

Zimbabwe lawyers for Human Rights submissions on the interpretation of citizenship laws to the Parliamentary Committee on Defence and Home Affairs.

2007

The Registrar General, Tobaiwa Mudede appeared before the Parliamentary Portfolio Committee on Defence and Home affairs on 20 February 2007 to give evidence on the challenges that the Central Registry is facing.¹ As part of his evidence, he stated that anyone born from parents of foreign citizenship had to renounce citizenship by descent according to citizenship laws, to avoid problems in applying for passports.² He categorically stated that most of the victims were farm workers.³

It is based on this evidence that Zimbabwe Lawyers for Human Rights (ZHLR) presents these submissions to this committee. According to the doctrine of separation of powers, parliament as the legislator makes the law. In instances where the law is unclear the judiciary has a duty to interpret the law.⁴ Interpretation of statutes is conceived as the search after the intention of the legislature.⁵ Judges fill in the gaps parliament has unavoidably left.⁶ The court has the function of ascertaining the relevant facts when trying a case to apply the relevant law.⁷ Courts exist to declare, give effect to, enforce statutory or other rights duties, liabilities as between individuals and between individuals and the state.⁸ The court has to determine on an informed interpretation the meaning of a statute in dispute.⁹

Pursuant to this function the High Court of Zimbabwe has on a number of occasions interpreted the Amendment number 12 of 2001 to the Citizenship Act of Zimbabwe. The provision on renunciation has been in dispute resulting in the Registrar General's offices refusing to issue passports to individuals or other identification documents. Section 9(7) provides that;

A citizen of Zimbabwe of full age who

(a) at the date of the commencement of the Amendment Act , 2001, is also a citizen of another 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

¹ *The Herald* 21 February (2007) 4.

² As above.

³ (n 1 above).

⁴ The court has done this in *In re Munhumeso and others* 1994 (1) ZLR 49(S); *Chiwore v Vainona Primary school Parents Association* 1992 (1) ZLR 322.

⁵ LM du Plessis *The interpretation of statutes* (1986) 2.

⁶ As above 3.

⁷ F Bennion *Statutory interpretation* (1992) 62.

⁸ As above.

⁹ (n 7 above) 69.

It must also be noted that accordingly the Constitution of Zimbabwe confers citizenship by birth to people born in Zimbabwe.¹⁰

Over the years the Registrar general has developed a habit of widely interpreting this provision. This is despite the guidance that he has received from the High court in several cases concerning citizenship and the government notice published in the Government Gazette to clarify these provisions.¹¹

One of the first cases to challenge these provisions was *Morgan Tsvangirai v Registrar General and others*.¹² The Registrar General had interpreted section 9(7) of Citizenship Act as amended by Act number 12 of 2001 to mean that any person who is or was born in Zimbabwe from one or both parents who were foreigners had to renounce his entitlement or potential claim to foreign citizenship. Failure to renounce meant that a person automatically forfeits his Zimbabwean citizenship. This interpretation does not take into account the fact that a person is not automatically guaranteed of foreign citizenship merely because his parents were born in a foreign country,¹³ some countries require a person to confirm their citizenship and this requires renunciation of any other citizenship.¹⁴ It was further held that it is wrong to presume that when one has a parent or parents that are born out of the country they are citizens of the another country by descent.¹⁵ This interpretation in *Morgan Tsvangirai* by Justice Adam has been relied upon in subsequent cases.

Justice Adam as he then was, stated that section 9,¹⁶ subsection 3,4 and 5 uses the word 'acquires' and 'becomes' in subsection 6 and 7 in order to prevent a citizen of Zimbabwe from having another citizenship.¹⁷ This was done to prevent a citizen of Zimbabwe from becoming dual citizens. One has to 'acquire' and 'become' in order for one to renounce such citizenship. One cannot be forced to renounce what they never acquired or possessed.

This interpretation has been relied upon in several instances when the Registrar has refused to issue individuals with passports. This has resulted in unnecessary litigation where the Registrar has lost and paid costs on a higher scale.¹⁸ This has resulted in the misuse of tax-payer's money as well as the wasting the court's time. Such litigation can be avoided if the Registrar General employs the correct

¹⁰ Section 4 and 5 of the Constitution of Zimbabwe; Citizenship by birth is granted unless the individual born before 1996 was born from an alien parent or an enemy to the state amongst other grounds.

