



CASE NO. A 322/2010

IN THE HIGH COURT OF NAMIBIA

In the matter between:

IRIS REGINA LE ROUX

APPLICANT

and

THE MINISTER OF HOME AFFAIRS & IMMIGRATION **1ST RESPONDENT**

THE ATTORNEY-GENERAL

2ND RESPONDENT

THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA **3RD RESPONDENT**

CORAM: SMUTS J

Heard on: 2011.06.06

Delivered on: 2011.06.06

EX-TEMPORE JUDGMENT

SMUTS J: [1] In this application the applicant has approached this Court for an order declaring that she is a Namibian citizen by birth as contemplated in Article 4(1(b) of The Namibian Constitution in paragraph 1 of the notice of motion. In paragraph 2 she seeks an order declaring that she is entitled to obtain citizenship of another sovereign country without the need to renounce her Namibian citizenship by birth and in paragraph 3 an order declaring that s 26 of the Namibian Citizenship Act, 14 of 1990 does not apply to persons who hold Namibian citizenship by birth. Section 26 precludes Namibian citizens from also being citizens of other countries. But it does so subject to the provisions of the Act or any other law.

[2] In the alternative to paragraph 3, the applicant seeks an order declaring s 26 of the Namibian Citizenship Act unconstitutional and of no force and effect. The applicant also seeks costs against the respondents.

[3] The Permanent Secretary of the Ministry of Home Affairs and Immigration filed an answering affidavit as did the Attorney-General. Many of the facts which are raised in the founding papers are not properly put in issue. What emerges and is clear to me concerns the treatment which the applicant was subjected to. She was required to leave the Republic of Namibia to legalise her stay or face deportation despite the fact that she is born in Namibia and had been provided with a Namibian birth certificate issued to her on 2 March 2010. This application was in my view necessitated because of the conduct of Ministry officials. The applicant was entitled to bring an application

and in particular to seek the relief set out in paragraphs 1 and 3 of the Notice of Motion.

[4] In view of what is stated by the Attorney-General, I agree that it would not be appropriate for this Court to make an order in terms of paragraph 2 of the notice of motion. I accordingly decline to do so.

[5] In view of the decision of Maritz, J (as he then was) in *Thloro v Minister of Home Affairs* 2008 (1) (NR) 97 (HC), it will be not necessary for me to grant the Constitutional relief sought. He held that there is an automatic acquisition of citizenship for those born in Namibia. They cannot be deprived of that, even if they have acquired citizenship of another country. The prohibition contained in s 26 is subject to the Act and other laws. The latter category includes the Constitution which entrenches the right to citizenship to those born in Namibia. I respectfully agree with the approach of Maritz, J in that judgment which I am also bound to follow (in the absence of finding that it was clearly wrong; on the contrary, it is in my view, correct). It would appear from the Attorney-General's affidavit that this approach has also been accepted by the Government. Ministry officials need to act in accordance with the legal advice of the Attorney-General.

[6] It accordingly follows that the Constitutional relief sought would not be required. This was also accepted by Mr Tjombe who has appeared on behalf of the applicant. It is however clear that the applicant is entitled to the relief sought in paragraph 1 and 3 of the notice of motion.

[7] As far as costs are concerned, I asked Ms Koita on behalf of the respondents to address me on the issue. It is clear from the facts that it was necessary for the applicant to apply for the relief, given the treatment she was subjected to, especially in view of what is stated in the urgent application attached to the replying affidavit.

[8] Ms Koita rightly conceded that costs are within my discretion. I have no hesitation in exercising that discretion in favour of the applicant. She was entitled to seek at least the relief set out in paragraphs 1 and 3 of the notice of motion. The treatment meted out to her demonstrated the need for her to do so. Given the fact that the application was opposed, this would entitle her to her costs as she was substantially successful. I decline to make any special order, despite the treatment to which she was subjected which warrants censure.

[9] I accordingly make the following order:

1. Declaring that the applicant is a Namibian citizen by birth as contemplated by in Article 4(1)(b) of the Namibian Constitution.
 2. Declaring that section 26 of the Namibian Citizenship Act, 14 of 1990 does not apply to persons who hold Namibian citizenship by birth.
 3. Directing the respondents to pay the costs of this application.
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ON BEHALF OF THE APPLICANT

MR N. TJOMBE

Instructed by:

NORMAN TJOMBE LAW FIRM

ON BEHALF OF THE RESPONDENTS

MS T KOITA

Instructed by:

GOVERNMENT ATTORNEY