

ABDUL KADIR YASSIN ISMAIL
versus
REGISTRAR GENERAL N.O
And
MINISTER OF HOME AFFAIRS

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 22 June 2017 & 3 August 2017

Opposed Matter

Ms Ndlovu, for the applicant
Mr C Chopamba, for the respondent

MWAYERA J: In this contested matter the applicant approached the court seeking the court to direct the Registrar General to issue the applicant with a National Identity document and to replace the applicant's passport upon application and payment of the prescribed fees.

The salient background factors occasioning the application are summarised as follows. The applicant was born in Zimbabwe on 15 May 1990. He obtained a passport in 2003 which was valid until 2013. Sometime in 2012 the applicant approached the first respondent's offices in a bid to obtain a national identity document. The first respondent turned down the request on the basis that the first respondent had obtained some information about the applicant's father, which the first respondent was not privy to at the time the applicant was born.

Efforts to obtain national identity by the applicant were met with negative responses culminating in the present application in which the applicant seeks to compel the first respondent to issue him with a national identity and passport.

The issues that fall for determination in this case are

1. Whether or not the applicant is a citizen of Zimbabwe and should be issued with a national identity document
2. Whether or not the applicant's citizenship can be revoked in terms of s 39 (a) of the Constitution of Zimbabwe Amendment (No. 20) Act 2013 hereinafter called the Constitution.

It is common cause that the applicant was born in Zimbabwe. Section 35 of the Constitution recognizes citizenship by birth, descent and registration. In terms of s 35 (3) it is clear all Zimbabwean citizens are entitled to rights and benefits outlined in the Constitution and granted to them by law. The respondent declined to grant the applicant a national identity document and passport citing that the applicant did not qualify as a citizen of Zimbabwe given the definition of citizen by birth as outlined in s 36 of the Constitutions. Section 36 reads

- “1. Persons are Zimbabwean citizens by birth if they were born in Zimbabwe and when they were born.
- a) Either their mother or father was a Zimbabwean citizen or
 - b) Any of their grandparents was Zimbabwean citizen by birth or descent.”

Citizenship by birth is conjunctive with either of the parents or grandparents being Zimbabwean. This would mean that the applicant at the time of birth qualified as a citizen of Zimbabwe by virtue of being born in Zimbabwe by his father who was a citizen of Zimbabwe by registration. At the time that the applicant sought to obtain his national identity document and renew his passport, the first respondent denied him chance and sought to revoke citizenship on the basis that the applicant's father had fraudulently or by misrepresenting that he was Tanzanian obtained Zimbabwean citizenship by registration. Whereas in actual fact he was of Somali origin. The respondent sought to rely on s 39 of the Constitution to revoke the applicant's citizenship. Section 39 states;

1. “Zimbabwean citizenship by registration may be revoked if
 - a) The person concerned acquired the citizenship by fraud, false representation or concealment of a material fact; or
 - b)
2. Zimbabwean citizenship by birth may be revoked if
 - a) The citizenship was acquired by fraud, false representation or concealment of a material fact by any person;

3. Zimbabwean citizenship must not be revoked under this section if the person would be rendered stateless.”

The respondent sought to revoke the applicant’s citizenship on the basis of the revocation anchored and related to the misrepresentation by the applicant’s father at the time of the latter obtaining citizenship by registration. Even if it is accepted that the applicant’s father obtained citizenship by registration fraudulently it is a fact that at the time of birth the applicant was born in Zimbabwe and his father was a citizen of Zimbabwe. Revocation of the applicant’s father citizenship does not render the *proviso* s 39, s 39 (3) of the constitution a nullity. By revoking the applicant’s citizenship the applicant who was born in Zimbabwe, issued with a birth certificate and passport will be rendered stateless in clear violation of s 39 (3) which is clear and unambiguous on the fact that Zimbabwean citizenship must not be revoked if the person would be rendered stateless. It is apparent the respondent has opted for a piece meal interpretation of the constitutional provisions with an unacceptable result of depriving the applicant his citizenship lightly. In the case of *Madzimbamuto v Registrar General and another* CCZ 114/13 it was stated with precision that “the approach to interpretation of a constitutional right has been laid down in many decisions of the predecessor of this court. Thus in *Rattigan and Ors v Chief Immigration Officers and Ors* 1994 (2) ZLR 54 (s) the court held:

