

SEANYANA STATE ADVOCATE MUNDUNGANI ISDORE C. P. v CHIEF
IMMIGRATION OFFICER AND THE MINISTER OF HOME AFFAIRS AND THE
ATTORNEY-GENERAL (1991) S.J. (H.C.)

HIGH COURT
MR. JUSTICE B. K. BWEUPE IN OPEN COURT
ON 27TH DAY OF JUNE, 1991
1989/HP/1949

Flynote

Administrative remedies - Prohibition - Certiorari - Declaration.
Immigration - Citizenship - Zambia's position on citizenship - Citizenship by descent.

Headnote

In 1989 the applicant was approached by the immigration authorities regarding his nationality. He was then detained by the immigration authorities for 14 days. He was later taken to central police station for photos. Thereafter, he was told he was being deported to Zimbabwe and was driven to Chirundu Border. The applicant testified that at Chirundu, the Zimbabwean authorities refused to accept him. The applicant applied to the court seeking for an order of prohibition, certiorari and a declaration that the order of the Minister declaring the applicant a prohibited immigrant is invalid, null and void for all legal purposes.

Held

- (i) That the was a Zambian by descent;
- (ii) That the purported deprivation of his Citizenship was invalid, and void for all intents and purposes;
- (iii) That the applicant was not liable to deportation;
- (iv) That the Deportation Warrant issued by the Minister of Home Affairs was thereby quashed and of no validity at all both in law and in fact.

For the appellants: Mr. Mwakapikisha of Mbaluku Sikazwe & Co.
Mr. Mundia of Mundia Kakoma & Co.

For the respondent: Mr. Emmanuel

Judgment

BWEUPE, B K, J.: delivered the judgment of the court.

This is an application by way of Motion on behalf of Mundungani Isdore C.P. for the following relief:-

- (i) Prohibition and that is for an order to prohibit the Hon. Minister of Home Affairs or his agents, servants or employees from removing out of the country the applicant herein as a prohibited immigrant;
- (ii) Certiorari and that is for the order of the Minister declaring the applicant a prohibited immigrant pursuant to section 26 of the Immigration and Deportation Act Cap. 122 of the Laws of Zambia be removed into Court for the purposes of quashing it in that the applicant is a Zambian Citizen and as such he cannot be declared a prohibited immigrant;
- (iii) Declaration that the applicant being a Zambian Citizen the Court should declare him so and further that the court declare that the order of the Minister declaring the applicant a prohibited immigrant is invalid, null and void for all legal purposes.

PW1. deposed that in addition to what he said in his affidavit in support he became Member of UNIP in 1976 and a Member of UNIP youth in 1977. He was a Member of UNIP youth Executive in 1978.

In 1989 he was approached by the immigration authorities regarding his nationality. He was detained by the immigration authorities on 5/12/89 for 14 days and 22/12/89. He was taken to central police station for photos. On 23/12/89 he was told he was being deported to

Zimbabwe and was driven to Chirundu Border. He said at Chirundu the Zimbabwean authorities refused to accept him.

He has been in Zambia since 1972 to-date. His father was Cripsin Gumana Shabuwe and his father's father (Grandfather) was Maliki Mutinta Shabuwe. He said his father Crispin was born in Southern Rhodesia but his father's father Maliki was born in Northern Rhodesia but went to work in Southern Rhodesia. His father died in 1959 and his mother died in 1972. He came to Zambia in 1972 upon the demise of his mother. He said he was a Zambian by descent in that his grandfather, Meleki, was born in Northern Rhodesia of Northern Rhodesian parent of Muiyanga village chief Kabulwebulwe in Mumbwa District.

Under cross-examinations he said he believed he was a Zambian Citizen because his grandfather had a Northern Rhodesian citizenship and just emigrated to Southern Rhodesia; that he was born in Zimbabwe in 1955 but came to Zambia in 1972; that he applied for NRC. In 1973 in accordance with the provision of the first Zambia Constitution; that his Aunt, Miriam, indicated that he was born in Mumbwa; denied he acquired Green NRC by deceit admitted that his grandfather was born in Mumbwa at Muiyanga Village, Chief Kabulwebulwe; that his mother was a Zimbabwean.

