Zulu government, African chiefs and Kings in Southern Africa used to accommodate and grant citizenship and refuge to unknown Africans who came from neighbouring war-torn tribal zones (foreigners) due to difaqane wars. See, for example, R Byrness *South Africa: A country study* (1996) at 23.

the developing South.[82] When ubuntu and hospitality for strangers are construed within the concept of statelessness, then it would mean that the word 'community/village' is not in solitude and, as such, borders cannot be justified to isolate Africans in the preservation of securing resources, self-determination, and identity.[83] Henceforth, in the case of *Port Elizabeth Municipality v Various Occupiers* (*Various Occupiers*), Sachs J held that homeless and destitute people should not be seen as a burden, and those with resources and who are able should not institutionally isolate such persons.[84] For the purposes of the *Khoza* ruling, a nexus between ubuntu and the case of *Various Occupiers*, it is submitted that these cases permeate an ideology of owing an obligation towards one another.[85] This obligation is driven by caring and showing active concern for each other's welfare through communitarianism.[86]

When compared to the *Khoza* case and the two examples of obtaining nationality, and 'customary acknowledgement from the monarch or Pan-Africanism'[87] in ancient Africa, as mentioned above, it is implied that ubuntu made it simpler for displaced people to naturalise and become citizens than it would have been for them to live in a contemporary setting with colonially imposed legal and administrative systems.[88] For instance, in a colonially imposed administrative system, ubuntu does not find relevance. This is because disproportionately prioritising refugees and stateless persons in its systems threatens the territorial integrity of a government, as proper methods for naturalisation are acquired unjustly, and such persons lack financial resources and are likely to overwhelm the

82 T Molnar 'Remembering the forgotten: International legal regime protecting the stateless persons stocktaking and new tendencies' (2014) 11 *US-China Law Review* at 825.

83 T Bennett 'Ubuntu: An African equity' (2011) 14 *Potchefstroom Electronic Law Journal* at 36. Zondi and Makhoba submit that Christian ethics and *ubuntu*, to a large extent are intertwined. These authors pinpoint the significance of Hebrews 13:2, and they argue black people are welcoming to others, to the extent that *ubuntu* philosophy does not subscribe to the isolation and rejection of (stateless) people who seek refuge. See, for example, N Zondi & K Makhoba 'What has happened to the principles of ubuntu? Exploring the concept of xenophobia in the post-apartheid literary work, Kudela Owaziyo by Maphumulo' (2018) 38 *South African Journal of African Languages* at 270.

84 2005 1 SA 217 (CC) para 37.

85 G Kateb 'Individualism, communitarianism, and docility' (1989) 56 *Social Research* 925.

86 Kateb (n 85) at 926.

87 Kamga concedes that although ancient Africa identified itself through ethnic solidarity, the influence of colonialism on Africans changed that trajectory and, as such, Pan-Africanism became an alternative as a tool of unity in the continent. See, for example, S Kamga 'A call for a 'right to development'-informed Pan-Africanism in the twenty-first century' (2019) 19 *African Human Rights Law Journal* at 439-440.

88 M Peters & T Besley 'The refugee crisis and the right to political asylum' (2015) 47 *Educational Philosophy and Theory* at 1369.

financial state apparatus to cover the existing population on basic service delivery.[89]

The overwhelming systems sternly regulate institutions, such as the Department of Home Affairs, to restrict the number of persons who can acquire nationality. The Court in the *Khoza* case regrettably failed to recognise the significant unpleasantness caused by statelessness and the adverse consequences that come with being considered an alien in a country that one grows up in.

However, the generational curse of the applicant's parents, who came to South Africa under duress and terror, although not explicit, also shows how the judiciary has developed into a pillar of transformative constitutionalism through ubuntu[90] on stateless persons and how courts will step in when an administrative agency like Home Affairs behaves unreasonably.[91]

Significantly, the applicant in the *Khoza* case was born in South Africa in 1997. According to Maritz AJ's portrayal of the evidence gathered, the learned Judge concedes that the applicant does indeed deserve to be given nationality because the government cannot deport a stateless person.[92] However, implicitly, this demonstrates how neo-liberal governments in Africa have imitated Western models of supervising migration without realising the role that wars, conflicts, and other socioeconomic factors — as was the case with the applicant's parents — play in the ongoing global movement of human migration.[93] The Court determined that Mr Khoza had no links to any other country and had no claim to such citizenship or nationality based on the facts and, as such, found that the applicant had met the burden of proof required by section 2(2) of the Citizenship Act.[94] The Phadagi investigation further supported the uncontested fact that Mr Khoza was born in South Africa and has no knowledge of any other

89 A Paxton 'Finding country to call home: Framework for evaluating legislation to reduce statelessness in Southeast Asia' (2012) 21 *Pacific Rim Law & Policy Journal* at 623.

90 For example, in *S v Makwanyane and Another* [1995] ZACC 3 (6 June 1995) para 130, where the Constitutional Court held that the purpose of a new constitutional order is to recognise that 'there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation'.

91 *DGLR and KMRG v Minister of Affairs* (3 July 2014) ZAGPPHC (unreported), available https://www.citizenshiprightsafrica.org at Appellants-Heads-of-Argument-Min-of-DHA-v-DGLR-SCA.pdf (accessed 7 September 2023).

92 *Khoza* (n 40) para 24.4.

93 O Aihwa *Neoliberalism as exception: Mutations in citizenship and sovereignty* (2006) at 6, 8.

94 *Khoza* (n 40) para 55. Section 2(2) of the Citizenship Act 88 of 1995 states that: 'A person born in the Republic of South Africa of parents who are not South African citizens or who have not been admitted into the Republic for permanent residence, acquires South African citizenship by birth if, at the time of his or her birth, one of his or her parents (i) was admitted into the Republic for permanent residence; or (ii) has been ordinarily resident in the Republic for a period of not less than five years immediately prior to the birth'.

nation.[95] Additionally, the Court had already emphasised that it was clear that Mr Khoza was a South African citizen by birth.[96]

