

WILLIAM STEVEN BANDA v THE CHIEF IMMIGRATION OFFICER AND THE ATTORNEY GENERAL (1994) S.J. 82 (S.C.)

SUPREME COURT
BWEUPE, D.C.J., CHAILA AND MUZYAMBA, JJ.S.
14TH JULY AND 25TH OCTOBER, 1994
JUDGMENT NO. 16 OF 1994

Flynote

Deportation - Warrant of deportation signed by deputy minister - Proof of place of birth - Section 3 appendix 3 of vol. X of the Laws of Northern Rhodesia

Headnote

The appellant, a member of the opposition party United National Independence Party, was detained at Ludazi Prison by the 1st respondent and later transferred to Namuseche Prison at Chipata. The appellant was detained pending deportation. He later brought an application under Article 28 of the Zambian constitution before the High Court seeking declarations to the effect that his fundamental right to personal liberty was contravened; that the period the appellant stayed in detention was long and therefore infringed article 13 and that the purported deportation Order was null and void. The High Court dismissed the application and the appellant appealed.

Held:

- (i) The finding by the trial court that the appellant and his parents were not Zambians could not be faulted as it was based on sound logic.
- (ii) The deportation warrant signed by the Deputy Minister was valid for all intents and purposes
- (iii) The appellant neither proved that he was born in Northern Rhodesia nor that one of his parents was born in Northern Rhodesia and therefore the provisions of section 3 appendix 3 of vol. X of the Laws of Northern Rhodesia did not apply to him

Cases referred to.

1. Kenmuir v Hattingh (1974) Z.R. 162

For the appellant: Messrs S S Zulu of Zulu and Co. and Prof. Mvunga of Messrs Mvunga and Associates.

For the respondent: Mr Kinariwala, Principal State Advocate

Judgment

BWEUPE, D.C.J.: delivered the judgement of the court.

This is an appeal from a decision of a High Court (Kakusa J.) dismissing an application under article 28 of the Constitution seeking for declarations:-

- (a) That the appellant's fundamental right to personal liberty was contravened;
- (b) That the period the appellant stayed in detention was long and therefore infringed article 13 and
- (c) That the purported deportation Order was null and void.

Further the document sought Orders of prohibition and certiorari; prohibiting the removal of the appellant from Zambia to Malawi or elsewhere and to quash the deportation order respectively.

The document further sought a declaration that the appellant is a Zambian and was therefore not a deportable person.

The facts set out by the learned trial judge and which were common cause are these:

- (1) On 9th November, 1991, William Steven Banda was placed under detention at Lundazi prison by the 1st respondent;
- (2) On 13th November, 1991 he was moved to Namuseche Prison at Chipata;
- (3) The appellant was detained pending deportation,. He was a member of the Youth League of the United National Independence Party (UNIP)

In addition to his affidavit the Petitioner gave viva voce evidence. Briefly the Petitioner said that he was aged 46 years having been born in 1945 in Mporokoso district, Mkanga Village, Chief Mkanga. He was brought up in Kabwe by his parents and attended school in Kabwe from about 1952. He took interest in politics at a tender age. In pursuit of political activities he moved to Lusaka in 1960, then left for Neganega in 1963. He went to Mumbwa at the end of 1963 where he was for some time a UNIP Youth Constituency Secretary. He rose to various ranks and finally in Lundazi where he became District Governor. He said his mother was alive, a Zambian called Balnio Malia Jumbe Chulu and that she was at Jumbe Village, Chief Jumbe in Chipata. He said his father was also a Zambia, Simeon Banda, who died in 1960. He said his brothers were (a) Arther Banda (b) John Banda and (c) Alfred Banda whereas Keliza Banda was his sister. He produced a National Registration Card No. 248990/11/1 and a UNIP Card No. 790963 issued in 1963. He also produced testimonials issued to him by Mumbwa Boma School on 12th May, 1970 and Mubwa Secondary Evening Classes School on 19th May, 1970 respectively. As regards the alleged Petitioner's village i.e Jumbe village in Chipata the Petitioner said he had been at the village at times about three times and was last there in 1991.

