REPORTABLE (7)

Judgment No S.C. 12\2002
Civil Appeal No 30\2002

(1) REGISTRAR-GENERAL OF ELECTIONS (2) REGISTRAR-GENERAL OF CITIZENSHIP (3) REGISTRAR-GENERAL OF BIRTHS AND DEATHS (4) THE CHIEF IMMIGRATION OFFICER (5) THE MINISTER OF HOME AFFAIRS (6) THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS (7) THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE (8) THE ATTORNEY-GENERAL OF ZIMBABWE v MORGAN TSVANGIRAI

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, SANDURA JA, CHEDA JA, ZIYAMBI JA & MALABA JA
HARARE FEBRUARY 15 & 28, 2002

M. Majuru, with him *F. Chatukuta,*, for the appellants

A.P. de Bourbon SC, with him *E.T. Matinenga*, for the respondent

CHIDYAUSIKU CJ: The respondent in this case launched a court application in the High Court in which he sought the following relief:

"IT IS ORDERED THAT:-

1. In order to comply with Schedule 3 paragraph 3 of the Constitution of Zimbabwe, the First, Second and Fourth Respondents shall make available forthwith to the Third Respondent all the records in their possession or under their control containing the full names and particulars of all persons who have, as at the date of this Order, attained the age of 18 years or over and who:

   (a) Are citizens of Zimbabwe; or

(b) Since 31 December 1985, have been regarded by virtue of a written law as permanent residents in Zimbabwe.

2. The Third Respondent shall compile a Common Roll in compliance with section 28(2) of the Constitution of Zimbabwe within one (1) month of the date of this Order, containing a full list of all persons who have, as at the date of this Order, attained the age of 18 years or over and who:

(a) Are citizens of Zimbabwe; or

(b) Since 31 December 1985 have been regarded by virtue of a written law as permanent residents in Zimbabwe;

3. The Third Respondent shall add to the Common Roll compiled in accordance with Clause (2) above all persons who provide reasonable proof to his office within one month of the date of this Order that since 31 December 1985 they have been permanent residents in Zimbabwe.

4. The Common Roll to be compiled by the Third Respondent in accordance with Clauses (2) and (3) above shall be in the form of one roll and shall consist of all those persons entered on the Common Roll who shall be deemed to be registered on the Common Roll.

5. Save as provided for in Clause (3) herein, it shall not be necessary for any person entitled to be placed on the Common Roll to apply to register themselves on the Common Roll.

6. The Third Respondent shall allow the following persons to vote at the forthcoming Presidential Election:

6.1 All persons issued with a voter's confirmation card or a certificate of registration as a voter in accordance with Section 23(1) of the Electoral Act [Chapter 2:01];

6.2 All persons issued with a provisional identity document in accordance with Section 23(3)(a) of the Electoral Act [Chapter 2:01];

6.3 All persons issued with an identity document in accordance with Section 23(3)(b) of the Electoral Act [Chapter 2:01].

7. All persons shall be entitled to vote at the forthcoming Presidential Election at any designated polling booth in Zimbabwe.

8. Section 158 of the Electoral Act be and is hereby declared *ultra vires* of the Constitution of Zimbabwe and invalid.

9. Respondents 3, 6 and 10 shall pay the Applicant's costs of suit, jointly and severally, the one paying the others, to be absolved."

The court application was opposed by the appellants. The learned judge in the court *a quo,* after submissions by counsel, made the following order:-

"1. In order to comply with section 28(2) of the Constitution of Zimbabwe, for the Presidential elections scheduled for 9 and 10 March 2002, the Registrar-General shall ensure that there is in place a Common Roll.

2. The Common Roll referred to in 1 above, shall contain the names and such other information as may be necessary, of all persons who have attained the age of 18 years, are citizens of Zimbabwe or, since 1985, have been regarded by a written law to be permanent residents in Zimbabwe and who meet the residential requirements of any particular constituency or have satisfied the Registrar-General that for reasons related to place of origin, political affiliation or otherwise, it is appropriate that they be registered in a constituency in which they do not reside.

3. The Registrar-General shall restore to the voters roll of any constituency, all voters who, on or before January 18, 2002, were on that roll or were eligible but were refused to be on that roll, who may have lost or renounced their citizenship of Zimbabwe, but who since 1985, have been regarded by a written law to be permanently resident in Zimbabwe.

4. The 3rd respondent shall make adequate and reasonable administrative arrangements for all voters registered on the common roll who will not be in their constituencies on the polling days, to exercise their vote; and

5. Each party shall bear its own costs."

The appellants appealed against the judgment of the court *a quo* upon the following grounds:-

"1. The High Court erred in law in finding that the common roll for the holding of Presidential Elections, as contemplated by the Constitution, consists of a single undivided document constructed without reference to delimited constituencies.

2. The High Court correctly found that applicants for registration must satisfy the prescribed residential qualifications in order to be registered on their respective constituency rolls but erred in law in holding that registered voters are entitled to vote at any place outside their respective constituencies.

3. The High Court erred in law in finding that registered voters who cease to qualify by virtue of having lost or renounced their citizenship remain eligible to vote as permanent residents even if they are not 'permanent residents' within the meaning of Schedule 3 to the Constitution.

4. The Appellants pray that the appeal be allowed with costs and that the decision of the court *a quo* be altered to one dismissing the application with costs."

The respondent also cross-appealed against the judgment upon the grounds set out in the notice of appeal which read:-

"1. The learned Judge erred in holding that it was in law a requirement for registration on the common roll for the purposes of a presidential election in Zimbabwe for a person to prove his residence in a particular constituency, and particularly to prove residence at a fixed address.

2. The learned Judge erred and failed to properly apply her discretion by ordering each party to bear its own costs of the matter, more so in that the Respondent was substantially successful in the matter and no facts existed to deprive the Respondent of the usual order for costs.

The Respondent will pray that this cross-appeal be allowed with costs and that paragraph 2 of the order of the High Court be altered by the deletion of all the words therein after the words in the fourth line 'to be permanent residents in Zimbabwe'. And furthermore that paragraph 5 be altered to read:-

'5. The First, Second, Third and Sixth Respondents shall jointly and severally, the one paying the others to be absolved, pay the costs of the Applicant.'"

It is apparent from the notice of appeal that the appellants are essentially appealing against paragraphs 3 and 4 of the order of the court *a quo* while the respondent is appealing against part of paragraph 3 of the same order.

The notice of appeal and cross-appeal reveal that the following are the issues that fall for determination by this Court.

