

DISTRIBUTABLE (84)

Judgment No. SC 101/02
Civil Appeal No. 158/02

(1) THE REGISTRAR GENERAL OF CITIZENSHIP
(2) THE MINISTER OF HOME AFFAIRS v

JUDITH GARFIELD TODD

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, MALABA JA & GWAUNZA AJA
HARARE, OCTOBER 21 & NOVEMBER 14, 2002

S Chihambakwe, for the appellants

A P de Bourbon SC, for the respondent

CHIDYAUSIKU CJ: The first appellant refused to renew the respondent's Zimbabwean passport because, according to him, the respondent had failed to renounce her entitlement to New Zealand citizenship, which entitlement, he alleges, is derived from the New Zealand Citizenship Act.

The respondent successfully applied in the High Court for an order compelling the first appellant to issue a passport to her. The first appellant was dissatisfied with that decision and noted an appeal to this Court.

At the hearing of this matter the appellants applied for a postponement to enable them to place before the Court expert evidence on the law of New Zealand on citizenship. They tendered the wasted costs. The respondent opposed the

application, essentially on the ground that the appellants have had ample time to secure such evidence and there was need for finality in this case.

It is quite apparent from the record that New Zealand does have a Citizenship Act. It is this Citizenship Act that really determines the status of the respondent *vis-à-vis* New Zealand. If the respondent, in terms of the New Zealand Citizenship Act, is a citizen of New Zealand then, in terms of s 9 of the Zimbabwe Citizenship Act [*Chapter 4:01*] (the Act), she has to renounce the citizenship of New Zealand or lose her Zimbabwean citizenship. If, in terms of the New Zealand Citizenship Act, the respondent is merely entitled to citizenship of New Zealand, as opposed to being a citizen, then the issue before this Court is whether the respondent is required, in terms of s 9 of the Act, to renounce that entitlement or lose Zimbabwean citizenship. The court *a quo* resolved that issue in favour of the respondent and the appellants now appeal against that judgment.

In my view, the critical issue is the status of the respondent in terms of the New Zealand Citizenship Act and not the Registrar General's interpretation of that Act, which could be correct or incorrect. The Court can only determine the respondent's status upon examination of the New Zealand Citizenship Act. That Act has to be placed before the Court.

It has been suggested that only expert evidence can determine the respondent's status in terms of the New Zealand Citizenship Act.

I think it is nonsensical to suggest that this Court is not competent to interpret a New Zealand statute without the assistance of an expert on New Zealand law. The enactment of s 25 of the Civil Evidence Act [*Chapter 8:01*] did not render this Court incompetent to interpret foreign statutes.

Mr *Chihambakwe* is simply seeking a postponement to enable him to place before this Court the New Zealand Citizenship Act. The provisions of that statute are critical to determination of the substantive issue in this matter.

The respondent will not, in any way, be prejudiced by such a postponement as she has been issued with a Zimbabwean passport.

The granting of an application for postponement is in the nature of an indulgence to be granted or refused at the discretion of the Court – see *Schapiro v Schapiro* 1904 TS 673; *D’Anos v Heylon Court (Pty) Ltd* 1950 (2) SA 40; *Prinsloo v Saaiman* 1984 (2) SA 56.

In the case of *Madnitsky v Rosenberg* 1949 (2) SA 392 it was held that a court should be slow to refuse to grant a postponement of a trial where the true reason for a party’s non-preparedness has been fully explained; where his unreadiness to proceed is not due to delaying tactics; and where justice demands he should have further time for the purpose of presenting his case. If the above requirements are met, such postponement should be granted.

Mr *Chihambakwe* has attributed the difficulty of obtaining the evidence he requires to the fact that he has to rely on third parties to supply him with such evidence and to the long distance between Zimbabwe and New Zealand. The application for a postponement in this case is certainly not a delaying tactic because, as I have said, the respondent does have as of now a Zimbabwean passport. Justice demands that the Court should familiarize itself with the provisions of the relevant New Zealand statute in order to determine this matter properly. The appellants have tendered wasted costs.

In my view, this is a proper case for the Court to grant a postponement to enable the appellants to place before this Court the relevant statute determining the respondent's New Zealand status, which has an effect on her Zimbabwean citizenship.

In the result, the matter is postponed *sine die*. The appellants will bear the wasted costs.

MALABA JA: I agree.

GWAUNZA AJA: I agree.

Chihambakwe, Mutizwa & Partners, appellants' legal practitioners

Gill, Godlonton & Gerrans, respondent's legal practitioners