

IN THE SUPREME COURT OF GIBRALTAR

CRIAP 004 of 2016

BETWEEN:

PHILIP ARUNDEL VAN DER WESTHUIZEN

Appellant

-v-

HER MAJESTY'S ATTORNEY GENERAL

Respondent

Transcript of Hearing 13<sup>th</sup> day of January 2017

*SOME SIGNIFICANT*

**BEFORE: The Hon Mr Justice Dudley, Chief Justice**

Mr Van Der Westhuizen litigant in person  
Mrs Sharon Peralta for the Crown

*THE TRANSCRIPT IS FULL OF ERRORS WHICH I HAVE CORRECTED:  
PHILIP*

Transcript

Judge Mr sorry, Van Der Westhuizen, I am sorry if I have mispronounced your name.

Mr Westhuizen No problem.

Judge Not an easy, not an easy name to sort of, turn my tongue round.

Mr Westhuizen Mmmm.

Judge I've read, well fair to say I have endeavoured to read your skeleton arguments. I can't say that I necessarily understand them, and but I also suspect that I will never understand them because we come to the concept of law from completely different angles. I see law as a social construction. You see law as something that emanates from a divine being. I, when I sit here, especially when I sit here, I don't do religion, I don't do



emotion. I do black and white letter law which you dispute its existence and that is a perfectly legitimate view to take. I can disagree with you fundamentally but I can very much agree that it is a view that you hold and it is a view that you are entitled to hold. And that's your view. And we have a constitution that protects our freedom of expression. We've got a constitution that protects our right to believe in whatever we choose to believe in and I take the view that your belief system is, you are entitled to equal respect of your belief system and anyone else is entitled to respect all their belief systems. Whatever, whether they are part of a more organised religion, or less organised religion what people believe is entirely a personal matter and a matter for them. But I then go to the narrow position in terms of if this is what the laws tell me that's what I do because that's what I get paid to do. So, let me put it on these terms, I look at this appeal, and I will look at this appeal, but from the very narrow constraints of what the laws of Gibraltar say. And whilst you, I accept that you say that they are not binding, they are not binding on you and they are not binding on anyone, and we could a philosophical discussion about that I could have been asking you lots of interesting questions and saying well what is it to you to pay a £200 fine when the £200 is not real money because the pounds are generated by Gibraltar laws which are therefore not binding and therefore what you are handing over is pieces of paper and how do you transact (unintelligible), how do you reconcile these (unintelligible)? And you may have very good answers to those but I am not going to go there, I am not going to go there because that might be an interesting discussion to have over a cup of coffee but doesn't take us anywhere here today. So what I am looking at is the

very narrow point of the fact that you were convicted of being in Gibraltar without a permit. I understand from the material that I have read and looking, and I have sort of skim read the transcript of what went on in the Magistrates Court, I have skim read that and I see that at some stage after your arrest, I am not sure whether before or after conviction you produced a temporary passport, an Austrian temporary passport, and in a sense it is a question on this that I ask of the Crown, does the right to enter Gibraltar, because as I understand it and I could be wrong on this, and I would be grateful if you could clarify it for me Miss Peralta, as I understand it if you are an EU national you are entitled to be in Gibraltar for a period, certainly for a period of three months. If you are going to stay beyond the period of three months there is a requirement that you then have to register with the CSRO, but failure to register with the CSRO is not a criminal offence. What it creates is a civil penalty, whatever that might be because I think that is more of an European concept rather than a common law concept of civil penalty, but anyway, creates a civil penalty of a £100 punishable, basically a £100 fine. But the appellant and (unintelligible) I apologise if I use appellant rather than Mr Westhuizen because I am going to...

Mr Westhuizen Yes.

Judge The appellant is in Gibraltar ostensibly or originally as I understand it when he is in Gibraltar he is Gibraltar by virtue of a South African passport. I can understand how absent the EU dimension he clearly needed a permit and in the context of that South African nationality you most certainly needed a permit to be in Gibraltar because there is no rights to reside in