According to the African concept of ubuntu, a person's burden is shared by the whole community.[97] When a child is born, for example, every village elder considers themselves to be such a toddler's parent, and their duty to care for the child takes precedence collectively.[98] Additionally, according to the ubuntu doctrine, a government must act like a parent, by taking care of the orphaned and, in this context, making plans for the non-citizen or person without documentation to be accepted and recognised by the State.[99] In order to decolonise statelessness from a neo-liberal and conservatively xenophobic perspective that sees vulnerable people (such as Mr Khoza) as unnecessary burdens that cannot be granted nationality,[100] it is necessary to extinguish any form of social capital that is contrary to how forbearers of the current constitutional order legislated the social contract of the South African Constitution.[101]

Neoliberalism is influenced by coercively applied methods through fiscal constraints,[102] thus seeing stateless persons as a burden that is likely to place additional weight on the existing population.[103] What seems misconstrued, it is submitted, is that these stateless persons parents were forced to leave their home countries due to socio-economic factors. This left them without a State and prevented them from being recognised where they are or where their parents are from, on the one hand, and from being able to be legally integrated

95 *Khoza* (n 40) para 55.
96 As above.
97 C Drucilla and K van Marle 'Exploring ubuntu: tentative reflections' (2005) 5 *African Human Rights Law Journal* at 195.
98 FK Camara 'Teaching, promoting, and implementing human rights instruments in Africa: the need to contextualize' (2014) 27 *Pacific McGeorge Global Business & Development Law Journal* at 62.
99 The South African government launched its universal grant programme in response to the outbreak of COVID-19 and the closing of countries to stop the virus's spread. Initially known as the 'COVID-19 SRD Grant', this short-term initiative provided welfare funds to any individual over the age of 18 who was unemployed. The plan was exclusively intended for South Africans, but the Court ruled that it was inconceivable to believe that if asylum seekers and holders of special permits were excluded, the initiative would not be successful. Since such persons were living in poverty, like ordinary poor South Africans, the Court ordered the government to provide them with maternal care as there was no need for there to be a distinction for the provision of that grant. See, for example, *Scalabrini Centre of Cape Town and Another v Minister of Social Development and Others* (22808/2020) [2020] ZAGPPHC 308; 2021 (1) SA 553 (GP) (18 June 2020).
100 M Cepo 'Illegal migration through the Practice of the Court of Justice of the European Union and the consequences for the Republic of Croatia' (2019) 3 *EU and Comparative Law Issues and Challenges Series* at 208.
101 D Bilchitz 'Should religious associations be allowed to discriminate?' (2011) 27 *South African Journal on Human Rights* at 240-244.
102 A Tuchten 'Law's happiness: A decolonial approach to well-being and human rights' (Unpublished LLM thesis, University of Pretoria 2021) at 16.
103 L Landau et al *Xenophobia in South Africa and problems related to it. Johannesburg: Forced Migration Studies Programme'* (2005) at 7.

into a new country of residence, which left them 'rightless', on the other hand.[104] It might be pertinent to acknowledge that while many stateless cases are migration-related, the majority of stateless persons have never crossed a border.[105] They live in the country of their birth.[106] According to Arch-Bishop Desmond Tutu's view, as Buabeng-Baidoo interprets this epistemology, when stateless people are excluded, ubuntu — at the very core of humanity — becomes tainted since, as people, 'we are interconnected within a web of interconnection'.[107] As a result, when people like Mr Khoza are excluded from the system and deprived of the right to enjoy constitutional prerogatives under the Bill of Rights, it is submitted that ubuntu becomes tainted, and injustice is given the authority to validate jurisprudence that contradicts deeply entrenched African pneumatologically dispensed empowerment.[108]

For De Beer, statelessness is not recognised in the notion of ubuntu because Africans are known for hospitality; as a result, this philosophy triggers communitarian welfare and well-being instead of individual self-interest.[109] As such, for the wrongs of colonial and apartheid past, the South African Constitutional Court has shaped constitutionalism based on communitarian welfare,[110] notably in its

104 Tuchten (n 102) at 16.

105 Weissbrodt and Collins submit that at the very least of minimum standards that are prescribed internationally, states are forbidden by international law customary practice from making their citizens stateless. They are, therefore, required to uphold the human rights of stateless individuals and must grant citizenship to all children born within their borders. See, for example, DS Weissbrodt & C Collins 'The human rights of stateless persons' (2006) 28 *Human Rights Quarterly* at 276.

106 Bhatnagar K 'Citizens of the world but non-citizens of the state: The curious case of stateless people with reference to international refugee law' (2019) 16 *Social Change and Development* at 6.

107 J Buabeng-Baidoo '"Human Rights do not stop at the border": A critical examination on the fundamental rights of regular migrants in South Africa' (Unpublished LLD thesis, University of Pretoria 2021) at 5, 10. See also, Tuchten (n 102) at 16.

108 V Magezi *Ubuntu in flames-Injustice and disillusionment in post-colonial Africa: A practical theology for new 'liminal ubuntu' and personhood* (2017) at 120. Some schools of thought argue that Africans are deeply spiritually connected to the land and its surroundings, and that any system that seeks to separate a person from the environment in which he has spent his entire life can have a disastrous impact on their well-being and welfare when they are forced to leave. See, for example, M Getui 'Land and Spirituality in the African Socio-Cultural Context' (2022) *Ontent* at 21; JI Onebunne & NI Chijioke 'African sacrality and eco-spirituality. *African Ecological Spirituality: Perspectives in Anthroposophy and Environmentalism a Hybrid of Approaches* (2021) at 90; MC Kgari-Masondo *'A superstitious respect for the soil"?: environmental history, social identity and land ownership-a case study of forced removals from Lady Selborne and their ramifications, c. 1905 to 1977'* (Unpublished Doctoral dissertation, Stellenbosch 2008) at 90; BO Igboin 'Colonialism and African cultural values' (2011) 3 *African Journal of History and Culture* at 102.

