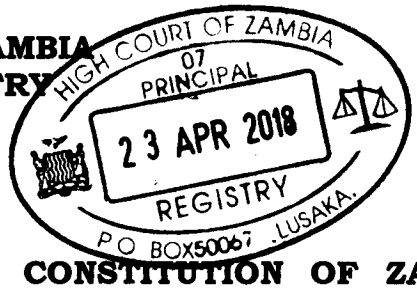
IN THE HIGH COURT OF ZAMBIA **2017/HP/1028**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Constitutional Jurisdiction)



IN THE MATTER OF: **THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO 2 OF 2016**

AND

IN THE MATTER OF: **THE CONSTITUTION OF ZAMBIA ACT NO 18 OF 1996**

AND

IN THE MATTER OF: **ARTICLES 11, 18, 22, 23 & 28 OF THE CONSTITUTION OF ZAMBIA (AMENDMENT) ACT NO 18 OF 1996**

AND

IN THE MATTER OF: **THE IMMIGRATION AND DEPORTATION ACT NO 18 OF 2010**

AND

IN THE MATTER OF: **SECTIONS 20 AND 34 (2) OF THE IMMIGRATION AND DEPORTATION ACT NO 18 OF 2010**

AND

IN THE MATTER OF: **AN APPLICATION FOR REINSTATEMENT OF THE RESIDENCE PERMIT OF MR ISSA YUSUF IBRAHIM ISMAIL NRC 978949/11/2**

AND

IN THE MATTER OF: **ISSA YUSUF IBRAHIM ISMAIL NRC 978949/11/2, PERMIT NO Y49/70**

AND

IN THE MATTER OF: **ANY OTHER ENABLING ACT AND REGULATIONS**

BETWEEN:

ISSA YUSUF IBRAHIM ISMAIL **PETITIONER**

AND

THE DIRECTOR GENERAL OF IMMIGRATION **1st RESPONDENT**
THE MINISTER OF HOME AFFAIRS **2nd RESPONDENT**

THE ATTORNEY GENERAL **3rd RESPONDENT**

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 23rd DAY OF APRIL, 2018

For the Petitioner : *Mr S. Sikota SC, Central Chambers*

For the Respondents : *Mrs S. Sakala, Acting Principal State Advocate, Attorney General's Chambers*

JUDGMENT

CASES REFERRED TO:

1. ***Ridge V Baldwin 1964 AC 40***
2. ***O'Reilly and others V Mackman and others 1983 2 AC 237.***
3. ***Ibrahim Mohamed Sherrif Noor V The Attorney General 1979 ZR 183***
4. ***Nyampala Safaris (Z) Limited and others V The Attorney General and others 2004 ZR 49***
5. ***Esan V The Attorney General Appeal NO 96/ 2014 [2016] ZMSC 225 (9 December 2016)***

LEGISLATION AND OTHER WORKS REFERRED TO:

1. ***The Constitution of Zambia Act No 18 of 1996***
2. ***The Immigration and Deportation Act, Chapter 23 of the Laws of Zambia***
3. ***Law Reform (Limitation of Actions) Act Chapter 72 of the Laws of Zambia***
4. ***The Immigration and Deportation Act No 18 of 2010***
5. ***The Immigration and Deportation (General) Regulations, 2011, S.I. No 129***
6. ***Halsbury's Laws of England Volume 30, 3rd Edition***
7. ***Halsbury's Laws of England Volume 27, 4th Edition***

The Petitioner commenced this action by way of petition on 27th June, 2017 claiming;

1. *A declaration that the decision of the 1st Respondent to place the Petitioner on a temporary permit is null and void;*

2. *An order that the Petitioner's residence permit be reinstated;*

3. *An order that the Petitioner's detention for two days without cause was unlawful;*
4. *Damages for false imprisonment;*
5. *Any other relief that the court may deem fit;*
6. *Costs.*

The petition shows that the Petitioner arrived in Northern Rhodesia as a minor with his parents on 2nd March, 1963, before Zambia gained its independence. That on 23rd October, 1985 after having stayed in the Republic of Zambia for twenty years, the Petitioner applied for and was issued a Resident Permit, and also applied for and was granted a national registration card number 978949/11/2.

The petition further states that the Petitioner was without lawful cause deported on 27th November, 1996 by the then Minister of Home Affairs, C.M. Sampa, on grounds that were politically motivated. That the Petitioner appealed the decision of the Minister of Home Affairs, and on 24th September, 2002, the then Minister of Home Affairs Lackson Mapushi reviewed the case, and found that the Petitioner had been discriminated against, and treated unfairly, due to politics and his race, and subsequently revoked the deportation order, and issued a certificate of exemption.

It is also stated that following the successful appeal, and the exemption certificate being granted, the Petitioner paid K250, 000.00 (unrebased) for the issuance of a duplicate resident permit as instructed by the 1st Respondent, but which to date has not been issued. The 1st Respondent has however discriminatorily and unreasonably placed the Petitioner on a temporary entry permit, as opposed to his confirmed reinstatement as a resident permit holder. That he has appealed the revocation and subsequent alteration of his resident permit without lawful cause, and in consequence of asking to be re-instated, the Petitioner was on 28th April, 2014 detained for two days without reasonable cause at Ridgeway Police Station.

Then on 27th December, 2016, the Immigration Secretary communicated that the appeal by the Petitioner had been rejected, but did not advance any reasons why the decision of the Minister of Home Affairs had been overturned. The Petitioner appealed against the decision to the Minister of Home Affairs on 28th March, 2017, but the Minister has not responded to the said appeal. That having been an established resident for over fifty years, and as a consequence of the rejection by the 1st Respondent, the Petitioner's rights as an individual under the Constitution, as amended by Act No 18 of 1996 have been infringed, thus subjecting him to unfair, discriminatory and unreasonable treatment.

The affidavit in support of the petition repeats the averments in the petition, and it is added that the 1st Respondent informed the Petitioner that the exemption certificate which was granted by the Minister of Home Affairs on 24th September, 2004 had been revoked, but was not told when that was done, as he had never been served documentation to that effect. That as a holder of a resident's permit, and having stayed in Zambia without breaking any law, the Petitioner is entitled to rights, privileges, duties and obligations of a citizen, except for those rights, privileges, duties and obligations which the law or the constitution explicitly ascribes to citizenship. That any variations/ revocation or cancellation of his resident permit ought to have been communicated to him, and reasons thereof given to him.

