

## CARR v REGISTRAR-GENERAL

A

Supreme Court, Harare

Ebrahim JA, Muchechete JA, Sandura JA, Korsah AJA &amp; Adam AJA

B

Constitutional application

30 November 2000

Judgment No. S-136-00

*Constitutional law — Constitution of Zimbabwe 1980 — citizenship — renunciation of foreign citizenship — form of renunciation — no need for person to renounce citizenship in manner provided by law of foreign country — renunciation under Zimbabwean law sufficient*

C

The applicant, who was born outside Zimbabwe, was registered as a citizen of Zimbabwe in 1995. When she did so, she renounced her United Kingdom citizenship in accordance with the form of renunciation set out in the Schedule to the Citizenship of Zimbabwe (Dual Citizenship) Regulations 1984 (SI 384 of 1984). She handed in her foreign passport and was issued with a Zimbabwean passport. When her passport expired after five years, her application to extend the passport was rejected on the grounds that she had not renounced her former citizenship according to the requirements for renunciation provided by the relevant British legislation and was thus not a citizen of Zimbabwe. She applied to the Supreme Court for an order (1) declaring that her right of freedom of movement under s 22(1) of the Constitution was being contravened by the respondent's action and that she was a citizen of Zimbabwe; and (2) directing the respondent to extend the passport.

D

*Held*, that, in terms of s 9 of the Citizenship of Zimbabwe Act [Chapter 4:01], a person who renounces his foreign citizenship in order to become or remain a citizen of Zimbabwe had only to do so "in the manner prescribed". The manner is prescribed in the Regulations. There is no need for the person in addition to renounce citizenship under the law of the country of his former citizenship. If he complies with the requirements of the relevant regulations, he is deemed to have renounced his foreign citizenship. There is no need to look at the requirements of the law of the relevant foreign country. Indeed, some countries do not permit renunciation of citizenship in any circumstances.

E

F

Cases cited:

*Chrmn, PSC & Ors v Zimbabwe Teachers' Assn & Ors* 1996 (1) ZLR 637 (S)  
*Movement for Democratic Change v Mudede NO & Ors* HH-123-00

G

Legislation considered:

Citizenship of Zimbabwe Act [Chapter 4:01], s 9

*A P de Bourbon SC*, for the applicant  
*A Kara*, for the respondent

H

**A MUCHECHETERE JA:** This is an application in terms of s 22(1) of the Constitution of Zimbabwe. The applicant alleged that, as she had complied with the requirements prescribed by the relevant law on citizenship, the respondent's refusal to issue her with a passport because she was no longer a citizen of Zimbabwe was a breach of her right to freedom of movement and in particular her right to enter and leave Zimbabwe.

**B** During the hearing, counsel for the respondent properly, in my view, conceded that the respondent's interpretation and understanding of the law applicable in the circumstances was incorrect and that the applicant's contention that she had fully and properly complied with the relevant law on citizenship was correct. After consultation with the respondent, he agreed that the following order be issued with the consent of both parties. In the result, the court made the following order:

- C**
1. It is hereby declared that the right of the applicant under section 22(1) of the Constitution of Zimbabwe to protection of freedom of movement has been contravened by the action of the respondent.
  2. It is declared that the applicant, Robyn Anne Carr, is a citizen of Zimbabwe.
  3. The respondent be and is hereby directed, within 30 (thirty) days of the payment of the prescribed fees, to process the applicant's application for the extension of her Zimbabwe passport, which application was made on 18 August 2000, and extend the applicant's Zimbabwe passport No. ZE 079342 for a period of 5 (five) years.
  4. It is ordered that the respondent shall pay the applicant's costs."

