MOHAMED YASSIN ISMAEL
versus
THE REGISTRAR GENERAL
and
THE MINISTER OF HOME AFFAIRS

HIGH COURT OF ZIMBABWE
MAKARAU JP
HARARE, 29 March and 25 April 2007

OPPOSED APPLICATION

Mr *D Foroma* for the applicant
Mr *C Muchenga* for the respondents

MAKARAU JP: The facts of this matter are not in dispute. I set them out.

The applicant entered Zimbabwe in 1980. At the time he declared he was born in Arusha, Tanzania. In 1982 he applied for Zimbabwean citizenship. His application was declined. He made a second application in 1987 which was successful. In the second application, he declared that he was Somalian and was the holder of a Somalian passport whose number was given and recorded. In consequence of his gaining Zimbabwean citizenship, the applicant was issued with a passport by the first respondent. His current passport is valid until 2013.

Following the receipt of certain adverse reports on the applicant from national security agencies, the second respondent on 20 December 2006, served the applicant with a notice depriving him of Zimbabwean citizenship.

On the same day he was served with the deprivation notice referred to above, the applicant filed this application. In the application, he seeks an order compelling the respondents to issue him with a new passport within 5 days of the granting of the order. The order concludes with the usual prayer for costs.

In the founding affidavit attached to the application, the applicant alleges that he is a business executive whose job entails extensive

travel. As a result, his passport pages are almost full with only two pages remaining for endorsements with visas and other immigration stamps. He further alleges that he has had to curtail his international trips to save the remaining pages in his passport. At the time of the application, his son was ill in Malaysia and he anticipated traveling to and from Malaysia to visit his indisposed son.

The application was opposed on the basis that the second respondent had deprived the applicant of citizenship.

In January 2007, the applicant's challenged the procedure by which the notice of 20 December 2006 had been issued. The second respondent then commenced fresh procedures against the applicant, which procedures were still under way as at the date of the hearing of the application.

It is apparent that the opposition to the application was premised on the defective deprivation order of December 2006 which has since been retracted by the second respondent. At the hearing of the matter, it was however conceded on behalf of the respondents, that the second respondent had retraced his steps and had commenced the deprivation process afresh after the challenge from the applicant's legal practitioners on the procedures that had been adopted to deprive the applicant of his citizenship.

The above then presents the state of affairs when the matter was argued before me.

At the hearing, it was the accepted position by both counsel, and correctly so in my view, that pending conclusion of the deprivation procedures put in motion by the second respondent against the applicant, the applicant remains a citizen of this country and is entitled to remain in possession of the passport issued to him. This explains why the first respondent has again, correctly and commendably in my view, not sought to have the passport issued to the applicant withdrawn or retrieved.

The sole issue that exercised my mind in this matter was whether with full knowledge of the fact that the second respondent has commenced citizenship deprivation procedures against the applicant, I should still proceed to compel the respondents to issue the applicant with a new passport.

It is trite that the issuance of a Zimbabwean passport is an incidence of and is ancillary to the citizenship of this country. It cannot be compelled independent of an inquiry into the citizenship of the applicant. In *casu,* it is common cause that the status of the applicant as a citizen is under review and is actually threatened by the second respondent's efforts to deprive the applicant of same.

In my view it is further trite that the competency of the second respondent to review and revoke the citizenship of the applicant is beyond dispute. That is his administrative preserve. Until he has completed his inquiries and taken a decision on the matter, the courts will be slow to interfere with the exercise of his administrative powers. Even when he is done, the courts will only interfere with his decision if such is tainted with illegality, irrationality or procedural impropriety.

With the above in mind, I have considered whether this is an instance where I could *mero motu* use the inherent jurisdiction vested in me to stay proceedings in this matter pending the completion of the deprivation process under way against the applicant. In doing so, I am mindful that the applicant is a citizen of this country until the deprivation process against him is completed and results in him being deprived of his citizenship. I am also mindful that the possession of a passport is necessary for a citizen to exercise freedom of movement and is therefore a right that the courts should guard against its possible erosion. Against these considerations I have kept myself aware of the fact that justice should be practical and must aim at finality. It must always strike a common sense balance between competing legal interests. I am also of the view that while the courts have ultimate

control over administrative actions and decisions of the respondents, the exercise of that power must not be used to interrupt or disrupt such processes unless such interruption is imperative in the interests of justice.

