

SEBASTIAN PIRORO
versus
REGISTRAR GENERAL OF CITIZENSHIP
and
CO-MINISTERS OF HOME AFFAIRS
and
MINISTER OF JUSTICE AND LEGAL AFFAIRS
and
MINISTER OF CONSTITUTIONAL AND PARLIAMENTARY AFFAIRS

HIGH COURT OF ZIMBABWE
MAVANGIRA J
HARARE 24 AND 31 MARCH AND 6 JULY 2011

Opposed Application

B.E. Elliot, for the applicant
F. Chimbaru, for the respondents

MAVANGIRA J: This matter was heard on 24 March 2011. On 31 March 2011 this court issued an order in the following terms:

“IT IS DECLARED THAT:

1. The applicant is a citizen of Zimbabwe by birth in terms of section 5 of the Constitution of Zimbabwe.
2. The provisions of section 9(7) of the Citizenship of Zimbabwe Act, Chapter 4:01 insofar as it relates to citizenship by birth, are *ultra vires* the powers the powers vested in the Parliament of Zimbabwe in terms of section 9 of the Constitution of Zimbabwe and are in consequence of no force and effect.

ACCORDINGLY IT IS ORDERED THAT:

1. The first respondent shall within 14 days of the date of this order renew the applicant’s Zimbabwe passport.
2. The first respondent shall pay the applicant’s costs of suit.”

The following are the reasons why this court granted the relief sought.

The facts of this matter are that the applicant’s father was born in Mozambique in 1941. He came to Zimbabwe in about 1955 when he was still young and lived most of his life in Zimbabwe. At some stage he became a citizen of Zimbabwe. He died in Harare on 8 February 2008

The applicant's mother was born in Zimbabwe. She was a citizen of Zimbabwe by birth. She lived all her life in Zimbabwe and died in Harare on 18 April 2008

The applicant was born in Zimbabwe on 29 April 1967. He is the holder of a Zimbabwe National Identity document. On 19 June 2000, the applicant was issued with a Zimbabwe passport on the basis that he was a Zimbabwean citizen. The passport expired on 18 June 2010 when the applicant was in Canada where he is living and working. Before its expiry the applicant submitted an application form to renew his Zimbabwe passport. He submitted the form to the first respondent through the Zimbabwe Embassy in Canada. The first respondent has refused to grant the application for a renewal.

The first respondent's reasons for adopting the stance which he has taken with the applicant may be summarised as follows. Firstly, he argues that contrary to section 9 (1) of the Citizenship of Zimbabwe Act, [Chapter 4:01], the applicant was a dual citizen of Zimbabwe and Mozambique and that as a consequence, and in terms of section 9 (7) of the Act, the applicant has lost his Zimbabwe citizenship. Secondly, he argues that before the applicant is entitled to apply for a new Zimbabwe passport, he has, in the first instance, to renounce Mozambique citizenship in terms of Mozambican law. Then, in accordance with the provisions of section 14 (1) (b) of the Act, he has to apply to the second respondent to be restored as a Zimbabwe citizen in terms thereof. Furthermore, that in this instance the applicant will have restoration of citizenship by registration and not by birth. The applicant, it is argued, will suffer no prejudice by being a citizen of Zimbabwe by registration rather than by birth. Only if and when the said application is approved will the first respondent recognise the applicant as a citizen of Zimbabwe.

The first respondent's third argument appears to be that the law relating to citizenship which applies to the applicant's case is that contained in Chapter II of the Constitution of Zimbabwe as set out in the Schedule to the Zimbabwe Constitution Order (SI 1979/1600) as amended but only up to and including Constitution Amendment No. 14 of 1996). The first respondent would appear to consider that in dealing with the applicant's case, the provisions of Constitution Amendment No. 19 (Act 1 of 2009) are not relevant. The first respondent appears to imply that if the applicant becomes a citizen

of Zimbabwe again, he concedes that he would be obliged to issue the applicant with a new Zimbabwe passport.

