**IN THE HIGH COURT OF SOUTH AFRICA**

**(TRANSVAAL PROVINCIAL DIVISION)**

DATE: 19 JUNE 2007

CASE NO: 30720/2006

In the matter between:

**JACOB VAN GARDEREN N.O** **APPLICANT**

**vs.**

**THE REFUGEE APPEAL BOARD** **FIRST RESPONDENT**

**TJERK DAMSTRA N.O** **SECOND RESPONDENT**

**THE MINISTER OF HOME AFFAIRS** **THIRD RESPONDENT**

**THE DIRECTOR GENERAL: HOME AFFAIRS**

**FOURTH RESPONDENT**

**REFUGEE STATUS DETERMINATION OFFICER**

**FIFTH RESPONDENT**

**THE STANDING COIMMITTEE FOR REFUGEE AFFAIRS**

**SIXTH RESPONDENT**

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**JUDGMENT**

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BOTHA J:

This is a review application that concerns three minors who entered the Republic in 2003 in the company of their father, the late Alidor Donkakim.

Mr Donkakim hailed from Lubumbashi, in the Shaba Region, previously known as Katanga, in the Democratic Republic of the Congo (DRC). His wife had died in 2001. In 2003 he entered the Republic from Mozambique with his four daughters, Charlene, born on 13 June 1986, Sabine, born on 13 February 1992, Christelle, born on 24 August 1993, and Sophie, born on 12 October 1996.

On 3 December 2003 Mr Donkakim received a document from the Braamfontein Refugee Reception Office which described him as an asylum seeker.

Mr Donkakim died on 15 January 2004. Charlene Donkakim took care of her younger sisters. At the time she was working for a Mrs Tshabalala.

In August 2004 Charlene Donkakim disappeared. The three

younger sisters were then placed in foster care with a Mrs Tshabalala.

With the assistance of a social worker Sabine, Christelle and Sophie Donkakim applied for asylum in terms of the Act. Although the application was lodged in the name of Sabine Donkakim, it was treated as one that also embraced her younger sisters.

On 1 March 2005 the Refugee Status Determination Officer (RSDO) dismissed their application in terms of section 24(3)(c) of the Act. In his written decision, which was served on 14 March 2005, the following is stated:

> **" After a thorough assessment and careful consideration of all available information, refugee status determination officer has reached the conclusion that your fear persecution is not well founded. Therefore the refugee status cannot be granted to you, it has been rejected as unfounded in terms of section**

**(3)c of the Refugee Act of 1998."**

And further on:

**"In reaching this decision the Refugee Status Determination Officer had due regard to the objective background information on the country of origin. The report for April 2004 from U.S State Dept. state that the DRC has experienced a number of positive political developments since 2002 ending the 5 year war and giving birth to a transitional government that would lead the country to democratic elections in 2005.**

**Calminating (sic) to that in March 2004 Rwandan, Ugandan and Burundian combatants and their dependants have been repatriated through the disamamounts (sic), demobilisation, repartition, reintegration and resettlement programs. However there were no reports in 2002 or 2003 of forced conscription of adults and children. Moreover, the applicants are from Lubumbashi which according to the information provided is calm and stable. Therefore there are major developments in the DRC since 2002 after the signing of**

**peace accord. Now nothing whatsoever that digests (sic) or indicates that their life will be in danger or at arise if they return to their country of origin."**

Sabine, Christelle and Sophie Donkakim were then referred to the Wits Law Clinic, who lodged an appeal in terms of section 26 of the Act on their behalf. The hearing took place on 14 June 2005. Heads of argument were lodged on behalf of the appellants.

On 30 November the Refugee Appeal Board (RAB) delivered its decision in which it upheld the decision of the RSDO.