109 S de Beer 'Ubuntu is homeless: An urban theological reflection' (2015) 36 *Verbum et Ecclesia* at 1.

110 AK Wing 'Communitarianism vs. individualism: Constitutionalism in Namibia and South Africa' (1992) 11 *Wisconsin International Law Journal* at 349-373.

protective endeavour on vulnerable and marginalised groups.[111] In decolonising the notion of statelessness by a Western normative view that is based on self-centred national interests of protecting individual citizens against outsiders, Mahleza submits that African communalism in South Africa is intertwined with the spirit of ubuntu for the welfare of Abantu, which permeates deeply in philosophical discourse that no man is an island.[112] According to Monono, there are several benefits to working together to solve the issue of statelessness, starting with identifying its effect on: '… historical and political factors such as colonialism and state succession, historic migration, conflicts and forced displacement, elimination of political rivals, ethnic nationalism and regional integration'.[113]

In a contemporary African setting, States have imitated European and Western-led liberal systems, which some Critical Legal Studies practitioners have perceived as racist and xenophobic by depriving those who are stateless of nationality in the phase of self-seeking national interests.[114] The unfortunate part of statelessness in Africa is that it tends to affect second and third-generation descendants of migrants more adversely because, as systems become digitised,[115] the more intricate they become, thus making it impossible to outmanoeuvre the control of bureaucracy.[116] For example, the *Nubian Children in Kenya v Kenya* case[117] offers significant advice on matters of nationality and statelessness, despite not unswervingly pinpointing the rights of asylum seekers and refugees. In this case, the African Children Committee's first ruling was based on the Kenyan government's failure to advance the children's human rights because of their socioeconomic status, which made them vulnerable to mistreatment when travelling, having access to the justice system, and running into issues with being expelled because they were deprived of nationality, despite having lived there all their lives.[118]

State sovereignty, according to Batchelor, must be protected by the government to the extent that it can grant, deny, or revoke

111 K Saaremael-Stoilov 'Liberal communitarian interpretation of social and equality rights: A balanced approach' (2006) 11 *Juridica Int'l* at 88.

112 Y Mahleza 'The interplay of citizenship, nationality and statelessness: interrogating South Africa's legal framework in light of its international obligations' (Unpublished LLD thesis, University of South Africa 2022) at vii.

113 D Monono 'Peoples' right to nationality and the eradication of statelessness in Africa' (2021) 3 *Statelessness & Citizenship Review* at 49.

114 I Piccioli 'European Integration and stateless Minorities. The trajectory of Basque Nationalism' (Unpublished LLD thesis, Libera Università Internazionale degli Studi Sociali Guido Carli 2010) at 55.

115 J Milbrandt 'Stateless' *Cardozo Journal of International and Comparative Law* at 99-100; MS Volodymyrovych & OV Liulov 'The impact of digitalization on the transparency of public authorities' (2022) 6 *Business Ethics and Leadership* 104.

116 G Bekker 'The protection of asylum seekers and refugees within the African regional human rights system' (2013) 13 *African Human Rights Law Journal* at 1.

117 Communication 002/2009. See also Bekker (n 116) at 26.

118 *Nubian Children* (n 117) para 46. See also, Bekker (n 116) at 26.

citizenship.[119] Article 1 of the 1930 Hague Convention, for example, asserts:

> It is for each State to determine under its own law who its nationals are. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised about nationality.[120]

The International Court of Justice held in the crucial *Nottebohm Case* that it is the State's authority to decide who shall be its citizens, with the qualification that the act may not necessarily have an international impact.[121] According to the Court:

> [A] State cannot claim that the rules it has thus laid down are entitled to recognition by another State unless it has acted in conformity with the general aim of making the legal bond of nationality accord with the individual's genuine connection with the State.[122]

That does not mean, however, that the State should use its protective constituents and territorial integrity as means to further delegitimise stateless persons.[123] In the domain of such delegitimisation, the concept of 'statelessness', according to the case of *Pham v Secretary of State for the Home Department (No 2)*, was described as follows:

> Citizenship should not be arbitrarily withdrawn or withheld, as occurred in Europe in the twentieth century, where people fleeing their country have had their citizenship removed or where people have not been granted citizenship when their state was created. The 1961 Convention protects a national against the arbitrary deprivation of his nationality and aims at reducing statelessness.[124]

The case of *Khoza* is unique because the Department of Home Affairs made an effort to fabricate arbitrary and unreasonable justifications.[125] Additionally, for individuals who do not possess nationality due to unforeseeable events — for example, when their

119 C Batchelor 'Stateless persons: Some gaps in international protection' (1995) 7 *International Journal of Refugee Law* at 235.

120 As above.

121 *Nottebohm Case (Liechtenstein v Guatemala); Second Phase*, International Court of Justice (ICJ), 6 April 1955, ICJ Reports 1955 at 4; General List, No 18 available at: http://www.refworld.org/cases,ICJ,3ae6b7248.html (accessed 26 November 2023).

122 *Nottebohm Case* (n 110) at 4.

123 D Thompson 'Scaling statelessness: absent, present, former, and liminal states of Somali experience in South Africa' (2017) 40 *PoLAR: The Political and Legal Anthropology Review* at 99.

124 [2019] 4 All ER 199 para 59.

125 Preston argues that statelessness applications, like asylum refugee applications, must be well-reasoned when they are decided. This means that, when considered objectively, their procedures should adequately address individualisation (handle the case on its particular facts as a unique case, despite existing jurisprudence that may be legalised in a particular practice), rather than necessarily relying on preconceived collective biases that aim to quench the applicant's application through unreasoned conclusion. R Preston 'Asylum adjudications: do State department advisory opinions violate refugees' rights and U.S. international obligations' (1986) 45 *Maryland Law Review* at 128.

parents or guardians passed away in a foreign nation without the required paperwork and the child was too young to properly identify their home country at the time[126] — circumstantial evidence must be taken into account.[127] The concept of circumstantial evidence centres on the disregard for formal and technical procedures, with the implication being that the State where the applicant may believe his or her parents originated from does not acknowledge the applicant as its national.[128]

Nationality is intended to protect a person's international legal identity, and, therefore, recognition gives one the power of existence, which is ultimately intertwined with the provisions that make Chapter Two's Bill of Rights in the Constitution central to dignity, *inter alia*.[129] Although the concept of ubuntu is African by nature, the British case of *Secretary of State for the Home Department v Al-Jedda* ("*Al-Jedda*") offered a universalistic approach to this African doctrine, when the court held that:

> Statelessness has been estimated to affect up to 12 million people worldwide. Possession of nationality is essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights. Those who are stateless may, for example, be denied the right to own land or exercise the right to vote. They are often unable to obtain identity documents; they may be detained because they are stateless; and they can be denied access to education and health services or blocked from obtaining employment.[130]

It is submitted that the *Al-Jedda* case is significant to the cause of the ubuntu doctrine, because it reflects the State's capacity to take affirmative international obligations[131] The Court ultimately held that the applicant could not be deprived of British citizenship as such a stance would render him stateless.[132]