Initially, Mrs. *Chimbaru* for the respondents made detailed submissions in line with the above summary, in opposition of the application. Her submissions were also in line with the heads of argument filed on behalf of the respondents. She highlighted that despite his protestation and claims to the contrary, the applicant is a citizen of Mozambique and that as he had not proved that he had renounced his Mozambican citizenship he had fallen foul of Zimbabwean law which prohibited dual citizenship. She submitted that he had therefore, by operation of law, lost Zimbabwean citizenship. As a result, the first respondent was entitled to refuse to renew his Zimbabwe passport on the ground that he also held Mozambican citizenship by descent, which citizenship he had not renounced. However when the court asked her to make submissions regarding the effect of this court's decision in *Ricarudo Manyere v Registrar General of Citizenship and Minister of Home Affairs* HH87/2002, a matter in which the facts are on all fours with the facts of the present matter and which was cited in the applicant's heads of argument, she readily conceded that the opposition mounted by the respondents in this matter cannot be sustained.

The court was of the view that the concession, though belated, was properly made. The following are the reasons why the court was of the view that the concession was properly made and further to that, that the applicant had laid sufficient basis to justify the granting of the order which he sought and which the court proceeded to grant soon after (a few days after) the hearing. It needs to be mentioned that the applicant's heads of argument have been most useful to the court in the articulation of the justification for the granting of the order which this court granted on 31 March 2011.

In **Citizenship Law in Africa: A Comparative Study**, by Bronwen Manby, it is stated that the term "citizenship" in law denotes a legal bond between an individual and the State in which the State recognises and guarantees that individual's rights. It is stated that the most common rights of citizenship are the right to permanently reside within the State, the right to vote, the right to be elected to public office, the right to freedom of

movement within and outside the State, which includes the right to a passport issued by the State, and the right to diplomatic protection by the State.

In general terms the concept of Zimbabwe citizenship is set out in section 4 of Chapter II of the Constitution of Zimbabwe as amended, up to and including the last amendment which was Constitution Amendment No. 19 (Act 1/2009) as follows:

“Zimbabwean citizenship

- (1) There is a common Zimbabwean citizenship and all citizens are equal, that is to say citizens are entitled, subject to this Constitution, to the rights, privileges and benefits of citizenship and are subject to the duties and obligations of citizenship.
- (2) It is the duty of every Zimbabwean citizen
 - (a) to observe this Constitution and to respect its ideals and institutions; and
 - (b) to respect the national flag and the national anthem; and
 - (c) to the best of his or her ability, to defend Zimbabwe in time of need.
- (3) Every Zimbabwean citizen is entitled to the protection of the State wherever he or she may be.
- (4) Zimbabwean citizenship may be acquired by birth, descent or registration.

[Section substituted by section 3 of Act No. 1 of 2009 (Amendment No. 19)]

Section 9 (1), (2) and (7) of the Citizenship of Zimbabwe Act states:

“Prohibition of dual citizenship

- (1) Subject to this section, no citizen of Zimbabwe who is of full age and sound mind shall be entitled to be a citizen of a foreign country.
- (2) A citizen of Zimbabwe of full age who, by voluntary act other than marriage, acquires the citizenship of a foreign country shall immediately cease to be a citizen of Zimbabwe.

.....

- 7) A citizen of Zimbabwe of full age who
 - (a) at the date of commencement of the Citizenship of Zimbabwe Amendment Act, 2001, is also a citizen of a foreign country; or
 - (b) at any time before that date, had renounced or purported to renounce his citizenship of a foreign country and has, despite such renunciation, retained his citizenship of that country; shall cease to be a citizen of Zimbabwe six months after that date unless, before the expiry of that period, he has effectively renounced his foreign citizenship in accordance with the law of that foreign country and has made a declaration confirming such renunciation in the form and manner prescribed.

[Subsection substituted by Act 12 of 2001.]

From a reading of this section, it appears that all persons affected by the provision had the period from 6 July 2001 to 6 January 2002 within which to renounce their alleged foreign citizenship, after which period they would cease to be a citizen of Zimbabwe by operation of law. Non compliance with section 9 (7) would result in being classified as a non-citizen and thus an alien. Section 2 of the Immigration Act defines the word “alien” as “a person who is not a Zimbabwe citizen.” A reading of the section also makes it dear that it applies only to those people who are in actual fact citizens of a foreign country and

not to people who may have some potential claim to foreign citizenship but who have taken no steps to take up that potential claim. This interpretation has already been made/stated/enunciated by this court in a number of cases which I will shortly refer to.