The Petitioner called a witness named Arther Joseph Banda referred to as PW1. PW1 told the court that he was 62 years a peasant farmers and a resident of Jumbe village, Chief Jumbe. He said he was born in Luanshya, his father was Zambian called Joseph Banda. His mother was also a Zambian called Maria Balani Chulu who is alive but the father is dead. PW1 said his mother was too old and could not walk. He said the late Joseph Banda (PW1's father) came from Kakumbi village, Chief Kakumbi. PW1 said he knew the Petitioner and regarded the Petitioner as his "young brother" . He said the Petitioner was born to the younger sister of PW1's mother-Nthenje Chulu. She was a sister of PW1 mother. PW1 was young then. He used to know the father of William Banda in Luanshya where they stayed together. In Luanshya PW1 stayed with his father. The father of William Banda was also in Luanshya. The father of William Banda was called Swedi Banda, a Zambian of Kakumbi village, Chief Kakumbi where the father came from. The mother of William Banda died in Luanshya when the Petitioner was then kept by PW1's mother. Later the Petitioner was brought up

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by PW1's elder brother Labani Malawo Banda. PW1 said the Petitioner was in Kabwe from 1960 or 1963. He said Swedi Banda and Nthenji Chulu had only one child William Banda, the Petitioner.

The Respondents called four witnesses. DW1, Dinao Phiri, a housewife aged 48, resident of Kapata Location in Chipata but a Malawian National. Who deposed that the Petitioner's true identity was Saidi Awali, a Malawian National of Nkono village, Chief Malenga Chazi in Nkhotakota born of Bonomali Awali as his father who is still alive. She said that in 1965 she received the Petitioner and kept him at her home in Chipata for two days after which she did not know that the Petitioner was still in Zambia.

DW2, Chief Kasonde Mwamba of Mporokoso in Chisha Mwamba's village, deposed that a traditional Chief about 250 villages fall under his authority. Mkanga village is one of his villages.

As a traditional ruler he has never learned of a person by the name of Simeon Banda having worked in Mporokoso - that is going by his personal knowledge or knowledge available to him as a chief. He referred to Bandas but could not recall one being Simeon Banda.

DW3, Gilbert Chanika Chulu, aged 69, of chanika village, chief Jumbe, said that he knew Steven William Banda, who was a District Governor in Lundazi. He said he also knew Suman Joseph Banda who is now dead and was the husband of DW3's Aunt Malia Balani Jumbe Chulu and she is still alive. This couple (i.e Suman Joseph Banda and Malia Balani Jumbe) had children and these were: Leonard Joseph Sumani Banda (died in 1991); Peter Joseph Banda (now in the village); Dorica Sumani Banda (housewife); Maxwell Joseph Banda (died in April, 1992) Keliza Suman Banda (still alive and lives in the village); Alfred Mambwe Sumani Banda (alive); and Joseph Sumani Banda (died in 1945 in Luanshya). DW3 said he did not know a person known as Nthenje Chulu. He knew Mr William Steven Banda who is not his relative in any way. He said he had been in his village since 1973 when he retired from Government Service. DW3 was born and has lived at Jumbe Village, Chief Jumbe since 1923. To his knowledge the Petitioner, William Steven Banda is not from Jumbe village. At one time the Petitioner visited DW3's village in a group from Lundazi who came for a funeral of Leonard Sumani Banda. DW3 said he knew all the families in his village. He did not know the family of Steven William Banda. DW3 knew all the sisters of Malia Balani Chulu who was his aunt and was the sister of his late father Chanika Jumbe Chulu. He said the Petitioner does not belong to his village.

DW4, Sylvester Chifulu Mulila, an Assistant Chief Immigration Officer investigated this case, and produced the documents in the bundle of documents.

In his Memorandum of Appeal the Petitioner said he was appealing against the decision of the learned Judge in the Court below on the following grounds:

1. That the appellant's purported deportation is bad in law as Section 26(2) of the Immigration and Deportation Act (cap 122) is concerned with prohibited Immigrants and not Zambian like the appellant.