PW 2, Jackson Kabubi, testified that he was a Village headman called Mundungani. He said he knew the applicant in this case because he, the applicant, was his cousin's son. He said the applicant's father Crispin was his cousin because his father, Meleki, was his uncle. Meleki was born at Muiyanga Village, Chief Kabulwebulwe in Mumbwa District.

He said his uncle, Meleki, was recruited by a White man as a Labourer and went to work at Chirundu Farms. He married a Zimbabwean woman with whom he had two children by the names of Miriam Shabuwe and Crispin Shabuwe. He said both Miriam and Crispin used to visit the and Crispin was the Father of the Applicant. He said on 4/11/89 he was approached by the immigration officers who obtained a written statement from him.

Under cross-examination he said he first came to know the applicant in 1980 when the applicant told him he was Crispin Shabuwe's son. He said he had known Miriam as one of Meleki's two children.

PW 3, Anne Mundungani said she was a Marketeer of H/No. 1181 Matero. The applicant was her nephew in that he was the nephew to her late husband who was Crispin's first cousin. She said Meleki Shabuwe was her father-in-law who was born in Muiyanga Village, Chief Kabulwebulwe, Mumbwa. There were five in Meleki's family. The first born was Kandiye Shabuwe;

- (2) Meleki Kafwamutuma Shabuwe;
- (3) Chali Shabuwe;
- (4) Wilson Mundungani Shabuwe
- (5) Pepa Shabuwe

Meleki emigrated to Chirundu in Southern Rhodesia where he married and had two children, Crispin and Miriam, as his first and second children respectively. She said Crispin used to come to see his uncle in Mumbwa and go back to Chirundu. She knows Crispin has passed away because her father-in-law went to Chirundu to attend Crispin's funeral.

She took the applicant to Miriam's house in Kabanana when he came to Zambia in 1972. She identified Miriam as the Sister to Crispin, the father of the applicant. She recognised the statement she gave to the Immigration Officer, she said the applicant was given the name of Mundungani" by Wilson Shabuwe Mundungani her husband who has now died. She said the applicant has all the relatives in Mumbwa and none at Chirundu.

PW 4, Miriam Meleki Shabuwe, of Kabanana and a farmer, said the applicant was her elder brother's son, Crispin Meleki Shabuwe. She said her father was Meleki Shabuwe. They were two in her family, herself and Crispin Shabuwe, Meleki, her father, came from Muiyanga Village, Chief Kabulwebulwe in Mumbwa District. She was born at Chirundu, so as Crispin. She said the applicant came to Zambia in 1972 and stayed with them at Kabanana. She said he traced her through Phillip Mundunga, the husband of PW 3, in Matero. She then took him to Muiyanga Village, where all the relatives were living and later took him to the Boma to obtain National Registration Card. She swore all affidavit to show that his father Crispin was the son of Meleki Shabuwe.

Later she was interviewed by the Immigration Officer who obtained a statement from her. She was double positive the applicant was the son of her elder brother Crispin Meleki Shabuwe. Under cross-examination she repeated the applicant was born in Zimbabwe; that Crispin was a truck driver operating in both Zimbabwe and Zambia; that Crispin had a house in Matero; that he had a wife in Matero whom he married after divorcing the applicant's mother; that the applicant's mother was a Zimbabwean.

The resourcement called one Witness, DW 1, Sylvester Liywalli, who said he had nothing to add to what he deposed in his affidavit filed on 2/2/90. He said during the course of his investigation he filed on an affidavit of which Paragraph 6 - 13 reads:-

