

RICARUDO MANWERE
versus
REGISTRAR GENERAL OF CITIZENSHIP
and
MINISTER OF HOME AFFAIRS

HIGH COURT OF ZIMBABWE
OMERJEE J,
HARARE, 5 June, 2002

Mr *Mujeyi* for applicant
Mrs *Matanda-Moyo* for respondents

Opposed Motion

OMERJEE J:

IN LIMINE:

This matter was lodged as an urgent chamber application on 21 May, 2002. It was duly set down for hearing on the 22 May, 2002 as an urgent chamber application. At the hearing counsel for the respondents applied for a postponement of the matter in order to file papers. This request was granted and the matter was postponed. With the concurrence of both counsel, directions were given regarding the filing of papers and deadlines for the submission thereof. Counsel for the respondents ought to have filed heads of argument by no later than close of business on Friday 31 May, 2002 but failed to do so. The respondents were accordingly barred.

At the commencement of the hearing respondents' counsel applied for condonation for the failure to comply with the directive given regarding the date for the filing of their heads of argument. Heads were filed on Monday 3 June, 2002. This Court, having heard submissions, granted condonation in the circumstances.

MAIN CASE

The applicant was born in Harare on 28 December, 1971 and has lived in this country since birth. His father was born in Mozambique but emigrated to Zimbabwe in the 1950s before the birth of the applicant. Faina, the applicant's mother, it is not in

issue, was born in Zimbabwe. The applicant is a member of the Tumbuka Dance Group a world acclaimed dance group. Due to the numerous international trips that the applicant has undertaken with Tumbuka, his current Zimbabwean passport, which was issued to him on 18 January, 1993, is now full and cannot accommodate any further travel endorsements. In or about April 2002 the applicant approached the offices of the first respondent and applied for a new Zimbabwean passport in order to proceed abroad on assignments with the Tumbuka Dance Group. The first respondent has refused to issue the applicant with a new passport, on the grounds that the applicant has lost his Zimbabwean citizenship by not renouncing his Mozambican citizenship or his claim thereto. The applicant disputes the respondent's claim that the applicant is required to make a declaration under oath renouncing his Mozambican citizenship, as a necessary pre-requisite to his regaining his citizenship of Zimbabwe and hence entitling him to obtain a new passport.

The applicant asserts, in his founding affidavit, that he is not a citizen of any country other than Zimbabwe. Although his father was born in Mozambique, the provisions of s 9(7) of the Citizenship of Zimbabwe Act [Chapter 4:01], as inserted by the Citizenship of Zimbabwe Amendment Act (No 12 of 2001), (hereinafter referred to as "the Act") are not applicable to him. He further contends that the wording of paragraphs 4-6 of the Form of Declaration of Renunciation of Foreign Citizenship, contained in the Schedule to the Citizenship of Zimbabwe (Renunciation of Foreign Citizenship) Regulations, 2001, published in Statutory Instrument 217 of 2001, similarly do not apply to him.

The applicant has lived in this country for the whole of his life. His permanent home is in Mufakose, where he lives with his wife and his 4-year old child, as well as his mother and his three sisters. He is the sole breadwinner. Being a citizen of this

country by birth, he applied for a passport which was issued to him on 18 January 1993. Since he obtained his passport he has travelled widely with the Tumbuka Dance Group. It has booked a tour of South Africa in mid-June and will be performing in Spain during the same month. The refusal by the first respondent to issue him with a new passport will have serious consequences. When the Group goes on tour all 7 members have to travel together. If even one does not go that would mean that the Group would not be able to perform all its routines, which would have a negative effect on its reputation. When the Group travels the applicant teaches and participates in exchange workshops. That enhances his ability as a dancer and a choreographer. If he does not accompany the Group on its visits to South Africa and Spain, his standing in the Group will be diminished and he stands to lose the opportunity of being promoted to the position of choreographer. Dancing is his career, which will be damaged if he does not tour with the Group. As he is the Rehearsal Director, his presence is essential if the Group is to perform well on its foreign tours.

The applicant states that after the officials at the Passport Office told him that they considered that he had lost his Zimbabwean citizenship because he had not renounced his Mozambique citizenship, he visited the Mozambique High Commission. He was told that he did not automatically become a Mozambique citizen merely because his father had been born in that country. They said that he was not a citizen of Mozambique.

The first respondent opposes the application. The deponent to the affidavit on behalf of the second respondent is similarly opposed to the application. The first respondent states that the applicant was issued with a citizen's birth certificate because his father was a permanent resident. He then goes on to say that the applicant is a

Mozambican citizen by descent and repeats that assertion three times. Mere repetition of that bald statement does not convert it into a statement of fact, becoming as it were sacrosanct and incapable of determination by a Court.

Counsel for the respondents places reliance on Article 19 of the Mozambican Nationality Act which she says reads as follows:

"Mozambicans are the children of a Mozambican mother or father even if born outside the country, provided that they expressly renounce, on their own behalf if they are older than 18, or through their parents or guardians if younger, any other nationality to which they may be entitled".