In *casu* the first respondents' stance is that because one of the applicant's parents, his father, was born in a foreign country, the applicant has to renounce foreign citizenship in order to retain his Zimbabwe citizenship, even though he has taken no voluntary or active steps to acquire such foreign citizenship. The first respondent has been brought before these courts in a number of cases in which the applicants were aggrieved after the first respondent made decisions on the basis of this same interpretation. The following are some of such cases.

In *Morgan Tsvangirai v Registrar-General and Ors* HH 29/2002 ADAM J stated at p 50 of the cyclostyled judgment:-

“The first respondent, if he is demanding from Zimbabwe her citizen, or both of whose parents were born in a foreign country that they renounce their foreign citizenship, then he is flagrantly acting *ultra vires* s 3(2) of the Citizenship of Zimbabwe Act. His conduct would certainly be unlawful”

In *Ricarudo Manyere v Registrar General of Citizenship and Minister of Home Affairs (supra)* the applicant's father had also been born in Mozambique. The facts in that matter are virtually identical to the facts of the instant matter. The first respondent raised therein the same arguments as he has raised in *casu*. The court rejected them all. OMERJEE J stated at pp3-4 of the cyclostyled judgment:

“He (the first respondent) then goes on to say that the applicant is a Mozambican citizen by descent and repeats that assertion three times. Mere repetition of a bald statement does not convert it into a statement of fact, becoming as it were sacrosanct and incapable of determination by a court”.

As already stated, the pertinent facts in that matter are virtually identical to the facts of this matter. OMERJEE J's judgment in that matter, as well as ADAM J's judgment in the Tsvangirai case (*supra*), are clear and extensive as to the correct legal position. Other instructive cases include the following: *Job Sibanda v The Registrar General of Citizenship N.O.* HH 3626/02; *Lewis Uriri v Registrar General of Citizenship and Anor* HH 7128/03. Similar arguments by the first respondent were also rejected in

Trevor Ncube v The Registrar General and Anor HH 7316/06 by BHUNU J who in that matter awarded costs on the higher scale against the first respondent.

This erroneous interpretation of s 9(7) adopted by the first respondent results in a scenario where a person, in this case, the applicant, is deprived of the only citizenship he has, thereby rendering him stateless.

It was submitted that the provisions of s 9 are not applicable firstly, because the applicant was not as at 6 July 2001, a dual citizen of Zimbabwe and Mozambique. Consequently, s 9(7) of the Act did not apply to him. Secondly, the applicant has never been a citizen of a foreign country and thus he has not breached the provisions of s 9(1) of the Act. Thirdly, and as he had not acquired a foreign citizenship, s 9(2) of the Act does not apply to him. On the facts presented to the court, the submissions were found to be justified.

It was also submitted before this court that the concept of citizenship in this jurisdiction first arose in 1949 with the promulgation of the Southern Rhodesian and British Nationality Act 1949 (No. 13 of 1949). Furthermore, that there were related and similar statutes promulgated in the United Kingdom and in other colonies of the United Kingdom at that time. Section 6(1) and (2) of that Act was headed “Citizenship by Birth” and it provided:

“6(1) Subject to the provisions of sub-section (3) of this section, every person who was born before the commencement of this Act shall on the date of commencement of this Act become a Southern Rhodesian citizen by birth if he was born on or after the 12th day of September 1890 within the territories which at the commencement of this Act are comprised in Southern Rhodesia.

(2) Subject to the provisions of subsection (3) of this section, every person born in Southern Rhodesia after the commencement of this Act shall be a Southern Rhodesian citizen by birth”.

The next statute relating to citizenship in this jurisdiction was the Citizenship of Rhodesia and Nyasaland Act 1957. (No. 12 of 1957 which was promulgated during the Federation. Section 6 of that statute was in similar terms as the 1949 Act.

Thereafter came the Citizenship of Rhodesia and British Nationality Act 1963 (No. 63 of 1963). This statute is relevant to this particular case as the applicant who was

born on 29 April 1967, was born whilst it was in force. It is therefore relevant in relation to the provisions of s 5 of the Constitution.