6. That it is not in dispute that the applicant was born at Green Summerset Farm, Daivedale Sinoya Zimbabwe
7. That through my investigation I found out that the applicant's father on Crispin Gumana Shabuwe was born in Zimbabwe and did not acquire Zambian Nationality at all
8. That my investigation revealed that the applicant came to Zambia in 1972 aged about 17 years and that since his arrival he has not applied to the Citizenship Board or any relevant authority for acquisition of the Zambian Citizenship. The acquisition of the Zambian Green NRC on 17/7/73 should definitely have been through illegal means
9. That the applicant has failed to show that he is a Zambian Citizen or that his father was Zambian or had any claim to Zambian Citizenship and all he has stated is that he came to Zambia in 1972 which coming to Zambia per se does not entitle him to Zambian Citizenship
10. That in fact the applicant has been staying in Zambia through deceit having misled the relevant authorities in believing that he was born in Mumbwa as shown in his affidavit herein
11. That I carried out investigations in Mumbwa to verify the applicant's claim as to his place of birth. I interviewed Mr. Jackson Kabubi, and the applicant's aunt Mirriam Muyanga. The two made statements which are hereby produced and marked "SL 1" and "SL 2" respectively. I confirm that the applicant was not born in Mumbwa but in Zimbabwe
12. That the glaring disparities in the applicant's affidavit as to his place of birth is a manifestation that the applicant's claim to Zambian Citizenship is fake, counterfeit, and fraudulent
13. That since the applicant has failed to show that he is a Zambian I pray that the orders sought by the applicant to be made by the Court herein should not be made."

The witness repeated what he said in his affidavit above quoted in his viva voce evidence and stood ready for cross-examination.

After the case for both parties was closed and the parties ready for submission the applicant successfully applied for recall of DW 1 for further cross-examination and at the end called an additional witness for fresh evidence.

PW 5 Paul Ngoma, a Police Detective Inspector, testified that on 5th September 1990 he travelled to Zimbabwe in pursuance of his investigations in this issue. Upon his arrival he reported himself to the Zimbabwean authorities and in conjunction with Zambia Security Authorities visited the Zimbabwean Registration Office where they requested to examine the records as to the birth record of the applicant and his parents. There were his findings:-

"Isodre Mundungani is said to have been born on 21/11/55 in the District of Chinhoyi at Green Summerset Farm Rhodesia and Nyasaland now Zimbabwe. There is no trace of his birth registration record. He holds no Zimbabwean passport or any form of travel document.

In terms of Zimbabwean Laws of Citizenship Act of Citizenship of Rhodesia and Nyasaland British Nationality Act of 1967 of paragraphs (a) (b) and (c) S.6 Isidore Pfumbe Clement Mundungani was a citizen of Federal States by birth. At the disintegration of the Federation in 1963, since Rhodesia at that time accepted dual citizenship. On 18th April, 1980 he remained a citizen of Zimbabwe and a Zambian citizen. He retained his Zimbabwean citizenship status in terms of S.4 of the Zimbabwean Constitution Order of 1979.

In 1984, however the Zimbabwean Government introduced and enforced the Citizenship of Zimbabwean Act No. 23 of 1984 which prohibits dual nationality. Isidore Mundungani who had

been a resident in Zambia for a period of not less than 10 years by the time the citizenship of Zimbabwean Act 23 of 1984 was introduced automatically lost his Zimbabwean Citizenship. Accordingly the said one Isdore Pfumbe Clement Mundungani is deemed not to be a citizen and /or resident of the Republican of Zimbabwe. He can not return to Zimbabwe as a deportee, voluntarily or otherwise. In conclusion I think that the said Isdore Pfumbe Clementine "Shabwe" Mundungani is a Zambian by descent."

At the close of the case both parties presented written submissions which I shall refer to in the course of my Judgment.

The applicant, Mr, Isdore Mundungani, is seeking for an order of prohibition, certiorari and a declaration that the order of the Minister declaring the applicant a prohibited immigrant is invalid, null and void for all legal purposes.

The affidavit of the applicant, Mundungani Isdore C.P. states that he was born in Zimbabwe in 1955 at Green Summerset Farm Daivedales Sinoya; that he came to Zambia in 1972 where he has remained todate; that in Zambia he stayed with his aunt Mirriam Muyunga who was married to Mr. Dube at Kabanana compound in Lusaka. His father's name being Crispin Gumana Shabwe; that in 1973 he obtained the Green NRC 299701/11/1; that his aunt Mirriam and other relatives at Muyanga Village, Mumbwa, stood for him as guardians; that he went to Evelyn Home College at Lusaka where he completed a Diploma in Accountancy from 1976 to 1979; that after graduating he went to work for the Party UNIP Youth League as Secretary for Students Affairs and later as Secretary for Administration where he has been working todate.