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2. That Immigration Officers have no authority or power in law to revoke citizenship granted under the Citizenship Act (Cap 121) or to revoke Citizenship granted under the Zambian Constitution.
3. That under Section 7(b) of the Constitution of Zambia not even the Minister has the authority to revoke any person's Citizenship as this was the function of the Citizenship Board.
4. That there was no evidence to show that he irregularly or illegally obtained the National Registration Card, and neither was there evidence to show that he was a deportable person.
5. That the learned trial judge erred in law by ruling that the Deputy Minister of Home Affairs was not barred from signing the deportation warrant which precluded act was in contravention of Section 26(2) of the Immigration and Deportation Act (Cap 122).

At the hearing of this appeal the learned counsel for the appellant, Professor Mvunga, added the sixth, seventh and eighth grounds which read:

- (6) That being a British protected as on the 23rd October, 1964 the Petitioner became a citizen of Zambia on 24th October 1964.
- (7) That since the state has not adduced evidence as to the Petitioner's country of origin the Petitioner can, in the alternative be deemed to be stateless and therefore not deportable.
- (8) That even if the Petitioner were not a citizen of Zambia he would be entitled to the status of established resident.

The learned counsel, Messrs S S Zulu and P M Mvunga represented the appellant at this hearing and both submitted their Heads of arguments separately. Mr Zulu argued ground 4 of the Memorandum of appeal namely that there was no evidence to show that the Petitioner's Zambian National Registration Card or his citizenship was irregularly or illegally obtained and neither was there evidence to show that he was a deportable person. In other words, there was not sufficient evidence to show that the Petitioner was not a Zambian citizen or that he was a Malawian. In order to prove that the Petitioner was a Malawian National the State called DW1, Diano Phiri who testified that the Petitioner's name was Saidi Awali from Nkono village Chief Malenga in Malawi and that his father was still alive in Malawi and was called Bonomali Awali. Mr Zulu argued that DW1 was a disaster to the State as is shown by the findings of trial judge at page 20 line 6. He said from 20th February, 1992 as is shown at page 46 line 12 to 18th June, 1992 the State Advocate applied for adjournments to have the alleged father of the Petitioner from Malawi, the state failed to bring Bonomali Awali. The Court ruled that the proposed witness was in every respect a key witness. However, the State dispensed with this witness and had it been in a criminal matter requiring proof beyond all reasonable doubt the Petitioner would have enjoyed the benefit of doubt but this is a Civil litigation. Mr Zulu argued that this was a misdirection on part of the trial court. Mr Zulu;u further argued that the

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court misdirected itself by allowing DW3 Gilbert Chanika Chulu to testify on the basis that the state advocate informed the court that the witness was in court at the previous sittings. He said the court should have taken evidence to establish whether DW3 had actually been sitting in court or not. the court misdirected itself when it found that there was no legal reason to exclude the evidence of DW3 as such as exclusion would have been unfair and prejudicial to the respondents. He said DW3 was called after failing to secure Bonomali Awali to rebut the evidence of the Petitioner and PW1 to show that the Petitioner was not a Zambian and that he did not come from Jumbe village. He said the evidence of DW3 on which the judge heavily relied was highly prejudicial to the Petitioner.

Mr Zulu further argued that the Petitioner had told the Court that he was born at Mkanga village, Chief Mkanga, Mporokoso district in his area in Mporokoso district but said there was no chief Mkanga - Kasonde Mwamba (chief) said there was a Banda in his area before he was born. He argued that failure to call the village headman to produce the village register to show that the Petitioner was not born in that village was fatal. He said there was evidence to show that the Petitioner's father was a Zambian but there was no evidence adduced that Petitioner's father was a Malawian or some other nationality. He said the decision of the court that the Petitioner was not a Zambian makes the Petitioner stateless. If he is not a Zambian and there is no evidence that he is a foreigner the Petitioner would have to remain in Zambia because there is no country to which he can be deported to. Mr Zulu went on that a person born in Zambia is a Zambian by birth in that village headman Mkanga was not called to refute the Petitioner's evidence that he was born at Mkanga village in Mporokoso.

