

Citizenship Lobby Group Update #11

February 18, 2002

Dear All

Magistrate Court Hearings

People who managed to lodge their appeals in response to the Notices of Objection have started to receive notice that they are required to present themselves for these hearings. The first notices seem to have been handed out on Thursday Feb 14, 2002. The recipients were required to present themselves at the magistrate's court the following morning.

Similarly, notices were served on many people on Saturday Feb 16, 2002 and Sunday Feb 17 requiring them to attend court on Monday 18, 2002.

Legal advice

Zimbabwe Lawyers for Human Rights (ZLHR) are organising lawyers, at no charge, to assist people with these hearings. Rosters of attendance need to be drawn up for these lawyers and to facilitate this, you are asked to notify ZLHR as soon as you receive notification that you are required to attend court.

Please call **Harare (04) 251468** and leave the following information on the answer phone/fax

- Name
- Contact number
- Date on which you received notice to appear in court
- Date and time of hearing
- City
- Court (and location if obscure)
- Court room

What is likely to happen?

Legal advice is that a postponement should be sought for these appeals on the grounds that:

- The Registrar-General needs to be called to provide information on previous passport applications and other such information being proof of residence since at least Dec 31, 1985.
- A higher court is currently deliberating this matter (Judge Garwe has handed down a judgement in the case of Liz Feltoe who is appealing the legitimacy of the Notice of Objection she received. This case is being handled as a class action - ie the judgement will apply to all others with a similar appeal)
- You have not been given adequate time to brief legal counsel

NOTE: a voter may not be struck off the voters' roll until their appeal has been heard.

Draft statement

A draft statement has been provided by ZLHR for you to use to secure a postponement of your hearing. It is included at the end of this document.

Do I have to go to court once given notice to do so?

Yes. If you fail to turn up you may be charged with contempt of court.

Don't be fearful of this procedure. Zimbabwe Lawyers for Human Rights are committed to providing legal assistance to you through this process.

Feedback from court cases on Feb 18, 2002

By the time our cases were heard, (12.15) Dave Drury had been sent by ZLHR. Our cases were heard along with two others in court 15. The magistrate and PP were very amenable and Dave did an excellent job. He managed to get permission to submit our case in writing on Thursday. He is allowed to appear for all of us and the magistrate will make a ruling after that. The whole thing was time consuming but everyone was very pleasant.

Lawyers - please assist

If you are a lawyer and are able to assist ZLHR in providing legal counsel in this regard, please contact ZLHR as a matter of urgency - **Harare (04) 251468**

What does Schedule 3 section 3(3) of the Constitution actually say?

Note that the Constitution of Zimbabwe can be viewed and downloaded from the NCA's website at www.nca.org.zw.

Schedule 3 (Section 38 and 39) Qualifications for Members of Parliament and Voters

3 Qualifications and disqualifications for voters

- (3) Any person who is registered on the electoral roll of a constituency shall be entitled to vote at an election which is held for that constituency unless—
- (a) he has then ceased to be a citizen of Zimbabwe; or
 - (b) he is then, in accordance with the provisions of subparagraph (2), disqualified for registration; or
 - (c) in the case of a person who was registered on the electoral roll by virtue of qualifications referred to in subparagraph (1)(b), he has ceased to be so qualified.
- [Subparagraph as substituted by s.14 of Act No.14 of 1996 - Amdmt No.14.]*

What does the Electoral Act have to say?

PART VII OBJECTIONS TO REGISTRATION OF VOTERS

Objections by constituency registrar

- (1) If a constituency registrar has reason to believe that—
- (a) a claimant is not entitled to be registered; or
 - (b) a claimant is not entitled to be registered on the voters' roll on which he has claimed to be registered; or
 - (c) a voter registered on a voters' roll is not qualified for registration on that voters' roll;

he shall send to the claimant or voter, as the case may be, written notice of objection to which a form of notice of appeal shall be annexed:

Provided that no such objection shall be taken or notice sent during the period between the issue of a proclamation referred to in section 38 or 39 and the close of

polling at the election to which such proclamation relates.