In its written decision the RAB made the following findings:

**"[8] The appellants resided in Lubumbashi prior to coming to South Africa.**

**[9] The appellants were unable to give any reasons for their**

**journey to South Africa.**

And

**[11] It is an accepted principle that a claimant must carry the burden to prove his case. *Semper necessitatis probandi incumbit illi qui agit.* It follows thus that the burden of proof is on the appellant to show that he is entitled to refugee status. This is confirmed in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, par. 196, p.47: "*It is a general legal principle that the burden of proof lies on the person submitting a claim.*"**

**[12] The standard of proof is real risk and must be considered in light of all the circumstances i.e past persecution and a forward-looking appraisal of risk. The real risk test is a forward-looking one.**

**[15] Counsel for the applicants has submitted that prominence should be given to the best interest of the**

**minor appellants in terms of the 1989 UN Convention of the Right of the Child and other instruments. While the Board is sympathetic it must be remembered that it is a creature of statute and had no inherent powers such as those vested in High Court judges. The Board, therefore, is bound by what is contained in the Refugees Act, 1998.**

**[19] The appeal is dismissed. Refugee status is declined. The decision rejecting the appellants' application for refugee status is confirmed."**

To conclude the history of the three sisters: on 4 January 2006 Mrs Tshabalala returned them to the child welfare service because her welfare grant had been discontinued because the girls were foreigners. On 9 January 2006 they were placed in a place of safety in terms of the Child Care Act, 1983 (Act 74 of 1983).

On 7 June 2006 the applicant, an advocate in the employ of the Lawyers for Human Rights, was appointed *curator ad litem* to Sabine, Christelle and Sophie Donkakim for the purpose of reviewing the decision of 30 November 2005.

This application was launched on 18 September 2006. It seeks a review of the decision of 1 March 2005 (called the decision of 14 March 2005), the decision of 30 November 2005, and a declaratory order that the three Donkakim sisters are entitled to asylum in terms of the Act.

The RAB was cited as the first respondent, and the RSDO as the first respondent. The other respondents are the chairman of the RAB, Mr Damstra (second respondent), the Minister of Home Affairs (second respondent), and the Standing Committee for Refugee Affairs (the fifth respondent) (the Standing Committee).

The applicant alleged four errors of law and three errors of fact on the part of the RSDO and the RAB. The alleged errors of law are:

(a) A failure to consider the best interests of the child when dealing with the application for asylum.

(b) The use of the wrong standard of risk for the purposes of section 3(a) of the Act (real risk instead of well-founded fear).

(c) The use of the wrong standard to find a change of circumstances for the purposes of section 5(e) of the Act.

(d) The application of the wrong standard of proof in respect of applications for asylum brought by unaccompanied minors (in normal parlance, orphans).

The mistakes of fact alleged by the applicant are:

(a) ignoring the fact that Charlene Donkakim said that

the family fled the DRC because of the civil war in the country.

(b) finding that the Donkakim children were not members of a persecuted social group in view of the evidence that female children were subject to assault and rape, and exposed to child prostitution.

(c) finding that information at its disposal confirmed that Lubumbashi was calm and stable.

The court was referred to documents containing evidence of unrest and turmoil in the DRC, notably a report of the United States State Department dated 28 February 2005, JVG 9, a Watchlist on Children and Armed Conflict dated June 2003, JGV10, and a report of the United States State Department dated March 2006, JGV14.

Further evidence of unrest in the DRC was annexed to a

supplementary affidavit; such as:

(a) A letter of the Standing Committee dated 22 August 2005 in which it is stated that refugees from the DRC are likely to remain refugees for some time.

(b) A Unicef news note dated 4 April 2005 dealing with the plight of children in the DRC.

(c) A Human Rights Watch document issued in December 2005 dealing with continued unrest and violence to civilians due to incomplete army integration.

It is argued that this court should substitute its finding for that of the RAB and accord asylum to the children.

The second respondent, in his answering affidavit on behalf of the RAB, elaborated on the reasons its decision without engaging in self

justification.

He accepted that it was not necessary for the appellants to prove past persecution and that it would be sufficient to produce evidence of the treatment of similarly situated persons. He remarked that within the extensive body of human rights data there was no evidence to show that the appellants would be at risk in their country of origin. He contended that it was not possible with regard to various reports, to find that they would be at risk of persecution in the DRC, especially in Lubumbashi.