After arguing Ground 4, Mr Zulu then proceeded to argue Grounds 1 to 3 and 5. He said in ground 1 the appellant's purported deportation was bad in law in that the Immigration and

Deportation Act is concerned with prohibited immigrants not Zambian like the appellant. He said if the court finds that the appellant is a Zambian then he cannot be deported under Cap. 122 unless he is a citizen of a country other than Zambia. On ground 2 he said Immigration Officers have no power or authority in law to revoke citizenship granted under the Citizenship Act or to revoke citizenship granted under the Zambian constitution. He argued that if the appellant is a Zambian by descent from his father and by birth then an Immigration Officer cannot deport him. On ground 3 the learned advocate said that under section 7(b) of the Constitution not even a Minister has authority to revoke any person's citizenship as this was the function of the Citizenship Board. He argued that this issue did not arise because the Minister who is also the Chairman of Citizenship Board did not revoke the Petitioner's citizenship but assumed that he was not a Zambian and declared him a prohibited Immigrant. On ground 5 he contended that the learned judge erred in Law by ruling that the Deputy Minister of Home Affairs was in order by signing the deportation warrant which was in contravention of section 26(1) of the Immigration Act. He argued that there was no evidence that the Minister of Home Affairs was absent from Zambia at the material time. The deportation warrant was null and void.

Professor Mvunga then vividly argued ground 6 and 8. On the ground 6 he said the 1964 Independence Constitution of Zambia grants Zambian citizenship on any person who was born in the former protectorate of Northern Rhodesia or one

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of whose parents was born in the former protectorate of Northern Rhodesia or both. He said there was evidence on record that the Petitioner was born in the Protectorate of Northern Rhodesia or one of his parents was born in the Protectorate of Northern Rhodesia. In either instance the Petitioner automatically became a citizen of Zambia as at Independence of the protectorate of Northern Rhodesia on the 24th October, 1964. Having become a citizen the petitioner is not deportable and cannot be deprived of Zambian citizenship even by an Act of Parliament except that he is a citizen of another country. As regard ground 7 Prof. Mvunga argued that if the petitioner is stateless then both under the International Law and Domestic Law the petitioner is not deportable because it is impossible to execute the warrant of deportation as the petitioner cannot be admitted to any other country.

On ground 8, he said that there is evidence on record that even if it were established that the Petitioner was not born in Zambia, he has been in Zambia as far back as 1963 or thereabouts. On this account he would be entitled to be an established resident, and therefore not deportable.

The respondent were not without arguments. The learned Principal State Advocate, Mr Kinariwala, contended that on 14th November 1991 the appellant on application under Article 28 of the Constitution of Zambia sought an order that he be released from detention on the ground that Article 13 had been contravened. The application was supported by the appellant's own affidavit. In par. 3, 5 and 9 the appellant claimed that he was a Zambian by nationality and that he was born in 1945 at Mkanga village in Mporokoso District of Zambia of a Zambian father by the name of Simeon Banda since deceased and a Zambian mother by the name of Maria Balani Jumbe Chulu who was still alive and residing at Jumbe village near Chipata and that on 9th November, 1991 he was arrested by the Immigration Officer, Mr Mulila, as a suspected illegal immigrant and detained. On 2nd December, 1991 the appellant filed a concurrent summons under Article 28 of the Constitution wherein he inter alia sought declarations to the effect (a) that his detention was unlawful (b) that the order for his deportation issued by the Minister of Home Affairs on 18th November, 1991 was null and void as he was not furnished with reasons for his deportation; and (c) that he is not a deportable person on the ground that he was a Zambian citizen by birth or by accrued right. On 19th