In connecting this contention with the *Khoza* case, it is submitted that transformative constitutionalism and ubuntu, when interpreted together, require policies that bring forth dignity to powerless

126 M Fullerton 'Comparative perspectives on statelessness and persecution' (2015) 63 *University of Kansas Law Review* at 876.
127 P Farci 'TP Minister of Home Affairs (Sentence no 9140, 22 April 2014) (Tribunal of Rome)' (2021) 3 *Statelessness & Citizenship Review* at 96.
128 P Farci (n 127) at 96.
129 J Robinson 'Children's rights in the South African Constitution' (2017) 6 *Potchefstroom Electronic Law Journal* at 39.
130 [2014] 1 All ER 356 para 13.
131 P Nevill 'Reconciling the clash between UK obligations under the UN charter and the ECHR in domestic law: Towards systemic integration?' (2008) 67 *The Cambridge Law Journal* at 447-450.
132 G Goodwin-Gill 'Mr Al-Jedda, deprivation of citizenship, and international law', (In Revised draft of paper presented at a Seminar at Middlesex University, London, February 2014) at 1.

persons.[133] Interestingly, South African jurisprudence on the issue of statelessness was subject to a person who was deemed 'stateless' to swear allegiance, if, on reasonable grounds, it was found that such a person had lost their native country's nationality.[134] Nonetheless, due to its apartheid practices, South Africa, like Israel, was more proactive in issuing nationality to people of European ancestry than Africans.[135] People of European ancestry can still easily obtain South African nationality and permanent residency status,[136] whereas people like Mr Khoza face intensely chauvinistic and xenophobic scrutiny because of their race; even in their statelessness, they are viewed as an unnecessary burden.[137]

The issue of statelessness was that, according to the case of *Re P (G E) (an infant)*, a stateless person ought to be viewed holistically and possibly from a humanistic perspective, and this is seen when a stateless person does not possess travel documents, identification document and ultimately deprived of nationality on either end.[138] In South Africa, the Constitution is premised on the condition that a child's best interest is of paramount importance.[139] Unfortunately, the Constitutional Court held in *Centre for Child Law v Director General: Department of Home Affairs and Others* that the cycle of statelessness is exacerbated by a child of a foreigner who is born in a foreign territory, and whose existence comes into enquiry when a birth certificate is in dispute.[140] Interestingly in *G v G (Secretary of State for the Home Department and others intervening)*, the Court held that refugee applications may be easily used to deprive people of nationality and, therefore, the Court pinpointed that under international law, subsidiary (circumstantial) means can be used to assist stateless persons with a more dignified protection.[141] The *Khoza* case is significant because it reflects an innate inclination to view statelessness subjectively.[142] After all, once reliance is placed on objectivity, ethics surrounding the

133 O Kgabo 'Re-Imagining culture of justification through transformative constitutionalism and the philosophy of ubuntu' (2017) 11 *Pretoria Student Law Review* at 25.
134 *Ex parte Lowen* 1938 TPD 504.
135 R Kasrils et al *Israel and South Africa: The many faces of apartheid* (2015) at 170, 315.
136 K Lalloo 'Citizenship and place: Spatial definitions of oppression and agency in South Africa' (1998) 45 *Africa Today* 446.
137 B Berkeley 'Stateless people, violent states' (2009) 26 *World Policy Journal* at 4.
138 [1964] 3 All ER 977 at 987.
139 B Bekink & M Bekink 'Defining the standard of the best interest of the child: Modern South African perspectives' (2004) 37 *De Jure* at 26.
140 2020 (8) BCLR 1015 (ECG) paras 4-5.
141 [2021] 4 All ER 113 para 87.
142 *Khoza* (n 38) para 36.54. Poignantly, even though the Court was objective in its analysis, it pointed out that the Department's allegations were not real, genuine, bona-fide, and as such, the Court had to reject Defendant's contention.

emotional state of affairs, caring for one another, and limitations for universal humanism towards one another diminish.[143]

In place of the above-mentioned factors analysed, it is submitted that in the case of *Khoza*, when construed properly, a person who is stateless and undocumented often lacks access to fundamental human rights.[144] Ubuntu in the phase of globalisation, submits Petersen, would require a system ensuring that the evidence which proves a person lacking documentation should not be something that is coercively weaponised. Instead there must be a reassurance of security, human rights protection and application of international law in a substantively sound manner.[145] The case of *Khoza*, when applied with *European Roma Rights Centre and Others v Immigration Officer at Prague Airport and another (United Nations High Commissioner for Refugees Intervening)*, significantly coincides with ubuntu because the Court held that a stateless person's position ought to be observed in good-faith and minimise reluctance of the self-centred position that is influenced by territorial security of the State.[146]

Many mainstream international law academics believe that a well-founded concern, particularly of refugees' vulnerability, is an underlying reason for sheltering them in a foreign state.[147] However, in the Australian Federal Court's case of *Savvin v Minister for Immigration and Multicultural Affairs*, Dowsett J held that stateless persons only had to prove that they were disinclined or unable to return to their native State of previous habitual residence.[148] When the case of *Khoza* is considered, the epistemology of ubuntu came to the forefront when the question of borders and territorial integrity gained traction. When *Savvin* gained international pull, the UN Secretary-General wrote letters to all UN member States cautioning them that migration will always be there and that human rights

143 K Staples *The ethics of statelessness* (2020) at 148-159.

144 Mahleza (n 112) at v.

145 A Petersen 'Statelessness as a failure of international law: A critical analysis of the effects of statelessness on gender rights' (Unpublished LLD thesis, University of Western Cape 2019) at 76.

146 [2005] 1 All ER 527 para 19.

147 A Dowty & G Loescher 'Refugee flows as grounds for international action' (1996) 21 *International Security* at 46; E Newman & J Van Selm 'Refugees and forced displacement' *International Security, Human Vulnerability, and the State, UNU Press, Tokyo Japan* (2003) at 10; JC Hathaway & WS Hicks 'Is there a subjective element in the Refugee Convention's Requirement of Well-Founded Fear' (2004) 26 *Michigan Journal of International Law* at 536; E Adjin-Tettey 'Reconsidering the criteria for assessing well-founded fear in refugee law' (1997) 25 *Manitoba Law Journal* at 129. Interestingly, well-founded fear does not have to be politically oriented to government policy, but can include 'natural disasters, wars, famines' which 'could be equally compelling reasons of necessity since they can induce a well-founded fear of harm'. See, for example, N Nathwani 'The purpose of asylum' (2000) 12 *International Journal of Refugee Law* at 377.