In paragraph 9.12 of his affidavit the following is said:

**9.12 "The specific country situation with specific reference to the return of the Donkakim children to the Democratic Republic of Congo was studied by the Board in the light of the above submissions. The Board was accordingly satisfied that persons situated in the Democratic Republic of Congo sharing similar circumstances in proximity with the Donkakim children were not at**

**risk of persecution. Reference to the generalized political climate ushered by the Congolese Dialogue, which, while having ended the war and having introduced a new political dispensation with great prospects for peace and democracy, for the country as a whole, was but one of the contributing factors towards the particular situation of the social group most akin to the Donkakim children, their status in relation to persecution, within the changing political climate of the Democratic Republic of Congo. As a contribution towards this investigation I also wrote a letter to the United Nations Human Rights Commission in which I, *inter alia*, sought to enquire about the status of children similarly situated to the Donkakim children in the Democratic Republic of Congo. Although no response to the aforesaid letter was forthcoming, the Board had due regard to relevant information sourced from human rights data, other evidence presented by the claimants and gathered by the Board of its own accord. I attach hereto a copy of the aforesaid letter as annexure "RAB2"."**

RAB 2 was a letter dated 1 November 2005 sent by the RAF to the United Nations High Commission for Refugee Affairs (UNHCR). In the letter the UNHCR is informed of the appeal and invited to give his assistance. There is no indication in the papers of any response to this letter.

He concluded that it could not be shown that the situation of similarly situated children in the DRC was fraught with danger.

In respect of the reliance on section 3(a) of the Act the point is made that it is important that a well founded fear must be based on persecution on account of race religion, political opinion or membership of a social group.

With regard to section 3(b) of the Act he stated that according to reports Lubumbashi was not affected by the civil war. He contended

that the appellants bore the burden to prove an entitlement to refugee status. He stated that the RAB was persuaded that there had been major developments in the DRC after the signing of a peace agreement. He referred to the ratification of the agreement in April 2003, the agreement to set up a transitional government and the scheduling of elections. It is stated that the setting up of the transitional agreement effectively ended the civil war.

He referred to the reliance on the best interests of the child and repeated that that could never be used to undermine the provisions of sections 2 and 3 of the Act. A child still has to qualify for refugee status in order to be entitled to asylum.

There was some debate between Mr Budlender, who with Ms Hofmeyr, appeared for the applicant, and Mr Matjila, who appeared for the respondents, as to whether it was only the decision of the RAB that should be reviewed or the decision of the RSDO as well. As I see it the

appeal to the RAB was an appeal in the widest sense of the word. See for instance the powers of the RAB in terms of section 26(3)(b), (c), (d) and (e) to gather further information. On that basis, what falls to be reviewed is in the first place the decision of the RAB. Irregularities committed by the RSDO are relevant to the extent that they have not been overtaken by or cured in the proceedings before the RAB.

Ms Hofmeyr argued that the proceedings before the RSDO were vitiated by the fact that the applicants were unrepresented and that they were not provided with proper assistance in the form of an interpreter and an expert conversant with child mentality.

Ms Hofmeyr made it clear that it was not the applicant's case that the best interests of the child principle could be used to create an entitlement to refugee status that does not comply with the Act. She argued that the best interests of the child principle should be applied procedurally.

In the decision of the RSDO it is stated that the children's fear of persecution was not well-founded. In the Handbook on Procedures and Criteria for Determining Refugee Station issued under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Reedited in 1992, the following is stated in paragraphs 214, 215 and 219.