**D** We indicated that our reasons for the order would follow in due course. **E** These are they.

The facts in the matter are that the applicant was born in Ndola, Zambia, on 21 February 1967. She came to Zimbabwe, whilst still a minor, in 1971. In 1992, she applied for registration as a citizen of Zimbabwe. Her application was duly processed and on 5 June 1995 she was registered as a citizen of Zimbabwe. She thereafter duly renounced her foreign citizenship. This is evidenced by an affidavit made in terms of s 9(b) of the Citizenship of Zimbabwe Act [*Chapter 4:01*] ("the Act"), as read with s 2(1) of the Citizenship of Zimbabwe (Dual Citizenship) Regulations 1984, SI 348 of 1984 ("the Regulations"). She also handed in her foreign passport and made an application for a Zimbabwe passport. Later she was issued with Zimbabwe passport No. ZE 079342.

**F** The said Zimbabwe passport expired on 18 August 2000. Subsequent to its expiry, the applicant applied for an extension of the same and paid the prescribed fee. On 25 August 2000, she attended upon the offices of the respondent to collect her passport. There she was advised by officials of the respondent that it could not be extended as she was no longer a citizen of Zimbabwe. **G** **H**

On 6 September 2000, the applicant's legal practitioners wrote to the respondent stating the following:

"Dear Sir,

RE: MS R.A. CARR

...

Ms Carr has recently tried to have her Zimbabwe passport No. ZE 079342 extended, the five year term having expired on 18 August 2000. She was unsuccessful and was advised by your officials that she is no longer a citizen.

Our client refutes this allegation and we have been instructed to approach the High Court for relief. Our client's position is that she has complied with s 9(b) of the Citizenship of Zimbabwe Act as read with s 2(1) of the Citizenship of Zimbabwe (Dual Citizenship) Regulations in SI 384 of 1984.

*Our client has complied with the specific directions of the Regulations and there is no lawful reason for your refusal to extend the passport*" (my emphasis).

The respondent replied on 13 September 2000 as follows:

"Dear Sirs,

RE: EXTENSION OF ZIMBABWE PASSPORT: R.A. CARR

...

Your client attempted to renounce British Citizenship in 1995 which renunciation is invalid because in terms of the British Nationality Act 1981 one does not lose British Citizenship unless and until one has renounced according to the British Law. The British Authorities have been very kind in explaining their position to us as regards citizenship renunciation by their nationals. Your client is a *British Citizen* and accordingly ceased to be a citizen of Zimbabwe in terms of s 9(1) of the Citizenship of Zimbabwe Act [Chapter 4:01], which prohibits dual citizenship.

As far as the Citizenship Office is concerned, we have no problem on this one. We need the applicant to complete Citizenship forms for the purposes of restoring the lost citizenship and paying statutorily prescribed fee, thereafter correctly renounce her British Citizenship according to British Law. *A Zimbabwe passport is unquestionably granted to a person of mono Zimbabwe citizenship. In the case of your client, because of the failure in renouncing her British Citizenship she is unquestionably a British Citizen ...*" (my emphasis).

As already indicated above, the relevant statutory provisions in this case are the Act and the Regulations. Section 9 of the Act provides two things which are relevant here, namely:

- (1) that *subject to this section (s 9)*, no citizen of Zimbabwe who is of full age and sound mind shall be entitled to be a citizen of a foreign country; and
- (2) that a citizen of Zimbabwe of full age who, on the 1st 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 his foreign citizenship in the form and manner prescribed* (my emphasis).

The power to prescribe the form and manner in which a person can

**A** renounce his foreign citizenship was delegated to the Minister of Home Affairs. He in turn made the Regulations. Sections 2(1) and (2) of the Regulations read:

“(1) *A person who wishes to renounce his foreign citizenship for the purpose of s 9 of the Act shall —*

**B**

- (a) *make the renunciation in the form set out in the Schedule, which he shall swear before a magistrate, justice of the peace or commissioner of oaths; and*
- (b) *submit the form, duly completed and sworn, to the Registrar-General, either by delivering it to the office of the Registrar-General, at the Old Drill Hall, Moffat Street, Harare, or by posting it by registered post addressed to the Registrar-General, Private Bag 7734, Causeway; and*
- (c) *submit to the Registrar-General, with the form, any valid passport or other travel document issued to him by the Government of any foreign country.*