148 [1999] FCA 1265; (1999) 166 ALR 348 (*Savvin*). See, also, M Foster et al 'Part one: The protection of stateless persons in Australian law — the rationale for a statelessness determination procedure' (2016) 40 *Melbourne University Law Review* at 425.

protection for stateless persons could not be diminished at the expense of national interests.[149]

The local of case of *Dzenisiuk and Others v Minister of Home Affairs and Others* is important within the jurisprudence of foreign and international case law, wherein the Court held that where 'everyone' appears in the Constitution, the Bill of Rights must be constitutionally universalised and cater not only to citizens, but also to foreigners, including those who have not been granted formal permission to remain.[150] It submitted that this is reflected by section 28(1)(a) of the Constitution, which supports the right of a child to be given name and nationality. For example, there is truth in the claim that organs of State, including the Department of Home Affairs in South Africa, have at times failed to grant nationality to stateless individuals.[151] Statelessness can arise due to various reasons, such as gaps in national laws, administrative challenges, discrimination, or lack of proper documentation.[152] These failures often leave affected individuals unable to access their fundamental rights, despite constitutional protections, like those in South Africa's Constitution, which guarantees the right to nationality for children born in the country under section 28(1)(a).[153] Furthermore, because the parents left their native country and settled in South Africa before the child's (Khoza's) birth, sections 28(1)(*a*)-(*b*) of the Constitution, particularly those relating to appropriate care, name and identity recognition (sheltering in South Africa), should have been handled in a depoliticised manner by the Department of Home Affairs.[154]

This section of the paper sought to demonstrate that Africans can never be foreigners in Africa. Although the law's application of *uti possidetis* has not been fully reformed, balanced, or calculated to

149 GW Paton 'A study of statelessness - book review' (1951) 5 *Res Judicatae* at 68.

150 (2021/476782) [2024] ZAGPPHC 221 (19 March 2024) para 4. See also, for example, *Director General Department of Home Affairs and others v Link and others* 2020 (2) SA 192 (WCC) para 21.

151 *Democratic Alliance v Minister of Home Affairs and Another* 2023 (6) SA 156 (SCA) paras 34 & 36.

152 *DGLR v the Minister of Home Affairs* (GPJHC) (unreported) case number 38429/13 of 3 July 2014. See also, for example, F Khan 'Exploring childhood statelessness in South Africa' (2020) 23 *Potchefstroom Electronic Law Journal* at 20-21.

153 In South Africa, cases have arisen where individuals, particularly children, have struggled to obtain birth certificates or documentation that would confirm their nationality. Statelessness remains a significant issue globally, exacerbated by bureaucratic delays, restrictive immigration laws, or inconsistent application of nationality laws. The UNHCR has documented efforts by several countries, including South Africa, to address statelessness, but challenges persist in implementation.

154 Steward submits that the case of *President of the Republic of South Africa v Grootboom and Others* 2000 (11) BCLR 1169 (4 October 2000) became pivotal in making the judiciary address the factors of vulnerability between women and children and, therefore, make it impossible in a manner that is depoliticalised, yet prohibiting forcibly imposed laws that are unjust and arbitrary. See, for example, L Stewart 'The *Grootboom* judgment, interpretative manoeuvring and depoliticising children's rights' (2011) 26 *Southern African Public Law* at 98.

recognise its detrimental influence on the freedom of movement,[155] it is submitted that borders and socioeconomic considerations have harmed family bonds.[156] These bonds, between groups that are similar yet barricaded by borders, stem over centuries but have eventually been eliminated by systemic application of the development of international law in *uti possidetis* and self-determination. It is submitted that Mr Khoza is the product of a bond that he lost due to socioeconomic factors that led to his parents' migration to South Africa,[157] and to suggest that he still is stateless is to bemoan his right not only to exist, but also to live and enjoy constitutional prerogatives granted by the Bill of Rights.

4 International and regional law[158]

This segment will deal with statelessness at a regional level. As such, judgments that were written by the African Court on Human and Peoples Rights, the Permanent Court of International Justice and the European Court of Human Rights will be comparatively analysed with the case of *Khoza*. When the *Khoza* case is discussed, the issue of statelessness may not solely rely on technicalities grounded in international law. Instead, national interests, particularly as professed through the domain of Western biases, state of mind, and the potential for unreasonable or unfair conduct by administrative agencies in granting or revoking nationality, will be assessed within the doctrine of ubuntu.

4.1 African Court on Human and Peoples Rights

The case of *Khoza*, it is submitted, follows the same logic that the jurisprudence of the African Court on Human and Peoples' Rights (African Court) followed, which was to first ponder the right to a nationality in the pre-existing case of *Anudo Ochieng Anudo v Tanzania* (*Anudo*).[159] Both *Khoza* and *Anudo* examine the critical intersection of nationality and human rights, demonstrating how

155 JA Evison 'Migs and monks in crimea: Russia flexes cultural and military muscles, revealing dire need for balance of uti possidetis and internationally recognized self-determination' (2014) 220 *Military Law Review* at 111.

156 HP Dlamini et al 'Towards understanding the Cameroon-Nigeria and the Eswatini-South Africa border dispute through the prism of the principle of uti possidetis juris customary international Law' (2022) 47 *Africa Development* at 251.

157 *Khoza* (n 40) para 5.

158 The author wishes to alert the readers that he could not rely nor critique some judgments about statelessness because they were either written in French, Spanish or they did not match the problem statement of what this paper sought to achieve on the website of the United Nations Refugee Agency on international law cases relating to statelessness. See, for example, https://www.unhcr.org/publications/international-case-law-relating-statelessness (accessed 20 January 2024).

159 African Court on Human and Peoples' Rights, App No 012/2015, 22 March 2018).

national courts and regional bodies are increasingly aligning in their recognition that denying or revoking nationality without due process constitutes a violation of fundamental rights. This alignment emphasises a broader, emerging jurisprudence aimed at protecting individuals from statelessness, reinforcing the imperative for African states to harmonise their national laws with international human rights obligations.