It is also stated that no such reasons were given to him, as he was not notified of the revocation of his exemption, in contravention of the stipulated guidelines within the law, and that the acts of the 1st and 2nd Respondent of revoking his resident permit without lawful cause, and reasons infringes on the Petitioner's fundamental rights under Part 3 of the Constitution of Zambia, that should be accorded to him by virtue of being a human, and as a resident permit holder. The Petitioner deposes that the decision to revoke and vary his resident permit to a temporary permit was not valid for the following reasons;

i. *That he was not guilty of contravening any written law in the Republic of Zambia.*

ii. *That his deportation was politically motivated which is not a ground for revoking a lawfully issued permit.*

iii. *That nonetheless his deportation was lawfully challenged and the Minister of Home Affairs at the time ordered that his deportation be revoked because it was politically motivated.*

iv. *That additionally, the Minister issued the Petitioner with a certificate of exemption and the Petitioner only surrendered his resident permit verily believing that it would be returned after his successful appeal.*

v. *That the Petitioner paid K250, 000.00 un-rebased for the issuance of a duplicate resident permit in accordance with the direction given by the 1st Respondent but has to date not been issued one.*

vi. *That the constitution under the bill of rights provides for protection of the law and from discrimination.*

vii. *That the Petitioner has done no wrong warranting a derogation by the Respondent from the fundamental rights provided for in the Constitution of Zambia, and is being discriminated against because he is a foreigner.*

The Petitioner also deposes that whilst it is true that the 1st and 2nd Respondents have authority to exercise variations to permits, this court has inherent powers to review and reverse the said actions, in order to protect the Petitioner's rights as an individual, guaranteed under the Zambian Constitution.

On 13th November, 2017, the Respondents filed an answer in which they state that the contents of paragraph 1 of the petition are within the Petitioner's particular knowledge, and that he would be put to strict proof thereof. The Respondents do however agree that the Petitioner was granted the status of an established resident on 23rd October, 1985, and make no comments as regard paragraph 3 of the petition, relating to the Petitioner having been issued

national registration card number 978949/11/2, stating that the same are within the Petitioner's peculiar knowledge.

As regards the assertions concerning the Petitioner's deportation from Zambia on 27th November, 1996, the Respondents state that the Petitioner's deportation from Zambia was due to the fact that his continued presence in Zambia was a danger to peace and good order, and that he was later on exempted from deportation. The Respondents admit that the Petitioner paid K250, 000.00 un-rebased for the issuance of a duplicate resident permit, but denies that the Petitioner having been given exemption by the Minister of Home Affairs, his residence permit was re-instated, stating that the said exemption did not re-instate the Petitioner's resident permit. The Respondents admit that the Petitioner appealed against the alteration of his residence status, but denies that the Petitioner was unlawfully detained at Ridgeway Police Post for two days on 28th April, 2014, after he asked that his resident permit be reinstated.

Whilst agreeing that the Immigration Secretary communicated the outcome of the Petitioner's appeal on 27th December, 2016, and that the Petitioner on 28th March, 2017 appealed to the Minister of Home Affairs against the Immigration Secretary's communication, and that no reason was given as to why the Minister's decision was overturned, and that the Minister has not responded to the Petitioner's last appeal, the Respondents state that there is no statutory requirement for the Minister to advance reasons for his refusal, and also that it was because the appeal was before him for the second time, based on the same facts.

The Respondents deny that the Petitioner's rights under the Constitution of Zambia as amended by Act No 18 of 1996 have been infringed thereby subjecting him to unfair, discriminatory and unreasonable treatment, and state that he is not entitled to the reliefs sought.

In the affidavit in support of the answer also filed on 13th November, 2017, it is averred that the Petitioner was born on 25th February, 1951 in Nairobi, Kenya, and he was issued with a certificate of status as an established resident on 23rd October, 1985. The affidavit further states that the Petitioner was deported from Zambia on 27th November, 1996 on the grounds that his presence in Zambia was a danger to peace and good order as shown on exhibit 'KL1'.

That the Petitioner was exempted from deportation in 2002, and upon his return to Zambia, and after alleging that he had lost his original permit, he applied for a duplicate resident permit on 22nd November, 2002, and paid the prescribed fee of ZMW250.00, as shown on exhibits 'KL2' and 'KL3' being copies of the receipt and exemption certificate respectively.

However the Petitioner's application for a duplicate certificate of status as an established resident was denied, and on 30th April, 2014, he was issued a notice to leave the country for lack of immigration status, as shown on exhibit 'KL4', a copy of the warrant of deportation. It is also deposed that on 2nd May, 2014, the Petitioner appealed to the Minister of Home Affairs against the decision of the Director General of Immigration to refuse to issue him with a duplicate permit, and the decision to issue him with a notice to leave the country.

That in consequence, the Minister of Home Affairs modified the decision of the Director General of Immigration by allowing the Petitioner to remain in the country on a temporary permit subject to renewal, and did not reinstate the Petitioner's established resident status, and that exhibit 'KL5' is a letter evidencing the same. The affidavit also states that contrary to established procedure, the Petitioner again appealed to the Minister for a second time, against the Minister's own decision, and the Minister rejected the second appeal without giving any reason.

On 28th March, 2017, the Petitioner through his advocates, wrote to the Minister, asking him to give reasons for his decision, but the Minister did not

do so, and the averment is that the Minister is not legally bound to give reasons for his decisions, and that such a requirement is only applicable to Immigration Officers.

The Petitioner filed a reply to the affidavit in support of the answer where he denies the reason advanced for his deportation in 1996, stating that it was politically motivated. He denies having ever been deported from Zambia in 2014, adding that he was never been served a notice of the same, and that his passport which is exhibited as 'TYII1' does not have any deportation stamp to prove the said deportation.

That to the contrary, the said passport has temporal permit extensions before and after the alleged deportation date, and not once was he ever informed of the said deportation when he appeared before the 1st Respondent for extension of his permit. The Petitioner also denies that a deportation notice was issued, and that the letter that he wrote to the Minister was to have his resident permit reinstated, which is the only issue in contention.

When the matter came up for trial on 29th January, 2018, Counsel for the Respondents had applied for an adjournment on the basis that they needed time to study the affidavit in reply, as they had not received it. The matter was adjourned to 2nd March, 2018, at which date only Counsel for the Petitioner State Counsel Sakwiba Sikota was before the court. As Counsel for the Respondents had been before court on the previous date, I allowed State Counsel to proceed.

State Counsel on behalf of the Petitioner stated that they relied on the petition, as well as the two affidavits that had been filed. He went on to state that paragraph 9 of the affidavit in reply states that the Petitioner has never been deported as alleged in the answer, and copies of the Petitioner's passport for the relevant period had been exhibited, showing that there had been no deportation. Further, that during the period of the said alleged deportation, the Petitioner was issued several temporal permits.

It was further State Counsel's submission that one who had been deported could not have been given permit extensions, and if the said deportation had been there in 2014, there would have been a gazette notice to that effect. That the Respondent had not exhibited any gazette notice to support the alleged deportation in 2014. It was also stated that there had been only one earlier deportation that was effected in 1996, but the same was successfully challenged in 2002. That from that time up to now, the Respondents had not alleged any deportation.

State Counsel, still in his submissions stated that the deportation of 1996 could not be used to keep the Petitioner from exercising his rights under his residency permit, as the deportation was overturned and revoked. On that basis, it was prayed that the Petitioner be granted the reliefs sought.