Mr Westhuizen Gibraltar by virtue of that without a permit. Indeed if one looks at the Immigration Act in its historic context, in fact it's only Gibraltarians that can reside in Gibraltar without a permit and members, and British citizens who are employed by Her Majesty's Government in Gibraltar you are cast back to the colonial days when it was only Gibraltarians that could live in Gibraltar and basically if you came over to Gibraltar with the Services as a Colonial Officer, those were the only people that could be in Gibraltar without a permit. So South African passport certainly needed a permit, no permit, conviction is made out. I don't see any basis for appealing it. EU dimension, did he was the appellant entitled to be in Gibraltar? He was certainly entitled to be in Gibraltar by virtue of his EU or citizenship of an EU country but that being the case did he require a permit? Because there is a distinction, seems to me, between the permit granted generally and the registration of an EU citizen. They are, they may be in the same Act but the legislation doesn't marry. They are parallel systems I think. Anyway, those are, those are the thoughts I have had when I was reading these papers yesterday afternoon, em and, but it's your appeal Mr Westhuizen so I am if, anything you wish to say, but I think I have set out what my concerns are so that the Crown can respond to that issue. I, I, it's your appeal, so go ahead say whatever you need to say.

Mr Westhuizen Thank you. Good morning, thanks for hearing me out. Em, I'll take a different (unintelligible) as you probably suspect I might have done so I am going to take a...

Judge Yes, you need to raise your voice a little bit Mr Westhuizen...

Mr Westhuizen Sorry about that.

Judge That's a flattering photograph of me.

Mr Westhuizen Yer, if you will all recall I was unlawfully detained whilst I was lawfully distributing these leaflets which are about you and expose your criminality as I have described various documents, therefore the only way that you can prove that you are unbiased is by quashing the conviction because there is bias involved.

Judge Fine, so essentially what you are saying is that I am making an application that I refused myself?

Mr Westhuizen Yes. But if you are not going to quash the conviction then you must accuse yourself of...

Judge Well no, no, so you see surely that can't be a principle of approach Mr Westhuizen. The approach cannot be well if I get what I want then you don't have to recuse yourself, but if you are not going to give me what I want then you ought to recuse yourself. That, that, that's simply, that that holds no sway whatsoever. Either, I can properly deal with the matter...

Mr Westhuizen Yer.

Judge or I can't properly deal with the matter. It can't be you can't properly deal with the matter if you don't, if the outcome is not the outcome that I wish for. Now that's not, that's not principled.

Mr Westhuizen Well it's not me, it's the outside world that would be looking at this.



- Judge Yes and look...
- Mr Westhuizen (unintelligible).
- Judge Yes I am certainly aware of the Porter and Magill test...
- Mr Westhuizen Yer.
- Judge that it is the, it is the well informed reasonable man in the public gallery, would he have a perception that or biased, it's just not actual bias or perception bias, I accept that. But tell me this, fair to say that in another publication, in another publication you have essentially, I think it was, you have provided it with your skeletons.
- Mr Westhuizen Yes, yes.
- See Page 184 Doc. 16**
- Judge At, on the third page it's Point 5 in it, the pretended judges and their fraudulent queen are therefore guilty of capital crimes and under the law should all be executed. So essentially what you are saying is that certainly all the judges in this jurisdiction should be killed.
- Mr Westhuizen According to the law...of God
- Judge The moment, the difficulty that I have with your argument is that by parity of reasoning because actually I did read this, well I saw it, when I saw it I found it assuming because I thought it was actually a really good photograph of me and then I saw that actually other than my photograph there is not much you say really about me but there we are I just thought it was a rather fetching photograph of me, and look and I certainly don't remotely agree with your that I call

them and again, I don't wish to minimise your belief system in any shape or form. I sort of interpreted it as a sort of a Christian or anarchic view of life but maybe I am wrong maybe it's not a Christian or anarchic view of life but that's how I perceived it and I, remember that because I saw the photograph I did look through it and I thought well really it's strange, don't agree with this sort of notion at all but equally I thought there's absolutely nothing defamatory, nothing wrong, it's simply your belief system. That was my reaction to this document.

Mr Westhuizen But, but it exposed...

Judge But, let me, let me, let me take you where I was going. The difficulty I have is this, given that passage in the other newsletter in which you assert that or you say that we are pretend judges again you are perfectly entitled to that. You are perfectly entitled to the view that the queen is fraudulent. Many, many might say actually we ought not to have a queen we ought to have a republic and vote for people why on earth should anyone become a ruler by dint of birth. Certainly I find that quite irrational but there we are. But you then go on to say "are guilty of capital crimes and under the law should all be executed." So in other words you are saying that every single judge in Gibraltar should be killed. The difficulty I have is this, if I recuse myself by parity of reasoning every other judge in Gibraltar also ought to recuse themselves.

Mr Westhuizen Correct, correct.