Section 6 of the 1963 Act provided:

“6(1) A person born in Southern Rhodesia on or after the date of commencement of this Act (this, in terms of s 2, was defined as “on the date of dissolution of the former Federation) shall be a citizen of Southern Rhodesia by birth unless –

- (a) At the time of the birth of the person his father -
 - (i) Possessed such immunity from suit and legal proceedings as is accorded to an envoy of a foreign sovereign power accredited to Her Majesty; and
 - (ii) Was not a citizen of Southern Rhodesia.

Or

- (b) At the time of the birth of the person –
 - (i) His father was an enemy alien: and
 - (ii) His mother was interned in a place set aside for the interment of enemy aliens or the place of the birth of the person was under occupation by the enemy.
- (2) A person who was, immediately before the date of commencement of this Act –
 - (a) A former citizen by birth; and
 - (b) A citizen of the former Federation; shall on that date become a citizen of Southern Rhodesia by birth”.

Thereafter came the Citizenship of Rhodesia and British Nationality Amendment Act 1967 (Act 25 of 1967). It amended s 6(1) of the 1963 Act by the insertion after para (b) of the following paragraph:

“or

- (c) At the time of the birth of the person his father was a prohibited immigrant in terms of a law relating to immigration in force in Rhodesia or was not lawfully residing in Rhodesia in terms of such law:

Provided that if subsequent to his birth his father is accepted for permanent residence in Rhodesia under a law relating to immigration in force in Rhodesia, he shall be a citizen of Rhodesia by birth”.

Following thereon was the Citizenship of Rhodesia Act 1970 which was amended in 1972 and 1973 and published in the Revised Edition of the statutes in 1974. Section 5

of the original 1970 Act dealt with citizenship by birth in the same manner as s 6 of the 1963 Act as amended by the 1967 Act. However, in terms of Act 49/72, which was incorporated into Chapter 23 of the 1974 Revised Edition of the Statutes, a new subsection was added after s 5(1)(c) which stated:

“5(1)(d) in the case of a person so born on or after the 12th January 1973, at the time of his birth his father or, in the case of an illegitimate child, his mother was –

- (i) Not a citizen of Rhodesia, and
- (ii) Not ordinarily resident in Rhodesia”

Thus up to the time of Independence, the main criteria for citizenship was the place of birth of the person concerned. However, in 1972, the origin and citizenship of the person’s parents at the time of that person’s birth became more relevant.

With the incidence of Independence the main laws relating to Citizenship of Zimbabwe were published as a Schedule to the Zimbabwe Constitution Order 1979 (S.I. 1979/1600 of the United Kingdom). [*Cap 11*] of the Constitution deals with citizenship. Section 4 of [*Cap 11*] of the original Constitution as promulgated in 1979 stated:

“4. A person who, immediately before the appointed day, was or was deemed to be a citizen by birth, descent or registration shall, on and after that date, be a citizen of Zimbabwe by birth, descent or registration, as the case may be”.

Section 5(1) of the Constitution as originally promulgated in 1979 provided for citizenship by birth in respect of persons born in this country on or after 18 April 1980 in the same manner as that provided in s 5 of the Citizenship of Rhodesia Act [*Cap 23*] in the 1974 Revised Edition. This meant that the place of birth of the person concerned was still the main criterion.

The next relevant amendment to citizenship laws was the Constitution Amendment No. 14 (Act 14/1996) which came into effect on 6 December 1996. The original s 4 relating to persons born before 1980 had provisions which were the same as those relating to persons born in the period from Independence on 18 April 1980 to 6 December 1996. However, the original s 5 was substantially amended for persons born on or after 6 December 1996. The relevant portions of s 5 as amended by Constitution Amendment No. 14 (Act 1/1996) were as follows:-

- “5(1) A person born in Zimbabwe on or after the appointed day but before the date of commencement of the Constitution of Zimbabwe Amendment (No. 14) Act, 1996, shall be a citizen of Zimbabwe by birth, unless (the remainder is as in s 5 of the original 1979 Constitution).
- (2)
- (3) A person born in Zimbabwe on or after the date of commencement of the Constitution of Zimbabwe Amendment (No. 14) Act, 1996, shall be a citizen of Zimbabwe by birth if at the time of his birth his father or his mother is a citizen of Zimbabwe”.

