

IN THE SUPREME COURT OF ZIMBABWE
HELD AT HARARE

CASE NO. 308/12

In the matter between:-

ROLAND WHITEHEAD

AND

REGISTRAR GENERAL OF CITIZENSHIP

AND

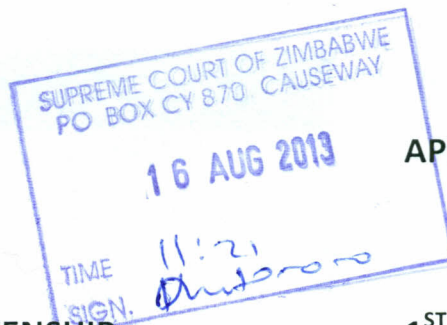
CO-MINISTERS OF HOME AFFAIRS

AND

MINISTER OF JUSTICE AND LEGAL AFFAIRS

AND

MINISTER OF CONSTRUCTIONAL AND
PARLIAMENTARY AFFAIRS



APPELLANT

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

1ST RESPONDENT'S HEADS OF ARGUMENT

1. BRIEF BACKGROUND

1.1 Appellant was a citizen of Zimbabwe by birth, who lost his citizenship by not renouncing his citizenship of South Africa now seek recourse in this Honourable Court for the following relief:

- a) The Appellant is a citizen of Zimbabwe by birth terms of Section 5(1) of the **Constitution of Zimbabwe**.

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- b) The Order issued in terms of Section 14(1)(g) of the **Immigration Act** [Chapter 4:02] signed by the then Minister of Home Affairs on 16 December 2005 deeming the Applicant to be an undesirable inhabitant or visitor to Zimbabwe is unlawful and of no force or effect.
- c) The provisions of Section 9(7) of the **Citizenship of Zimbabwe Act** [Chapter 4:01] are ultra vires the powers vested in the Parliament of Zimbabwe in terms of section 9 of the **Constitution of Zimbabwe** in so far as the said provisions relate to citizenship by birth of Zimbabwe and are of no force or effect in so far as the said provisions relate to citizenship by birth of Zimbabwe.
- d) The provisions of Section 9(2) of the **Citizenship of Zimbabwe Act** [Chapter 4:01] are ultra vires the powers vested in the Parliament of Zimbabwe in terms of Section 9 of the **Constitution of Zimbabwe** in so far as the said provisions relate to citizenship by birth of Zimbabwe and are of no force or effect in so far as the said provisions relate to citizenship by birth of Zimbabwe.

2. SUBMISSIONS IN GENERAL

- 2.1 It is respectfully submitted in terms of the **Immigration Act** [Chapter 4:02] in particular **Section 22**, that this Honourable Court does not have jurisdiction to deal with the Prohibited Immigrant status of the Applicant.
- 2.2 The Appellant did not follow the correct procedure when he was declared a prohibited immigrant and it is on this basis that the Application should fail.
- 2.3 It is respectfully submitted that this Honourable Court cannot declare that the order issued in terms of Section 14(1)(g) of the **Immigration Act** [Chapter 4:02] on the 16th December 2005 deeming Applicant to be undesirable inhabitant or visitor to Zimbabwe is unlawful and of no force and effect.

- 2.4 In terms of **Section 21** of the **Immigration Act** supra which states that the court does not have jurisdiction to look into the issue of the of the certificate once it has been issued by the Minister.
- 2.5 Appellant has not challenged the fact that he was declared a Prohibited immigrant, but it is pertinent to point out to this Honourable Court that Applicant has lost his Zimbabwean Citizenship through the operation of law and was therefore not a citizen of Zimbabwe at that time.
- 2.6 Furthermore, Appellant as a non-citizen now fell under Immigration Control.

3. SUBMISSIONS IN DETAIL

- 3.1 Appellant was a citizen of Zimbabwe by birth and he lost that citizenship by operation of the law when he did not renounce his South African Citizenship by 6th January 2002.
- 3.2 Appellant had from 6 July 2011 to 6 January 2002 to renounce his foreign citizenship which he held descent, that is why he was able to obtain a South African passport easily.
- 3.3 Appellant had an option in terms of the Zimbabwean Law to apply for restoration of his citizenship in terms of Section 14 of the **Citizenship of Zimbabwe Act** [Chapter 4:01]

That section reads as follows:-

Restoration of citizenship

(1) A person who has-----

(a) been deprived of his citizenship by order in terms of section eleven or twelve; or

(b) ceased to be a citizen in terms of section nine or thirteen;

May apply to the Minister in the prescribed form and manner for the restoration of his citizenship of Zimbabwe:

Provided that a person who was deprived of his citizenship in terms of Section twelve shall apply in terms of this section within twelve months after the date on which he attains the age of eighteen years.

(2) The Ministry may, subject to such conditions as he may fix each case, restore citizenship of Zimbabwe to a person who has applied to him in terms of subsection (1):

Provided that-

(i) such person shall not become a citizen of Zimbabwe until he has taken the oath of loyal before a person specified by the Minister;

(ii) the Minister shall not restore citizenship of Zimbabwe to any person who is a citizen of a foreign country, except with the consent of the President.

(3) A person whose citizenship has been restored in terms of this section shall become a citizen of Zimbabwe by registration on the date the oath of loyalty in terms of proviso (i) subsection (2).

3.4 Appellant deliberately decided not to follow the law of Zimbabwe and refused to apply for restoration of his lost citizenship.

3.5 The Appellant is now relying the provisions of Section 3.3 of the New Constitution which reads as follows:-

“3.3 Rights of citizens by birth. Zimbabwean citizens by birth do not lose their citizenship by acquiring the citizenship of another country”

Now, the Appellant has however not dealt with the fact that in his case the issue of him being declared a prohibited immigrant has an impact on his citizenship status.

3.6 Appellant during the law in operation at the time lost his Zimbabwean citizenship and he was also declared a prohibited immigrant.

3.6.1 Appellant is still a prohibited immigrant and it is respectfully submitted that this Honourable Court cannot ignore that status which was not overturned. In fact Appellant did not seek the proper legal channels to challenge his status as a prohibited immigrant.

3.7 The Appellant was deemed an undesirable inhabitant in terms of **section 14 (g)** of the **Immigration Act [Chapter 4:01]**. The Minister issued a certificate in terms of the **Immigration Act** (supra) page 13 of the Record.

4. Appellant did not act in terms of **section 21** of the **Immigration Act** (supra) as a prohibited person Appellant did not file such Appeal on present an evidence that he once Appealed against that decision.

As it stands the Appellant is still a prohibited person in terms of the Immigration Act supra and would it therefore be competent to declare him a citizen of Zimbabwe by birth before looking into the issue of his prohibited status.

5. **New Constitution vs Acts of Parliament already in force.**

5.1 It is submitted that the Constitution is the Supreme law of the law, however we still have in force the provisions of **section 9** of the **Citizenship of Zimbabwe Act** which is still in force until Parliament sits to repeal or amend Part iv of this Act.

5.2 The **Mawere** case has been cited by the Appellant's counsel however reasons for judgment have not been made available, and at present it would be difficult to show that the Appellant falls squarely within that judgment, bearing in mind his prohibited immigration status. See **Edwards v Chief Immigration Officer 2000 (1) ZLR 485 (SC)**

WHEREFORE, 1st Respondent prays that this Appeal be dismissed with costs.

DATED AT BULAWAYO THIS ^{15th} DAY OF AUGUST 2013.



MUDENDA ATTORNEYS

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