That this court has inherent jurisdiction to stay its own proceedings pending the completion of some other process is beyond dispute. The court can stay proceedings pending the payment of costs incurred in previous proceedings between the same parties; (*Western Cape Housing Development Board & Anor v Parker & Anor* 2005 (1) SA 462 (C); pending arbitration in terms of an agreement between the parties or inherently; (*Nick's Fishmonger Holdings (Pvt) Ltd v De Sousa* 2003 (2) SA 278 (SE), and pending the exhaustion of domestic remedies in review proceedings.

Superior courts enjoy the inherent power to stay their own proceedings pending the completion of administrative processes and arrangements. The inherent powers of the superior courts to stay their proceedings pending the completion of some other administrative arrangements was used and thereby endorsed by the full bench of the Supreme Court in *Commercial Farmers Union v The Minister of Agriculture, Land and Rural Settlement and Others* 2000 (2) ZLR 469 (S) when the court issued an order in favour of the applicants interdicting the respondents from further acquiring land under a programme that the court had ruled to be unworkable, to allow the respondents to work out and put in place a workable plan of land acquisition and to satisfy the court that the rule of law had been restored in the farming area. On the basis of its inherent powers, the court suspended the operation of its own interdict for a period of 6 months.

A similar exercise of jurisdiction was exercised by the court in *FTCK Consultants CC & Others v Shoprite Checkers Ltd* 2004 (2) SA 504 (T) where the court held that in the interests of justice, it would stay the proceedings before it pending certain administrative decisions to be

made by the relevant government minister or the Special Court on appeal against the decision of the minister. A time limit of 15 months was placed on the stay in the interests of reasonableness, to be extended on good cause.

While the above stay was not an exercise of the inherent powers of the court but was a stay granted in terms of a statute, in my view, the case is important in illustrating the inherent power of the court to limit the period of the stay of proceedings in the interest of reasonableness. (The statute in question did not prescribe that a stay be for a given period).

Being guided by the above authorities, I would venture to suggest that this court has inherent jurisdiction to stay its proceedings in appropriate cases, pending the completion of some administrative function and decision. Further, I will hold that in exercising that discretion, the court may, in the interests of justice, place a period within which the administrative function and decision must be undertaken and completed.

Applying the above to the facts of the application before me, while I agree with Mr *Foroma* for the applicant that pending the deprivation of his citizenship, the applicant is entitled not only to hold his current passport but to be issued with a new passport with fresh pages where visa and other immigration information may be endorsed, I believe that in the interests of finality to litigation, I would want to give the second respondent limited time within which to lawfully complete the procedures he has commenced against the applicant to deprive him of Zimbabwean citizenship. To safeguard the applicant from tardiness or undue delays on the part of the respondents, I would say that it is in the interests of reasonableness that I put a time frame to the stay in proceedings so that after the period limited in the stay, the applicant may approach the court for suitable relief.

In *casu,* I take note of the fact that the applicant prudently approached the court before all the pages in his passport have run out. He thus will be able to travel for some time. At the same time the second respondent has commenced procedures that must be completed within a given time frame in terms of the Citizenship of Zimbabwe Act [*Chapter 4.01*]. Taking all these factors into account and especially of the fact that the deprivation procedures commenced against the applicant in January 2007, a further period of 60 days should in my view see the completion of the procedures.

In the result, I make the following order:

1. The decision in this matter is stayed for a period of 60 days reckoned from the date of this order.

2. The applicant shall be entitled to set this matter down on the same papers for suitable relief after the expiration of the 60 day period referred to in 1 above.

3. The costs of this application are reserved.

Sawyer & Mkushi, applicant's legal practitioners.

Civil Division of the Attorney-General's office, 1st and 2nd respondent's legal practitioners.