Thus Constitution Amendment No. 14 made the citizenship of the person’s parents equally important to the place of birth of the person concerned. For a person to be a citizen by birth of Zimbabwe, he or she had to be born in Zimbabwe and his or her mother or father had to be a citizen of Zimbabwe at the time of his or her birth.

The most recent amendment to the citizenship in Zimbabwe was by Constitution Amendment No. 19 (Act 1/2009) which came into effect on 13 February 2009. That Constitution Amendment repealed [*Cap 11*] in toto and substituted it in substantially different terms. The original s 4 which stated that citizens before 18 April 1980 were citizens after that date, does not appear in the new [*Cap 11*]. In its place there is a section which deals with the concept of citizenship and which has already been quoted earlier in this judgment (that is s 4 of [*Cap 11*] of the Constitution of Zimbabwe, as amended up to and including the last amendment, which was Constitution Amendment No. 19 (Act 1/2009)).

“Zimbabwean citizenship

- (1) There is a common Zimbabwean citizenship and all citizens are equal, that is to say citizens are entitled, subject to this Constitution, to the rights, privileges and benefits of citizenship and are subject to the duties and obligations of citizenship.
- (2) It is the duty of every Zimbabwean citizen.
- (a) To observe this Constitution and to respect its ideals and institutions; and
- (b) To respect the national flag and the national anthem; and
- (c) To the best of his or her ability, to defend Zimbabwe in time of need.
- (3) Every Zimbabwean citizen is entitled to the protection of the State wherever he or she may be.
- (4) Zimbabwean citizenship may be acquired by birth, descent or registration.
- [Section substituted by section 3 of Act No. 1 of 2009 (Amendment No. 19)]

Section 9 (1),(2) and (7) of the Citizenship of Zimbabwe Act states:

“Prohibition of dual citizenship

- (1) Subject to this section, no citizen of Zimbabwe who is of full age and sound mind shall be entitled to be a citizen of a foreign country.
- (2) A citizen of Zimbabwe of full age who, voluntary act other marriage, acquires the citizenship of a foreign country shall immediately cease to be a citizen of Zimbabwe.

.....

- (7) A citizen of Zimbabwe of full age who
 - (a) at the date of commencement of the Citizenship of Zimbabwe Amendment Act, 2001 is also a citizen of
A foreign country; or
 - (b) at any time before that date, had renounced or purported to renounce his citizenship of a foreign country and has, despite such renunciation, retained his citizenship of that country; shall cease to be a citizen of Zimbabwe six months after that date unless, before the expiry of that period, he has effectively renounced his foreign citizenship in accordance with the law of that foreign country and has made a declaration confirming such renunciation in the form and manner prescribed.
[Subsection substituted by Act 12 of 2001.]

The new s 5 deals with citizenship by birth as did the original one. However, its provisions are materially different from the original one. Section 5(1) as it is now states:-

- “5(1) Everyone born in Zimbabwe is a Zimbabwean citizen by birth if, when he or she was born-
- (a) Either of his or her parent was a Zimbabwean citizen; or
 - (b) Either of his or her grandparents was a Zimbabwean citizen by birth or descent”.

Thus for a person born in Zimbabwe to be a citizen by birth of Zimbabwe, the above subsection must be complied with. Furthermore, this section is the sole provision in terms of which a person born in Zimbabwe can qualify as a citizen by birth of Zimbabwe as the previous s 5 was repealed and is of no force or effect. In *casu* the applicant qualifies as a citizen by birth of Zimbabwe in terms of s 5 (1)(a) in that when he was born “either of his parents was a Zimbabwean citizen”. The undisputed facts are that when he was born his mother was a Zimbabwean citizen.

The first respondent referred in his opposing affidavit and attached a copy of the provisions of s 5(a)(ii) of the Constitution. He states that this is the relevant provision of the law in relation to this case and contends that it has not been complied with by the applicant. However,

that provision was repealed by Constitution Amendment No. 19 of 2009 and therefore of no force or effect. The first respondent's stance is thus without any legal basis and cannot prevail.