Judge Em and if we brought over someone from the UK on the basis of well let's bring someone that is from



outside the jurisdiction it is then we avoid any sort of perception of bias, actually the moment he comes into Gibraltar and is sworn as a judge this provision (unintelligible) he also ought to recuse himself. It flows from that that all of a sudden by dint of threatening or threatening, you don't threaten so I, that's not accurate, but by dint of indicating that all judges should be killed you are above the law.

Mr Westhuizen

~~I was~~ <sup>NOT</sup> above the law... (OF GOD)

Judge

Well you are above, you are above the administration of justice in Gibraltar as a social construct. We can agree, I take like I said before, I take the view that law is a social construct, I take the view that the law is man created. We develop as communities and the law provides a common system to which we ascribe and are forced to ascribe by society because we don't want people killed, we don't want people raped, we don't want people assaulted, we want to go to shops and buy things and we want to eat food and someone sells it to us and it becomes a social construct since as much a social construct as money is a social construct because they are pieces of paper which really have no intrinsic value and there's dots and zeros in the computer that says I have got however many pounds in account is imaginative because it means, It's not like that piece of gold, it's not like a stone, it is not like a loaf of bread, they are social constructs and I accept that, I accept that, I that's how I see the world. You see it in a different way, you are perfectly entitled to that view but...

Mr Westhuizen

We see it as God's law.

Judge ...Mmmm.

Mr Westhuizen And what you are describing we call legislation...

Judge Yes...

Mr Westhuizen No

Mr Westhuizen so...

Judge Is there anything you would like to say Mr

Judge and what I am applying and let me deal first of all with your application for recusal. I think, I am not, I am not going to recuse myself, I am not going to recuse myself because for two reasons 1) I don't think in this document you made any defamatory comments whatsoever about me. The fact that you assert that I am masquerading as a judge, well you are perfectly entitled to that view. I, I disagree but you are perfectly entitled to hold it, and given your assertion in your other newsletter that all the judges should be executed. If I recuse myself on that basis then so should every single judge that is appointed ought to recuse themselves and that, and it cannot be right that simply by dint of me saying to someone you should die or that a group of people should die, because it's a group of people should die, that all of a sudden I am not bound by the law or what you would describe legislation. So on that basis Mr Westhuizen I am not recusing myself and I will deal with this appeal. And I will deal with it irrespective of whether you win or you lose, alright. So we've dealt with the refusal point so anything you would like to say on the substantive issue and it may be useful matter for you I am not going to prevent you from saying anything you wish to say or advancing your arguments as you wish to advance them, I have given you, I have told you how I am going to deal with it, so I don't want you to be under any



misapprehension. If you, is there anything you would like to say in relation to the appeal particularly in relation, may I suggest, in relation to the EU nationality point.

Mr Westhuizen No.

Judge Is there anything you would like to say Mr Westhuizen?

Mr Westhuizen Well, whatever is said will be whatever was submitted yesterday...

Judge I have indicated that I tried to read it, I have indicated that I have tried to read it...

Mr Westhuizen But you've, are you going to consider some of the points?

Judge No Mr Westhuizen the arguments that you advanced, look the arguments that you advanced and that's why I came in and said, I have put it out there quite openly...

Mr Westhuizen You're going to...

Judge I respect, I respect your views you're entitled to hold those views, but I am looking at what you call the legislation and I am applying the legislation. And you may, you may, you know what, people can choose to opt out of things in life. I accept that people can choose to opt out of things. You could, you could or someone with your belief system or similar belief system could opt to go and become a hermit and have no human contact and that way avoid being exposed to legislation as you describe it. But my job, for which I get paid in

pretend money I suppose like we all do and we all spend pretend money but my job is to apply that legislation. Now I accept, I accept that you disagree with the fundamental. I accept that you don't believe that I have authority to do it. I accept that. I don't agree with you because I say that my having authority is part of that social construct...

Mr Westhuizen Yer.

Judge and therefore I will do within that social construct what I am asked to do what I am paid to do, and I pay my part too in that social construct. Your argument is, it is because it is a social construct and it is not the law of God therefore I have no power and I have no right to be here.

Respects money more than Truth.

Mr Westhuizen It's a social construct that directly contradicts the decrees of God, the laws of God so I'll answer you by, on one particular point. This is a book The Taking of the Stone of Destiny by Ian Hamilton QC, he is a QC.

Judge Well, I, I .....

Mr Westhuizen Well it relates to something you said.

Judge Alright. What would you like me to look at?