**C**

- (2) *The Registrar-General shall, without delay, return to the foreign Government concerned, any passport or travel document submitted to him in terms of para (c) of subsection (1)” (my emphasis).*

I should state that the proper form in this case is provided in the Schedule to the Regulations, and reads as follows:

**D**

“FORM OF RENUNCIATION OF FOREIGN CITIZENSHIP

I ..... (full names in block capitals) do solemnly and sincerely swear:

**E**

1. I was born at ..... (city, town or place) in ..... (country) on ..... (date of birth).
2. I am a citizen of Zimbabwe by \*birth/descent/registration.
3. I am also a citizen or national of ..... (name of country) by \*birth/descent/naturalization/registration/marriage/other (if ‘other’, specify .....).
4. As I am desirous of retaining my status as a citizen of Zimbabwe, I hereby renounce, so far as it lies within my power, my status as a citizen or national of ..... (name of country) and any claim I have to the protection of that country.

**F**

.....  
Signature of Deponent  
Sworn at ..... (place) this ..... day of ..... 19 ....., before me.

**G**

.....  
\*Magistrate/Justice of the Peace/  
Commissioner of Oaths

\* Delete the inapplicable.”

It is similar in every respect to the one sworn to by the applicant. Such forms are kept at the Registrar-General’s Office and I have no doubt that the applicant obtained the form she swore to from that Office.

**H**

I should also state that there is an explanatory note to the Regulations which reads: **A**

“EXPLANATORY NOTE

*(This note forms no part of the regulations, but is intended simply to explain their purport.)*

Section 9 of the Citizenship of Zimbabwe Act 1984, requires persons who hold both Zimbabwean and foreign citizenship to renounce their foreign citizenship within one year after the date of commencement of the Act or within one year of becoming a foreign citizen, failing which they will automatically cease to be citizens of Zimbabwe. **B**

*These regulations set out the manner and form in which persons may renounce their foreign citizenship so as to retain their Zimbabwean citizenship.* The regulations also provide for the manner in which persons may apply for exemptions from the provisions of s 9 of the Act” (my emphasis). **C**

Counsel for the applicant submitted that the manner in which persons of dual citizenship were required to renounce their foreign citizenship is a matter within the power of the legislature and that it elected to prescribe the manner of renunciation in the form outlined in the Regulations. He went on to state that a reading of the Regulations indicates that the word “shall” is used in the Regulations and that that on its own makes the manner in which foreign citizenship should be renounced mandatory. In the circumstances, a person holding dual citizenship has no option but to act in accordance with the procedure stated in the Regulations. He argued that the respondent cannot in the circumstances be heard to contend that there is an additional requirement in renouncing foreign citizenship, that is, that one must comply with the Regulations that are purportedly imposed by the foreign country concerned, in this case Britain. **D**

I agree with counsel for the applicant’s submissions. Indeed, counsel for the respondent could not point to any Act or regulations which gave the respondent the power to impose the extra condition he now seeks to impose. As counsel for the applicant pointed out, the Regulations came into force in 1984 and surely between that time and August 2000 the legislature or the Minister would have known the British authorities’ attitude towards renunciation in terms of the Regulations. And if the legislature wished to have renunciation in the terms the respondent now contends, it would have acted to amend the Regulations accordingly. The respondent has no power to amend the Regulations. That is for the legislature and/or the Minister. **E**

Indeed, at some stage in 1994, the legislature attempted to amend the legislation to reflect the present contention by the respondent. That was in the Citizenship of Zimbabwe Amendment Bill 1994. Clause 4 of the memorandum to that Bill reads: **F**

“Clause 4

Section 9 of the Citizenship Act prohibits citizens of this country from holding foreign **H**