The following submission also made in the applicant's heads of argument is instructive. The preamble to the Citizenship of Zimbabwe Act 1984 contains the provisions of ss 4, 5, 6 and 7 of the Constitution as at 18 April 1980. These sections have since been repealed and substituted in the Constitution itself. The preamble to the 1984 Act is therefore out of date and I would venture to suggest may require up-dating especially in view of the provisions of s 6 of the Interpretation Act, [*Cap 1:01*] which provides:

“6. The preamble to an enactment and any punctuation in an enactment shall form part of the enactment and may be used as aids to the construction of the enactment”.

With regards the declaration in para 2 of the order granted by this court as quoted earlier in this judgment, the applicant's heads of argument have been again of great assistance in the articulation of the reasons warranting the granting of the same. This is the declaration that the provisions of s 9(7) of the Citizenship of Zimbabwe Act are *ultra vires* s 9 of the Constitution.

Section 27(1) of the 1949 Citizenship Act provided as follows:-

“A Southern Rhodesian citizen who is a citizen by registration or a neutralized person shall cease to be a Southern Rhodesian citizen if he is deprived of his citizenship by an order made under this section.....”

Then, a citizen by birth of Southern Rhodesia could not be deprived of his or her citizenship. Even then, in the case of citizenship by registration or naturalization, the section required that prior notice be given and an opportunity afforded to the person concerned to make representations to a judicial body, the High Court, against the action which was proposed to be taken against him. Sections 27(5) and (6) of that Act provided:-

“27(5) Before making an order under this section the Governor shall cause to be served on the person against whom an order is proposed to be made a notice in writing informing him of the ground on which it is proposed to be made and of his right, upon making application therefor in the prescribed manner, to have his case referred for enquiry.

(6) If the person against whom the order is proposed to be made applies in the prescribed manner for an enquiry, the Governor shall refer the case for enquiry and report, in accordance with the rules of court, to the High Court”.

The 1957 Citizenship Act also only allowed for deprivation of citizenship if the person concerned was a citizen by registration or naturalization not by birth. Section 27(1) of the 1957

Act was in similar terms to s 27(1) of the 1949 Act. As with the 1949 Act, s 27(4) and (5) provided that prior notice had to be given and an opportunity afforded to the person concerned to make representations to a Commissioner who had to be qualified as a judge or senior advocate allowed for deprivation of citizenship if the person concerned was a citizen by registration or naturalization, not by birth. This was provided for in s 18(1) of the Act. Section 18(4) and 18(5) was similar to s 27(4) and (5) of the previous Act. However, the 1963 Act introduced a provision which was not in existence before. Section 23 provided as follows:-

“A citizen of Southern Rhodesia of full age and capacity who, while outside Southern Rhodesia, by some voluntary and formal act, other than marriage, becomes a national of a foreign country shall thereupon cease to be a citizen of Southern Rhodesia”.

As submitted by Mr *Elliot*, “citizenship” in the above section was not qualified and must therefore have inclined citizenship by birth. However, for a person to lose citizenship, the person had to be outside the country and become a foreign citizen by “some voluntary and formal act, other than marriage”.

In the 1970 Citizenship Act s 15 (s 16 in the 1974 Revised Edition) only allowed for deprivation of citizenship in the ease of citizenship by registration. Section 15(3) and (4) contained similar provisions as in previous Acts regarding the right to notice and to be heard by a judicial body. Section 16(1)(a)(b) provided for deprivation of citizenship if a person was declared a prohibited immigrant or was deported but this could only have related to citizenship by registration. There was no power given to the Minister to deprive a citizen by birth of citizenship except in terms of s 16(1)(c) which was in the same terms as s 23 of the previous Act.