The Petitioner also filed written submissions on 13th March, 2018, in which it is argued that the Petitioner arrived as a minor in Zambia with his parents in the country then known as Northern Rhodesia on 2nd March, 1963. That the Petitioner stayed in Zambia for twenty years immediately after Zambia obtained its' independence, and he applied to legalise his stay in the country upon reaching the required age, and was legally issued with a certificate of status as an established resident, Y/4970 on 23rd October, 1985. The said resident permit is at page 1 of the Petitioner's bundle of documents.

That after being issued a certificate as an established resident permit holder, the Petitioner applied, and was issued with national registration card number 978949/11/2 by the Zambian government. However on 27th November, 1996, the Petitioner was deported from Zambia, by the then Minister of Home Affairs, Chitalu Sampa on account that his presence in Zambia was a danger to peace, as seen at page 2 of the Petitioner's bundle of documents.

The Petitioner appealed against the said deportation, and on 24th September, 2002, the then Minister of Home Affairs reviewed the matter, and found that the Petitioner had been discriminated against and treated unfairly due to

politics and his race, and the deportation order was revoked, and the certificate of exemption which is at page 3 of the Plaintiff's bundle of documents was issued.

The submission by the Petitioner is that upon revocation of the deportation order and a certificate of exemption being issued, the Petitioner's original status of an established resident was restored in 2002, and that this position is supported by the document at page 5 of the Petitioner's bundle of documents, which is a letter from the Acting Chief Immigration Officer dated 18th October, 2002, stating that the Petitioner was to be placed on a report order until he was issued with his certificate of established resident.

That the Petitioner surrendered his old original resident permit to the Respondent at their request, without any reasons being advanced for the same, as seen on the letter at page 8 of the Plaintiff's bundle of documents dated 18th March, 2003. The submissions further state that in light of the exemption, the Petitioner later asked to be given back the established resident permit, and the Respondent asked him to pay ZMW250.00 so that he could be issued a duplicate of the same, and he did so, as shown on the receipt at page 7 of his bundle of documents.

That as the deportation of 1996 was revoked, it was null and void, and could not be considered, and the procedure outlined in the Immigration and Deportation Act of 2010 should have been followed before altering the Petitioner's status to a mere temporary permit holder. Reference is made to the case of ***IBRAHIM MOHAMED SHERRIF NOOR V THE ATTORNEY GENERAL 1979 ZR 183*** where it was held that;

(i) Courts have jurisdiction to go behind the face of a deportation order and if reasons given are not proved, queries as to its validity can be made.

(ii) The Minister is not bound to give reasons for the deportation under s. 22 (2) of the Act. However courts can intervene if a

prima facie misuse of power is established, and the Minister will then be required to give an answer.

(iii) The applicant lawfully gained the status of an established resident and the Minister's declaration under s. 22 (2) that his presence in Zambia was inimical to the public interest was ultra vires that Act.

That therefore in this case, the court has jurisdiction to go behind the decision of the 1st Respondent to alter the status of the Petitioner without cause, and in contravention of the enshrined fundamental rights under the Constitution of Zambia, which the Petitioner is entitled to by virtue of being an established resident, and residing in the jurisdiction.

Further, that the question is whether the alleged deportation order of 2014 was valid, and if not, whether the alteration of the Petitioner's status from an established resident to a temporary permit holder, without cause or reasons being furnished, violated the Petitioner's rights under the Constitution as enshrined in the bill of rights. That when the court lookes at the issues highlighted it will note that not only did the 1st Respondent act in bad faith, but that all the decisions that it made were irrational, such that no impartial body applying the same circumstances of this case, would have found it justifiable to alter an innocent party's status in contravention of the Bill of Rights protected under the Constitution, as was done against the Petitioner.

On the deportation order of 2014, the submission is that same must be ignored as it was not valid at law, as Section 39 (2) of the Immigration and Deportation Act No 18 of 2010 states that;

"(2) if an immigration officer has reasonable grounds to believe that any person's presence in Zambia or conduct is likely to be a danger to peace and good order in Zambia, that person shall be deported from Zambia under a warrant signed by the Minister."

That the Respondents rely on the assertion that the Petitioner was a danger to public peace and good order, but this cannot be relied upon as the Petitioner was an established resident who lawfully attained that status, and the 1st Respondent had not exhibited proof of the allegations levelled against the Petitioner. It is stated that the case of ***IBRAHIM MOHAMED SHERIFF NOOR V ATTORNEY GENERAL*** cited above, is instructive that declaring an established resident who lawfully attained that status to be a danger to peace and good order is invalid at law. Further that the deportation of 2014 cannot be relied upon, as Section 39(2) of the Immigration and Deportation Act No 18 of 2010 cannot be used arbitrarily against the Petitioner.

It is also submitted that while exhibit 'KL4' to the affidavit in support of the answer alleges that the Petitioner was deported on 30th April, 2014 on the basis of Section 39(2) of the Immigration Act, which is that the Petitioner was a danger to peace and good order, the affidavit in support of the answer sworn by Mr Lwiindi in paragraph 9 alleges that the said deportation was due to the Petitioner's lack of status brought about by the 1st Respondent's irrational refusal to issue a duplicate certificate of established resident on 30th April, 2014, which altered his status to a prohibited immigrant under Class D of the Immigration and Deportation Act.

Therefore, it is the Petitioner's submission that the 1st Respondent's reasons for the Petitioner having been deported were contradictory, and that the said warrant ought to have been issued under Section 35(1) and (3), and not 39(2) of the Immigration and Deportation Act of 2010, as the reason for the deportation ought to have been on account of the Petitioner becoming a prohibited immigrant under Class D of the 2nd Schedule of the Act, and the order was therefore tainted with procedural impropriety.

The Petitioner also submits that further, the deportation order cannot be entertained on account of the fact that the normal procedure was that the 1st Respondent would capture the Petitioner's passport and place a red and visible deportation stamp within the passport on the deportation order being made.

That the Petitioner had exhibited to the affidavit in reply, exhibit "IYII1', the passport in use for the period, which reveals that no such stamp was ever placed as required. To the contrary page 7 of the said exhibit 'IYII1' shows stamps for temporary permit extensions given to the Petitioner during the period of the alleged deportation, which is odd for a person who had allegedly been deported, as they are not be allowed in the country or given temporary permit extensions until the order is quashed, as by law they are a prohibited immigrant, who should have left the country in accordance with Section 36 of the Immigration and Deportation Act.

The Petitioner further submits that should the court be of the view that the deportation order was dully served on the Petitioner, which they say it was not, reference is made to the letter dated 25th July, 2014 at page 10 of the Plaintiff's bundle of documents, and which is also exhibit 'KL5' to the Respondent's affidavit in support of the answer, which effectively set aside the deportation order of 2014. That the said letter however unlawfully altered the status of the Petitioner which was tainted with illegality.