Mr Westhuizen Page 90.

Judge Page 90.

Mr Westhuizen So this is when <sup>THE</sup> a stone was taken, so Ian Hamilton describes what happens when the stone was taken so the, it will be, the, where it says "let the cynics laugh"



AND

about half way down the page "let the cynics laugh at the Archbishops hold sacrilege..."

howl

Judge So you said page 90?

Mr Westhuizen Page 90.

Judge Nine Zero.

Mr Westhuizen Nine Zero.

Judge It might be easier if you mark where that is, I don't seem, maybe I need new glasses, but if you can just show the court bailiff precisely what you would like me to look at?

Mr Westhuizen On this one says page 90.

Judge Standard problem when people come and court, especially (unintelligible) all the time miss their references. You are not alone in not finding a reference. Anyway let's, do you have it in your skeleton?

Mr Westhuizen Well it did relates directly to something you said, I can read it now.

Judge Yes, yes.

Mr Westhuizen And we can establish it later if necessary. It said "let the cynics laugh and let the Archbishops hold sacrilege, but the hands of God were evident over mine when I lifted that stone".

HOWL  
HOWL

Judge Sorry I missed your final phrase.

Mr Westhuizen I said "the hands of God were over mine when I lifted that stone". So he was, what he was referring to was the weight of the stone. It was 458 lbs so it was an extremely heavy stone but he managed to move it. But he is a QC...

Judge That doesn't impress me much...

Mr Westhuizen (unintelligible)

Judge The fact that, the fact that someone is a qualified lawyer doesn't impress me much.

Mr Westhuizen So we were talking about God and here the QC has referenced God and he took the stone in 1950, he with three other Scottish Nationalists they took it back to Scotland. They returned a fake stone and your employer Mrs Bettenburg was crowned on a fake stone.

Judge That may, in fact I have seen, maybe I have seen the fake stone then because I have seen it in Edinburgh Castle.

Mr Westhuizen You've seen the fake stone?

Judge I have seen the fake stone.

Mr Westhuizen I have, I have photo of the original stone, I have photos of the fake stone. In fact we have in another place, we have those photos with (unintelligible) and stamps at the back. We have geological surveys...

Judge I, I...

WESTMINSTER



Mr Westhuizen The point...

Judge I go back to the same thing Mr Westhuizen, you know what, we will always be at cross purposes because, because from my perspective whether or not the person that we describe as Her Majesty Queen Elizabeth II was crowned properly or not properly is, is...

Mr Westhuizen Fundamental to that... *THE WHOLE CASE*

Judge Well it may be, actually look we are going down the route that I said I wouldn't go down because I could have, we could have this philosophical discussion. Yes you know what, of course we will, and you are almost driving me into it because I find it, I find these discussions interesting...

Mr Westhuizen Yes.

Judge But look I could say to you actually well surely that doesn't apply in Gibraltar. She is the Queen of Gibraltar not least because there have been two referendums in which Britain has given Gibraltar the opportunity to sever its links with the United Kingdom. We've chosen as a people, democratically to be part of the Crown under Elizabeth II.

Mr Westhuizen That's absolutely...

Judge So it may be, it may be that what you say applies in the United Kingdom but from a Gibraltar perspective why shouldn't the wishes of the people be supreme in determining who is Queen of Gibraltar? Look, we could have that philosophical discussion, yes?

Mr Westhuizen But what's going to happen is that this information is going to come out, alright?

Judge And if you are right...

Mr Westhuizen But, let me finish, it's going to come out so what happens here is going to in the future, either do terrible damage to you, to your reputation, by the decisions you make.

Judge I, you know what, I don't care much about my reputation. Don't get me wrong, I do my very best, I have taken oaths to apply the law without favour or ill will. That's what I do every day. I try my very best to be as just and as fair as I can. I sometimes get it right. I am sure lots of times I get it wrong...

Mr Westhuizen But that is...

Judge ...that is why there is an Appeal Process and I try my best, let me, Mr Westhuizen, I hear what you say, I ...

Mr Westhuizen Please hear a little bit more. I am not reading the whole thing to you only bits and pieces. Point 1.7 Gibraltarians must not make the same fatal mistake as the English, cause English made the fatal mistake because it is not God, it is God not men who decides who the lawful monarch is and sits upon the ~~throne~~ <sup>STONE</sup> ~~instead~~ of destiny/coronation stone. God decides. Now the English, it was explained to the English, there was a writ put in the Sheffield Court they rejected it, they made a mistake, the English made a mistake. Now Gibraltar is at the point where it is either going to make the same mistake as the English and pay for it, I might add. I don't want to threaten all, I am just saying what



THEY HAVE

the laws of God do. I have penalty curses built into them. So it is not me threatening, this is God.. WARNING.