> **"214. The question of whether an unaccompanied minor may qualify for refugee status must be determined in the first instance according to the degree of his mental development and maturity. In the case of children, it will generally be necessary to enrol the services of experts conversant with child mentality. A child - and for that matter, an adolescent - not being legally independent should, if appropriate, have a guardian appointed whose task it would be to promote a decision that will be in the minor's best interests. In the absence of parties or of a legally appointed guardian, it is for the authorities to**

**ensure that the interests of an applicant for refugee status who is a minor are fully safeguarded.**

**215. Where a minor is no longer a child but an adolescent, it will be easier to determine refugee status as in the case of an adult, although this again will depend upon the actual degree of the adolescent's maturity. It can be assumed that – in the absence of indications to the contrary – a person of 16 or over may be regarded as sufficiently mature to have a well-founded fear of persecution. Minors under 16 years of age may normally be assumed not to be sufficiently mature. They may have fear and a will of their own, but these may not have the same significance as in the case of an adult.**

**219. If the will of the parents cannot be ascertained or if such will is in doubt or in conflict with the will of the child, then the examiner, in co-operation with the experts assisting him, will have to come to a decision as to the**

**well - foundedness of the minor' s fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt."**

According to these guidelines the applicants were prejudiced because they were not provided with professional assistance to articulate and motivate their fear. They were all under the age of 16. In my view, given the adverse finding regarding to their fear of persecution, the failure to provide them with the assistance of a person conversant with child mentality was an irregularity that vitiated the proceedings before the RSDO. The effect of this irregularity persisted throughout the appeal, as appears from paragraph 9.7 of the answering affidavit. It can therefore not be said that the irregularity has been cured.

The RAB found that the applicants did not prove that they were entitled to refugee status. It cited paragraph 196 of the **Handbook** ***supra*** where it is stated that in general the legal principle is that the

burden of proof lies on the person submitting a claim.

It is necessary to quote the whole of paragraph 196:

**“It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. Thus, while the burden of proof in principle rests of the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application. Even such independent research may not, however, always be successful and there may also be**

**statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should unless there are good reasons to the contrary, be given the benefit of the doubt."**

In my view by simply referring to the normal civil standard, the RAB imposed too onerous a burden of proof. It is clear form paragraph 196 that allowance must be made for the difficulties that an expatriate applicant may have to produce proof. It is also clear that there is a duty on the examiner himself to gather evidence. Another factor that is relevant is the duty cast on the examiner by the best interests of the child principle. In that regard I can refer to paragraphs 214, 215 and 219 quoted above.

In the context of proof of a well founded fear of persecution it was held that it had to be proved to a reasonable degree. See **Fang v Refugee Appeal Board and Others 2007(2) SA447 T at 456F.** See

also **Immigration and Naturalization Service v Cardoza-Fonseca 480 US421 (1987) at 440** where the United States Supreme Court held that a reasonable possibility of persecution rather than a possibility of persecution had to be proved.

Mr Mtjila, who appeared for the respondents, submitted that the appropriate test in respect of the burden of proof is that of “real chance”. He referred me to the judgment in appeal no 72668/01 of the Refugee Status Appeals Authority in New Zealand where that test was applied.

It appears from paragraph 152 of that judgment that the authority does not apply the standard of a balance of probabilities. In paragraph 143 it is accepted that if there is a real chance of persecution taking place and equally a real chance of persecution not taking place, the fear of persecution is well founded. This shows that the New Zealand Authority does not apply a balance of probabilities test. In paragraph 154 of the judgment is said that the phrase “real chance” captures and

clarifies the meaning of the phrase “well founded” (used in the context of a well founded fear of persecution). In paragraph 151 the phrase “real chance” is contrasted with the phrase “real possibility” and a preference is expressed for the former.

All this confirms my view that the normal onus in civil proceedings is inappropriate in refugee cases. The enquiry has an inquisitorial element. The burden is mitigated by a lower standard of proof and a liberal application of the benefit of doubt principle. See paragraph 47 of the judgment.

It seems to me that the preference of the New Zealand Authority in this judgment for the real chance test stems from a perception that a real possibility test may be confusing as a result of the association of the word “possibility” with words like “probability” and “likelihood” in legal phraseology. I must confess that I find the distinction finely - drawn. If “real chance” defines “well founded” I am satisfied that a “reasonable

possibility" test amounts to the same thing.

It stands to reason that what applies to the proof of a well founded fear of persecution should also apply to the proof of refugee status based on section 3(b) of the Act.

I conclude therefore that the RAB has erred in the law by requiring too high a standard of proof from the applicants.