¹¹ Published on 22 November 2002 by the Minister of Justice, Legal and Parliamentary affairs as General Notice 584 of 2002.

¹² HH 29/02; judgment was passed on 27 February 2002.

¹³ As above 25.

¹⁴ (n 12 above).

¹⁵ *Morgan Tsvangirai v Registrar General* (n 12 above) 13.

¹⁶ Of the Citizenship Act of Zimbabwe as amended by Act number 12 of 2001.

¹⁷ *Morgan Tsvangirai v Registrar General* (n 12 above) 46; the same words of acquiring and becoming were used in the 1984 Citizenship Act and the Regulations on renunciation that were one had to acquire and become in order to be obliged to renounce .

¹⁸ Costs on a legal practitioner and client scale were awarded in the cases of *Trevor Ncube v Registrar General* H 7316/06 and *Purser v Registrar General*.

interpretation of Citizenship laws. These judgments will be highlighted chronologically according to the dates they were passed.

Two months after the *Morgan Tsvangirai* decision interpreting provisions of the amendment on renunciation of foreign citizenship, another judgment was passed in *Judith Todd v Registrar General*¹⁹ by the high court. The applicant Judith Todd was born in Zimbabwe. Her parents were born in New Zealand and migrated to Zimbabwe. In this case both parents were foreigners and the court referred to the decision in *Morgan Tsvangirai* case that one had to actually acquire the citizenship in order to be obliged to renounce.

A month later the Registrar was back in the High court after refusing to issue a passport to Ricarudo Manwere.²⁰ The applicant Ricarudo was born in Harare on 28 December 1971. His mother was born in Zimbabwe whilst his father had been born in Mozambique and migrated to Zimbabwe in the 1950's.²¹ The Registrar refused to renew the applicant's passport stating that he had lost his Zimbabwean Citizenship by failing to renounce his Mozambican citizenship by descent. This Mozambican citizenship was simply presumed by the Registrar General with no evidence to show that Ricarudo had indeed acquired the same.

The Registrar General merely repeated the bald statement that the applicant was a Mozambican citizenship in his opposing papers.²² The court held that the Registrar General had to provide the court with a copy of the citizenship laws of the country which he alleged the applicant had acquired to prove that indeed the applicant had foreign citizenship.²³ Mozambique does not allow dual citizenship. Acquisition of citizenship by descent is not automatic when one is a citizen of another country. They have to renounce the other citizenship first. The Registrar was ordered to pay the costs in this case since he had failed to prove that Ricarudo was a dual citizen.²⁴

To clarify the interpretation of Act number 12 of 2001, the Minister of Justice published a notice in the Government Gazette.²⁵ This interpreted section 9 of the Citizenship of Zimbabwe Act as amended in 2001. Renunciation of citizenship would not apply to a potential right, claim or entitlement to foreign citizenship.²⁶ The cabinet also endorsed and approved that every one was presumed to be a Zimbabwean citizen by birth and one had to acquire foreign citizenship to be obliged to renounce.²⁷

¹⁹ HH 76/02; Judgment was passed on 7 May 2002.

²⁰ *Ricarudo Manwere v Registrar General* HH 87/02 was passed on 5 June 2002.

²¹ As above 1.

²² Justice Omerjee stated that such repetition of an assertion did not transform it into a statement of fact, becoming as it were, sacrosanct incapable of determination by the court.

²³ (n 20 above) 5.

²⁴ (n 20 above) 6.

²⁵ This notice was published on 22 November 2002 by the Minister of Justice, Legal and Parliamentary affairs as General Notice 584 of 2002 to interpret the renunciation provision.

²⁶ As above paragraph e.

²⁷ (n 25 above) paragraph a & c.

Despite this guidance from the Cabinet and High Court, the Registrar General was back in court 15 months later as he clinged on to his wide interpretation of renunciation requirements.²⁸ This time he rendered Job Sibanda stateless by refusing to renew his passport and declaring him a non citizen.²⁹ The Registrar made it crystal clear that he still harboured his own wide interpretation of the Citizenship Act despite guidance from the court.³⁰ Applicant was born in Zimbabwe in 1963. His mother was a Zimbabwean and the father was from Malawi.³¹ The Registrar insisted that Sibanda had to renounce his Malawian citizenship by descent although he never possessed it.³² The court referred to earlier decisions including *Morgan Tsvangirai* to determine the interpretation of renunciation requirements again. The Registrar paid the costs of the application again due to his wrong interpretation of the law.

