

MOFFAT NDLOVU

Versus

THE CHIEF IMMIGRATION OFFICER

And

THE MINISTER OF HOME AFFAIRS

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 2 AND 7 OCTOBER 2003

H Shenje for the applicant
C Dube for the respondent

Urgent Chamber Application

CHIWESHE J: The applicant filed an urgent chamber application in terms of which he sought in the interim a provisional order interdicting the 1st and 2nd respondents from “unlawfully causing the arrest, detention and deportation of the applicant” and a declaration that “the present detention of the applicant” is illegal and to that extent should be discharged or terminated forthwith.

After hearing arguments from Mr *Shenje* (for the applicant) and Mr *Dube* (for the first and second respondents) I dismissed the application and indicated that my reasons therefor would follow. These are they.

The facts of this matter are common cause. The applicant is the holder of a Zambian passport and identity document. On 5 March 2003 the applicant entered Zimbabwe from Zambia through the Victoria Falls border post. He presented himself to the Zimbabwe Immigration Officers as a Zambian national visiting Zimbabwe. He duly presented his Zambian passport and completed the usual formalities. He was allowed into the country on “Holiday Visitors Entry Certificate”. The certificate was

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valid for 25 days. He had subsequently renewed the certificate so that its validity was extended to 30 May 2003. He failed to renew the certificate any further. He nonetheless remained in the country leading to his arrest on 28 August 2003. He now faces deportation.

In this application the applicant challenges the propriety of his arrest, detention and imminent deportation on the grounds that he is a Zimbabwean citizen who was born and bred in Zimbabwe. He seeks that the court declares the actions of the respondents illegal and that he be released. He avers that he had forged the Zambian passport and identity card in order that he uses the same to enter the United Kingdom in search of employment. He says he is in fact a national of Zimbabwe. He was born of a Zambian father and a Zimbabwean woman. He grew up in Zimbabwe and worked for the National Railways of Zimbabwe for 20 years. He is now retired and of ill health.

The respondents filed opposing papers and detailed heads of argument. In their heads the respondents raised a number of pertinent points in *limine*. I shall return to these in due course. In the interests of justice the application was decided on the merits. The present application is in essence an application for review of the conduct of the respondents. If it is, then it must fail dismally. I find that at all relevant times the respondents acted properly, fairly and in terms of the law. The applicant presented himself as a Zambian national visiting Zimbabwe. He was treated as such. He was allowed entry and issued with a visitor's permit. He renewed the permit on two occasions. He was arrested after his permit had expired and rightly so.

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The law empowers the respondents to deport a person in the position of the applicant. The conduct of the respondents cannot be faulted. The applicant now states that he is a Zimbabwean citizen. He admits that he never told the immigration officers that he was in fact a Zimbabwean citizen. On the contrary he gave out to them that he was Zambian and produced documents to that effect. Mr *Shenje* (for the applicant) is unable to explain why this court should censure the respondents, given the facts of this matter. The applicant himself is to blame for the predicament in which he finds himself.

In any event his claim to Zimbabwean citizenship is strongly opposed by the respondents. In the first place Mr *Shenje* sought at the hearing to have the applicant declared a citizen. There is no such prayer in the application, nor have the papers been amended to include such prayer. In any event even if that had been the case there are serious disputes of facts which could not be resolved on the papers without hearing oral evidence. The application was bound to fail. This point was raised in *limine* by the respondents. The respondents also criticised Mr *Shenje* for drawing up the papers in the application and proceeding to sign himself the certificate of urgency, contrary to rule 244 of the High Court Rules. I agree with their observations.

The applicant has not availed himself of the domestic remedies provided for under section 21 of the Immigration Act [Chapter 4:02]. In terms of that section the applicant could have appealed against the decision to declare him a prohibited person to the nearest magistrates' court. No reasons have been given as to why that procedure was not followed.

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The point was also raised that the applicant has dirty hands and was not entitled to approach this court for that reason. There is merit in that argument. The applicant forged Zambian documents, obtained leave to enter Zimbabwe and remained in the country after the expiry of his permit in clear violation of the immigration laws of Zimbabwe. He now resists the legal consequences of his actions. It was open for him to leave for Zambia and therefrom file an appeal in terms of section 21 of the Immigration Act [Chapter 4:02] or seek such other remedy as may be appropriate.

It was for these reasons that the application was dismissed with costs.

Messrs Shenje & Company applicant's legal practitioners
Paradza, Dube & Associates respondents' legal practitioners