Mr Anudo contended that Tanzania had violated his right to nationality under the Universal Declaration of Human Rights. He had to travel to Tanzania to legally consummate his marriage, but his passport was seized upon his arrest on unsubstantiated and vague allegations.[160] His nationality was then arbitrarily revoked, and he was deported to Kenya, from where he was expelled back to Tanzania.[161] He managed to travel to Tanzania, but even in his native state of birth, he was still considered unidentifiable on the system and an unwanted alien.[162] Although the African Court made no mention of the international law of non-refoulment, it is submitted that Tanzania's arbitrary expulsion of the applicant desecrated Article 15(2) of the UDHR.[163]

In a noteworthy ruling in *Nystrom v Australia*, the United Nations Human Rights Committee ruled that, despite the applicant's non-native ties to Sweden and his presence in Australia at the time, his nationality could not be deprived if the Court was persuaded that the applicant had no strong ties to Australia and that other factors, such as the existence of his family there, his level of language proficiency, the length of time he spent there, and a credible link that strongly tied him to Australia, all played a part.[164]

Crawford J's ruling of the Permanent Court of Justice in the *Question concerning the Acquisition of Polish Nationality*,[165] when compared to *Nystrom* and synchronised with the *Khoza* case, highlights that while states may restrict who may become a national, migration and external factors play a part in that endeavour;

160 N Ndeunyema, '*Anudo v Tanzania*: The African Court recognises the right to nationality under customary international law', 19 April 2018. https://ohrh.law.ox.ac.uk/anudo-v-tanzania-the-african-court-recognises-the-right-to-nationality-under-customary-international-law/ (accessed 18 January 2024).

161 As above.

162 As above.

163 A Elligai & R Phiri 'Migration and human rights: Exploring key policy gaps' (2009) 1 *Africa Governance Insights* at 44.

164 *Nystrom v Australia*, UN Doc CCPR/C/102/D/1557/2007, 18 [7.5]. See also, M Foster et al 'Part two: the prevention and reduction of statelessness in Australia: an ongoing challenge' (2017) 40 *Melbourne University Law Review* at 502.

165 1961 Convention, especially arts 8–10; International Law Commission's (ILC's) Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, annexed to UNGA Res 55/153 (12 December 2000).

consequently, deprivation of nationality should not be weaponised but should be used judiciously.[166]

4.2 Permanent Court of International Justice

4.2.1 Nationality Decrees issued in Tunis and Morocco[167]

On 7 February 1923, the Permanent Court of International Justice (PCIJ) issued an advisory opinion about the nationality decrees made in Tunisia and Morocco, with specific reference to nationality and ensuring that colonial powers who had their citizens in those two colonies could not be stateless. The League of Nations Council requested the opinion judgment to settle a disagreement between France and Great Britain on the legality and consequences of the decrees that France had issued on 8 November 1921, in its protectorates of Tunis and Morocco. Numerous persons who were born in certain regions and had no other nationality were given French nationality by the decrees. In challenging the decrees, the British Government contended that France went mutually against international law and the rights of British nationals.

The PCIJ considered the protectorates' legal standing as well as the kind and extent of the decrees. The Court found that the decrees did not infringe on British nationals' rights or France's obligations under international law. It considered them valid and enforceable since France issued them in the protectorates while exercising its sovereign authority. The Court also decided that only individuals who met the requirements and gave their assent to become French nationals by the decrees could do so, and not everyone else who wanted to become a citizen without meeting the requirements. The Court further declared that, subject to the laws of the respective countries, the decrees had no bearing on the nationality of people who already held another nationality, such as British subjects, nor did they prohibit people who had acquired nationality from renouncing it and obtaining another nationality.

The significance of the threat to ubuntu and protectorate defence against colonial influence, it is submitted, was averted through building relations with powers that did not pose a significant threat to the independence of a State. For example, Lesotho sought a British protectorate against Dutch settlers as they hurdled into the interior of South Africa and, accordingly, impliedly terrorised locals and

166 J McAdam 'Disappearing states', statelessness and the boundaries of international law. *Statelessness and the Boundaries of International Law (21 January 2010). UNSW Law Research Paper* at 13.

167 See, for example, BO4 on https://www.icj-cij.org/pcij-series-b (accessed 19 January 2024). For English translation, see https://www.refworld.org/jurisprudence/caselaw/pcij/1923/en/20991 (accessed 19 January 2024).

expropriated their land unjustly in certain parts of what may now be called the Free State, Eastern Cape, and Natal.[168] Additionally, Lesotho and Botswana were under British protectorate, and since the British believed that their territories were barren, they had no further interest in locating minerals.[169] Therefore, it is crucial to analyse this advisory opinion by drawing comparisons between Tunisia and Morocco, while delicately acknowledging that France actively engaged in diplomacy in that region instead of using tactics that were perceived as colonially insensitive to the needs of the locals.[170] Be that as it may, due to historical accidents that have sown the seeds of jagged individualism throughout the continent, colonialism disrupted the spirit of ubuntu for the first time in Africa, consequently distorting the continent's progressive narrative.[171] This jagged individualism, it is submitted, was introduced in the case of *Nationality Decrees issued in Tunis and Morocco* when foreign powers sought to prevent their nationals from being stateless. Thus, self-centred national interests in immigration gained traction in that case and this has sporadically been embraced to this day by carefully constructed systems that seek to protect citizens, even when some had naturalised, against outsiders.[172]

In South Africa, the Constitution's preamble is premised on 'South Africa belongs to all who live in it, black and white', and, as such, utilitarianism extends even to those who are not indigenous but have naturalised in the country.[173] In chastising 'hate against other Africans', Maritz AJ cautions unreasonableness as an issue of

168 MM Lelimo 'The reasons for the annexation of Lesotho 1868 a new perspective' (Unpublished PhD thesis, University of the Free State, 1998) at 158, 164 & 209.

169 O Selolwane 'Colonization by concession. Capitalist expansion in the Bechuanaland Protectorate. 1885-1950' (1980) 2 *Pula: Botswana Journal of African Studies* 75-124; B Paton (1995). Botswana: From Goromente to the Government of Labour Export. In *Labour Export Policy in the Development of Southern Africa* (pp 267-295). London: Palgrave Macmillan UK; P Robson 'Economic integration in Southern Africa' (1967) 5 *The Journal of Modern African Studies* 469-490.