Assuming, for the purposes of this case, that that is a current statement of the Mozambican Act, it, in effect, means that the applicant, since he was born in Zimbabwe, must expressly renounce his Zimbabwean citizenship, if he wishes to become a Mozambican citizen. Respondents' counsel, in her heads of argument said this meant that the onus is on the applicant to show that he had effectively renounced Mozambican citizenship in terms of Mozambican law. However, when arguing the case, she conceded that the effect of Article 19 is that the applicant, since he was born in Zimbabwe, will only obtain Mozambican citizenship once he renounces his Zimbabwean citizenship. It is not in issue that the applicant has not done so. What Article 19 requires is that the applicant must expressly renounce his Zimbabwean citizenship in order to become a Mozambican citizen. The only way that the applicant could expressly renounce his Zimbabwean citizenship is by making such renunciation to the first respondent in terms of the Citizenship of Zimbabwe Act. If he had done so, the first respondent would be able to produce proof thereof. In the absence of any such proof, it can be accepted that the applicant has not expressly renounced his Zimbabwean citizenship. On the contrary, the applicant is strongly asserting that he is a Zimbabwean citizen. Therefore he cannot be a Mozambican citizen by virtue of the provisions of the said Article 19.

I would point out that section 25(3) of Civil Evidence Act [Chapter 8:08] provides that a Court may have regard to any written law of a foreign country if that law is properly placed before it. A mere quotation in heads of argument of what purports to be a statement of the foreign law cannot be regarded as being sufficient in compliance with the requirement of the abovementioned provision. However, for present purposes this Court has relied on the respondents' statement of the Mozambican law as that is what their case is based on.

The law in regard to the issue of citizenship was the subject of inquiry by ADAM J in *Morgan Tsvangirai v Registrar-General & Others* HH 29/02. In that judgment the learned judge addressed at length issues similar to those which arise in the present application. His findings on issues of law relevant to the present application were not the subject of an appeal at the instance of the respondents. Only a portion of his judgment, which is not relevant for present purposes, was appealed against.

At page 46 of the cyclostyled judgment the learned judge reasoned as follows:-

"It is apparent that the specific wording in section 9, in its subsections (3), (4), (5) by deliberately using 'acquires', and in its subsections (6) and (7) by deliberately using 'becomes' demonstrates that the clear intention of the legislature is to prevent a citizen of Zimbabwe having another citizenship. It is the 'acquisition' and 'becoming' of a foreign citizenship that is required to be renounced so as to retain one's citizenship of Zimbabwe. These provisions in subsections (3), (4), (5), (6) and (7) are not concerned with any entitlement or claim to foreign citizenship".

At page 50 the learned judge stated as follows:-

"It appears that, without any basis whatsoever, the first respondent made it a presumption that citizens of Zimbabwe by birth born to foreign-born parents, are foreign citizens or have an entitlement or claim to foreign citizenship. None of the countries in his examples grant automatic citizenship to children born abroad to foreign-born parents. The old adage that a little knowledge is dangerous is appropriate here. In terms of section 25(2) of the Civil Evidence Act only a person who in the opinion of the court is suitably qualified shall be

qualified to give expert evidence on foreign law. It would seem that the rule in most countries is against dual citizenship. The first respondent if he has been demanding from Zimbabwe born citizens, one or both of whose parents were born in a foreign country that they renounce their foreign citizenship, then he is flagrantly acting *ultra vires* section 3(2) of the Citizenship of Zimbabwe Act. His conduct would certainly be unlawful."

In the case of *Judith Garfield Todd v The Registrar-General of Citizenship and the Minister of Home Affairs* HH 76-02 this Court was required to deal with a situation similar to the present application. The learned presiding judge, MUNGWIRA J relied upon the findings of law pronounced upon by ADAM J in the *Tsvangirai* case (*supra*). At page 5 of the cyclostyled judgment MUNGWIRA J stated as follows:-

"Mr *Mutsonziwa* initially attempted to introduce an extract of section 16 of the Citizenship of New Zealand Act but later accepted that no weight could be attached to this submission in the absence of expert evidence. When confronted with the judgment of ADAM J he conceded that he was unable to make any meaningful submissions to counter the learned judge's line of reasoning. He in short accepted that the grounds of opposition advanced are not sustainable and that the applicant is in the circumstances entitled to a grant of the order which she seeks".

Just as, in the case of the application by Judith Garfield Todd, MUNGWIRA J found that the grounds of opposition were not sustainable, I find myself in a similar position. The respondents have advanced no reasonable grounds. It must follow therefore that the applicant's draft order in its present form is amended to include reference to his being a citizen of Zimbabwe.

It is declared that the applicant is a citizen of Zimbabwe. Accordingly it is ordered that -

1. The first respondent shall issue or cause to be issued to the applicant a Zimbabwean passport within 14 days of this order.
2. The respondents shall pay the costs of this application.

Gollop & Blank, applicant's legal practitioners
Civil Division of the Attorney-General's Office, respondent's legal practitioners