That he who alleges must prove, and the Respondents herein allege that the Petitioner was deported, but had failed to lead evidence to that effect, apart from exhibiting a notice of deportation that had never been served, and which had cited a wrong section as a basis of the deportation. It is also submitted that the date of the refusal to issue the Petitioner with a duplicate resident permit, and the date of the alleged deportation were the same, being 30th April, 2014, and it therefore followed that Section 34 of the Immigration and Deportation Act was not complied with regard to the alteration and cancellation of a permit, and the subsequent deportation which was premised on the Petitioner falling under Class D had no limb to lean on, and had no basis.

That in line with the case of ***IBRAHIM MOHAMED SHERIFF NOOR*** cited above, the deportation order of 2014 cannot be relied upon, as an established resident holder who gains his status lawfully, should not without valid reason be affected under part 5 of the Immigration and Deportation Act No 18 of 2010.

Further, that if indeed the Petitioner was deported, then the Respondent would not have allowed him to reside within the Republic. The Petitioner also submits that as can be seen from the affidavit in reply, the only issue that the Petitioner is aware of, is the unlawful alteration of his status as an established resident permit holder to a temporary permit holder. That the deportation order of 2014 had no legal effect, and could therefore not be the basis upon which to alter the Petitioner's resident permit, and withdraw the certificate of an established permit holder.

Still with regard to the alteration of the permit issued to the Petitioner as an established resident, the submission is that the deportation of 2014 having failed to meet the requisite requirements of the law, the question is whether the Respondents subsequent actions of altering the permit after the refusal to issue a duplicate resident permit was lawful or arbitrary? The Petitioner's submission is that the Petitioner was lawfully restored to his original status when his appeal against the deportation was successful.

Therefore, the initial refusal to issue a duplicate permit was unlawful, and that any alteration of his resident permit and revocation of his status as an established resident thereafter had to be done in line with Section 10(1) as read with Section 34(1) and (2) of the Immigration and Deportation Act No 18 of 2010, as read with Regulation 39 of the Immigration and Deportation (General) Regulations of 2011. Thus the decision to alter the Petitioner's resident permit was tainted with procedural impropriety, as the procedures laid down in the above provisions had not been followed, and the case of ***ESAN V THE ATTORNEY GENERAL APPEAL NO 96/ 2014 [2016] ZMSC 225 (9 December 2016)*** is relied on.

That the said case interpreted the steps that have to be taken under Sections 10 and 34 of the Immigration and Deportation Act before a permit can be revoked, cancelled or altered, and that a notice in writing under the hand of the Director General must be served in person disclosing the grounds upon which the permit is being revoked. The Petitioner's submission is that in this case no

such notice was served on the Petitioner, and as the Respondent had not led evidence to show this, the revocation was void.

The Petitioner further in the submissions states that the Respondents acts were irrational, as in the affidavit in support of the answer, they merely state that they were not bound to give reasons in matters of deportation. However the Petitioner's submission is that this matter is premised on the revocation of a resident permit, which subsequently left the Petitioner as a prohibited immigrant under Section 34 of the Immigration and Deportation Act. That in line with the case of ***ESAN V THE ATTORNEY GENERAL APPEAL NO 96/ 2014 [2016] ZMSC 225 (9 December 2016),*** the Respondents ought to have given the Petitioner notice and reasons in the prescribed form showing why he was a prohibited immigrant.

Thus, it is the Petitioner's submission that the revocation of his resident permit, and his subsequent deportation, was premised on improper motives and bad faith, as no investigations were conducted, and the conduct of the Respondents' was Wednesbury unreasonable.

Further, that the Petitioner has been in Zambia since 1963 and had contributed greatly to its economy, and had made it home for over 50 years, and for the Petitioner to be treated in the manner stated, especially in the wake of his medical condition and human rights, was unacceptable. That Section 20 (7) of the Immigration and Deportation Act provides that a holder of a residence permit shall have rights, privileges, duties and obligations of a citizen, except for those rights, privileges, duties, obligations which a law or the Constitution explicitly ascribes to citizenship.

That in this case, the Petitioner had been treated as if he has no rights. Reference is made to the case of ***NYAMPALA SAFARIS (Z) LIMITED AND OTHERS V THE ATTORNEY GENERAL AND OTHERS 2004 ZR 49 where it was stated that "when such exercise is questioned through judicial review, the role of the courts is to ensure that the individual is given fair***

treatment by the authority to which he is subjected. Persons within Zambia are entitled to the protection of the law and for the bill of rights to have any meaning, there must be sanctions for arbitrary behavior".

It is the Petitioner's submission that in light of that case, the Petitioner enjoys the protection of the Constitution of Zambia Act No 2 of 2016, and the bill of rights contained therein, especially article 11 that guarantees fundamental rights and freedoms, article 18 that guarantees protection of the law, article 22 that guarantees freedom of movement and article 23 which guarantees protection from discrimination on the ground of race etcetera.

That as the procedure in Section 10 as read with Section 34 (1) and (2) of the Immigration and Deportation Act No 18 of 2010 was not followed, there was breach of Article 18 of the Constitution, which accords the Petitioner protection of the law, and the revocation of his resident permit ought not to be entertained, and should be declared void ab initio. That the Petitioner is of Indian descent from Kenya, and the Respondents have adopted different standards on him on account of his race, and have not provided evidence to rebut that presumption. This discrimination and treatment was therefore a direct breach of Article 23 of the Constitution of Zambia.

The Petitioner also in his submissions deals with the claim for false imprisonment. It is stated that it is trite law, that a person commits the tort of false imprisonment when they restrain another person, confining them in a bounded area. That in this case, there is undisputed evidence that the Petitioner was unlawfully detained for two days without cause. That this is so in light of the fact that the initial alteration of the Petitioner's permit was void ab initio for its failure to meet the requirements of the law, and any subsequent acts including the imprisonment of the Petitioner had no basis and amounted to false imprisonment.

It is further submitted that Article 22 of the Constitution of Zambia guarantees freedom of movement, which was breached by the Petitioner being unlawfully

detained, and the Petitioner prays that he be awarded damages for false imprisonment. In conclusion, the Petitioner refers to Article 28 of the Constitution of Zambia Act No 2 of 2016 stating that it empowers the court to hear matters that touch on the breach and enforcement of fundamental rights enshrined in the bill of rights, and to grant any orders that are appropriate for purposes of enforcing and or securing the enforcement of the said provisions.

Further, that Paragraph 1368 of ***Halsbury's Laws of England Volume 30, 3rd Edition*** provides that all persons exercising judicial or quasi-judicial functions must have due regard to the dictates of natural justice which require that the parties to the proceedings are duly notified when and where they may be heard, and shall be given an opportunity of stating their view. That it was absurd that the Respondents would allow the Petitioner into the country if he was truly a danger to peace and good order, and they would not have issued him with the extensions. That this is a case where the Petitioner's fundamental rights were abrogated and asks that the Petitioner be granted the reliefs sought.