- Judge Yes well...
- Mr Westhuizen ... that we spoke about earlier.
- Judge You are, you are, look you are...
- Mr Westhuizen Gibraltar is on the point of either making the same mistake or not making that mistake.
- Judge But, and that is not a decision for me.
- Mr Westhuizen In this, that's why I said to you what happens here, this tiny little issue of £200 of paper, legal tender, this little issue is going to be enormous because...
- Judge I, I, fine, I, Mr Westhuizen I accept that that is what you believe. I accept that you take the view that it has huge ramifications in terms of Gibraltar and the, and (unintelligible) and I like I said at the beginning everybody is entitled to equal respect in relation to their beliefs systems. You are as entitled to respect in relation to what you believe, to what the, to the Pope and what the Pope believes and to what the Archbishop of Westminster believes. I take the view that in life everybody is entitled to equal respect in relation to their belief systems. I, I, but, but those belief systems, whatever, whoever, whatever belief systems are held in the context of the social construct of the law that I apply and with which I accept you fundamentally disagree. They hold no sway. And I would be saying, I would be saying exactly the same thing, if the Pope walked in here and he said to me I am speaking, I am

the leader of a faith with however many billion and this is what I say, I would be saying to him exactly the same as I am saying to you. This is a, I adopt a secular approach to the application of law. I, and look you are perfectly entitled to say that whatever is wrong, you are perfectly entitled to say that what I, that the way I operate offends your belief system, it offends all those things I, I and I respect that. If those are your beliefs I respect your beliefs then I respect your beliefs. But I, all that I say, I need to do what I need to do.

Mr Westhuizen Ok you've called them beliefs but actually I am only presenting facts. The fact that I believe that, I do believe that but I am presenting facts.

Judge Look, Mr...

Mr Westhuizen Can I ....

Judge Mr Westhuizen we could go into the metaphysical of...

Mr Westhuizsen Can I, can I...

Judge ...what is God, who is God, is there a God. We could go to the metaphysical you know, I, we could end up having a sort of a (Unintelligible) discussion about the existence of God em, look I, and each one of us may hold our own beliefs and our own faith. We, some of us may believe in God, others don't. We are all entitled to equal respect irrespective of the person what doesn't believe in God is entitled to the same respect as the person who believes in, you know, God within an organised religion or believes in God out with an organised religion. Everybody, look I am very, I suppose I am very liberal that way. We are all entitled



to believe what we choose to choose our faith. That it's faith, but that I am not dealing with faith here. I ...

Mr Westhuizen I have just said that it's fact, I have given you fact because to start with the primary document in the whole British Empire is the Coronation Oath is it not? What document is there in the British Empire that supersedes the Coronation Oath? I submit there isn't one, it doesn't exist.

Judge No, I (unintelligible).

Mr Westhuizen Except the Bible but what the Coronation Oath does is it says very clearly the monarch says very clearly " I will to the utmost of my power maintain the laws of God. The things which I've here before promised I will perform and keep". So all this legislation, man-made legislation is contrary to that law because it, because the laws of God specifically forbid that law, Deuteronomy 4 verse 2 "you shall not add into the word which I command you neither shall you diminish word from it, that you may keep the commandments of the eye of your God that I command you, and Jesus said I think not that I come to destroy the law or the prophets. I have not come to destroy but to fulfil. For (unintelligible) I say unto you, till heaven on earth pass one (unintelligible) shall in no way pass from the law". Those are facts.

"I AM"

VERILY

TITTLE (FROM MATTHEW 5:17-19)

Judge Alright, alright Mr Westhuizen we clearly are not going to agree on this one so I am going to what you would describe as...

Mr Westhuizen I, I, I said not to my benefit because I know that I am complying with the facts, I am saying it for your...

Judge            Alright.

Mr Westhuizen ...for everyone listening, I am saying it for...

Judge            Alright then and that's fine, and that's fine. And from your perspective you are doing the right thing...

Mr Westhuizen Yes.

Judge            ...and I hope that I have given you the opportunity to verbalise what you wanted to tell me. I ...

Mr Westhuizen Can I can I ...