In his affidavit in support of the application Mr. Liywalli, DW 1, had exhibited two statements one made by PW 2, Jackson Kalubi, and the other by PW 4, Mirriam Muyunga "SL 1" and "SL 2" respectively. Giving family History PW 2 said his grandmother Lutayi had a sister who had five children namely:

- (1) Kadiye Mundungani;
- (2) Chali Mundungani
- (3) Meleki Mundungani
- (4) Wilson Mundungani
- (5) Pepa Mundungani

He said Meleki Mundungani emigrated to Zimbabwe as did Chali Mundungani. He married Zimbabwean woman and had two children Crispin and Mirriam. Crispin married and had two children Isdore Shabwe Mundungani (applicant) and Shaluwe Mundungani. He said around 1960 Mirriam and her husband Dube came to Zambia and later followed by Isdore.

Jackson Kabubi was not called by the defence but was called by the applicant to strengthen, by viva voce evidence, what contains in Exh. SL 1.

Mirriam Muyunga also gave a viva voce evidence to confirm the statement she gave and produce by DW 1 which was admitted as Exh. SL 2. On February 15, 1990 the applicant filed a further affidavit. The bone of contention herein is; is Isdore C.P. Mundungani a Zambian or not? The answer is not far searching.

In the said affidavits and further Affidavit of the Applicant and the statements of his witnesses and their viva voce testimony the evidence was to the effect that the applicant's father who died in 1959 was born at Chirundu. Mirriam, the applicant's aunt stood firm on oath that her elder brother Crispin (the applicant's father) was born on the Zambian side of Chirundu. This is disputed by the Respondents who said that the applicant himself told them that his father was born in Zimbabwe, (then Southern Rhodesia). The applicant was born in 1955 and his father died in 1959. He was four years at the demise of his father. He cannot be expected to be an authority regarding his father's place of birth. Jackson Kalubi, PW 2 and Mirriam Muyunga PW 4 could be treated as persons with some information which the court can safely rely on. PW 2 said Crispin was the son of Meleki so was Mirriam. He said both Mirriam and Crispin were born at Chirundu. I accept her evidence as authoritative details regarding the birth details of Crispin, her only brother.

Further PW 2, Headman Mundugani has given a detailed Family Tree. He said his grandmother Lutayi had a sister who had five children among whom were Meleki Shabwe Mundungani and Chali Shabwe Mundungani. He said Meleki had two children Crispin and Mirriam. Crispin had a child Isdore the applicant, in this case. As if this was not enough there was the evidence of

PW 3, Anne Mundungani, a 55 year old widow, and a marketeer who identified the applicant as her nephew by marriage to her late husband who passed away in 1970. She said Meleki Shabuwe was her father-in-law who was born at Muyanga Village Chief Kabulwebulwe in Mumbwa District. She also gave the family tree of Meleki. She said the first born was Kandiye (2) Meleki (3) Chali (4) Wilson and (5) Pepa . Meleki emigrated to Southern Rhodesia where he married in Chirundu and had two children Crispin and Mirriam. She said Crispin was the father of the applicant, Isdore C.P. Mundungani. Crispin used to visit his uncle in Mumbwa and returned to Chirundu where he was working. Crispin has died. She said when the applicant came to Zambia in 1972 he stayed at her house in Matero. Later she took him to his Aunt Mirriam in Kabanana. In November, 1989 she was approached by the Immigration Officers who recorded a statement from her. In that statement she gave the family Tree of Meleki. The applicant was named "Mundungani" by his uncle Wilson Shabuwe Mundungani her late husband, who was Meleki's brother.

Without much ado the evidence of PW 1, PW 2, PW 3, PW 4 and PW 5 has established the following facts to the satisfaction of this court upon the balance of all probabilities (a) that the sister of Lutayi who was the grandmother of PW 2 had five children (i) Kandiye Shabuwe Mundungani; (ii) Meleki Shabuwe Mundungani; (iii) Chali Shabuwe Mundungani; (iv) Wilson Shabuwe Mundungani; and (v) Pepa Shabuwe Mundungani.