I have considered the matter. It is not in dispute that the Petitioner, an Indian national arrived in Zambia in 1963 as a minor, and lived in the country from that time, and he successfully applied for and was granted a resident's permit on 23rd October, 1985. It is also not in dispute that on 27th November, 1996, the Petitioner was deported from Zambia, and he successfully appealed the same, and on 17th April, 2002, the deportation was revoked, and the Petitioner was issued a certificate of exemption. Further, the Petitioner was placed on a temporary permit after the deportation order was revoked.

The issue for determination is whether the decision to place the Petitioner on temporal permits was null and void, and that he should have the resident permit restored. Further, whether he was unlawfully detained for two days, and is entitled to be paid damages for false imprisonment? This matter was commenced by way of petition, claiming breach of the Petitioner's rights as enshrined in part three of the Constitution of Zambia. A perusal of the matter

shows that the Petitioner is challenging the decision of the 1st Respondent to place him on temporary permits after he was issued an exemption certificate, following the revocation of the deportation order of 27th November, 1996.

The Petitioner in commencing the action by way of petition, relied on Article 28 of the Constitution of Zambia Act No 18 of 1996 which provides that;

> ***"28. (1) Subject to clause (5), if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall-***
>
> ***(a) hear and determine any such application;***
>
> ***(b) determine any question arising in the case of any person which is referred to it in pursuance of clause(2);***
>
> ***and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive.***

The 1st Respondent is the Director-General of Immigration, an office established under the Immigration and Deportation Act No 18 of 2010, and is an office that exercises public functions, as seen in Section 4 of the Act. It is trite that where a person seeks to establish that a decision of a person or a body of persons infringes rights which are entitled to protection under public law, they must as a general rule proceed by way of judicial review, and not by way of an ordinary action, whether for a declaration, an injunction or otherwise, as was stated in the case of ***O'REILLY AND OTHERS V MACKMAN AND OTHER 1983 2 AC 237***.

Halsbury's Laws of England Volume 27, 4th Edition at paragraph 567 states the nature of judicial review as ***"the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties."***

Further, Lord Reid in the case of ***RIDGE V BALDWIN 1964 AC 40*** in reference to judicial review stated that ***"wherever any person or body of persons has authority conferred by legislation to make decisions of the kind I have described, it is amenable to the remedy to quash its decision either for error of law in reaching it or failure to act fairly towards the person who will be adversely affected by the decision by failing to observe either one or other of the two fundamental rights accorded to him by the rules of natural justice or fairness, vis to have afforded to him reasonable opportunity of learning what is alleged against him and of putting forward his own case in answer to it, and to the absence of personal bias against him on the part of the person by whom the decision falls to be made."***

Lord Diplock in the ***O'REILLY AND OTHERS V MACKMAN AND OTHER 1983 2 AC 237*** case noted that since Order 53 of the Rules of the Supreme Court of England had in 1977 provided a procedure by which every type of remedy for the infringement of the rights of individuals that are entitled to protection in public law and can be obtained in one and the same proceeding by way of an application for judicial review, and whichever remedy is found to be the most appropriate in light of what has emerged upon the hearing of the application, can be granted to them, actions in their respect must as a general rule be commenced by way of judicial review .

He went on to further note that Order 53 of the Rules of the Supreme Court of England does not provide that procedure by application for judicial review shall be the exclusive procedure available by which a remedy of declaration or

injunction may be obtained for the infringement of rights that are entitled to protection under public law.

He stated as follows, ***"now that those disadvantages to applicants have been removed and all remedies for infringements of rights protected by pubic law can be obtained upon an application for judicial review, as can also remedies for infringement of rights under private law if such infringements should also be involved, it would in my view as a general rule be contrary to public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he is entitled to protection under public law, to proceed by way of an ordinary action and by this means to evade the provisions of Order 53 for the protection of such authorities."***

Lord Diplock had on stating the general rule, gone on to provide exceptions to it, stating them as, firstly where the invalidity of a decision arises as a collateral issue in a claim for infringement of a right of a Plaintiff arising under private law, and secondly where none of the parties objects to the adoption of the procedure by writ or originating summons. In this case, the first exception does not apply, as the invalidity of the decision of the 1st Respondent in this matter is the main issue in contention, and is not a collateral issue. The Respondents have however not objected to the commencement of these proceedings by way of petition as opposed to judicial review, and on that basis I will proceed to determine the matter.

As can be seen from the affidavits on record, the Petitioner who was granted the status of an established resident, and was issued with a resident's permit on 23rd October, 1985, after having lived in the country from 2nd March, 1963, was deported on 27th November, 1996. The deportation order is exhibited as exhibit 'KL1' to the affidavit in support of the answer deposed to by Killian Lwiindi, a Principal Immigration Officer, and is also at page 2 of the Petitioner's bundle of documents. The reasons for the deportation as can be seen on

exhibit 'KL1' were that in the opinion of the Minister, the Petitioner's presence was likely to be a danger to peace and good order in Zambia.

The said deportation was revoked, and on 17th April, 2002, the Petitioner was issued an exemption certificate, exempting him from Class C of Prohibited Immigrants, who are those persons that have been deported or removed from or required to leave, or prohibited from entering or remaining in Zambia, pursuant to Section 22 (5) of the Immigration and Deportation Act, Chapter 123 of the Laws of Zambia, which was in force at the time. The certificate of exemption is exhibited as 'KL3' to the affidavit in support of the answer, and is also at page 3 of the Petitioner's bundle of documents. The letter directing the Chief Immigration Officer by the Minister of Home Affairs to revoke the deportation order is dated 24th September, 2002, and is at page 4 of the Petitioner's bundle of documents.

That however, despite the exemption order being issued in the Petitioner's favour, the 1st Respondent has discriminatorily and unreasonably placed the Petitioner on temporary entry permits, as opposed to his confirmed reinstatement as a resident permit holder. At page 5 of the Petitioner's bundle of documents is a letter dated 18th October, 2002 to the Petitioner's advocates Lukona Chambers from the Senior Immigration Officer informing them that the Petitioner had been exempted from deportation, and his entry into the country was being facilitated by placing him on a report order to that office, so that he could be served the certificate.

However, the Petitioner was not issued a duplicate certificate as an established resident, and the Petitioner appealed against the said alteration of his resident permit without lawful cause, which appeal was rejected on 27th December, 2016, as communicated by the Immigration Secretary, and that his appeal to the Minister on 28th March, 2017 against the Immigration Secretary's communication had not been responded to.

The defence by the Respondents as seen in paragraphs 8 and 9 of the affidavit in support of the answer is that after the Petitioner was exempted from deportation in 2002, and upon his return to Zambia, he had applied for the issuance of a duplicate certificate of status as an established resident on the basis that he had lost his original permit, and on 22nd November, 2002, he had paid K250.00 for the issuance of the said duplicate certificate, as evidenced on exhibit 'KL2' to the affidavit in support of the answer.

There is a contention that the decision to deny the Petitioner the duplicate certificate as an established resident was made on 30th April, 2014, the same date the deportation was made, but the said communication was not produced in this matter. At page 6 of the Petitioner's bundle of documents is an application to the Chief Immigration Officer dated 18th November, 2002 by the Petitioner's advocates then, for the issuance of a duplicate resident's permit, and enclosing a cheque for ZMW250.00, being payment of the fees in respect for the same.

