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Judgment No. S.C. 101/2001  
Civil Application No. 76/2001

CLARA MOYO v

(1) THE CHIEF IMMIGRATION OFFICER (2) MR BUNYA

SUPREME COURT OF ZIMBABWE  
CHIDYAUSIKU CJ, McNALLY JA, MUCHECHETERE JA, ZIYAMBI JA &  
MALABA JA  
HARARE, OCTOBER 4, 2001 & JANUARY 10, 2002

*C Chinyama*, for the applicant

No appearance for the respondents

ZIYAMBI JA: The applicant, a Zimbabwean citizen, resident in Zimbabwe, seeks an order:

- (a) declaring that her right under s 22(1) of the Constitution of Zimbabwe to freedom of movement, that is to say, the right to reside permanently in any part of Zimbabwe with her alien husband, has been contravened by the first and second respondents; and
- (b) compelling the first respondent to issue such written authority as is necessary to allow the applicant's husband to reside and work in Zimbabwe.

The history of the matter is as follows.

Sometime in 1994, Marceal MBA Orfordile, a Nigerian national, entered Zimbabwe on the strength of a visa issued by the office of the first respondent. He left on the expiry of his visa but continued to visit on the strength of subsequent visas until he met and fell in love with the applicant in 1996.

Thereafter he continued to visit Zimbabwe periodically and on 23 January 1998, the applicant and himself were married at Harare, their intention being to establish their matrimonial abode in Zimbabwe and to reside in Zimbabwe. After their marriage, he continued to visit Zimbabwe as before. However, the time spent in Zimbabwe with the applicant was limited by the terms of the various visas and on 10 September 1999, he applied for a permit to permanently reside in this country. He paid the requisite application fee of Z\$3 850 (the equivalent of US\$100), to the Department of Immigration and was issued with the receipt, a copy of which is annexed to the applicant's answering affidavit. No response to the application was received despite numerous visits by the applicant to the first respondent's offices to enquire as to the progress of the application. Instead, on 2 January 2000, Mr Orfordile was deported from Zimbabwe on the grounds that he had contravened the Immigration Act by remaining in Zimbabwe beyond the period permitted by his visa.

The respondents did not appear at the hearing but filed, in opposition, an affidavit sworn by a senior immigration officer by the name of Owen Vincent Mukombero. The grounds of opposition, as set out in paragraphs 5-7 of the affidavit, are as follows:

“5. Ad Paragraphs 7-8

Whilst it is admitted that the marriage was entered to (sic), the applicant did not take steps to legalise or normalise her husband's stay in Zimbabwe showing total disregard for our Laws. He was declared a Prohibited Immigrant and deported in January 2000.

6. Ad Paragraph 9

It is admitted that the Applicant is entitled to reside permanently in this country with her husband. However, this right is not absolute and where her husband does not respect the Laws of the Country, these rights may be taken away.

7. Ad Paragraphs 10 – 11

The Applicant has failed to show why she wilfully allowed her husband to stay in the country illegally and is not approaching the court with clean hands. For this reason her application should fail with costs”.

As the applicant observed in reply, it is untrue that no steps were taken to “legalise” her husband's stay in Zimbabwe. The receipt from the first respondent's office was for a “RESIDENT PERMIT APPLICATION”. The applicant, it seems to me, did all that was within her power to “legalise” her husband's residence in Zimbabwe and it is the office of the first respondent which was remiss in failing to process Mr Orfordile's application for a residence permit. Thus the respondents have advanced no valid ground for a refusal, to the applicant, of the relief which she seeks from this Court.

On the other hand, the applicant is well within her rights in making this application. As a citizen of Zimbabwe, she is entitled, by virtue of her right to freedom of movement protected by s 22(1) of the Constitution of Zimbabwe, to reside permanently with her alien husband in Zimbabwe. See *Rattigan & Ors v Chief Immigration Officer & Ors* 1994 (2) ZLR 54 (S). This right has undoubtedly been infringed by the respondents who, by deporting the applicant's husband, have placed

the applicant in the unhappy predicament wherein she is forced to go out of Zimbabwe to meet or reside with her husband.

A corollary of the right of the applicant to reside permanently with her alien husband in Zimbabwe, is his right to engage in meaningful and gainful employment in Zimbabwe. See *Salem v Chief Immigration Officer & Anor* 1994 (2) ZLR 287 (S).

Accordingly the application is upheld. The applicant is granted the following relief:

1. It is declared that the right of the applicant under s 22(1) of the Constitution of Zimbabwe to freedom of movement, that is to say, the right to reside in any part of Zimbabwe, has been contravened by the actions of the first and second respondents.
2. By virtue of the applicant's right under the aforementioned s 22(1) to have her husband residing with her in any part of Zimbabwe, it is hereby ordered that -
  - (a) the first respondent issue to Marceal MBA Orfordile, within thirty days hereof, such written authority as is necessary to enable him to remain in Zimbabwe on the same standing as any permanent resident;
  - (b) the said Marceal MBA Orfordile be accorded the same rights as are enjoyed by all permanent residents of Zimbabwe, including the right to engage in employment or other gainful activity in

any part of Zimbabwe and that the first respondent impose no restriction upon such right;

- (c) the costs of this application shall be paid by the first respondent.

CHIDYAUSIKU CJ: I agree.

McNALLY JA: I agree.

MUCHECHETERE JA: I agree.

MALABA JA: I agree.

*Chinyama & Partners*, applicant's legal practitioners

*Civil Division of the Attorney-General's Office*, respondents' legal practitioners