170 For example, in Lesotho, King Moshoeshoe saw the British as a less hostile ally strategically, since he was disturbed by the Dutch having demolished a great chapel named Morija that significantly affected tourism and religious gatherings in his region. See, for example, Lelimo (n 168) at 120.

171 Lelimo (n 168) at 120.

172 Amnesty International, for example, has once voiced concern that ubuntu is eroding, and this is attributed to policies that are contrary to the welfare of immigrants. See, for example, S Tolmay, 'Xenophobia in South Africa: What happened to ubuntu?', (30 August 2019), https://www.dailymaverick.co.za/opinionista/2019-08-30-xenophobia-in-south-africa-what-happened-to-ubuntu/ (accessed 23 January 2024).

173 SH Chiumbu & D Moyo '"South Africa belongs to all who live in it": Deconstructing media discourses of migrants during times of xenophobic attacks, from 2008 to 2017' (2018) 37 *Communicare: Journal for Communication Sciences in Southern Africa* 136-152. See also, BA Sotonye & BA Tamunopubo 'Xenophobic Attacks on Nigerians in South Africa: Ethical Implications and Responses of the Nigerian Government' (2020) 7 *International Journal of Multidisciplinary Research and Development* at 39

administrative failure in the *Khoza* case. Yet to Mthombeni, a State acts in a thoughtlessly neglectful manner, by omitting to realise that the issue encrypting Afrophobia is seen through a systematic national policy.[174]

4.3 European Court of Human Rights

Kuric and Others v Slovenia[175] is a case ruled by the European Court of Human Rights ('ECtHR') in 2012. About 25,000 persons had their names removed from Slovenia's civil registration (system) following the country's 1992 separation from the former Yugoslavia.[176] They lost their nationality, their legal standing, and access to several rights because of the expurgation from the system. According to the ECtHR, Slovenia had infringed against the applicants' — eight of the persons who had been erased — rights to an effective remedy, respect for their private and family lives,[177] and non-discrimination.[178] Additionally, the Court granted them fair satisfaction and mandated that Slovenia take broad action to address the circumstances surrounding the persons who were deleted from the system.

In the case of *Andrejeva v Latvia*,[179] the ECtHR found that Latvia had discriminated against Ms Andrejeva, the applicant, by denying her pension claim under the State Pensions Act on the basis of her status as a stateless non-citizen.[180] According to ECtHR, the absence of Latvian nationality was the only motive for depriving her of her rights and, as such, this was politicised on inhumane grounds to justify the state not to consider granting her pension.[181] Furthermore, the Court determined that there had been a breach of both Article 1 of Protocol No. 1, which highlights the right to the peaceful enjoyment of rights

174 Z Mthombeni 'Xenophobia in South Africa: Problematising ubuntu as an ethical response' (2022) 93 *The Thinker* at 70. Interestingly, when national interests strive to protect a specified population at the expense of outsiders, it is submitted that this creates a fear which demonises foreign nationals. See, for example, when former president Donald Trump was elected, his policy was powered by building the Southern border fence, to the extent that the budget which was meant for the Department of Defence was shifted to infrastructural development. See, for example, *Sierra Club v Trump*, 963 F.3d 874 (9th Cir. 2020).

175 *Kuric and Others v Slovenia,* Application no 26828/06, Council of European Court of Human Rights, 13 July 2010, available at https://www.refworld.org/cases,ECHR,4c3f01312.html (accessed 19 January 2024).

176 *Kuric* (n 175) para 364.

177 *Kuric* (n 175) para 318.

178 *Kuric* (n 175) paras 259, 268, 399.

179 *Andrejeva v Latvia,* Appl No 55707/00, Council of Europe: European Court of Human Rights, 18 February 2009, available at: https://https://www.reworld.org/cases,ECHR,49a654aa2.html (accessed 20 January 2024).

180 Equal Rights Trust; Petrova, Dimitrina (29 September 2009). 'Letter to the Saeima' (PDF). *The Equal Rights Trust*, Microsoft Word - Latvia PisjmoDaudze _2_ (equalrightstrust.org) (accessed 1 January 2024).

181 Equal Rights Trust (n 180).

under the European Convention on Human Rights and Article 14, which forbids discrimination.[182]

In 2007, the European Court of Human Rights ('ECHR') ruled in the case of *Tatishvili v Russia*[183] about the complexities surrounding the issue of statelessness, housing and property rights, and proof of nationality, *inter alia*. The applicant, a stateless person residing in Moscow, stated that her daily life had become significantly more difficult and that her access to medical treatment was unclear due to the domestic authorities' arbitrary denial of registering her residency at the designated location.[184] According to Article 8 of the Convention, the ECHR determined that the Russian Federation had infringed upon the applicant's right to respect for her private and family life.[185] In violation of Article 6 § 1 of the Convention, the ECHR also concluded that the applicant had not received a fair trial from the national courts.[186] The applicant received 1,500 euros for fees and expenses and 3,000 euros for non-pecuniary damages from the ECHR.[187]

The Court further stated that, given the case's status as an exemplar of the European Court of Human Rights' jurisprudence regarding residence registration and its implications for the rights of migrants and stateless individuals, naturalisation had emerged as a crucial factor that needed to be taken into account, given the significant influence that the collapse of the Soviet Union had on population displacement.[188] It became necessary, therefore, for the ECHR to acknowledge that the applicant had solid interpersonal relations with Moscow,[189] had been there for more than 40 years and that her denial of residence registration had deprived her of several support systems and prerogatives, including voting powers, social security, health insurance, and a pension.[190] Along with dismissing the applicant's claim without considering the substance of her claims, the municipal courts were chastised by the ECHR for depending on procedural and immaterial reasons, such as the applicant's lack of Russian citizenship or her inability to present a migration card.[191]

The cases of *Kuric*, *Andrejeva*, and *Tatishvili* become imperative when reconciled with *Khoza* case because they stimulate the notion

182 Equal Rights Trust (n 180).
183 *Tatishvili v Russia*, 1509/02, Council of Europe: European Courts of Human Rights, 18 February 2007, available at https://www.refworld.org/cases,ECHR, 4667e2912.html (accessed 20 January 2024).
184 *Tatishvili* (n 183) paras 31, 37 46, 50, 53 (registration of her residency) 34, 44, 67 (access to medical treatment).
185 *Tatishvili* (n 183) paras 14, 45
186 *Tatishvili* (n 183) paras 62-63.
187 *Tatishvili* (n 183) paras 61, 71.
188 *Tatishvili* (n 183) para 41.
189 *Tatishvili* (n 183) paras 7, 13.
190 *Tatishvili* (n 183) paras 34, 44.
191 *Tatishvili* (n 183) paras 12, 15, 19.