1. The meaning or correct interpretation to be ascribed to section 28(2) of the Constitution. In particular whether that section enjoins the first appellant to make certain administrative arrangements to enable voters away from the constituencies in which they are registered to vote in other constituencies.

2. The correct meaning to be ascribed to paragraph 3 of Schedule Three. In particular whether a citizen loses his or her right to vote upon loss of citizenship.

3. Whether residence is an essential requirement for registration on a common roll for the election of a President.

Before dealing with the issues I wish to dispose of the preliminary issue of the application to lead further evidence. That application is dismissed because this matter can be determined without reference to the evidence sought to be introduced. That evidence is, therefore, irrelevant.

WHAT DOES SECTION 28(2) OF THE CONSTITUTION MEAN?

Section 28(2) of the Constitution provides as follows:-

"28(2) The President shall be elected by voters registered on the common roll."

The learned judge in the court *a quo* had this to say on the meaning to be ascribed to this section:-

> "In terms of section 28(2) of the Constitution, the President shall be elected by voters on the common roll. Therefore in my opinion, all those who are on the common roll have the right to vote for the President. There are no further requirements necessary for one to exercise their right to vote other than to show that one is on the common roll. If the intention of the legislature were to impose any further qualifications, it would have specifically made that provision in the Constitution.
>
> The applicant has argued that those on the common roll are entitled to vote. The respondents have advanced a rather half-hearted argument against this contention. It has been suggested by the respondents that residence remains an essential qualification at the voting stage particularly as regards voters who qualify *qua* permanent residence. I have not been referred to any provision in the Constitution which has the effect of derogating from the apparent right given voters on the common roll by section 28 of the Constitution. As such I am reluctant to add a residential qualification to the right. For those who would have qualified to be on the roll by virtue of being permanent residents the law is quite clear that they lose their qualification when they cease to be residents. They therefore lose the right to be on the roll.
>
> It is therefore my finding that the law provides that all voters registered on the common roll are entitled to vote and the 3rd respondent has to put in place the administrative machinery to give effect to that law."

The learned judge was correct in observing that the section confers on the voter registered on the common roll the right to vote for a President in a Presidential Election. The section however does not provide for how, when and where that right to vote is to be exercised. The learned judge, purporting to act in terms of this section, ordered the first appellant to make adequate and reasonable

administrative arrangements for all voters registered on the common roll who would not be in their constituencies on the polling days, to exercise their votes in the constituencies they happen to be on the election day. My reading of the section is that it confers a constitutional right on a voter to vote for a President. The learned judge concluded that a voter has a constitutional right to vote outside his or her constituency. This is where the learned judge in the court *a quo* erred. I am fortified in my view by the provisions of section 28(4) which provides as follows:-

> "28 (4) The procedure for the nomination of candidates for election in terms of sub-section (2) and the election of the President shall be as prescribed in the Electoral Law."

The above subsection makes it clear that the procedures, that is how, when and where to vote, are to be provided for under the Electoral Law. The Electoral Act [Chapter 2:01] (hereinafter referred to as the Act) provides for the procedures to be followed in Presidential elections. Section 101(2) of the Act provides:-

> "101 (2) Where two or more candidates for President are validly nominated, a poll shall be taken in each constituency for the election of a President."

Whenever an election for a President is necessary by reason of there being more than one candidate nominated, such election shall take place in each constituency.

It is common cause that the first appellant, in his capacity as Registrar-General of Elections has directed that each voter on the common roll shall vote in his or her constituency in the forthcoming Presidential election. The respondent is not, in any way, challenging this decision. It is the failure of the first appellant to make

adequate and reasonable arrangements for all voters registered on the common roll who would not be in their constituencies on the polling days which he alleges is unconstitutional. Providing for as many people to vote as possible is highly commendable. Failure to provide in the manner alleged is, however, not unconstitutional. The contention that the failure to provide the above facility amounts to the disenfranchisement of a voter is simply untenable. The voter does not lose his right to vote. He is disabled from exercising the right by being in a wrong constituency at the time he is expected to vote. The disability would not, in the circumstances, have resulted from any action by the Registrar-General.

In my view section 28(2) of the Constitution does not confer on a voter registered on the common roll the constitutional right to vote outside the constituency in which he is registered.

Having come to the above conclusion it only remains to consider whether the first appellant's decision that registered voters would vote in the constituencies in which they are registered can be impunged on any other grounds.

Section 15 of the Act confers certain powers on the first appellant. In the exercise of such powers the first appellant is not subject to the direction of any person or authority except the Electoral Directorate. Section 15 of the Act provides as follows:-

> "15 (1) There shall be a Registrar-General of Elections whose office shall be a public office and shall form part of the Public Service.

(2) The Registrar-General shall exercise such functions as are imposed or conferred upon the Registrar-General by or under this Act and, in the exercise of his functions, the Registrar-General shall not be subject to the direction or control of any person or authority other than the Electoral Directorate, but shall have regard to any report or recommendation of the Electoral Supervisory Commission."

The above provisions clearly empower the first appellant to make the decision that he made. The court can only interfere with that decision on any of the recognised grounds for review such as lack of compliance with the law or gross irrationality. I have already concluded that the decision was within the powers of the first appellant, see section 101 of the Act. The decision is not, *per se,* irrational. It is not unreasonable to require a person to vote in the constituency in which he is registered as a voter. There is no evidence before the court on the number of voters who would be adversely affected by the requirement that people vote in the constituency in which they are registered as voters to enable the court to make an informed decision as to the reasonableness or otherwise of the first appellant's decision. Accordingly no basis has been established on which this Court can interfere with the decision of the first appellant made in terms of s 15 of the Act. Accordingly the first appellant succeeds on this ground.

WHAT IS THE CORRECT MEANING OF PARAGRAPH 3 OF SCHEDULE 3 OF THE CONSTITUTION OF ZIMBABWE?

Paragraph 3 of the order in the court *a quo* provides as follows:-

"The Registrar-General shall restore to the voters roll of any constituency, voters who, on or before January 18, 2002, were on that roll or were eligible

> but were refused to be on that roll, who may have lost or renounced their citizenship of Zimbabwe, but who since 1985, have been regarded by a written law to be permanently resident in Zimbabwe."

The first appellant appeals against this finding on the ground that the learned judge erred at law in concluding that registered voters who cease to qualify to be on the voter's roll by virtue of having lost or renounced their citizenship remain eligible to vote on the ground that they are permanent residents.