- (b) That Meleki Mundungani emigrated to Chirundu where he married a Southern Rhodesia woman with whom he had two children Crispin Shabuwe and Mirriam Shabuwe; (c) That Crispin Shabuwe married a Southern Rhodesian woman and had one of the children Isdore, the applicant in this case;
- (d) That the applicant was born in Southern Rhodesia in 1955;
- (e) That the applicant came to Zambia in 1972 and in 1973 obtained the Green NRC at Mumbwa with the assistance of his aunt Miriam; (f) That after obtaining a Diploma at Evelyn Hone College in Accountancy he worked at UNIP Youth League Headquarters at Lusaka first as a Secretary for Student Affairs and later as a Secretary for Administration where he has been working to date; these facts demonstrate in most unquestionable character that Isdore C.P. Mundugani is a descendant of Lutayi's sister who was the mother of Meleki who was the father of Crispin who was the brother of Mirriam and the father of Isdore, the applicant. The Exhibits produced by DW 1 as "SL 1" and "SL 2" clearly goes to confirm the evidence of applicant, Isdore. I can not attribute any reason why Mirriam should stand up so unmoved both in her extra-judicial statement and viva voce evidence that Crispin, the father of the applicant, was here biological brother in deed and in entity. I can not postulate any reason why PW 2, PW 3 and PW 4 would stand so firmly and convincingly both in their respective extra-judicial statements and viva-voce evidence to Chronologically state the family tree of Lutayi's sister, the grand aunt of PW 2. They have done so undoubtedly with one goal so achieve namely to assist the court ascertain the truth and nothing but the truth. These facts have proved to my entire satisfaction that the applicant is a Zambian by descent and no more and no less.

The above is the position as regards the facts. What is the applicant's position in law? I am indebted to the two Defence Advocates, Mr. Kakoma and Mr. Mwakapikisha who have done such a wonderful homework regarding the present law.

The applicant is challenging a Deportation Warrant issued on December 18, 1989 by the Minister of Home Affairs purportedly made pursuant to Section 26 (2) of the Immigration and Deportation Act Cap. 122 of the Laws of Zambia. The applicant holds a green NRC. No. 299701/11/1 issued in July, 1973. Section 3 (1)(d) of Act Cap. 122 of the Laws of Zambia enacts that a Zambian shall not be liable to the exercise of the Minister's powers under Part V. of that Act. The Minister's Deportation Warrant issued on December 18, 1989 is under S. 26(2) of the Act which Section falls under Part V. The crucial question that arises is whether the applicant is a Zambian. To answer the question I find it important to examine the status of an individual on law before 1964.

In 1911 Northern Rhodesia became a territory by virtue of the Order-in-Council and it was administered by British South Africa Company. In 1923 by an Order-in-Council the territory came under direct British Rule and acquired the status of a Protectorate. The status of Africans was not clear. In 1934 the Imperial Government passed the Naturalisation and British protected Persons Order-in-Council (Appendix 6 of the 1948 edition of the laws). Section 1 thereof reads:-

"In this order, unless the context otherwise requires the expression "the territory" means any territory mentioned in the schedule to this order."

The schedule contains Northern Rhodesia.

Section 2 reads:-

The following person shall be regarded as belonging to the territory:

- (a) Any person born (whether before or after the entry into force of this order) within the territory who is not, at the time of his birth, a British subject and who does not at the time of his birth possess under the law of some other state the nationality of that state.
- (b) Any person born (whether before or after the entry into force of this order) out of the territory who is not at the time of his birth a British subject and does not possess under the law of some other state nationality of such state and whose father was, at the time of that person's birth, a person under this order is regarded as belonging to the territory and was himself born within the territory; provided that any person born after the death of his father (whether before or after the entry into force of this order) shall be regarded as belonging to the territory if he would if born before his father's death, have been so regarded.