Judge            I don't share your views, you are not going to persuade me and I go back to what I said that I need to look at my job is you raise an appeal, I've identify an issue that gives me that I want clarification on, which is the EU nationality point...

Mr Westhuizen But how does that supersede the coronation oath?

Judge            Alright, alright.

Mr Westhuizen Okay.

Judge            Mr Westhuizen, look I am going to apply, look in fact, look we could again we could go back and we could go back and have all these discussions in terms of it'd be interesting if one looked at the Immigration Act and see if it preceded because it may not precede the coronation and if not an earlier legislation of an earlier version of the Immigration Act probably my recollection is,



because I have had cause to look at that legislation and the history of it...

Mr Westhuizen (unintelligible).

Judge ...in the context of an EEA case.

Mr Westhuizen There was a coronation before that, there is always a Coronation Oath.

Judge Well fine, but then but then...

Mr Westhuizen The previous monarch sworn...

Judge Well sorry but I thought, I thought (unintelligible....unintelligible) again. Look your argument is that it is the law is invalid because Her Maj, or because Elizabeth was not crowned properly or is it that generally basically there can be no law?

Mr Westhuizen She was not lawfully crowned...

Judge So...

Mr Westhuizen ...not only was she not lawfully crowned she broke, she broke the laws of God and she directly deliberately broke the laws of God with many of the enactments of legislation...

Judge And what about, what about legislation before her are those valid or not?

Mr Westhuizen Not valid because the same applied with her dad.

Judge Oh but at least the dad was crowned properly?

Mr Westhuizen He was crowned properly so it doesn't apply in exactly the same way...

Judge Alright.

Mr Westhuizen He was <sup>PROPERLY</sup> property crowned but he also <sup>PERMITTED</sup> committed legislation but she has a double (unintelligible).

Judge Why? <sup>FAULT</sup>

Mr Westhuizen Because she was not properly crowned and she never said anything. She was dishonest.

The crown had already changed to Christ. Doc. 3 P25-52 from Jforjustice.net/challenge

Judge Alright thank you Mr Westhuizen.

Mr Westhuizen Can I ask as a last resort that you at least take time to...

Judge No, I am going to, what I want to hear from Miss Peralta in relation to the point that I raised with her which I need clarification on because the difficulty that I have, the difficulty that I have is if Mr Westhuizen was, is, let's call him an EU citizen, an EU national holds EU nationality, not sure if that context does quite exist having said that, but as an Austrian national therefore has EU rights how does that work in relation to the requirement of the permit?

Miss Peralta My Lord, I was not quite expecting the angle you have raised but in any case...

Judge No it is because I think it's and interesting...

Miss Peralta Yes.



Judge I think it's about, I think it's got to be the angle. If we look at Mr Westhuizen pure and simple South African then, then clearly he needs a permit.

Miss Peralta Yes but let me just say...

Judge Alright.

Miss Peralta ... what I do have. My Lord when Mr Van Der Wethuizen went for trial he, at the time the facts were that he was in Gibraltar, he had a South African passport and it had a Schengen visa which Mr Victory informed us that it wouldn't have been valid in any case in Gibraltar given that Schengen visas are not...

Judge No they can't, Schengen visas can't (unintelligible)...

Miss Peralta ...Schengen countries

Judge ... are not Gibraltar.

Miss Peralta ...are not Gibraltar so, and in any case it had expired as well. It had expired a number of years prior. During the course of the trial the appellant stated that he had subsequently found out he may be entitled to an Austrian passport and this was due to the fact that he had previously been married to an Austrian national.

Mr Westhuizen I have held Austrian citizenship since 1989.

Miss Peralta But it came as a surprise to me because at the time of the trial he had been trying to obtain British citizenship. He as claiming that he was also, he was entitled to that because a relative of his, I don't know...

- Judge            Alright.
- Miss Peralta     ... whether it was his mother anyway. Then it transpired that he may have been entitled to this. The information we had at the time that was produced to the court over the course of a number of adjournments was that Mr Van Der Westhuzien had been married to an Austrian 10 years prior and that any documents he had also expired. Now he then obtained an Austrian emergency passport...
- Judge            Which establishes...
- Miss Peralta     Which establishes that...
- Judge            His EU nationality.
- Miss Peralta     What I don't know, I can't say is whether he eventually produced a full...
- Mir Westhuzien   Yes, yes.
- Miss Peralta     ...Austrian passport because I wasn't present in court on that occasion but given that the removal order was removed, let's call it that...
- Judge            Quashed (unintelligible).
- Miss Peralta     I formed the view that he then must have produced documents to the satisfaction of the court.
- Judge            Right so we have established that he is an Austrian national.
- Miss Peralta     Yes but at the time...