At page 8 of the Petitioner's bundle of documents is a letter from the Petitioner's advocates dated 18th March, 2003 to the Chief Immigration Officer, returning the original resident permit issued to the Petitioner as requested. Then at page 9 of the said Petitioner's bundle of documents is a receipt for the payment of K4, 000.00, dated 27th June, 2014 being payment for a temporal permit. As already seen, paragraph 9 of the affidavit in support of the answer states that the Petitioner's application for a duplicate certificate was denied, and on 30th April, 2014, the Petitioner was issued with a notice to leave the country for lack of Immigration Status, and exhibit 'KL4' is the warrant of deportation. The warrant of deportation, 'KL4', is dated 30th April, 2014, and states that the Petitioner was likely to be a danger to peace and good order, and was deported under Section 39 (2) of the Immigration and Deportation Act No 18 of 2010.

The Petitioner challenges the deportation warrant alleging that he was never served the same, and secondly that it was not valid, as it was issued pursuant

to Section 39(2) of the said Immigration and Deportation Act No 18 of 2010. That upon the deportation of 1996 being revoked, and an exemption certificate being issued to the Petitioner, his status as an established resident was reinstated, and for the 1st Respondent to make an assertion that the Petitioner was a danger to public peace and good order, there should have been exhibited proof of this. The Petitioner relies on the case of ***IBRAHIM MOHAMED SHERIFF NOOR V ATTORNEY GENERAL 1979 ZR 183,*** which is instructive that declaring an established resident who lawfully attained that status to be a danger to peace and good order is invalid at law.

In the submissions, the Petitioner argues that the deportation warrant dated 30th April, 2014 was void, as while it states that the Petitioner was deported pursuant to Section 39 (2) of the Immigration and Deportation Act No 18 of 2010, the affidavit in support of the answer deposed to by Killian Lwiindi, the Principal Immigration Officer states that the Petitioner was deported as his application to be issued with a duplicate certificate as an established resident was denied, and the Petitioner had no immigration status.

The evidence on record shows that after the exemption certificate was issued to the Petitioner on his deportation being revoked, he was not issued with a duplicate certificate as an established resident after he wrote requesting that it be issued. The letter at page 8 of the Petitioner's bundle of documents shows that his advocates then, Lukona Chambers, on 18th March, 2003 wrote to the Chief Immigration Officer enclosing the original resident permit for the Petitioner as requested. This evidence shows that the 1st Respondent had asked the Petitioner to surrender the resident permit that he had been issued prior to his deportation.

Section 21 (4) of the Immigration and Deportation Act, Chapter 123 provided that any permit other than a temporary permit issued under that Act to a person who thereafter became a prohibited immigrant ceased to be of force and effect at such time that the holder became a prohibited immigrant. Therefore, when the Petitioner was deported on 27th November, 1996, he ceased to be an

established resident of this country. However as we have already seen, his deportation was revoked, and he was given an exemption certificate in 2002. The question that therefore begs an answer is; was his status as an established resident restored when he was issued an exemption certificate after the deportation of 1996 was revoked, as he argues?

The Respondents argued that this was not the position, but did not advance any reasons for this position. The Petitioner was however allowed into the country on temporal permit extensions, as seen from his passport exhibited as 'YII1' to the affidavit in reply, until 30th April, 2014, when he was allegedly deported as seen on exhibit 'KL4' to the affidavit in support of the answer. This warrant, as seen, has been challenged on account of having been issued pursuant to a wrong provision of the law, that is Section 39 (2) of the Immigration and Deportation Act No 18 of 2010 when it should have been issued pursuant to Section 35 (1) and (3) of the Act, as Killian Lwiindi deposed that the Petitioner had no immigration status following the denial of the issuance of a duplicate certificate as an established resident.

The Petitioner also submitted that apart from not being served the deportation warrant, the said deportation was not endorsed in his passport, contrary to the regulations of the Immigration and Deportation Act No 18 of 2010, and no government gazette notice was issued to that effect, and the Respondents did not provide any evidence to support the position that the Petitioner was indeed served the warrant of deportation.

While the Petitioner argued that he was not served the deportation warrant of 30th April, 2014, there is the letter at page at page 10 of his bundle of documents, and which is also exhibit 'KL5' to the affidavit in support of the answer. This document is a letter dated 25th July, 2014 written by the Immigration Secretary to Petitioner's advocates then, George Kunda and Company, informing them that the appeal against the notice to leave the country issued to the Petitioner had been successful, and that the Petitioner had been put on a temporal permit subject to renewal.

The notice to leave the country pursuant to which the warrant of deportation was issued, has not been exhibited before this court. However as the warrant of deportation states that the Petitioner was deported pursuant to Section 39 (2) of the Immigration and Deportation Act No 18 of 2010, the provisions in that respect applied to the Petitioner, even though the affidavit in support of the answer reveals the reason for the deportation as being, that as the application to be issued a duplicate certificate as an established resident was denied, the Petitioner had no immigration status. On that basis, the Petitioner's argument is that he should have been deported in line with the provisions of Section 35 (1) and (3) of the Act. I will however go with the reason cited on the deportation warrant as being the reason why the warrant of deportation was issued, as it is the only document evidencing the alleged deportation.

Section 39 (2) of the Immigration and Deportation Act No 18 of 2010 pursuant to which the deportation of 30th April, 2014 was issues provides that;

> ***"If an immigration officer has reasonable grounds to believe that any person's presence in Zambia or conduct is likely to be a danger to peace and good order in Zambia, that person shall be deported under a warrant signed by the Minister."***

It appears as already seen that the Petitioner was served a notice to leave the country after the deportation warrant dated 30th April, 2014 was issued, as exhibit 'KL5' to the affidavit in support of the answer is a letter advising that the appeal against the notice to leave the country had been successful. Section 36 of the Immigration and Deportation Act No 18 of 2010 provides for instances in which a prohibited immigrant is required to leave Zambia. It states that;

> ***"36. (1) Any immigration officer shall, if so directed by the immigrant Minister, by notice served in person on any prohibited immigrant or required to leave Zambia a person to whom subsection (2) of section thirty five relates, require that immigrant or person to leave Zambia.***

(2) Any notice served in accordance with subsection (1) shall specify in relation to the person on whom it is served-

a) the class set out in the Second Schedule to which it is considered the person belongs, or that the person is a person to whom subsection (2) of section thirty five relates;

b) the period within which the person is required to leave Zambia; and

c) the route by which the person shall travel in leaving Zambia.

(3) The period within which a person shall be required to leave Zambia shall, except in the case of a person who, within seven days of that person's appearing before an immigration officer in accordance with this Act has been served with a notice under this section, be not less than forty eight hours and shall commence—

a) in the case where such person does not make representations under this Act, from the time that person is served with such notice requiring the person to leave Zambia; or

b) in the case where such person makes representations in accordance with this Act, from the time that person is advised that the representations have been unsuccessful.