Section 3 of the Act reads as follows:

**3. Refugee status – Subject to Chapter 3, a person qualifies for refugee status for the purposes of this Act if that person-**

**(a) owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social**

**group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his of her former habitual residence is unable or, owing to such fear, unwilling to return to it; or**

**(b) owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; or**

**(c) is a dependant of a person contemplated in paragraph (a) or (b).”**

Section 3 follows on section 2 which reads as follows:

**“General prohibition of refusal of entry, expulsion, extradition**

**or return to other country in certain circumstances. – Notwithstanding any provision of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where –**

**(a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or**

**(b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country."**

**Section 5(1)(e) of the Act reads as follows:**

**5. Cessation of refugee status.-(1) A person ceases to qualify for refugee status for the purposes of this Act if-**

**(a) he or she voluntarily reavails himself or herself of the protection of the country of his or her nationality; or**

**(b) having lost his or her nationality, he or she by some voluntary and formal act requires it; or**

**(c) he or she becomes a citizen of the Republic or acquires the nationality of some other country and enjoys the protection of the country of his of her new nationality; or**

**(d) he or she voluntarily re-establishes himself of herself in the country which he or she left; or**

**(e) he or she can no longer continue to refuse to avail himself or herself of the protection of the country of his or her nationality because the circumstances in connection with which he or she has been recognised**

**as a refugee have ceased to exist and no other circumstances have arisen which justify his or her continued recognition as a refugee."**

It seems that the application before the RSDO was considered as an application under section 3(a). In the appeal reliance was placed on section 3(b). The decision on appeal seems to have been based on section 3(b).

It was perceived by the applicant that there was an implied finding by the RAB that there were circumstances which had the effect that the applicants ceased to qualify for refugee status. It was argued that section 5(1)(e) was irrelevant because it only applied if a person had already been accorded refugee status. That is not how I read section 5(1). It seems to me that it refers to a person's qualification for refugee status irrespective of whether refugee status has been accorded to him or not.

The question of whether there has been a change of circumstances in the DRC can be considered together with the factual issue of what the situation in the DRC was.

To return to sections 2 and 3 of the Act, it was common cause that it was irrelevant that the applicants had no recollection of the reasons why their father left the DRC. If all the other requirements are satisfied they could be considered as refugees *sur place*, that is refugees who find themselves outside their country of origin at a time when either they may be subjected to persecution as envisaged in section 3(a) or may be exposed to conduct as envisaged in section 3(b) as a result of events that have occurred during their absence.

Mr Budlender argued that the claim of the applicants could be accommodated under either section 3(a) or section 3(b). The applicant's claim can indeed be accommodated under section 3(a). The

human right abuses to which they will be exposed as young girls can be described as persecution on account of their membership of a social group, namely that of female children. To the extent that may not be able to articulate a fear of such persecution it must be presumed in their best interest. It does in any event appear from the social worker's report dated 21 June 2005 that the applicants expressed a fear of the war that had been going on in the DRC.

The critical issue is whether there was evidence that there was a reasonable possibility that persons situated like the applicants – young girls with no parents or guardians – would be exposed to violent treatment if they were to return to the DRC.

The RAB found that there was no such evidence and in fact found that the position in the DRC had changed for the better.

Mr Budlender argued that this finding was supported by the evidence and that it was indeed contrary to the evidence. Mr Matjila

argued that the unrest in the DRC was mostly confined to the provinces or regions of Kiva South and Kiva North and that Southern Katanga, and especially Lubumbashi, was an island of tranquillity which at all times remained under the control of the central government. As Mr Budlender pointed out, these submissions are not supported by evidence.

I have already pointed out that the RAB's letter to the UNHCR never received an answer. I may add that the UNHCR was not explicitly requested to report on the situation in the DRC or Lubumbashi.