Schedule 3(3)(1) provides as follows:-

> 3(3)(1) Subject to the provisions of this paragraph and to such residence qualifications as may be prescribed in the Electoral Law for inclusion on the electoral roll of a particular constituency, any person who has attained the age of eighteen years and who —
>
> *(a)* is a citizen of Zimbabwe; or
>
> (*b*) since the 31st December, 1985, has been regarded by virtue of a written law as permanently resident in Zimbabwe;
>
> shall be qualified for registration as a voter on the common roll."

The above provision confers the right to vote on two distinct and separate categories or classes of people, "the citizen" and "the person who has since the 31st December 1985 been regarded by virtue of a written law as permanently resident in Zimbabwe".

It was common cause that the word "since" in subparagraph (1)(b) has to be read as meaning "as at", see paragraph 25 of the respondent's heads of argument. I agree with the submission therein. What that means is that a person

referred to in subparagraph (b) has to be regarded as a permanent resident as at that date and not a day later.

After conferring the right to vote on the two categories of people paragraphs 3(3)(3)(a)(c) proceed to provide how each category would lose the right to vote. They provide as follows:-

> "3. (3) Any person who is registered on the electoral roll of a constituency shall be entitled to vote at an election which is held for that constituency unless —
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> *(a)* he has then ceased to be a citizen of Zimbabwe; or
>
> *(b)* …
>
> *(c)* in the case of a person who was registered on the electoral roll by virtue of qualifications referred to in subparagraph (1)(*b*), he has ceased to be so qualified."

The above provisions explicitly state that a citizen loses his or her right to vote upon ceasing to be a citizen and a permanent resident upon losing the permanent resident status formerly possessed by him in terms of subparagraph (1)(b) of section 3. The plain and primary meaning of the words in the enactment is, in my view, clear and unambiguous. The provisions confer on the citizen the right to vote which he loses upon ceasing to be a citizen. Equally the right to vote is conferred on the person regarded as a permanent resident which he loses upon loss of residence.

It has been argued that a citizen is also a permanent resident and, therefore, included in the persons referred to in para. 3(1)(b). The argument is further that when such a person loses his citizenship he remains qualified as a voter by virtue

of a residual permanent resident status. I am not persuaded by this reasoning. I see nothing in the language nor the context of the legislation to justify such an interpretation. At best this interpretation is secondary. There is no need to resort to a secondary meaning when the primary meaning is clear.

The background to the enactment of Schedule 3, its history and the debates during its passage in Parliament, clearly demonstrate that the legislature intended the primary meaning set out above.

Is it permissible to take into account the Parliamentary debates, history and background of an enactment in determining its meaning or the intention of the legislature?

In *Hewlett v Minister of Finance* 1981 ZLR 571, it was held:-

> "… that in interpreting a Constitution the principles of interpretation are basically no different from those governing the interpretation of any other legislation, but recognition must be given to the character and origin of the document and interpretation must be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms set out in the Constitution. It is not permissible however, to take into account proposals and discussions in the preparation of the Constitution." (see headnote)

The first proposition emerging from the decision in the *Hewlett's* case, *supra*, is that the principles governing the interpretation of a Constitution are the same as those governing the interpretation of a statute. The second is that it is not

permissible to take into account the background to a Constitution in interpreting its meaning.

I have no difficulty with the proposition that the principles of interpretation of a Constitution and any other legislation are the same.

However, the proposition that it is not permissible to take into account proposals and discussions in the preparation of the Constitution is no longer good law. It might have been in 1981. That proposition is based on a case that has since been overruled. In *Hewlett's* case, *supra,* FIELDSEND CJ reasoned as follows at p 582:-

> "There is one further point on the question of interpretation. It was argued that we could have regard, particularly in relation to the significance of section 16(3) which dealt with pension rights, to an extract from proposals tables by the British Government on the 3rd October, 1979, at a plenary session of the Lancaster House Conference that led to the settlement finally formalized by the present Constitution of the 6th December, 1979. There are a number of reasons why I think it would be wrong and dangerous to rely on such material.
>
> In the first place the general principle of our law is clearly stated in the speeches of the majority of the Law Lords in *Black-Clawson Ltd v Papierwerke AG* [1975] AC 591; [1975] 1 All ER 810 (H.L.) and accurately reflected in the headnote in the following terms:
>
> > 'In considering the report of the Foreign Judgments (Reciprocal Enforcement) Committee r1932 presented to Parliament before the passing of the Act of 1933 and containing a draft Bill which was substantially adopted in the subsequent legislation, the House, in construing the Act, was entitled to have regard to the statement contained in the report of the mischief aimed at and of the state of the law as it was then understood to be, but it was not entitled to take into account the committee's recommendations or its comments on the draft Bill…

> It is not proper to use the report of a committee or commission or any official notes on a clause of a draft Bill for a direct statement of what a proposed enactment is to mean or what the committee or commission thought it means …'"

The exclusionary rule set out in *Hewlett's* case, *supra*, is derived from English law. The English courts have since modified the exclusionary rule.

In *Pepper (Inspector of Taxes) v Hart* [1993] 1 All ER 42 at 43 the House of Lords held:-

> "(1) (Lord Mackay L.C. dissenting) Having regard to the purposive approach to construction of legislation the courts had adopted in order to give effect to the true intention of the legislature, the rule prohibiting courts from referring to parliamentary material as an aid to statutory construction should, subject to any question of parliamentary privilege, be relaxed so as to permit reference to parliamentary materials where (a) the legislation was ambiguous or obscure or the literal meaning led to an absurdity, (b) the material relied on consisted of statement by a minister or other promoter of the Bill which lead to the enactment of the legislation together if necessary with such other parliamentary material as was necessary to understand such statements and their effect and (c) the statements relied on were clear. Furthermore, the use of parliamentary material as a guide to the construction of ambiguous legislation would not infringe s 1, art 9 of the Bill of Rights since it would not amount to a 'questioning' of the freedom of speech or parliamentary debate provided counsel and the judge refrained from impugning or criticising the minister's statements or his reasoning, since the purpose of the courts in referring to parliamentary material would be to give effect to, rather than thwart through ignorance, the intentions of Parliament and not to question the processes by which such legislation was enacted or to criticise anything said by anyone in Parliament in the course of enacting it …"

The exclusionary rule seems to me to be an affront to common sense. It excludes the court from accessing what the legislator said was its intention in the process of enacting the legislation. I find myself in agreement with the following remarks of LORD BRIDGE OF HARWICH in *Pepper's* case, *supra* at p 49f:-

> "Following the further arguments of which we have had the benefit, I should find it very difficult, in conscience, to reach a conclusion adverse to the taxpayers on the basis of a technical rule of construction requiring me to ignore the very material which in this case indicates unequivocally which of the two possible interpretations of s 63(2) of the 1976 Act was intended by Parliament. But, for all the reasons given by my noble and learned friend LORD BROWNE-WILKINSON, with whose speech I entirely agree, I am not placed in that invidious situation."