- A** citizenship. This clause will alter the requirements of the section in several respects. In the first place, it will prohibit all citizens, whether by birth, descent or registration, from voluntarily acquiring the citizenship of a foreign country; if they do they will immediately lose their Zimbabwean citizenship. Secondly, persons who hold foreign citizenship when they become citizens by registration will be required to forego their foreign citizenship within a year — *and their renunciation of foreign citizenship will have to be made according to the law of the foreign country concerned, not according to Zimbabwean law as at present.*
- B** The same will apply to citizens by registration who acquire foreign citizenship through marriage or through some circumstance other than their voluntary act (for instance, through a change in a foreign law): *they will have to renounce their foreign citizenship within a year, and their renunciation will have to be effective according to the foreign law ... People who have already made a declaration renouncing their foreign citizenship in the form and manner prescribed under the Act will not be obliged to make a fresh renunciation: see the new subs (5) ...*” (my emphasis).
- C**

And the proposed new subs (5) to s 9 of the Act would have read as follows if the amendment had gone through:

*“A person who renounced his foreign citizenship before the fixed date in the form and manner then prescribed under this Act shall be deemed, for the purposes of subsections (2), (3) and (4), to have ceased to be a citizen of the foreign country concerned by virtue of that renunciation:*

- D** Provided that this subsection shall not apply to such a person if, after the renunciation, he re-acquired citizenship of the foreign country concerned or availed himself of that citizenship” (my emphasis).

I understand the above amendment was abandoned after its first reading in Parliament. The reasons for the abandonment are not very clear but one factor which must have exercised the thinking of Parliament is that the amendment would have worked a hardship on some Zimbabweans of foreign origin whose countries of origin do not in any event accept renunciation of citizenship by birth.

- E** What, however, was clear from the proposed amendment was the fact that Parliament was aware of the present state of the law — that is, that a renunciation of foreign citizenship in the form prescribed in the Regulations was proper and sufficient renunciation under Zimbabwean law. In other words, there was no necessity to look to the law of the foreign country in question on the matter. Another matter which was also clear was that the legislature had wished to change that position so as to reflect the position now being contended for by the respondent. Further, the Legislature was not about to make the proposed amendment retrospective — a reflection, perhaps, of its respect for vested rights. See *Chairman, Public Service Commission & Ors v ZIMTA & Ors* 1996 (1) ZLR 637 (S) at 651-655.
- F**
- G**

The proposed amendment therefore serves to clarify the legal position in this matter and clearly bolstered the contentions of the applicant.

- H** In addition to the above, consideration ought to be given to the provisions of s 9(6) of the Act. The subsection reads:

“A person who becomes a citizen of Zimbabwe by registration while he is a citizen of a foreign country shall cease to be a citizen of Zimbabwe one year after such registration unless, on or before the expiry of that period, he has renounced his foreign citizenship in the form and manner prescribed. A

Provided that a person who, at any time between 1 January 1985 and 31 December 1985 —

- (a) became a citizen of Zimbabwe by registration; and  
(b) was enrolled as a voter on any roll in terms of the Electoral Act, 1979 (No. 14 of 1979); shall be deemed not to have lost his citizenship of Zimbabwe solely on account of his not having renounced his foreign citizenship in terms of this subsection.” B

The proviso to the subsection is most significant and it applied to a limited class of persons who fell into that category. The effect of the enactment is to the effect that such persons, including those of British citizenship, who had between 1 January and 31 December 1985 become citizens of Zimbabwe by registration and were enrolled on any such roll under the Electoral Act 1979, had not lost their citizenship simply because they had not renounced their foreign citizenship. This, if anything, is indicative of the legislature, in its wisdom, choosing to permit dual citizenship in this special category. C

All the above indicates that the law in this matter is very clear. And that Parliament, through the above-quoted explanatory notes, made its intention clear. It is the result which is probably unpalatable to the respondent and others. D