As hereinbefore stated Meleki Kaswamutima Shabuwe was born at Muyanga Village, Chief Kabulwebulwe in Mumbwa. By virtue of Clause 2(a) above he was regarded as belonging to the Northern Rhodesia in 1934. Crispin Meleki Shabuwe was born in Southern Rhodesia. The evidence in Court is to the effect that Mirriam (PW 4) was born in 1929 and that Crispin was her elder brother. By deductive reason Crispin was born before 1929. By section 2(b) above the said Crispin Meleki Shabuwe belonged to Northern Rhodesia because his father Meleki Shabuwe belonged to the territory.

In 1949 the Imperial Government passed the British Protectorate, Protected States and Protected Person Orders in Council, 1949. Section 5 (i) thereof enacted that the territories named in the first schedule shall be protectorates from the purposes of the Act. Northern Rhodesia is amongst the territories in the first schedule.

Section 9(i) of the same Act enacts:

"Subject to the provisions of S. 13 of this Order, a person shall be a British protected person by virtue of his connexion with a protectorate or a trust territory:

- (c) In the case of a person born elsewhere than in a protectorate or a trust territory before the date of this order if his father was born in a protectorate or a trust territory; or....."

By virtue of section 9(i) above Mr. Crispin Meleki Shabuwe became a British protected person in 1949.

In 1958 there was an amendment to the British Nationality Act of 1948 by the British Nationality Act 1958 Section 1(a) and (b) thereof changed the status of Northern Rhodesia to a territory that could have its separate citizenship by virtue of belonging to the Federation of Rhodesia and Nyasaland.

In 1963 the Federation of Rhodesia and Nyasaland (Dissolution) Order-in-Council was passed. Section 74 (1) thereof put back Northern Rhodesia amongst the territories that could have not a separate citizenship. The above was the position at Independence in 1964. Article 3(2) of the Constitution of Zambia 1964 enacts:

"Every person who, having been born outside the former protectorate of Northern Rhodesia, is on 23rd October, 1964 a British protected person shall, if his father becomes or would but for his death have become a citizen of Zambia in accordance with the provisions of sub-section (i) of this section, become a citizen of Zambia on 24th of October, 1964."

Mr. Crispin Meleki Shabuwe would have been a British protected person at the time of Independence in 1964 and would have qualified for Zambian citizenship by virtue of Article

3(2) of the Zambia Independence Order. By the same Article his son, the applicant, acquired Zambian Citizenship at Independence.

Alternatively, the applicant was born in 1955 two years after the Federation of Rhodesia and Nyasaland had been born. By Section 6 of the Citizenship of Rhodesia and Nyasaland Act, 1957 a person born on or after the date of commencement of the Act became a citizen of the Federation. The applicant was born in 1955, two years before the commencement of the act and became a citizen on its commencement. In other words the citizenship law which was guiding the three territories of the Federation (Southern Rhodesia, Northern Rhodesia and Nyasaland) from the inception of the federation in September, 1953 was the citizenship of Rhodesia and Nyasaland and British Nationality Act, 1957. The applicant who had been born of a Zambian (Northern Rhodesia) father, at the dissolution of the Federation in 1963, remained a Zambian citizen.

In this regard; the applicant was a Zambian and remained so up to the time he could exercise his right otherwise. It is on record that the appellant was issued with a Green National Registration Card No. 299701/11/1 on 17th July, 1973. The evidence that the applicant did not acquire any other citizenship is amply supported by the evidence of Detective Inspector Ngoma who was sent to Zimbabwe by the Zambian Government for the purposes of investigating the status of the applicant-Inspector Ngoma stated that he found the applicant never at any one time acquired a Zimbabwean citizenship. I accept Inspector Ngoma's evidence as totally supportive in every way the applicant's evidence.

Even a situation where the Minister has every reason to deprive a citizen of his citizenship such circumstances are clearly spelt out under section 10 (1)(a)(c) and (d) of Cap. 121 of the Laws of Zambia.

Sub-section 3 of section 10 above provides that:

"The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen."

And sub-section 4 of the same S. 10 enacts:-

"Before making an order the Minister shall give the person against whom the order is proposed to be made of his right to have his case referred for inquiry under subsection (5) of the same section."