In *Pepper's* case, *supra*, the court relied on extensive remarks made in the House of Commons during the passage of the Act under consideration in determining the intention of the legislature.

It is also clear that *Pepper's* case, *supra*, overrules *Black Clawson Ltd, supra*, upon which FIELDSEND CJ relied for his conclusion in *Hewlett's* case *supra*.

In South Africa it is permissible, in interpreting the Constitution, to have regard to the purpose and background of discussions on the Constitution. It is also permissible in South Africa, in interpreting a statute, to have regard to the purpose and background of the legislation in question.

In *S v Makwanyane & Anor* 1995 (3) SA 391 (CC) CHASKALSON P had this to say at pp 404F-405F:

> "Legislative history
>
> The written argument of the South African Government deals with the debate which took place in regard to the death penalty before the commencement of

the constitutional negotiations. The information that it placed before us was not disputed. It was argued that this background information forms part of the context within which the Constitution should be interpreted.

Our Courts have held that it is permissible in interpreting a statute to have regard to the purpose and background of the legislation in question.

> 'Certainly no less important than the oft repeated statement that the words and expression used in a statute must be interpreted according to their ordinary meaning is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that "the context", as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and, within limits, its background.'

Debates in Parliament, including statements made by Ministers responsible for legislation, and explanatory memoranda providing reasons for new Bills have not been admitted as background material. It is, however, permissible to take notice of the report of a judicial commission of enquiry for the limited purpose of ascertaining 'the mischief aimed at (by) the statutory enactment in question'. These principles were derived in part from English law. In England the Courts have recently relaxed this exclusionary rule and have held, in *Pepper (Inspector of Taxes) v Hart and related appeals* that, subject to the privileges of the House of Commons,

> '… reference to parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words.'

As the judgment in *Pepper's* case shows, a similar relaxation of the exclusionary rule has apparently taken place in Australia and New Zealand. Whether our Courts should follow these examples and extend the scope of what is admissible as background material for the purpose of interpreting statutes does not arise in the present case. We are concerned with the interpretation of the Constitution, and not the interpretation of ordinary legislation. A constitution is no ordinary statute. It is the source of legislative and executive authority. It determines how the country is to be governed and how legislation is to be enacted. It defines the powers of the different organs of State, including Parliament, the executive, and the courts, as well as the fundamental rights of every person which must be respected in exercising such powers."

Thus *Makwanyane's* case, *supra*, is clear authority that in South Africa Parliamentary proceedings are admissible as evidence of the meaning of the Constitution.

The recently declared invalid General Laws Amendment Act expressly provided for the admissibility of Parliamentary debates in interpreting statutes. The above act is not law. I only mention it as an indicator of the current thinking that courts should have regard to Parliamentary debates in interpreting statutes. In these proceedings we are concerned with the interpretation of the Constitution. I therefore intend to follow *Makwanyane's* case, *supra,* and hold that the Third Schedule to the Constitution "must not be construed in isolation, but in its context, which includes the history and the background of the Constitution, and other provisions of the Constitution itself": *per* CHASKALSON P at p 403G-H.

What then is the history and the background to Schedule 3 of the Constitution?

It is very clear from successive Electoral Acts that in Rhodesia and thereafter Zimbabwe the right to vote was and is accorded to citizens only. The right to vote has always been lost upon loss of citizenship. The need to extend the vote to a particular class of permanent residents was recognised for the first time in 1979 upon the introduction of a Constitution that extended the franchise to every adult citizen.

The Electoral Act [*Chapter 5*] which came into effect on 6 December 1969 and has since been repealed provided that only citizens of the age of twenty-one had the right to vote. Section 17 of that Act provided as follows:

"17. (1) Subject to the provisions of this Act, every person who –

(a) is a citizen of Rhodesia; and

(b) has attained the age of twenty-one years; and

(c) …

(d) …

(e) …

(f) …

shall be entitled to be registered in a constituency as a voter".

Residents, permanent or otherwise, had no right to vote under this Act.

In terms of section 28(2) of the same Act a voter was disenfranchised upon loss of citizenship. The section reads:-

> "28.2 A person shall be disqualified for registration as a voter if he ceases to be a citizen of Rhodesia, whether because of renunciation of citizenship, deprivation of citizenship or loss of citizenship, in terms of any enactment in force in Rhodesia relating to citizenship of Rhodesia."

The Electoral Act [*Chapter 5*] was repealed and replaced by the Electoral Act 14 of 1979. Act 14/79 was necessitated by the introduction of the Zimbabwe-Rhodesia Constitution which extended the franchise to all adult persons.

Act 14/79 was enacted in terms of section 17 of the Zimbabwe-Rhodesia Constitution which reads:

> "17. A law of the Legislature shall, subject to the other provisions of this Constitution, make provision for the election of Senators and of members of the House of Assembly for the purposes of this Constitution."

The Electoral Act 14/79 made it clear that only citizens were entitled to vote and those who lost citizenship also lost the right to vote. In this regard section 19 of that Act provided as follows:-

> "19. (1) Subject to the provisions of this Act, every person who –
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> (a) is a citizen of Zimbabwe Rhodesia; and
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> (b) has attained the age of eighteen years; and
>
> (c) has the requisite residence qualification in terms of section twenty; and
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> (d) is not disqualified under this Act;
>
> shall be entitled to be registered in a constituency as a voter."

The same Act also provided for the loss of the right to vote upon loss of citizenship. See section 21(2) of that Act which reads:-

> "21. (2) A person shall be disqualified for registration as a voter if he ceases to be a citizen of Zimbabwe Rhodesia, whether because of renunciation of citizenship, deprivation of citizenship or loss of citizenship, in terms of any enactment in force in Zimbabwe Rhodesia relating to citizenship of Zimbabwe Rhodesia."

Permanent residence was not recognised in the Act as a basis for acquiring the right to vote. It was however recognised at the time that Act 14/79 was enacted that it was desirable to enfranchise a certain class of permanent residents. This class of residents was made up of people who were eligible to be registered as citizens but had not applied for citizenship and consequently were not citizens. It was felt that these people who had all the qualifications for citizenship should be enfranchised for the particular election that was due in March 1979. This was, as I have already stated, the first election on the basis of adult suffrage. It was considered desirable that these persons who were not citizens but eligible for citizenship be allowed to vote.