At Independence Citizenship laws were elevated from an Act of Parliament to the Constitution. I would agree with Mr *Elliot* that this signified the importance of citizenship. Section 9 of the 1979 Constitution stated:-

“(9) An act of Parliament may make provision, not in consistent with this Chapter, in respect of citizenship and, without prejudice to the generality of the foregoing, for-

(a)

(b) Subject to the provisions of s 8 (which provided for dual citizenship) and provided that a person shall not thereby be rendered stateless –

(i) the circumstances in which a person who is a citizen of Zimbabwe, other than by birth, and who becomes a citizen of some other country or person who is a citizen of some other country and who becomes a citizen of Zimbabwe shall cease to be a citizen of Zimbabwe.

(ii) depriving any person, other than a citizen by birth or descent, of his citizenship of Zimbabwe; and depriving any person, other than a citizen by birth or descent, of his citizenship of Zimbabwe; and

(c) the renunciation by any person of his citizenship of Zimbabwe”

Thus in terms of the above provision, a citizen by birth of Zimbabwe could not, under any circumstances, be deprived of his or her right to citizenship.

In terms of s 3 of the Constitution Amendment Act No..... (Act 1/2003, the original s 9 was repealed and substituted by a new s 9 which stated:-

“(9) Notwithstanding the provisions of this Chapter, an Act of Parliament may make provision in respect of citizenship and, without prejudice to the generality of the foregoing, may provide for-

- (a) the acquisition of citizenship of Zimbabwe by persons who are not eligible or who are no longer eligible to become citizens of Zimbabwe under this Chapter;
- (b) the circumstances in which a person may cease to be a citizen of Zimbabwe.
- (c) the deprivation of any person of his citizenship of Zimbabwe;
- (d) the renunciation by any person of his citizenship of Zimbabwe:

Provided that no such law shall provide for the cessation by, or deprivation of, any person of his citizenship of Zimbabwe where such person is a citizen thereof by birth except on the grounds that he is or has become a citizen of some other country.

This provision introduced a significant amendment of the citizenship laws in Zimbabwe as it specifically empowered Parliament, for the first time, to pass a law to provide that a citizen by birth could be deprived of citizenship but that this was only limited to “on the grounds that he is or has become a citizen of some other country”.

Following the 1983 Constitutional Amendment, a new Citizenship of Zimbabwe Act was promulgated by Act 23 of 1984 and in terms of the 1984 Revised Edition of the statutes became [Cap 4:01]. Section 9 of that Act is headed “Prohibition of dual citizenship”, subsections (1) and (2) of section 9 of the Act have remained in un-amended and state as follows:

“9(1) Subject to this section, no citizen of Zimbabwe who is of full age and sound mind shall be entitled to be a citizen of a foreign country.

- (2) A citizen of Zimbabwe of full age who, by voluntary act other than marriage, acquires the citizenship of a foreign country shall immediately cease to be a citizen of Zimbabwe”.

The original s 9(7) stated as follows:-

“9(7) A citizen of Zimbabwe of full age who on 1 December, 1984, is also a citizen of a foreign country shall cease to be a citizen of Zimbabwe one year after that date unless, on or before the expiry of that period, he has renounced for his foreign citizenship in the form and manner prescribed”.

The form and manner which was prescribed provided for renunciation in terms of Zimbabwe law. In *Carr v Registrar-General* 2000(2) ZLR 433(5), the Registrar General

argued that in order to effectively renounce a foreign citizenship. This had to be done in terms of the foreign law concerned. However the Supreme Court ruled that s 9(7) did not provide for this and that renunciation in terms of Zimbabwe law was sufficient. Following this decision, the Citizenship of Zimbabwe Amendment Act (12/2001) was promulgated and came into effect on 6 July 2001. Section 9(7) was repealed and substituted. The new s 9(7) which is still in force reads:-

- “9(7) A citizen of Zimbabwe of full age who –
- (a) at the date of commencement of the Citizenship of Zimbabwe Amendment Act, 2001, is also a citizen of a foreign country; or
 - (b) at any time before that date, had renounced or purported to renounce his citizenship of a foreign country and has, despite such renunciation, retained his citizenship of that country; shall cease to be a citizen of Zimbabwe six months after that date unless, before the expiry of that period, he has effectively renounced his foreign citizenship in accordance with the law of that foreign country and has made a declaration confirming such renunciation in the form and manner prescribed”

The Citizenship of Zimbabwe Amendment Act 2003 (Act 12/2003) dealt with persons who were born in Zimbabwe of “migrant workers” from “SADC countries”. In terms of the Act and the regulations published in terms thereof (S.I. 101 A/2004), these citizens were regarded as having lost their citizenship and were therefore required to apply to “restore” their citizenship.