(4) Any person having been required by notice under this section to leave Zambia within a specified period who wilfully remains in Zambia after the expiry of that period commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both.

(5) Any person who left Zambia as a prohibited immigrant or who was removed from Zambia and who unlawfully returns to Zambia commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding three years.

From the wording of the section, it can be presumed that the immigration officer issued the notice in this matter to the Petitioner under the direction of the Minister, which by virtue of Section 36 (1) of the Immigration and Deportation Act No 18 of 2010 was required to be served on the Petitioner in person, who disputes that this was done. He also contends that no endorsement was made in his passport in red to show that he had been deported, and referred to page 7 of exhibit 'TYII1' to the affidavit in reply, which was the page applicable for the period, as having no such stamp. The Respondents have not shown that there was such a deportation endorsement in the Petitioner's passport, let alone that he was served the said warrant of deportation.

Therefore, while a deportation warrant against the Petitioner was issued, the deportation was not endorsed in his passport, and as there is no proof that there as a gazette notice issued for the said deportation, it was therefore invalid, as it did not comply with the law. However, despite this, the Petitioner made representations against the notice he was issued to leave the country, after he was deported, which was successful, and he was placed on a temporary permit. Section 27 of the Immigration and Deportation Act No 18 of 2010 empowers an immigration officer to issue a temporary permit to a prohibited immigrant or to any person in respect of whom the minister directs that such a permit be issued.

The Petitioner then appealed against being placed on a temporary permit, and the document at page 14 of the Petitioner's bundles of documents, which is a letter dated 27th December, 2016 shows that the Petitioner's appeal for re-instatement of his residential status in Zambia had been rejected by the appeals committee, and that the exemption certificate issued to the Petitioner on 17th April, 2002 was revoked by the minister. The appeal against the notice to leave the country was successful. Section 37 of the immigration and Deportation Act No 18 of 2010 provides that;

"37. (1) Any person required by notice under section thirty six to leave Zambia and who due to such notice has lawfully remained in Zambia longer than seven days may, within forty eight hours of receiving such notice, deliver to any immigration officer written representations to the Minister against such requirement and the immigration officer shall place such representations before the Minister without delay.

(2) If, after considering the representations as provided under subsection (1), the Minister does not think it fit to exercise the Minister's powers in relation to the issue of a permit to the person or the exemption of the person from the classes set out in the Second Schedule, the Minister shall notify that person that that person's representations have been unsuccessful."

Going by the Section, upon the Petitioner having made the representations, the Minister may have issued a permit to him or exempted him from the classes in the second schedule, which relates to prohibited immigrants. The letter at page 10 of the Plaintiff's bundle of documents states that the Petitioner was just placed on a temporary permit, but does not make reference to the fate of the deportation warrant of 30th April, 2014, and the letter dated 27th December, 2016 states that the appeal for reinstatement of the Petitioner's residence status had been rejected by the Appeals Committee.

Section 10 of the Act requires that where any decision made which adversely affects a person, other than a decision relating to deportation or removal, an immigration officer shall notify that person of the decision and the reasons, and give the person at least forty eight hours in which to make representations. It states that;

"10. (1) After making a decision, under this Act, which adversely affects a person, other than a decision relating to a deportation or removal, an immigration officer shall notify that person of the

decision and the reasons for the decision and give the person at least forty eight hours to make representations.

(2) The immigration officer shall, where a person makes any representation under subsection (1), within fourteen days of receiving the representation, notify the person of the decision made, with respect to the representation.

(3) Any person aggrieved with a decision of the immigration officer under subsection (1) may, within forty-eight hours of receiving the decision, appeal to the Minister.

(4) The Minister may, upon receiving an appeal under subsection (3), reverse or modify the decision of the immigration officer within ten days:

(5) Provided that the Minister shall not take any decision before consulting the Director-General of Immigration and obtaining the Director's advice.

(6) Any person aggrieved with a decision of the Minister under subsection (4) may, within forty eight hours of the Minister's decision, if appropriate, appeal to a court, which may suspend, reverse or modify the decision.

(7) (6) If a decision of the Department is not appealed in terms of subsections (3) and (5), the decision shall be final."

I must state that there was a lot confusion in this matter as to what subject the Petitioner made representations on. There is a warrant of deportation dated 30th April, 2014, and presumably a notice to leave the country following the notice of deportation. The Petitioner was successful on appeal against the notice to leave the country, but what is not clear is whether that deportation was revoked, as the letter of 27th December, 2016 refers to the appeal for the reinstatement of the residential status being unsuccessful, and the revocation of the exemption granted to the Petitioner on 17th April, 2002.

By the letter of 27th December, 2016 stating that the exemption certificate of 2002 was revoked, it entails that when the Petitioner successfully appealed the notice to leave the country in 2014, he was exempted from deportation in 2014. But the Minister went ahead to deny the reinstatement of the Petitioner's residential status on the basis that he was still a deportee as the exemption certificate of 17th April, 2002 had been revoked.

Therefore in this case, it can be said that when the Petitioner was granted a certificate of exemption on 17th April, 2002 after his deportation was revoked, he was not given a duplicate certificate of status as an established resident, but was instead placed on temporary permits, that were renewed. He was again deported on 30th April, 2014, which deportation though invalid as it never endorsed in the Petitioner's passport and was not gazetted, was successfully appealed, but the exemption certificate granted on 17th April, 2002 was revoked. If one looks at the letter at page 4 of the Petitioner's bundle of documents written by the Minister of Home Affairs then, Mr Lackson Mapushi on 24th September 2002, to the Chief Immigration Officer, it reveals that the Petitioner was deported for political reasons, and termed such as bad for their administration. The minister had further alluded to the Petitioner being mistreated.

As according to the letter of 27th December, 2016 what was considered was the reinstatement of the Petitioner's resident permit, by virtue of Section 10 of the Immigration and Deportation Act No 18 of 2010, the reasons for declining that decision should have been given to the Petitioner, and asking the Petitioner to make representations within forty eight hours. Further by virtue of Section 34 of the said Act the immigration officer was obliged to notify the Petitioner in writing of the intention to revoke the temporary permit that had been issued to the Petitioner, before the said permit was revoked.

It is clear from the evidence that that this was not done, and the Petitioner was therefore not given an opportunity to be heard on the same. He has argued that he is entitled to protection of the law as enshrined in Article 18 of the

Constitution, and a guarantee of his rights as provided in Article 11 of the said Constitution. The Petitioner also relies on the case of ***IBRAHIM MOHAMED SHERIFF NOOR V ATTORNEY GENERAL 1979 ZR 183,*** arguing that is instructive that declaring an established resident who lawfully attained that status to be a danger to peace and good order is invalid at law.