In the circumstances, I must agree with the submissions of counsel for the applicant that the sentiments expressed by CHIDYUSIKU JP in the judgment *Movement for Democratic Change v Mudede NO & Ors* HH-123-2000 at pp 9-10 of the cyclostyled judgment, to the effect that the law on the matter is absurd and nonsensical and that one does not expect such law being drafted by a first year law student, are unfortunate. They, in my view, do an injustice to draftsmen who, in any event, work under the direction and supervision of the Attorney-General. And indeed, they also do an injustice to Parliament, which must be held to have passed the legislation after careful consideration. E

Faced with what in a way was “a mission impossible”, counsel for the respondent had no option but to concede that the present state of the law is that being contended for by the applicant and her counsel. For, as already indicated, he could not point to any provisions which gave the respondent the power to impose the conditions he sought to impose on the applicant. The function of the respondent, and indeed all public servants, is to implement the law as it is and not, as in this case, as he thinks it ought to be. And, as already indicated, any change in the law must be made by Parliament and not by an administrative decree of the respondent. G

As the applicant followed, to the letter, the provisions of the Regulations the respondent had no option but to extend her Zimbabwean passport. H

**A** Refusal and failure to do so amounted to violation of her rights under the Constitution.

There was some allegation raised in the respondent's heads of argument and later in his supplementary affidavit that there were some irregularities in the handing in of the applicant's foreign passport and the issue of the Zimbabwean passport to her. This court dismissed the allegation because in the first place those allegations were raised as an afterthought and after "the pleadings" were closed, so to speak. Secondly, they were denied by the applicant. Thirdly, the allegations were not a matter of any substance because the applicant had a year within which she had to "perfect" her renunciation of the foreign citizenship. She must have done so, as evidenced by her use of the Zimbabwean passport from the date of her handing over of the foreign passport to the date it expired without the respondent's objection. Fourthly, the respondent's real objection to renewing the applicant's Zimbabwean passport was not because of the new alleged irregularities but on the basis that her renunciation of foreign citizenship in terms of the Regulations was not enough and that she ought in addition to have satisfied him that such renunciation was in accordance with the relevant provisions of the foreign country in question, in this case Britain.

In conclusion, I should state, for the sake of clarity, that what this Court upheld in the above *consent order* is the present state of the law — the respondent and therefore the State agreed with the order. And it is to the effect that all persons who renounced their foreign citizenships in terms of the Regulations are Zimbabwean citizens and should therefore be accorded and enjoy all the rights flowing from that status. Further, in terms of the laws of Zimbabwe they are deemed to have renounced their foreign citizenships and are therefore not dual citizens, as a misleading article in one of the local newspapers indicated. The question of Zimbabwean citizenship is therefore to be looked at from the point of view of the laws of Zimbabwe and not those of the foreign country in question.

I should also state that it is, in my view, a matter of concern that, whilst in many developed and developing countries the relevant officials, for the sake of developing their countries economically, socially or otherwise, go out of their way to woo and attract honest persons of all races, who have professional and other skills, financial and business know-how, to acquire residence and/or citizenship in their countries, the respondent and his colleagues in the Immigration Department on the other hand — see the number of cases against the latter heard in this court — seem to be doing the opposite. There ought to be a rethink of their attitude for the development of the country.

Lastly, on costs, the applicant in her first heads of argument had sought costs to be awarded against the respondent in his personal capacity. This was

because of what was viewed as the persistent and unreasonable attitude of the respondent in refusing to renew the Zimbabwean passport when the law on the matter was clear and the applicant had fully complied with it. I agree that in the circumstances the attitude of the respondent was inappropriate, but he may have been encouraged in that attitude by the said sentiments expressed in the judgment *Movement for Democratic Change v Mudede NO & Ors supra*. In the circumstances, I agree with the attitude of counsel for the applicant in this court to the effect that costs should be awarded against the respondent in the usual manner, that is, in his official capacity.

A

B

**EBRAHIM JA:** I agree.

C

**SANDURA JA:** I agree.

**KORSAH AJA:** I agree.

**ADAM AJA:** I agree.

D

*Stumbles & Rowe*, applicant's legal practitioners  
*Civil Division of the Attorney-General's Office*, respondent's legal practitioners

E

F

G

H