In 2009 s 9 of the Constitution was repealed and substituted, as was the whole of [*Cap 11*] of the Constitution by Constitution Amendment No. 19 (Act 1/2009) which came into effect on 13 February 2009. This is the section which is now in force: It provides:-

- “9. An Act of Parliament may provide for-
- (a) the prohibition of dual citizenship;
 - (b) procedures for the renunciation of citizenship;
 - (c) the circumstances in which persons qualify for or lose their citizenship by descent or registration; and
 - (d) any other matters regarding citizenship”.

As submitted by Mr *Elliot*, this new s 9 of the Constitution has completely overhauled the law relating to citizenship by birth of Zimbabwe and has restored the position to what it was prior to the promulgation of Constitution Amendment No. 3 (Act 1/1983). The power given to Parliament in relation to deprivation of citizenship is that contained in s 9(c) which specifically empowers Parliament to provide for “the circumstances in which persons qualify for or lose their citizenship by descent or registration”. There is no provision empowering Parliament to pass laws to provide for deprivation of citizenship in the case of citizenship by birth. The previous s 9 contained the proviso quoted earlier but the current s 9 does not contain such or any equivalent provision.

The current s 8 of the Constitution is headed “Citizenship and Immigration Board”. There was no equivalent provision in the repealed s 8 which was in fact left vacant after the original s 8, which provided for dual citizenship was repealed by Act 1/1983. The up-to-date s 8 states in subsection (9) that an Act of Parliament “must” provide for the establishment of a Citizenship and Immigration Board to be responsible by registration”. It specifically does not empower the board to revoke citizenship by birth.

Thus a person who is a citizen by birth cannot be deprived of his or her citizenship thereby confirming the paramount importance which the Constitution rightly assigns to citizenship by birth. I find persuasive Mr *Elliot’s* submission that although subsection (d) of s 9 stated that Parliament may provide for “any other matters regarding citizenship”, this subsection must be read in the context of the preceding subsections and cannot be interpreted to give Parliament unlimited powers.

Another aspect of citizenship by birth is that s 4 of the 1979 Constitution stated *inter alia* that a person who was a citizen by birth immediately before 18 April 1980 was on and after that day a citizen of Zimbabwe by birth. This section remained as it was originally until Constitution Amendment No. 19. Section 5 of the 1979 Constitution as amended by Act 14/1996 applies different criteria to qualify as a citizen by birth depending on whether the person concerned was born between 18 April 1980 and 6 December 1996 and after 6 December 1996. In the [*Cap 11*] introduced by Act 1/2009, the previous s 4 has been repealed and its provisions have completely disappeared. The new s 5 is the only provision relating to citizenship by birth. It contains one Act of criteria and its provisions apply to anyone born in Zimbabwe regardless of when he or she was born comes within its provisions.

The reference to Article 15 of the Universal Declaration of Human Rights is also opposite. The Article provides:

- “1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Section 9 of the Constitution prescribes the powers of Parliament in relation to citizenship and it does not empower Parliament to deprive a citizen by birth of his or her citizenship of Zimbabwe. I also find persuasive the submissions that the effect of s 5(1) of the Constitution is that if a person fulfils the requirements set out therein, then he or she is a citizen by birth of Zimbabwe. Furthermore, that the effect of s 9 as read with s 5(1) of the Constitution is that a person who qualifies as a citizen by birth in terms of s 5(1) cannot be deprived, and cannot

have been deprived of that citizenship by default or in any other manner during his or her lifetime.

In the circumstances, if the above analysis is correct, which in my view it is, then s 9 (7) of the Citizenship of Zimbabwe Act not only breaches the provisions of Article 15 of the Universal Declaration of Human Rights, but it is also *ultra vires* s 9 of the Constitution of Zimbabwe in so far as that provision relates to citizens by birth of Zimbabwe.

The above was found to be sufficient justification for the granting of the order quoted at the beginning of this judgment.

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