In this regard what Mr Walker, the then Minister in the Rhodesian government responsible for steering the Bill through Parliament, had to say in his second reading speech is instructive. He said:-

> "Ordinarily, a person must be a citizen of this country before he is entitled to be registered as a voter. However, as hon. Members well know, there are in Rhodesia many thousands of foreign Africans who have come to this country to find employment and are now settled here, having been resident in the country for many years. These people have not, in the main, taken advantage of the provisions of the Citizenship Act which entitle them to apply for registration as citizens. With the extension of the franchise to all persons over eighteen, it will not be possible, because of the numbers involved, to handle thousands of applications for registration as a citizen. Accordingly, it

has been decided that, for the purposes of the first general election, any person who is not a citizen, but who is ordinarily resident in Rhodesia, will be permitted to vote if he is qualified to be registered as a citizen and is otherwise qualified to be registered as a voter. This concession will, however, only apply for the first election because, after that, the persons concerned will be expected to apply to be registered as citizens and then to become registered voters."

(2808 Hansard 20 February 1979) (the emphasis is mine)

It is quite clear from the above remarks that the extension of the vote was intended to be on a one off basis, the first election after the introduction of adult suffrage and for the reasons stated.

In order to cater for this category of persons, who were not citizens but Parliament wished to enfranchise provision was made in the Transitional Provisions set out in Chapter XI of the Act to allow such people to vote. In particular the proviso to section 175 (10)(a) of the Electoral Act provided:

"(10) At the election -

(a) any person who is entitled to be registered as a voter for the Common Roll may vote in any electoral district and shall be entitled to cast at the election one vote for one registered party only:

Provided that in the case of the first general election referred to in paragraph a) of subsection (1) of section *one hundred and sixty-seven* any person who is entitled to apply for registration as a citizen of Rhodesia and, if he were so registered as a citizen, would be entitled to be registered as a voter on the Common Roll shall be entitled to cast at the election one vote for one registered party only. (emphasis is mine)

The intended beneficiaries did not register as citizens as expected and various statutory instruments were enacted to enable them to vote every time there

was an election until 1990 when the legislature sought to resolve the issue once and for all. The legislature sought to resolve the issue by amending the Third Schedule through the introduction of the present paragraph 3(1) of the Third Schedule. The amendment was introduced by Act No 30/1990. Again the remarks of the then Minister of Justice, the Honourable Mr Mnangagwa, as he steered the Bill through Parliament are instructive:-

> "With regards certain aspects of his question, since 1985, I think my brother the hon. Member, Mr Bhebhe, will remember that we allowed during the 1985 general election all those permanent residents who have been in this country for long periods, to vote even if they had not taken citizenship of this country, and so on. A Statutory Instrument made a provision for them to vote and after the election they could easily apply for citizenship. When the 1990 general elections came, we discovered that none of them, not all of them, the majority of them had not exercised the privilege we had granted them by the instrument of either 1980 or 1985. So again this year, we allowed them to vote. We are saying those who have been allowed to vote in those two general elections, that is in 1980 and 1985 and are still permanent residents in this country shall be allowed henceforth to vote. We shall not seek any further law each time there is a general election. I hope this satisfies the hon. Member." (3044 Hansard, 12 December 1990) (the emphasis is mine)

The elections in 1979 were held in terms of the transitional arrangements referred above. The 1980 elections were also conducted in terms of a British Order-in-Council, the Southern Rhodesia (Constitution of Zimbabwe)(Elections and Appointments) Order 1979 which provided for essentially the same qualifications for voting as was the case in the previous elections of 1979. Section 175(10)(a) of the Electoral Act allowing non-citizens to vote was repealed by Act 13 of 1985 thus effectively disenfranchising non-citizens. There were also other enactments that attempted to enfranchise the aliens eligible for citizenship but had failed to register as citizens for one reason or other. Act 30/90 was clearly intended to resolve that issue once and for all.

It is clear from the Third Schedule that a citizen loses his right to vote upon his loss of citizenship. This has been the case in successive Electoral Acts and paragraph 3(1) of the Third Schedule does not seek to alter that principle.

In the result I am satisfied that a person who was a citizen as of the 31st December 1985 loses his right to vote upon ceasing to be a citizen by operation of the law, namely, paragraph 3(3) of the Third Schedule. I have already held that the common roll for the election of a President in terms of section 28(2) of the Constitution is the sum total of the various constituency rolls. A constituency roll must be taken to mean one and the same thing as the electoral roll for a constituency referred in the Third Schedule. To hold otherwise would be absurd. The loss of vote or disenfranchisement upon cessation of citizenship is a loss by operation of law, namely, paragraph (3)(3)(a) of the Third Schedule.

Where the loss of citizenship is common cause, the consequent loss of the right to vote is by operation of the law making the procedures set out in section 25 of the Act superfluous or non-applicable. In such cases the constituency registrar, or anybody else for that matter, cannot reverse such a loss nor does he have any discretion in the matter. The law has taken its course, the voter has lost his or her right to vote by operation of the law and the loss cannot be revived in any way.

IS RESIDENCE IN A PARTICULAR CONSTITUENCY A REQUIREMENT FOR REGISTRATION ON A COMMON ROLL FOR THE ELECTION OF THE PRESIDENT?

The respondent, in his cross-appeal, contends that the learned judge in the court *a quo* erred in holding that it was in law a requirement for registration on the common roll for the purposes of a Presidential election for a person to prove his residence in a particular constituency. This issue of course raises the question of what constitutes the common roll for the purposes of electing a President. Put differently, is the common roll referred to in section 28(2) of the Constitution separate and distinct from the sum total of the constituency rolls?

In the court *a quo* the respondent argued that for any person to qualify to be registered on the common roll he or she must be eighteen years of age, a citizen of Zimbabwe or have been a permanent resident of Zimbabwe as at 31 December 1985. The respondent further argued that residence qualification was immaterial for one to be registered on the common roll referred to in section 28(2). He submitted that residence only becomes material or relevant if one wished to be registered on the roll of a particular constituency. Essentially the same argument has been advanced in this Court in support of the cross-appeal. That argument did not find favour with the learned judge in the court *a quo*. The first appellant argued to the contrary. The first appellant maintained that residence in a particular constituency was a necessary qualification for enrolment on the common roll. This argument was accepted by the learned judge. In this regard she had this to say:-

> "Residence qualification is immaterial for one to be registered on the common roll. It only becomes relevant if one wishes to be registered on the roll of a particular constituency, so the argument proceeds.
>
> In terms of this argument, the common roll gives universal suffrage to all adult citizens or permanent residents in Zimbabwe. Thus a homeless vagrant in the shopping malls of Harare who cannot prove that he is resident in Harare by

any of the conventional methods, is qualified to be on the common roll by virtue of his being a Zimbabwean Citizen who is over 18 years of age.