December, 1991 the respondent filed an affidavit in opposition sworn by Mr Mulila in which he deposed inter alia that from investigations carried out and statements recorded from (3) three witnesses namely Dinao Phiri Baluwa, Arthur Joseph Peter Banda and Awali Bwanali Chaseta, it was established that the appellant was a Malawian who was living in Zambia illegally and that consequently he was declared a prohibited immigrant. On 6th May, 1992 the respondents filed a supplementary affidavit in opposition sworn by Mr Mulila in which he deposed that from the further investigations it was established that the appellant did not as claimed by him attend Kabwe Mine School from 1952 to 1960. Again on 6th May 1992 the respondents filed yet another affidavit in opposition sworn by one Mporokoso Kasonde Mwamba, Chief of Mporokoso District in which he deposed that the applicant was not born in the village where he was the Chief and that he did not know of Simeon Banda as having lived in his village. Mr Kinariwala said that at the trial the applicant

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produced his National Registration Card; UNIP Card, Testimonials issued to him by Mumbwa Boma School and Mumbwa Secondary Evening Classes School. He also called PW1 Arthur Joseph Banda as his witness. The trial judge found the evidence of the applicant contradictory. At the trial the respondents called four witnesses namely DW1, Dinao Phiri, DW2 Chief Kasonde Mwamba, DW3, Gilbert Chanika Chulu, and DW4, Sylvester Chipulu Mulila. DW4 produced an extract of school attendance register; Deportation Warrant; and letter from the district secretary, Mporokoso. After considering all evidence both viva voce and the documentary the judge came to the conclusion that on the balance probabilities the appellant had failed to prove that he was a Zambia and his father and or mother were Zambians. He submitted that the issue for the determination was whether the appellant was a Zambian, not that the appellant was a Malawian. This issue was an issue of fact and depended upon the credibility of witnesses. The learned judge did not believe the appellant and his witness.

He believed the evidence of DW2, DW3 and DW4. Mr Kinariwala then referred the Court to the case of *Kenmuir v Hattingh* (1974) (1). In which this court held that where the questions of credibility are involved, an appellate court which has not had the advantage of seeing and hearing the witnesses will not interfere with the findings of fact made by the trial judge unless it is clearly shown that he has fallen into error. He submitted that in this case the judge directed himself properly in assessing and evaluating all the evidence before him before making a decision on the credibility of witnesses and did not fall into error. He submitted that this court should not interfere with the findings of the fact made by the trial judge unless it is clearly shown that he has fallen into error. He submitted that this court should not interfere with findings of fact. In the alternative he submitted that under the provisions of section 28 of Cap.122 the burden was upon the appellant to prove that he was a citizen of Zambia. The appellant however, having failed to discharge the burden the judge was right in holding that he, the appellant, was not a Zambian. the judge having found that the appellant was not a Zambian he fell under the category of prohibited immigrants for lack of any or any valid permit to stay in Zambia and consequently the Minister of Home Affairs acted lawfully in declaring appellant's presence in Zambia to be inimical to the public interest and in issuing a warrant of deportation which was good in law.

On the ground 2, Mr Kinariwala said that the appellant never claimed in the court below that he had acquired Zambian citizenship by adoption or by registration and as such the question of Immigration Officers having no authority or power to revoke citizenship granted under the citizenship Act or under the Zambian Constitution did not arise. He argued ground 5 and said that the judge acted correctly in holding that the Deputy Minister of Home Affairs was not precluded from signing the Deportation warrant. He then referred the court to section 3 Cap 2 of the Interpretation and General Provisions Act which defines as "Minister" as including the Member of the Cabinet or other person for the time being vested with such functions.

We have, as did the learned trial judge, carefully considered and analysed the affidavits and viva voce evidence adduced; the documents produced and the

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submissions and arguments presented by both parties and we cherish the view that the facts before the court below boiled down to one question namely; was the appellant born at Mkanga village, Chief Mkanga of Mporokoso District of the Zambian parents, or any one of them? According to the statement recorded from the appellant the appellant said that he was born at Mkanga village, Chief Mkanga, District Mporokoso in Zambia in 1945. His parents were Simeon Banda, father, who was born at Jumbe village, Chief Jumbe, Mabwe and his mother being Mrs Balani Maria Jumbe Chulu who was born at Jumbe, Chief Jumbe Mambwe Chipata. He said he was a Zambian citizen having been born of Zambian parents in a family of six (6): (1) Leonard Simon Banda; (2) Arthur John Banda (3) Maria Banda (deceased); (4) William Steven Banda; (5) Keliza Banda; and (6) John Banda. He denied that he originated from Malawi and that Mr Awali Bonomali of Nkono village, Chief Malenga Chansi, Nkota kota, Malawi was his father. He said his father Simeon Banda is deceased but his mother Balani Maria Jumbe Chulu is alive in Jumbe village, Chief Jumbe, Mabwe Chipata, that his brothers and sisters are all in Jumbe village, Chief Jumbe Mabwe and their names are Leonard Simon Banda, Arthur John Banda, Keliza Banda and John Banda.

