

Case EA

In the Matter Between

.....

Appellant

and

The Constituency Registrar for

..... Constituency

Respondent

WRITTEN STATEMENT OF THE FACTS AND QUESTIONS FOR DETERMINATION

Application

The Appellant hereby requests that this matter be referred to the High Court as a stated case in terms of section 28(1)(b) of the Electoral Act [Chapter 2:01]. The following facts and questions for determination are filed by the Appellant to assist the Magistrate to prepare the stated case for transmission to the High Court.

Statement of Facts

1. The Appellant received a Notice of Objection (dated)
on the
2. A notice of Appeal against the objection was filed on ,
to comply with the stipulated time limit.
3. A notice of Hearing was served on Appellant on The date of hearing
was the
4. Appellant was born outside Zimbabwe and emigrated to Zimbabwe in
and has resided in Zimbabwe since then. She/he applied for permanent residence and was granted this
status on On the Appellant was granted
citizenship of Zimbabwe. Appellant renounced his/her citizenship in terms of the Citizenship
Amendment Act, No 12 of 2001 on the at which time his/her passport was
automatically stamped to confirm that he/she was a permanent resident.

Questions for Determination

1. Since Schedule 3 Section 3(3) of the Constitution of Zimbabwe refers to an election held “for that constituency” Appellant is not disqualified from voting since the forthcoming election is a presidential and not parliamentary election, and hence is not held for any particular constituency. The disqualification referred to in section 3(3) of the Constitution cannot be held to refer to a Presidential election which is held on the common roll and not on the constituency rolls.
2. In terms of Section 25(1) of the Electoral Act (2:01), no objection shall be taken or a notice sent during the period between the issue of a proclamation and the close of polling at the election. A proclamation was gazetted on 10 January 2002 in terms of the Electoral (Presidential Election) Notice 2002, SI 3A of 2002. The voters roll for the Presidential Election has already been closed in terms of section 4 of the proclamation. Although the proclamation was gazetted on 10 January 2002, the notice of Objection was issued on the and therefore the notice of Objection is null and void. The notice of Objection was issued and served at a time when the roll could no longer be altered because it had been closed.
3. The Appellant is entitled to remain on the voters roll by virtue of the fact that she/he has been a permanent resident since 31 December 1985, as required by section 3(1)(b) of the Third Schedule of the Constitution of Zimbabwe and has a constitutional right to vote in the presidential election. Appellant, before he/she became a citizen of Zimbabwe, and before 31 December 1985, was officially

granted the status of Permanent Resident in Zimbabwe. A certificate was issued and this has never been taken away from Appellant. Appellant has therefore always been a permanent resident, even when he/she was also a citizen. the Appellant therefore very clearly falls under the category of persons who have been permanently resident in Zimbabwe in terms of a written law since 31 December 1985 and is accordingly entitled to vote.

4. Since the Appellant is not entitled to vote on the basis of citizenship, she/he must be given the opportunity to apply to register on the basis of residence in the country since 31 December 1985.

5. The Appellant also has the requisite residence qualifications to be registered as a voter in the constituency in terms of section 20(1) of the Electoral Act (2:01).

6. The Constituency Registrar who signed the notice of Objection that Appellant received, or who delegated signature of this document, was not properly appointed as the Constituency Registrar for the constituency in which Appellant is registered and Appellant puts the authority in issue and requires proof of authority for the objection.

7. The Constituency Registrar who purported to sign the notice of Objection is purportedly acting as the Constituency Registrar of both Harare Central and Harare East Constituencies, in breach of the Electoral Act.

8. The Objector, Respondent in these papers, has not put any evidence before this Honourable Court on which a finding can be made by this Honourable Court that I am not entitled to be registered as a voter; no affidavit by the respondent has been filed to establish the facts upon which he relies and no witnesses from the Registrar General's office have been called. The Objector has simply filed "a brief statement of the facts" which is not signed and is not sworn and therefore cannot be accepted as evidence. Appellant submits that there is no evidence before this Honourable Court on which it can be found that Appellant is not entitled to vote and on that ground alone the objection should be struck down.

9. The Notice of Objection is fatally invalid as it simply states that Appellant has ceased to be a citizen of Zimbabwe as if this were the only category of persons that can vote in a Presidential election. In terms of s3(1) of the third schedule to the Constitution of Zimbabwe a permanent resident may vote. As the Objector has not alleged that Appellant has not been a Permanent Resident in terms of a written law since 31 December 1985, the grounds of Objection do not show a *prima facie* case that Appellant should be removed from the voters' roll and is therefore invalid.

The Appellant will file Heads of Argument on these matters to be put before the High Court when the stated case has been put before a judge of the High Court.

Dated at this day of..... 2002

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Appellant

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(address)