The second interpretation of the subparagraph that has been urged upon me is to the effect that for any person to qualify to be on the common roll, he/she must first meet the residential qualifications of any particular constituency. Thus still using the example of the homeless vagrant who sleeps in the shopping malls of Harare, if he cannot qualify to be on any particular constituency roll by virtue of being of no fixed address, he cannot be registered on the common roll. He therefore cannot vote for the President even if it is obvious that he resides in Zimbabwe, is over the age of 18 years of age and is a Zimbabwean. According to this argument, the Zimbabwean Constitution does not grant universal suffrage to the citizens and permanent residents, but limits the right to vote for the President only to those who can satisfy the residential requirements for a particular constituency as provided for in the Electoral Act.

The difficulty one has in interpreting subparagraph (3) of the 3rd Schedule is that it is in a Schedule that specifically provides for the qualification of Members of Parliament and voters. This reinforces the argument that the voters referred to herein can only be voters to be registered on a constituency roll from which Members of Parliament are to be elected.

The crisp issue that then falls before me for determination is what was the intention of the legislature in enacting subparagraph (3) of the 3rd Schedule. Was it to grant universal suffrage to all adult citizens and permanent residents without regard to where these are resident, as argued by the applicant or to grant qualified suffrage as argued by the respondents.

In determining the intention of the legislature, I am to be guided by the wording used in the enactment. I have to establish whether or not the interpretations urged upon me can be supported by the words used in the subparagraph.

The applicant's argument is quite forceful but I am not persuaded that it finds a basis from the wording of the enactment.

I have been persuaded by the argument on behalf of the respondents. Counsel for the respondents argues that the true meaning of the provisions of the subparagraph is that, to qualify to be on the common roll, a claimant must show that, in addition to being 18 years of age and a citizen or is regarded as a permanent resident since 1985, he or she meets the residence qualifications that are prescribed in the Electoral Law for inclusion on the electoral roll of a particular constituency.

In my view, the wording of the subparagraph (3) of the 3rd Schedule is clear that all three criteria listed therein must be met before one can be registered on the common roll.

In my mind, for one to understand fully the provisions on who qualifies to be registered on the common roll, it is necessary to make reference to the provisions of the Electoral Act on the residential qualifications of voters. This is to be found in section 20(1), which provides:

> 'in order to have the requisite residence qualifications to be registered as a voter in a particular constituency, a claimant must be resident in that constituency at the date of his claim:
>
> Provided that, if a claimant satisfied the Registrar-General that, for reasons related to his place of origin, political affiliations or otherwise, it is appropriate for the claimant to be registered as a voter in a constituency in which he is not resident, the claimant may be registered as a voter in that constituency.'

The conclusion that I then come to is that it was the intention of the legislature that for one to be on the common roll, one has to be:

- over 18 years of age
- a citizen of Zimbabwe or has been regarded in terms of a written law as a permanent resident since 1985; and,
- resident in a particular constituency or satisfies the Registrar-General that for reasons related to his or her place of origin, political affiliations or otherwise, it is appropriate for him/her to be registered in a constituency he/she is not resident (in).

The practical effect of the above in my view, is to grant suffrage to all adult citizens and persons regarded as permanent residents who can prove residence in a particular constituency or can satisfy the Registrar-General that they have a link with some other constituency in Zimbabwe by reason of place of origin, political affiliation or otherwise. Those failing to prove residence in a particular constituency and links to any other constituency by reason of place of origin or political affiliation or otherwise will fail to qualify to be on the common roll. This, to me, appears to have been the intention of the legislature in enacting subparagraph 3 of Schedule 3 of the Constitution." (the emphasis is mine)

I agree with the reasoning and the conclusion of the learned judge in this regard. The history of the phrase "common roll" clearly shows that it was never used by Parliament to denote a consolidated roll, as it were, of the single constituency of Zimbabwe as contended for by the respondent. The various provisions of the Constitution and the Electoral Act suggest otherwise. Thus as correctly submitted by

Mr *Majuru* the term "common roll" derives from pre-independence colonial legislation which differentiated franchise between "common roll" to denote the roll on which blacks were registered and "white roll" on which whites were registered.

Section 3 of the Electoral Act 14/79 defined "common roll" thus:-

> "common roll means the rolls kept by the constituency registrars in terms of subsection (2) of section sixteen".

Section 16(2) provided that "Each constituency registrar shall have charge and custody of the roll of voters on the common roll for his common constituency". "Common roll" constituency was defined in the Act as follows: "Common Roll Constituency" means a constituency referred to in paragraph (a) of subsection (c) of section six be delimitated from time to time in accordance with the provision of Chapter 1". Thus the history of the legislation clearly shows that the term "common roll" referred to the eighty common roll constituencies on which blacks were registered. Since the abolition of the racially segregated franchise system it would appear to me that the term "common roll" has referred to and means the one hundred and twenty common roll constituencies. This view is reinforced by the various provisions in the Constitution which clearly link the term common roll to the constituency. Thus, section 38(1)(a) provides as follows:-

> "38 (1) There shall be a Parliament which, subject to the provisions of section 76(3b), shall consist of one hundred and fifty members qualified in accordance with Schedule 3 for election or appointment to Parliament, of whom —
>
> *(a)* one hundred and twenty shall be elected by voters registered on the <u>common roll for one hundred and twenty common roll constituencies</u>;"
>
> (my emphasis)

The use of the word "common roll" in the above section is inconsistent with one common roll for one constituency of Zimbabwe as a whole.

Section 60(2) and (4)(c) and (e) of the Constitution refer to the term common roll. They provide as follows:-

> "60 (2) Zimbabwe shall be divided into one hundred and twenty common roll constituencies.
>
> …
>
> 60 (4) In dividing Zimbabwe into constituencies the Delimitation Commission shall, in respect of any area, give due consideration to –
>
> (c) the geographical distribution of voters registered on the common roll.
>
> …
>
> (e) in the case of any delimitation after the first delimitation consequent upon an alteration in the number of constituencies, existing electoral boundaries and whenever it appears necessary to do so in order to give effect to the provisions of this subsection, the Commission may depart from the requirements of subsection (3), but in no case to any greater extent than twenty *per centum* more or less than the average number of registered voters in constituencies on the common roll."