However, when he gave viva voce testimony the appellant told the court:

“We are four (4) in the family. I cannot recall the names of those who have died, I am sorry we are not four but eight. We were very young. I was brought up in Kabwe.”

On the evidence the learned judge observed in his judgement:

“This is far from being in the ordinary. This cannot be attributed to anything except desire not to be truthful although it is not usually considered necessary to record and remark on demeanour, these answers speak for themselves. The petitioner was highly uncomfortable merely to state how many sisters and brothers he had. Naturally he was pressed on this simple point - so he said the brothers who were alive were; Arthur Banda, John Banda and Alfred Banda. I comment on these aspects because the issue at hand is credibility. The petitioner was displaying lack of credibility when he appeared to experience difficulties in responding on such a simple question. As the record shows Maria Banda is not a sister of Keliza Banda. One wonders too why the petitioner makes no mention of Labani Malawo Banda. ----In his affidavit and viva voce evidence the petitioner has maintained that his mother is Malia Balani Jumbe Chulu. Indeed such a woman exists and is at Jumbe village, too old to come to court to assist. Her first child was born in 1914. The evidence of PW1 called by the petitioner, is that this is not the mother of the petitioner but a sister of the petitioner’s mother. This too is a serious anomaly. It was PW1’s evidence that the petitioner grew up believing that Maria Balani Jumbe Chulu was his natural mother when in fact a woman called Nthenje Chulu who died about 1945 or 1946 when the petitioner was too young. On this very point we had the evidence of DW3 aged 69. This witness testified in English very calmly. He is the nephew of Maria Balani Jumbe Chulu. He retired from the Civil Service in 1973. He said Maria Balani Jumbe Chulu was married to Sumani Joseph Banda. The couple had the following children:

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Leonard Joseph Suman Banda; Dorica Suman Banda, Peter Aurther Joseph Banda, Maxwell Joseph Banda; Keliza Sumani Banda and Alfred Banda. This witness was born and has lived in Chief Jumbe since 1923. It was his evidence that he knew all the relatives of Maria Balani Jumbe Chulu. She had no relative by the name of Nthenje Chulu-----”

After meticulously analysing and considering all the evidence on record the court made a finding on facts that the appellant had lied on his father, mother, brothers and sisters. He has also lied that he was born at Mkanga village, Chief Mkanga in Mporokoso District.

There can be no doubt that from the evidence on record the appellant exhibited himself to be a big liar. On the facts it is abundantly clear that he lied about his family tree. He lied about his father, mother, brothers and sisters. He lied to the court that he was born at Mkanga village, Chief Mkanga of Mporokiso District of Zambian parents. DW2, known as Chief Mporokoso, denied that there was chief Mkanga in that area. He also denied there was Simeon Banda. DW3, 69 years old, said he is the nephew of Maria balani Jumbe Chulu married to Sumani Joseph Banda.

DW3 went further to name the children of Maria Balani Jumbe Chulu as Leonard Joseph Sumani Banda, Dorica Sumani Banda, Peter Arthur Joseph Banda, Maxwell Joseph Banda, Keliza Sumani Banda and Alfred Banda. DW3 said he was born and has lived in Chief Jumbe since 1923, and that he knew all the relatives of Maria Balani Jumbe Chulu who had no relative by the name of Nthenje Chulu and that DW3 did not know Nthenje Chulu. The learned judge accepted the evidence of DW2 and DW3 and based his findings of fact on their evidence in coming to the conclusion that the appellant and his parents were not Zambians. There were findings for fact which this court has not found reasons to have them faulted they were findings based on sound logic. We are therefore satisfied that grounds one to four are collectively and individually without merit.