that nationality cannot be arbitrarily denied, nor can the system be weaponised to the extent of denying people the right to social security, arbitrarily separating family bonds for the sake of preserving territorial integrity and denying people their socioeconomic rights. Poignantly, Tanous et al submit that, should international law be acquiescent to a domestic setting, this would suggest that the circumstances surrounding statelessness would entail, both inferentially and epistemologically, stateless persons being abandoned in the wilderness, suffering from an identity crisis, and experiencing homelessness and destitution.[192]

5 Conclusion

The notion conveyed in George Orwell's *Animal Farm*, where 'all animals are equal, but some are more equal than others',[193] resonates in the *Khoza* case, which matches hundreds of similar circumstances.[194] The problem stems from the perspective of those who are thought undeserving of accelerated administrative assistance, as seen by how authorities such as the Department of Home Affairs treat foreign nationals, stateless individuals, asylum applicants, and undocumented persons.[195] Be that as it may, the contribution of this paper sought to reflect the implications of being a stateless person. In that endeavour, the case of *Khoza*, as was shown, disclosed the possibility of regularising the jurisprudence of statelessness. Moreover, although statelessness is an international law theme, it is submitted that the case of *Khoza* formalised it in a domestic law context; to the extent of the recognition that balances ubuntu and humanistic centred approach that sees people such as the applicant worthy of being afforded nationality. Although Department of Home Affairs insisted that the applicant did not meet the requirements to be classified as a stateless person, Maritz AJ's contribution is commendable because no evidence could be legitimately sustained to confirm the authenticity of proof that would imply the applicant was deceiving the Department.

192 O Tanous et al 'Beyond statelessness: 'Unchilding' and the health of Palestinian children in Jerusalem' (2022) 4 *Statelessness & Citizenship Review* at 101.

193 Harkins & Lugo-Ocando (n 3) at 3.

194 *Mulowayi v Minister of Home Affairs* [2019] ZACC 1, *inter alia*. The author cannot quote every case-law since this is a conclusion, but to the readers, may this inference be drawn in light of domestic, international and foreign case-laws that were presented in this paper.

195 *Scalabrini Centre of Cape Town and Another v Minister of Social Development and Others* (22808/2020) [2020] ZAGPPHC 308; 2021 (1) SA 553 (GP) (18 June 2020); *Magadzire and Another v Minister of Home Affairs and Others* [2023] ZAGPPHC 2249; 2022-006386 (28 June 2023); *Helen Suzman Foundation and Another v Minister of Home Affairs and Others* [2023] ZAGPPHC 1607; 32323/2022 (10 February 2023); *African Amity NPC and Others v Minister of Home Affairs and Others* [2023] ZAGPPHC 2252; 51735/2021 (29 June 2023).

Furthermore, this paper sought to evoke the ubuntu concept, which holds that stateless people should not be treated unwelcomingly while seeking shelter or permanent status, and that they ought to be recognised as worthy of having a nationality. Ubuntu and communitarianism are inextricably linked, to the degree that Africans have never imposed colonial practices, such as enforcing the protection of a State's territorial integrity against unwelcome persons in need of support, refuge, and care. As such, this paper has proven how the South African government can still readily give nationality and residency to foreigners who are of European descent, whereas individuals like Mr Khoza — despite being black African — are subjected to treatment that is consistent with xenophobic sentiments. Given these problems, this paper advocated for the inclusion of decolonised procedures in stateless person applications. This entails implementing indigenous ubuntu systems that do not seek to alienate persons only because of their origins, but rather prioritise the recognition of needs resulting from a lack of documents and a desire for naturalisation as a citizen. Hence, in the case of *Chisuse and Others v Director-General, Department of Home Affairs and Another,* it was held that:

> … Citizenship is not just a legal status. It goes to the core of a person's identity, their sense of belonging in a community and, where xenophobia is a lived reality, to their security of person. Deprivation of, or interference with, a person's citizenship status affects their private and family life, their choices as to where they can call home, start jobs, enrol in schools and form part of a community, as well as their ability to fully participate in the political sphere and exercise freedom of movement.[196]

When the aforementioned case is reconciled with the *Khoza* case, it is submitted that these two cases are factually identical in the sense that they both focus on how the deprivation of nationality causes inferiority and identity crisis in people who confront such challenges. The purpose of Maritz AJ's decision, as shown, was to bring international law, particularly the significance of statelessness, closer to domestic law by drawing the inference that people cannot be loosely left in the wilderness and suffer from an identity crisis, as this does not reflect the sentiments of what ubuntu embodies.

In achieving its proposition, this paper explored the significance of the *Khoza* judgment and its jurisprudential development to international law was seen when ubuntu was advocated at the domestic level. Accordingly, the evidence was analysed to determine how the procedures used undermined the assessment of whether the applicant was South African and entitled to nationality. Additionally, ubuntu paved the way for observing the receptive nature of how Africans view stateless persons. Therefore, the international law concept of statelessness was decolonised to promote Africanism. This decolonisation, as the paper unfolded, showed how Mr Khoza, like any

196 [2020] ZACC 20 para 28.

rightless person, ought to be sheltered, rather than choosing the trajectory of isolation and deprivation of nationality based on unsound, unreasonable, and arbitrary procedures.

The final part focused on regional statelessness. This regionalism, as it was contended, was built on the *Khoza* case, and personified by foreign judgments decided by the African Court on Human and Peoples Rights, the Permanent Court of International Justice, and the European Court of Human Rights. Rightly stated, statelessness was comparatively analysed to demonstrate how ubuntu is a worldwide phenomenon that was previously unknown, but rather a historic African customary practice that can be measured on a global and regional scale.

What is importantly novel about this paper is that it decolonises how stateless persons are viewed. States tend to prioritise their citizens to the disadvantage of foreign nationals, asylum seekers, and stateless persons. This novelty was personified by extensive existing literature on ubuntu. As such, this novelty provided flexibility for individuals like Mr Khoza to be viewed not as burdens to national interests, but as individuals deserving of recognition as nationals, entitled to live dignified lives with access to basic necessities through their interactions with the State.