Schedule 3(3)(1) also provides:-

> "(1) Subject to the provisions of this paragraph and to such residence qualifications as may be prescribed in the Electoral Law for inclusion on the electoral roll of a particular constituency, any person who has attained the age of eighteen years and who —
>
> *(a)* is a citizen of Zimbabwe; or

(b) since the 31st December, 1985, has been regarded by virtue of a written law as permanently resident in Zimbabwe;

shall be qualified for registration as a voter on the common roll." (emphasis is mine)

Section 101(2) of the Act as read with section 28(4) of the Constitution provides that if more than one candidate is nominated for the Presidency a poll shall be taken in each constituency for the election of a President.

It is quite clear from the above statutory provisions that Parliament used the term common roll to refer to the constituency common rolls, and the common roll referred to in section 28(2) of the Constitution is no more than the sum total of 120 constituency common rolls referred in the various provisions of both the Constitution and the Electoral Act. Thus, in my view, the learned judge was correct in concluding that:-

(a) the age of 18

(b) citizenship or permanent residence, and

(c) residence in a constituency

were necessary qualifications for registration on the common roll referred to in section 28(2) of the Constitution. On this basis the cross-appeal cannot succeed.

Finally the Court came to the following conclusion:

1. That the sum total of all the constituency rolls constitute the common roll in terms of section 28(2) of the Constitution of Zimbabwe.

2. That the court *a quo* had no legal basis for issuing the directive in paragraph 4 of its order, directing the Registrar-General of Elections to make adequate arrangements for persons away from their constituencies on the polling dates to cast their votes in other constituencies. Consequently that directive is hereby set aside.

3. That it is in law a requirement as the court *a quo* correctly held, for registration on the common roll for the purposes of a Presidential election in Zimbabwe for a person to prove his residence in a particular constituency.

4. That, by a majority of four to one, a person who ceases to be a citizen also ceases to be a voter by operation of law namely paragraph 3(3) of the Third Schedule of the Constitution of Zimbabwe. Consequently paragraph 3 of the order of the court *a quo* is hereby set aside.

In the result the appeal is allowed. The cross appeal is dismissed. There will be no order as to costs.

CHEDA JA: I agree

ZIYAMBI JA: I agree

MALABA JA: I agree

SANDURA JA: I have read the judgment prepared by CHIDYAUSIKU CJ and agree with the conclusions reached by him on all issues except the interpretation of the provisions of paras 3(1) and 3(3) of Schedule 3 of the Constitution of Zimbabwe ("the Schedule"). Paragraph 3(1) reads:

> "Subject to the provisions of this paragraph and to such residence qualifications as may be prescribed in the Electoral Law for inclusion on the electoral roll of a particular constituency, any person who has attained the age of eighteen years and who –
>
> (a) is a citizen of Zimbabwe; or
>
> (b) since the 31st December 1985 has been regarded by virtue of a written law as permanently resident in Zimbabwe;
>
> shall be qualified for registration as a voter on the common roll."

In terms of subpara (1)(a), a citizen of Zimbabwe who has attained the age of eighteen years and who meets the residence qualifications prescribed in the Electoral Law is qualified for registration as a voter on the common roll. That is clear and straightforward.

However, in terms of subpara (1)(b), and subject to the residence qualifications already referred to, any person who, since 31 December 1985, has been regarded by virtue of a written law as permanently resident in Zimbabwe is qualified for registration as a voter on the common roll. Thus, for example, a person who lost the citizenship of Zimbabwe in November or December 1985 on the ground that he opted to retain his foreign citizenship falls into this category, provided that immediately before 1 December 1984 he was ordinarily resident in Zimbabwe and continues to be so resident.

Such a person has, since 31 December 1985, been regarded as permanently resident in Zimbabwe by virtue of s 9(8) of the Citizenship of Zimbabwe Act [*Chapter 4:01*], which reads as follows:

> "Notwithstanding anything to the contrary in any other enactment, but subject to subsection (9), any person who was ordinarily resident in Zimbabwe immediately before the 1st December 1984, and who ceases to be a citizen of Zimbabwe in terms of subsection (3),(4), (5), (6) or (7), shall be entitled, on and after the date on which he ceased to be a citizen of Zimbabwe –
>
> (a) to reside in Zimbabwe; and
>
> (b) – (d) …; and
>
> (e) generally, to do all such things as may be done by persons who are ordinarily resident in Zimbabwe."

The question which arises is whether a citizen of Zimbabwe, who qualified for registration as a voter on the common roll in terms of subpara (1)(a), could also qualify for that registration in terms of subpara (1)(b). I have no doubt in my mind that he could, provided he had, since 31 December 1985, been regarded by virtue of a written law as permanently resident in Zimbabwe. The greater includes the lesser.

In my view, a citizen of Zimbabwe who, since 31 December 1985, has been ordinarily resident in Zimbabwe is regarded by virtue of the written law of Zimbabwe as having been permanently resident in Zimbabwe since that date.

To substantiate that statement, I would like to examine the position of a foreigner who acquired the citizenship of Zimbabwe by registration before 1 December 1984. It is clear from the legislation in force at the time that it was necessary for such a foreigner to have in his possession a permanent residence permit, issued in terms of the relevant Immigration Act, before he applied for the citizenship of Zimbabwe by registration.

The legislation then in force was the Citizenship of Rhodesia Act [*Chapter 23*]. The relevant part of s 7 of that Act reads as follows:

> "7. (1) If a person who is not a citizen of Rhodesia –
>
> (a) is of full age and capacity; and
>
> (b) makes application in the manner prescribed; and
>
> (c) is qualified to be registered as a citizen of Rhodesia;
>
> the Minister may … authorize the registration of the person as a citizen of Rhodesia.
>
> (2) A person who makes an application in terms of subsection (1) shall be qualified to be registered as a citizen of Rhodesia if he satisfies the Minister that he –
>
> (a) was lawfully admitted to Rhodesia <u>for permanent residence</u>; and
>
> (b) is, at the date of his application, ordinarily resident in Rhodesia; and

(c) has, at the date of his application, been ordinarily resident in Rhodesia –

(i) in the case of a person who has not resided in Rhodesia before the date of his application for a period of more than five years or periods in the aggregate amounting to more than five years, for a period immediately preceding the date of his application of not less than two years …;

(ii) in the case of a person who has resided in Rhodesia before the date of his application for a period of more than five years or periods in the aggregate amounting to more than five years, for a period immediately preceding the date of his application of not less than six months …;

(d) – (e) …

(f) intends, after the grant of his application, to continue, subject to the exigencies of his employment, to reside in Rhodesia.