It has already been said that the applicant is the holder of NRC No. 299701/11/1. If the Respondents felt that it was improperly obtained they should have availed themselves of the procedure in section 10 hereinbefore-said. There is no evidence on record that any letter was ever written to the applicant informing him of any proposed course of action against him nor of his right to ask for a tribunal. In R vs. HOME SECRETARY (1916 - 179) A. E. R. 523 the Court had this to say:

"A Secretary of state is not required to justify in a Court of law his reasons for making a Deportation Order in the case of an alien. In event of it being disputed that the subject of a deportation order is an alien the matter must be determined by the Court and unless it be proved that the person is an alien the order must be quashed as made without jurisdiction."

Paragraph 1368 of Halsbury's Laws of England, Vol. 30, 3rd Edn., puts the matter thus:-

"All persons exercising judicial or quasi-judicial functions must have due regard to the dictates of natural justice. These require that the parties to the proceedings shall be duly notified when and where they may be heard and shall then be given full opportunity of stating their views, the matters in dispute being decided honestly, impartially and without bias by a tribunal, no member of which has an interest, either pecuniary or otherwise in the matter."

In the instant case the applicant was never availed to the provisions of the Act in that the Respondents did not follow the provisions in section 10 (4) of Cap. 121 before making an order to inform the person against whom the order is proposed to be made of his right to have his case referred for inquiry under subsection (5) of section 10. By the use of the word "shall" the

legislature has imposed a duty upon the Minister to do so. As I have already said there was no letter ever written to the applicant informing him of any proposed course of action against him nor of his right to ask for a tribunal. The applicant, therefore, was not afforded the opportunity of being present and of being heard by a tribunal before the Minister condemned him in being deported. By any standard, therefore, the order of deportation by the Minister is a clear breach of the rules of natural justice.

Having established that there was breach of natural justice, does this entitle the applicant to an order of certiorari? Again paragraph 122 of Halsbury's laws of England, Vol. 11, 3rd Edition, has this to say:

"A power analogous to that of restraining by means of orders of prohibition and certiorari any excess of jurisdiction by a person or body exercising judicial or quasi-judicial functions is the to restrain or to quash the decisions of, those persons or bodies if they fail to observe what have been called the rules of natural justice.

An Order of prohibition may be granted to restrain and an order to certiorari may be granted to bring up and quash the decision of, a person or body exercising judicial or quasi-judicial functions if he or it fails in its duty to act in good faith and to list fairly to both sides and to give fair opportunity to the parties in the controversy adequately to present their case or correct or contradict any relevant statement prejudicial to their view."

It has been said that the court does not make an order of mandamus or certiorari where there is an alternative remedy such as an appeal from the decision of a person exercising judicial functions. In this case, however, no such alternate remedy was available to the applicant who was not given an opportunity to be heard. In an event, it has been held that where there has been a denial of natural justice, the applicant would be entitled to an order of certiorari even though another remedy may be available to him: *R. v Wandsworth J.J. Ex-Parte Read* (1942) ALL E.R. 56

The applicant, having satisfied this Court that the Deportation Order made by the Minister, was a breach of the rules of natural justice, is entitled to an order of certiorari. In the result, an order of certiorari should go to quash the decision of the Minister.

I declare, therefore, that the purported deprivation of the applicant of his Citizenship was a nullity. All in all, it amounts to this. The applicant is a Zambian who must not be liable to threats of Deportation by virtue of Section 3 (1) (d) of the immigration & Deportation Act Cap 122.

For the forgoing reasons I repeat for the sake of emphasis that Isdore C.P Mundungani is a Zambian by descent of Muyama village, Chief kabulwebulwe, Mumbwa District in the Republic of Zambia; That the purported deprivation of his Citizenship was invalid, and void for all intents and purposes; That the applicant is not liable to deportation; That the Deportation warrant issued by the Minister of Home Affairs is hereby quashed and of no valid at all both in law and in fact

The respondents are hereby condemned in costs occasioned by and incidental to these proceedings to be taxed by the Deputy Registrar in event of disagreement.