“This court on several occasions in the past pronounced upon the proper approach to constitution construction embodying fundamental rights and protections what is to be avoided is the imparting of a narrow, artificial rigid and pedantic interpretation to be preferred is one which serves the interests of the Constitution and best carries out its objects and promotes its purpose. All relevant provisions are to be considered as a whole and where rights and freedoms are conferred on person, derogation therefrom, as far as the language permits, should be narrowly or strictly construed.” (underlining my emphasis).

Given the full meaning of s 39 *in toto* it would not only be erroneous but unlawful for the respondent to revoke the citizenship of the applicant rendering him stateless. It should be noted that citizenship is a right and as such deprivation of that right should not be lightly resorted to as this would amount to an infringement of the supreme law of the country, the Constitution. The applicant is an adult who is a citizen of Zimbabwe by birth, to seek to deprive him of citizenship on the basis of the father’s sins being visited on him would render him stateless in violation of s 39 (3). In any event, the alleged fraud or misrepresentation by the applicant’s father was not substantiated or proved by evidence placed before the court. It is apparent from the record HH

25-2007 that the respondent did not really revoke the applicant's father's citizenship as they did not pursue the matter. It is settled that the court is entitled to relate and make reference to its own record and proceedings. See *Shell Zimbabwe (Pvt) Ltd v Webb* 1981 (1) ZLR 498 and also *Mhungu v Mtidi* 1986 (2) ZLR 171. The question then is on what basis does the respondent seek to revoke the citizenship of the applicant who was born in Zimbabwe when his father was a Zimbabwean citizen. In the case of *Mawere v Registrar General and others* CCZ 4/15 it was stated "in a case where it is common cause that a person was born in Zimbabwe and at the time of birth at least one of his parents was a Zimbabwean citizen, the person enjoys citizenship by birth in terms of s 36 (1) and such citizenship cannot be revoked or lost under any circumstances."

In this case the applicant acquired citizenship by birth when one of his parents, his father, was a citizen of Zimbabwe by registration. The alleged misrepresentation or fraud on the applicant's father was not substantiated. Such that revocation of the applicant's citizenship is glaringly unlawful. Even if it was to be accepted that the applicant's father obtained his citizenship by fraud the status of the applicant, an adult man born in Zimbabwe remains, he cannot be rendered stateless by operation of the law. The applicant is of full age and a man in his own right and a citizen of Zimbabwe by birth. The applicant is not in the realm of minor children whose citizenship can be revoked upon revocation of the parent's citizenship as envisaged in s 12 (1) of the citizenship of Zimbabwe Act [*Chapter 4:01*]. Further the applicant's citizenship cannot be revoked in circumstances where he will be rendered stateless. From the foregoing it is apparent the respondent in a heavy handed manner sought to revoke the applicant's citizenship in clear defiance of s 39 of the Constitution. The respondent gave a narrow interpretation to the provisions of the Constitution and in unjustified circumstances lightly deprived the applicant of his rights as a citizen of Zimbabwe as provided by the Constitution. The respondent ought to comply with the law.

Accordingly it is ordered that:

1. The first respondent be and is hereby ordered to issue the applicant with a national identity document within 48 hours of service of this order.
2. The first respondent shall replace the applicant's passport upon application and payment of the prescribed fee by the applicant.

3. The first respondent shall bear the costs of the application.

Sawyer & Mkushi, applicant's legal practitioners

Thodhlanga & Associates, respondent's legal practitioners