(3) …

(4) No period during which a person who makes an application in terms of subsection (1) resided in Rhodesia as a visitor or in terms of a permit issued under an enactment permitting temporary residence in Rhodesia in force before, on or after the appointed day shall be counted for the purposes of subsection (2) as a period of residence in Rhodesia." (the emphasis is mine)

It is clear from the above provisions that a person applying for citizenship of Rhodesia by registration had to satisfy the Minister that, *inter alia*, he had been lawfully admitted to Rhodesia for permanent residence. It is also clear that in computing the periods of residence set out in s 7(2)(c) any period during which the applicant had resided in the country as a temporary resident was to be ignored. What that means is that the periods set out in s 7(2)(c) were periods during which the applicant was in the country as a permanent resident in terms of a permanent residence permit issued in terms of the relevant Immigration Act.

That conclusion is confirmed by the personal details of the applicant required on the application form. The relevant application form is set out in the Schedule to the Citizenship (Amendment) Regulations, 1971 (No. 2), published in Rhodesia Government Notice No. 744 of 1971 at 998-999. The relevant part of the form reads as follows:

> "13. Date and place of lawful entry into Rhodesia for permanent residence:
> Date: Place:
>
> 14. Permanent Residence Permit: No.: Date of Issue: Place of Issue:
>
> 15.-17. …
>
> 18. (a) Have you been ordinarily resident in Rhodesia for an unbroken period of not less than two years from the date of issue of your Permanent Residence Permit to the date of this application?
> Yes ☐ No ☐; or
>
> (b) Have you been ordinarily resident in Rhodesia for an unbroken period of not less than six months from the date of issue of your Permanent Residence Permit to the date of this application?
> Yes ☐ No ☐ ; …"

Similar information was required from an applicant in terms of the Citizenship Regulations, 1963, published in Southern Rhodesia Government Notice No. 955 of 1963, the Citizenship Regulations, 1967, published in Rhodesia Government Notice No. 609 of 1967, and the Citizenship Regulations, 1970, published in Rhodesia Government Notice No. 215 of 1970.

In the circumstances, it follows that a person who acquired the citizenship of Zimbabwe by registration before 1 December 1984, for example, and who has been ordinarily resident in Zimbabwe since he acquired that citizenship is regarded by virtue of a written law as having been permanently resident in Zimbabwe

since 31 December 1985. He is, therefore, qualified for registration as a voter on the common roll, not only in terms of para 3(1)(a), but also in terms of para 3(1)(b) of the Schedule.

In my view, it cannot logically be argued that a person who was a permanent resident of Zimbabwe before he acquired the citizenship of Zimbabwe by registration ceased to be a permanent resident of Zimbabwe the moment he became a citizen of Zimbabwe. There is no such provision in our law.

I now wish to examine the position of a citizen of Zimbabwe by birth. His status as a permanent resident of Zimbabwe is much stronger than that of a citizen of Zimbabwe by registration. He does not require a permanent residence permit in order to become a permanent resident of Zimbabwe.

His domicile, i.e. the country in which he ordinarily resides and which he regards as his permanent home, is Zimbabwe. This permanent home is his domicile of origin, i.e. the domicile which he received at birth.

Our statute law equates domicile with permanent residence. In this regard, s 3(1) of the Immigration Act [*Chapter 4:02*] ("the Act") states as follows:

> "Subject to this section, a person shall be regarded, for the purposes of this Act, as being domiciled in a country if –
>
> (a) he resides permanently in that country; or
>
> (b) that country is the country to which he returns as a permanent resident."

The section, therefore, equates domicile with permanent residence. See *Grant et Uxor v The Chief Immigration Officer* 1976 (1) RLR 268 (AD) at 269D.

What that means is that, in terms of s 3(1) of the Act, a person domiciled in Zimbabwe either resides permanently in Zimbabwe (i.e. as a permanent resident) or Zimbabwe is the country to which he returns as a permanent resident.

In the circumstances, it follows that a citizen of Zimbabwe by birth who, since 31 December 1985, has been ordinarily resident in Zimbabwe, is regarded by virtue of a written law as having been permanently resident in Zimbabwe since 31 December 1985. He is, therefore, qualified for registration as a voter on the common roll, not only in terms of para 3(1)(a) but also in terms of para 3(1)(b) of the Schedule.

If it had been the intention of the legislature that subpara (1)(b) should only apply to persons who were not citizens of Zimbabwe it would have said so, and para 3(1) would have been drafted so that it read as follows:

> "Subject to the provisions of this paragraph and to such residence qualifications as may be prescribed in the Electoral Law for inclusion on the electoral roll of a particular constituency, any person who has attained the age of eighteen years and who –
>
> (a) is a citizen of Zimbabwe; or
>
> (b) not being a citizen of Zimbabwe, has since the 31st December 1985 been regarded by virtue of a written law as permanently resident in Zimbabwe;
>
> shall be qualified for registration as a voter on the common roll."

In my view, the fact that subpara (1)(b) of the Schedule was not drafted in the form shown above is significant. Regardless of what was said in Parliament when the constitutional amendment was debated, I am satisfied that subpara (1)(b) includes citizens of Zimbabwe who have been ordinarily resident in Zimbabwe since 31 December 1985. They are certainly not excluded by the wording of the subparagraph according to the plain meaning of the words used.

Finally I wish to examine the provisions of para 3(3) of the Schedule. The paragraph reads as follows:

> "Any person who is registered on the electoral roll of a constituency shall be entitled to vote at an election which is held for that constituency unless –
>
> (a) he has then ceased to be a citizen of Zimbabwe; or
>
> (b) he is then, in accordance with the provisions of subparagraph (2), disqualified for registration; or
>
> (c) in the case of a person who was registered on the electoral roll by virtue of the qualifications referred to in subparagraph (1)(b), he has ceased to be so qualified."

In my view, a citizen of Zimbabwe who is registered as a voter on the common roll, and who qualifies for such registration in terms of both para 3(1)(a) and para 3(1)(b) of the Schedule, would not lose the right to vote merely because he has lost one of the two grounds on which he qualified for registration as a voter.

In other words, if such a registered voter ceased to be a citizen of Zimbabwe, for whatever reason, but remained qualified for registration as a voter in terms of para 3(1)(b) of the Schedule, he would not lose the right to vote. He would

only lose that right if he ceased to be a citizen of Zimbabwe and no longer qualified for registration as a voter in terms of para 3(1)(b) of the Schedule.

That, in my view, is the correct interpretation of the provisions of para 3(3) of the Schedule.

The learned judge in the court *a quo*, therefore, correctly determined the issue. It follows that the appeal against para 3 of the order of the court *a quo* is devoid of merit and must be dismissed.

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

Gill, Godlonton & Gerrans, respondent's legal practitioners