- Miss Peralta And if the immigration officer did not have any of
- Judge And there, and I am not for one second saying quite rightly if he was purporting to be in Gibraltar by virtue of his South African nationality and the Schengen visa he clearly breached the terms of the Immigration Act and required a permit.
- Miss Peralta Yes I know ...
- Mr Westhuis And privately actually I had the Austrian Nationality
- Judge I think that, I see that, I see that in its entirety but by dint of his EU nationality...
- Miss Peralta But you still have to show that you have a permit, Section 55J of the Immigration, Asylum and Refugee Act.
- Judge Mmm what does that state?
- Miss Peralta That states that an EEA national shall be allowed to enter Gibraltar if he produces on arrival a valid passport or identity card issued by an EEA state, and I have looked in other jurisdictions whilst the appellant was making his submissions to you, Your Lordship, certainly in Germany you have to produce something showing that you are an EU national if not you can't exercise that right, that right will not be...
- Judge Alright so the exercise of the right is linked to...
- Miss Peralta Production of evidence to show that you are...
- Judge To production of evidence to show that you are an EU national.

Miss Peralta And at the time he was arrested he did not have any of that because he only had the South African passport and he had been trying to obtain British citizenship not Austrian. It then subsequently transpired that he was entitled to have an Austrian passport, he's obtained one and for the reason the Magistrate granted a number of adjournments for him to regularise his position.

Mr Westhuizen And privately actually I had the Austrian Nationality Certificate on my possession. Not the (unintelligible) to understand that... WITS

Miss Peralta I never...

Judge It was relevant.

Mr Westhuizen Yes.

Miss Peralta At no time was that produced to the court, the only thing that was produced in due course was the emergency passport and then apparently the full passport...

Judge (Unintelligible) the full passport.

Miss Peralta I don't know if that exists.

Judge Alright. Anything you would like to say in reply.

Mr Westhuizen My usual response.

Judge Alright.

Mr Westhuizen (Unintelligible....)

IT CONTRAVENES DEUTERONOMY 4:2



Judge Alright, let me stand the matter down for 15 minutes.

ADJOURNMENT

*PHILIP J. CONRAD*  
*IMMIGRATION ATTORNEY*  
*1112*

Transcript of Hearing 17<sup>th</sup> day of January 2011

REFUSED: Mr Peter Mc Justice, District, Chief Justice

Mr Van Der Weerdenberg present  
Mrs Sharon Forster for the Crown

Transcript

Judge This is an appeal from a decision of the District  
Magistrate by which he imposed a fine of £200.00 upon  
the applicant, for being in Officer and being a non-  
Citizen without a valid permit contrary to Section  
6(7a) of the Immigration, Asylum and Refugee Act.

The first issue that arose in this hearing was an  
application by the applicant seeking an adjournment of the  
hearing. The judge refused this application, the applicant  
contending that he had a passport of his and  
which showed that he was lawfully in possession of  
a visa. Subsequently the applicant has also produced a  
passport from which the inference is that all visas in this  
passport are not properly stamped because the  
dates of the visas is largely inconsistent with  
the dates of his arrival and therefore under the law he  
should not be charged. It must follow that if the court  
accepts the suggestion that all visas in this

IN THE SUPREME COURT OF GIBRALTAR

CRIAP 004 of 2016

BETWEEN:

PHILIP ARUNDEL VAN DER WESTHUIZEN

Appellant

-v-

HER MAJESTY'S ATTORNEY GENERAL

Respondent

Transcript of Hearing 13<sup>th</sup> day of January 2017

BEFORE: The Hon Mr Justice Dudley, Chief Justice

Mr Van Der Westhuizen litigant in person  
Mrs Sharon Peralta for the Crown

Transcript

Judge

This is an appeal from a decision of the Stipendiary Magistrate by which he imposed a fine of £200.00 upon the appellant, for being in Gibraltar and being a non-Gibraltarian without a valid permit contrary to Section 62(a) of the Immigration, Asylum and Refugee Act.