In his decision the RSDO referred to the April 2004 report of the United States State Department. It is annexed to the papers as annexure JVG9. It refers, *inter alia*, to the following:

a. Civilian authorities did not maintain effective control of the security forces.

b. Members of the security forces were

undisciplined and they committed numerous serious human rights abuses.

c. In areas under government control serious human rights abuses occurred such as killings, torture, acts of rape etc.

d. Child labour and child prostitution remained serious problems.

e. In the Kivas, Maniema Kalanga and south eastern Orientale armed groups continued to severely harass civilians. In the same areas armed groups committed abuses like kidnappings, rape, torture etc.

f. In areas of marginal government control armed groups committed numerous abuses like the forcible recruitment of child soldiers and rape of woman and children.

g. Armed groups abducted woman and girls and

used them as sex slaves.

h. In Kinshasa the significant risk of rape perpetrated by uninformed men restricted the freedom of movement at night for woman in many areas.

i. Government spending on programs for children's welfare was almost non-existent.

j. Child prostitution was a serious problem.

In the Watchlist on Children and Armed Conflict, JGV 10 it is stated that all the parties to the conflict in the DRC used rape as a weapon of war.

In the US Department of State Report dated March 2006, JGV 14, it is stated that in spite of the establishment of a transitional government serious human rights problems persist in the security services and the justice system.

As mentioned before, the Standing Committee, in its letter dated 22 August 2005 expressed the view that in spite of the peace programme in the DRC, the refugees from the DRC were likely to remain refugees for some time.

A Human Rights Watch issued in December 2005 refers to FARDC units attacking Mai-Mai groups in Central Katanga in November 2005.

All this is evidence of a country in turmoil. There was no evidence that Katanga or Lubumbashi were exempt from the unrest. It is clear that the unrest persisted because of an incomplete integration of the opposing armed forces. It also appears that in government controlled areas civilians and particularly woman were not immune to rape and assault.

The evidence on which the RSDO relied did not confirm his finding. The second respondent referred to human rights data that were not disclosed. The applicant produced data that paint a picture of unrest and lawlessness in the DRC. The respondents did nothing to produce evidence to the contrary in spite of the applicant's challenge of the factual findings of the RAB.

In the circumstances I am of the view that the factual finding of the RAB that the situation in the DRC did not pose a danger to the applicants was wrong. It was a fundamental error which renders the finding of the RAB reviewable. See **Pepcor Retirement Fund v Financial Services Board 2003(6) SA 38 SCA at 58 H to C.**

In conjunction with this finding I wish to express my agreement with the contention on behalf of the applicant that the RSDO and the RAB seemed to accept that the mere fact of a peace agreement and the

establishment of a transitional government transformed the DRC into a peaceful country. The evidence is that in spite of all this tension persisted and abuses by armed groups, even government troops, continued. There was therefore not sufficient evidence of a cessation of the circumstances that entitled the applicants to refugee status.

For all these reasons I have come to the conclusion that the decisions of the RSDO and the RAR should be reviewed and set aside.

The last question is whether the matter should be remitted to the RAB and whether this court should substitute its own finding. The latter course should only be followed if there are exceptional circumstances.

In my view there are exceptional circumstances. In the first place I do not foresee a different outcome. There does not appear to be other sources of information available to the respondents than the reports

referred to in the papers. Then there is the question of delay. The case concerns young children. The uncertainty surrounding their fate should not be allowed to continue indefinitely. In **Ruyobiza and Another v Minister of Home Affairs and Others 2003(5) SA51C at 65 C-H** the prejudice caused by delay was considered to be exceptional circumstances justifying a court to substitute its own decision.

**In the result the following order is made:**

1. **The decision of the fifth respondent dated 1 March 2005 and the decision of the first respondent dated 30 November 2005 are set aside.**

2. **In terms of section 24(3)(a) of Act 130 of 1998 Sabine Kalenga Donkakim, born on 13 February 1992, Christelle Bambi Donkakim, born on 24 August 1993 and Sophie Mukembe Donkakim, born on 12 October 1996, are granted asylum.**

3. **The respondents are ordered to issue such**

**documentation as may be required to give effect to the order in paragraph 2 above.**

**4.** **The respondents are to pay the costs of this application as well as the application for the appointment of a curator ad litem.**

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**C. BOTHA**

**JUDGE OF THE HIGH COURT**