We do not intend to labour much on ground 5 - but suffice it to say in passing that our view is that the word “Minister” is defined to include the member of Cabinet or such other person for the time being vested with such functions (vide section 3 of the Interpretation and General Provisions Act Cap.2.). Hence the deportation warrant signed by the Deputy Minister was valid for all intents and purposes.

We turn now to the sixth ground namely that being a British protected person as on 23rd October 1964, the appellant became a citizen of Zambia on 24th October, 1964. Prof. Mvunga leading the onslaught vividly argued that 1964 Independence Constitution of Zambia grants citizenship on any person who was born in the former protectorate of Northern Rhodesia or one of whose parents was born in the former protectorate of Northern Rhodesia (vide section 3, appendix 3, vol. X Lwas of Northern Rhodesia). Prof. Mvunga argued that there was evidence on record that either the appellant was born in the protectorate of Northern Rhodesia or one of his parents was born in the protectorate of Northern Rhodesia. In either instance the appellant automatically became a citizen of Zambia at independence of the protectorate of Northern Rhodesia on 24th October 1964.

We have seriously considered this argument and in the ordinary course of things

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we would easily accept the arguments but also the events have not been shown to be in the ordinary. The appellant has neither proved that he was born in Northern Rhodesia nor that one of his parents was born in Northern Rhodesia and therefore the provisions of section 3 appendix 3 of vol. X have no application in relation to him.

The seventh ground that since the state has not adduced evidence as to the appellant's country of origin appellant can in the alternative be deemed to be stateless and therefore not deportable because it is impossible to execute the warrant of deportation as the appellant cannot be admitted to any other country.

As to whether or not a stateless person cannot be admitted entry into another country we are not in a position to say. However, when it was specifically put to the appellant that his father, Bonomali Awali, and his mother Abili Umali came from Nkono village Chief Malenga Chansi, Nkota kota in Malawi the appellant denied. The appellant also denied that he came from Malawi.

All the investigations that were carried out indicated that he appellant and his parents came from Nkono village, Nkota kota in Malawi. This evidence came from DW1 and other witnesses. There was no other country than Malawi that was put to the appellant. The appellant would, therefore, not be a stateless person.

The learned defence counsel then proceeded to argue the eight ground which was that even if the petitioner and his parents were not citizens of Zambia he would be entitled to the status of an established resident. He said the petitioner has been in Zambia as far back as 1963 or thereabouts. On this account he would be entitled to be an established resident.

The state submitted on this point that according to section 2 of the Immigration and Deportation Act, Cap 122 of the Laws of Zambia an established resident is the person who has been ordinarily and lawfully resident in Zambia or the former protectorate or Northern Rhodesia for a specified period or both. The state has argued that the appellant does not qualify because he has not lawfully and ordinarily resided in Zambia.

We have considered this argument on an established resident and we agree with the contention by the state that the appellant must satisfy the Immigration Authorities that he has been ordinarily and lawfully resident in Zambia or former protectorate of Northern Rhodesia or both for him to qualify as an established resident. From the facts on record the appellant has not proved that he has been ordinarily and lawfully resident in Zambia. The appeal cannot succeed on this ground also. Even if he was, he was liable to deportation on the ground that he was deported i.e being inimical to the interest of Zambia.

For reasons foregoing we hold that the learned trial judge was correct on the evidence before him, to declare and hold that the petitioner is not a Zambian; the findings made by the high court were factual and we are unable to interfere with them because the trial judge did not fall into error on any point. The appellant deliberately lied about his father, mother, brothers, sisters and place of birth. He has failed to prove that he was born in Zambia while the investigations carried out by the state against him showed that his parents came from Nkono village, Nkota kota in Malawi. Because of this there was no way it can be claimed that the appellant would be a stateless person if it were held that he was not a Zambian.

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We would dismiss this appeal with costs.
Appeal dismissed.