The first issue that arose in this hearing was an application by the appellant seeking my recusal, on the basis that when they arrested him he had been distributing a leaflet which had a photograph of me and which asserted that I was fraudulently masquerading as a judge. Subsequently the appellant has also produced a leaflet from which the inference is that all judges in this jurisdiction are not properly appointed because Her Majesty The Queen is herself fraudulently, was fraudulently crowned and therefore under the law we should all be executed. It must follow that if I recuse myself, given the suggestion that all judges in Gibraltar



should be executed, that any other Gibraltar judge should also recuse himself. That cannot be right because it will provide a mechanism for individuals to avoid trials.

Mr Westhuizen No, that's not true, there would be ...

Judge Alright. Fine, OK, I, and then ...

Mr Westhuizen You know ...

Judge Look, you don't tell me ...

Mr Westhuizen Yes.

Judge ... let me finish ...

Mr Westhuizen Yes.

Judge ... these are my reasons you don't have to agree with them. The appellant's grounds of appeal are based entirely on his belief system. As I have repeatedly said during the hearing he is entitled to those beliefs and those of us that do not share them have to respect them, but they do not provide a basis for the appellant to opt out of the laws of Gibraltar, or, as he would describe them, our legislation. At the hearing I raised a point which was this. The appellant when found, produced a South African passport with an expired Schengen visa. It cannot be in issue that a Schengen visa, let alone an expired one, did not give him a right to be in Gibraltar. Subsequently, as I understand it, after he was convicted, he produced evidence that he also holds Austrian nationality and therefore his rights as a citizen of an EU State are engaged. Subject to the conditions

found in the Act the appellant may now be in a position to establish a right to reside in Gibraltar. The Section 65(j)(1) of the Act allows for entry into Gibraltar by an EEA national on production of a passport or an identity card issued by an EEA State. It is not in issue that the appellant did not do this and therefore he was within the jurisdiction by dint of his South African nationality. In those circumstances he required a permit, which he did not have and he was therefore properly convicted. Alright so I am upholding the decision of the Stipendiary Magistrate. Again, you don't, I don't expect you to agree with my reasons but there they are, those are my reasons for my decision and you are entitled to further appeal the matter should you ...

Mr Westhuizen OK.

Judge ... choose to do so, that's a matter entirely for you, but if you choose to appeal no doubt you can go to the counter and they will provide you with some guidance as to what it is that you need to do. I, the truth is I don't know where the rights of appeal lie, whether the, I don't know whether you can appeal as of right or whether you need to come before me, because I can also sit as a single Judge in the Court of Appeal, seeking permission to appeal, I don't know. The truth is that I, these sorts of, a £200.00 fine normally does not go on further appeal to the Court of Appeal but the provisions are there, you may disagree with them, you may think that they are not binding upon you and so on and so forth but matter for you whether you wish to consider whether or not you want to further appeal, and indeed I don't know whether you have a right. I think you do. Or certainly you have a right to file the papers, but I don't know how it works in the context of a



second appeal, but if you require help I'm sure that they will, it can be provided. Alright.

Mr Westhuizen Could I say ...

Judge Yes.

Mr Westhuizen ... a few final things. There is a, just generally, our point of view, there is a law and I'm not above that law, the law of God. There will be trials in terms of the law of God. The executions that are called for are in terms of that law so I'm just conveying what ...

Judge Alright, I'm ...

Mr Westhuizen ... the message that is there.

Judge I ...

Mr Westhuizen It's five books.

Judge I, like I've said repeatedly I accept it's your belief system, I respect your belief system as much as I would respect anybody else's belief systems. I take the view that each human being is entitled to equal respect.

Mr Westhuizen I'll tell you something personal about myself. I was a chartered accountant and then ...

Judge I'm not sure whether a chartered accountants are involved by that matter lawyers are entitled to equal respect, but anyway.

Mr Westhuizen So I was also enforcing this legislation, same thing. So, having become aware of all the information, if I didn't,

I resigned as a chartered accountant, when I understood the facts I resigned, and if I did not resign I technically would also be, because I was enforcing legislation I would also be subject to a death penalty, that's the way it's written.

Judge But, anyway, we will simply agree to disagree on this one.

Mr Westhuizen Yes I'm just, I'm just imparting ...

Judge Yes, look as I've said ...

Mr Westhuizen It's information that people don't (inaudible) ... know.

Judge As I've said, as I've said repeatedly you are perfectly, perfectly entitled to believe what you want to believe. I'm entitled to believe what I want to believe. I think, well, we all simply need to respect each other as human beings.

Mr Westhuizen Well thank you for hearing me out, and it was nice to meet you anyway.

Judge Not at all.

Mr Westhuizen Thank you.

Judge Alright.

**ADJOURNMENT**