Determined and convinced of his interpretation skills, that same year in the case of *Uriri v Registrar General and another*,³³ the Registrar General was back in court. He still insisted that anyone born in Zimbabwe from foreign parents had to renounce citizenship by descent even if they had not acquired it but had a potential claim or entitlement. Uriri was born in Zimbabwe, both of his parents were born in Mozambique and migrated to Zimbabwe before independence. Uriri approached the Registrar's offices to obtain a birth certificate for his son. The Registrar insisted that he renounces his Mozambican citizenship by descent despite Uriri never having claimed Mozambican citizenship.³⁴ The Registrar General was again ordered to pay the costs as he had not relied on the Government Gazette that interpreted the amendment to the Citizenship Act.³⁵

Two years later, in the case of *Trevor Ncube v Registrar General*³⁶ the court was faced with the same song. Trevor Ncube born in Zimbabwe from a Zimbabwean mother and a Zambian father was refused renewal of his passport.³⁷ The Registrar General asserted that he was a Zambian citizen by descent. Justice Bhunu J sitting at Harare High Court ordered the Registrar General to pay the costs on a higher scale as he was in defiance of Cabinet rules and a court order.³⁸

The Registrar cannot continue to demand that Zimbabweans whose parents were born outside the country renounce foreign citizenship. His conduct is unlawful and

²⁸ Amendment no 12 of the Citizenship Act.

²⁹ *Job Sibanda v Registrar General of Citizenship and another* HH 3626/02 this matter was filed on 10 September 2003 and the judgment was passed on 20 February 2005.

³⁰ *Morgan Tsvangirai v Registrar General* (n 12 above), *Judith Todd v Registrar General* (n 19 above), *Purser v Registrar General*, *Ricarudo Manwere v Registrar* (n 20 above).

³¹ (n 29 above) 1.

³² (n 29 above) 2.

³³ HH 7128/03 judgment was passed in 2006.

³⁴ As above.

³⁵ (n 25 above).

³⁶ HH 7316/06 judgment was passed on 24 and 25 January 2007.

³⁷ As above 1.

³⁸ (n 33 above) 6.

*ultra vires*³⁹ the Registrar General is a public functionary but continues to assume functions of the legislature and powers of the judiciary. This is despite the Supreme Court's ruling in the case of *Carr v Registrar General*⁴⁰ that the Registrar is a public servant who must implement the law as it is and not as he thinks it ought to be.⁴¹ After the decision in *Trevor Ncube* the Registrar General and his office cannot be allowed to try and change the law by administrative decree.

Without citizenship the farm workers and other individuals can not exercise basic rights such as voting,⁴² non discrimination on the basis of origin,⁴³ nationality,⁴⁴ registration immediately after birth⁴⁵ and the right to travel into and out of one's country.⁴⁶

It is submitted that citizenship is a man's basic right, for it is nothing other than a right to have rights. Remove this priceless possession and there remains a stateless person disgraced and degraded in the eyes of his countrymen and countrywomen.⁴⁷

It is apparent that the Registrar General's evidence on the issues raised above to this committee was inaccurate and misguided. The Registrar General cannot be allowed to continue to widely interpret the law and mislead legislators as he has just done. He must shake off the old adage that a little knowledge is dangerous,⁴⁸ by accepting guidance from the court and cabinet to avoid unnecessary litigation.

³⁹ *Morgan Tsvangirai v Registrar General* (n 6 above) 50.

⁴⁰ (2000) ZLR 433 SC.

⁴¹ *Carr v Registrar General* 2000 (2) ZLR 433.

⁴² Article 13 of the African Charter on Human and Peoples' Rights (ACHPR).

⁴³ Article 5(2) of the Convention on the Elimination of all forms of Racial Discrimination (CERD).

⁴⁴ Article 6 of African Charter on the Rights and Welfare of the Child (ACRWC); Article 7 of the United Nations Convention on the Rights of the Child (CRC).

⁴⁵ As above.

⁴⁶ Article 12(2) of ACHPR.

⁴⁷ A M Warnke 'Vagabonds, tinkers and travellers: statelessness amongst the East European Roma' *Indiana journal of global studies* (1999) 335.

⁴⁸ He was warned by Adam in *Morgan Tsvangirai* (n 12 above) 50.