- (2) A notice of objection in terms of subsection (1) shall be in the prescribed form and shall set forth—
- (a) the grounds of objection; and
 - (b) that, unless notice of appeal is given within a time stated therein, being not less than seven days, or the constituency registrar, on representations made by the person to whom the objection relates, withdraws his objection, the claim will be rejected and the claimant registered on the appropriate voters' roll or the voter's name struck off the voters' roll, as the case may be.
- (3) If—
- (a) notice of appeal is not duly given or is withdrawn or the constituency registrar does not withdraw his objection, the constituency registrar shall reject the claim, register the claimant on the appropriate voters' roll or strike the voter's name off the voters' roll, as the case may be;
 - (b) notice of appeal is duly given—
 - (i) the constituency registrar shall, unless he withdraws his objection, forthwith set down the objection for hearing before a designated magistrate of the province in which the claimant or voter resides; and
 - (ii) the designated magistrate shall appoint a day and place for the hearing, the day so appointed being not more than 30 days after the date of receipt of the notice of appeal.
- (4) The constituency registrar shall give written notice to the appellant of the day and place appointed for the hearing.
- (5) A notice of appeal shall be accompanied by the sum of \$50 as a deposit.
- (6) The appellant may withdraw his appeal on written notice to the constituency registrar and—
- (a) if the objection has been set down in terms of subsection (3) for hearing, the constituency registrar shall notify the designated magistrate of such withdrawal; and
 - (b) the sum deposited in terms of subsection (5) shall be forfeited and the money paid into the Consolidated Revenue Fund unless the constituency registrar is satisfied that there was good reason for the appeal and the withdrawal thereof and has authorised the refund of such sum.

Your rights

Permanent residence is an implicit part of citizenship. Prior to renunciation in the latter part of 2001 you would have been a de facto permanent resident.

Regardless of the fact that you may have chosen to retain your foreign citizenship over your Zimbabwean citizenship, you are nonetheless eligible to vote as evidenced by the following relevant details extracted from the High Court judgement handed down by Justice Rita Makarau on January 25, 2002:

1. In order to comply with section 28(2) of the Constitution of Zimbabwe, for the Presidential elections scheduled for 9 and 10 March 2002, the Registrar General shall ensure that there is in place a common roll.
2. The common roll referred to in 1 above, shall contain the names and such other information as may be necessary, of all persons who have attained the age of 18 years, are citizens of

Zimbabwe or, since 1985, have been regarded by a written law to be permanent residents in Zimbabwe and who meet the residential requirements of any particular constituency or have satisfied him that for reasons related to place of origin, political affiliation or otherwise, it is appropriate that they be registered in a constituency in which they do not reside;

3. The Registrar General shall restore to the voters roll of any constituency all voters who, on or before 18 January 2002, were on that roll or were eligible but were refused to be on that roll, who may have lost or renounced their citizenship of Zimbabwe, but who since 1985, have been regarded by a written law to be permanently resident in Zimbabwe;
4. The Registrar General shall make adequate and reasonable administrative arrangements for all voters registered on the common roll who will not be in their constituencies on the polling days, to exercise their vote

Hope this all helps

Regards

Brenda Burrell

(incl. Draft Statement)

Draft statement

I refer to the Notice of Hearing dated

I received this notice atam/pm ontheday of February 2002.

In this regard:

1. I have had inadequate notice of this hearing.
2. Due to the lack of proper notice of this hearing I have not been afforded the opportunity to secure legal representation. I am entitled to be legally represented. I want to be legally represented.
3. I will require certain persons to be called to give evidence in this matter including:
 - 3.1 the Registrar General.
 - 3.2
 - 3.3
 - 3.4
4. I will produce certain documentary evidence which I have yet to collate given the lack of notice given to me.
5. I will submit that the issues of law raised in the matter of L.Feltoe v Registrar General presently pending before the High Court are all to be decided in this matter and this matter should be postponed pending the outcome of that matter.
6. I reserve my right on obtaining legal advice to apply to have this matter referred to the High Court as a stated case or to the Supreme Court sitting as a Constitutional Court. Accordingly I believe that this matter should be postponed accordingly.