I agree with the principles set out in that case. A careful reading of that case shows that the court in holding that the applicant lawfully gained the status of an established resident, and the Minister's declaration under s. 22 (2) that his presence in Zambia was inimical to the public interest was ultra vires that Act observed that;

> ***"There is no question that the applicant obtained his resident permit by using forged documents because that has not been established by evidence in court. It is, therefore, my view that for all intents and purposes the applicant has lawfully gained the status of an established resident. I am, therefore, satisfied that the applicant has not violated the provisions of the Immigration and Deportation Act. Prima facie, therefore, the Minister of Home Affairs declaration that the applicant's presence in Zambia was inimical to the public interest was ultra vires that Act."***

Therefore, the holding in that case was based on the fact the court found that there was no evidence to show that the applicant had obtained his documents as an established resident unlawfully, and in consequence had not violated the Immigration and Deportation Act, as alleged by the respondent, that would have warranted him being declared inimical to the public interest. The issue in this case is whether any of the instances laid down in Section 34 of the immigration and Deportation Act No 18 of 2010 are applicable to the Petitioner. The said Section 34 provides that;

> ***"34. (1) The Director-General of Immigration may, by notice in writing, revoke any permit issued under this Act if the holder—***

(a) has contravened any provision of this Act or any other law;

(b) obtained a permit by means of any representation which was false in any material particular or by means of the concealment of any material information;

(c) has failed to comply with any requirement or condition of a permit issued under this Act;

(d) has become or is likely to become a charge on the Republic in consequence of failure to support oneself and such of that person's dependants as may be in Zambia; or

(e) is likely to be a danger to peace and good order in Zambia.

(2) A notice to revoke a permit referred to in subsection (1), shall be served in person on the holder of the permit and it shall specify—

(a) the permit to be revoked; and

(b) the grounds on which the permit is being revoked.

(3) Every permit, other than a temporary permit, issued under this Act to a person who thereafter becomes an illegal immigrant shall cease to be of force and effect at such time as the holder becomes an illegal immigrant.

(4) Any permit surrendered under this Act shall be cancelled.

The procedure outlined above was not followed in this case. Further, seeing that the Minister of Home Affairs in 2002 found that the Petitioners' deportation of 1996 was politically motivated, the decision to decline the reinstatement of the Petitioner's resident status in 2016 should have been based on evidence showing that there was something adverse against reinstating the said resident status. No reasons were advanced by the Respondents for the decision being arrived at. It was not sufficient for the Respondents to argue that the Minister was not obliged to give reasons as has been seen the case of ***IBRAHIM MOHAMED SHERRIF NOOR V THE ATTORNEY GENERAL 1979 ZR 183*** held that;

(i) Courts have jurisdiction to go behind the face of a deportation order and if reasons given are not proved, queries as to its validity can be made.

(ii) ***The Minister is not bound to give reasons for the deportation under s. 22 (2) of the Act. However courts can intervene if a prima facie misuse of power is established, and the Minister will then be required to give an answer.***

Even the later case of ***ESAN V THE ATTORNEY GENERAL APPEAL No 96/2014 (2016) ZMSC 225 (9th December, 2016)*** agreed with the position stated above, and in reinforcing the provisions of Section 34 of the Immigration and Deportation Act No 18 of 2018 held that;

> ***"Where legislation seems to grant absolute discretion by leaving little or no room to question the legitimacy of an exercise of public power, courts ought to be conscious of emerging trends towards a more open and transparent government that promotes the rule of law, human rights and curbs arbitrariness. The Court should go behind the orders and delve into the circumstances in which the power was exercised especially where there is prima facie evidence of arbitrariness or perverse actions, to ensure that it was exercised lawfully and within the confines of the law".***

I have already alluded to the confusion and inconsistency in the manner that the Petitioner was dealt with after the deportation warrant of 1996 was revoked, and he was issued an exemption certificate. The Respondents have not shown that the decision to revoke the said deportation and issue an exemption certificate in 2002 was erroneously or otherwise issued, prompting them to revoke the same, and instead place the Petitioner on a temporal permit. The deportation of 1996 having been revoked and an exemption certificate having been issued, meant that Petitioner was restored to his initial status that being, an established resident, as exemption entails ***to be free***

from an obligation or liability imposed on others as defined by the Oxford dictionary.

Further, Section 14 (5) of the Immigration and Deportation Act Chapter 123 of the Laws of Zambia which is the same as Section 20 (8) of the Immigration and Deportation Act No 18 of 2010, and which applied to a resident permit holder like the Petitioner, shows that a residence permit shall cease to be valid if the holder-

a) Fails to enter Zambia within six months of the date of the issue of the permit or such later date as the Director General of Immigration may endorse on the resident permit;

b) Is absent from Zambia for a period in excess of six months without notifying the Director General of Immigration in writing that the person proposes to return to Zambia; or

c) Is absent from Zambia for any period in excess of twelve months.

While the Petitioner by virtue of having been deported on 27th November, 1996, which was only revoked on 27th April, 2002, and an exemption certificate issued, was absent from Zambia in excess of twelve months, this period could not be used to decline to grant him his resident permit, as his absence was occasioned by a deportation which was later found to have been driven by ill motives, and was revoked. In short his absence from the country was not of his making, and which would result in Section 14 (5) of the Immigration and Deportation Act Chapter 123 of the Laws of Zambia being invoked.

As the Petitioner was exempted from deportation, his status as an established resident was restored, the provisions of Section 34 of the Immigration and Deportation Act No 18 of 2010, as read with regulations 39 of 40 of the Act contained in Statutory Instrument No 126 of 2011 applied to him, when the 1st Respondent decided to place him on temporary permits. However the Petitioner was not given the opportunity to be heard, which went against the law and

principles of natural justice, and invariably violated Articles 11 and 18 of the Constitution which guarantees persons to protection of the law.

Even in these proceedings, no reasons have been disclosed that were considered when deciding to place the Petitioner on temporal permits in this matter, as opposed to restoring his resident permit status. These proceedings as already noted were commenced by way of petition, and not judicial review, and as such I am at liberty to delve into the merits of the decision made, which in judicial review proceedings, I would be precluded from doing, as it was held in the case of ***NYAMPALA SAFARIS (Z) LIMITED, BAOBAB SAFARIS (Z) LIMITED, NYUMBU SAFARIS (Z) LIMITED, EXCLUSIVE SAFARIS (Z) LIMITED, BUSANGA TRAILS (Z) LIMITED V ZAMBIA WILDLIFE AUTHORITY, ZAMBIA NATIONAL TENDER BOARD, ATTORNEY GENERAL, LUANGWA CROCODILE AND SAFARI LIMITED, SOFRAM AND SAFARIS LIMITED, LEOPARD RIDGE SAFARIS LIMITED, SWANEPOEL & SCANDROL SAFARIS LIMITED 2004 ZR 49 SC*** that;

> ***"That the remedy of judicial review is concerned not with the merits of the decision, but the decision making process itself."***

As no reasons have been advanced by the Respondents in this matter as to why the Petitioner was placed on temporary permits when his exemption from deportation entailed that he was restored to his status as an established resident, I find that the decision of the 1st Respondent to do so was exercised in bad faith, unreasonably, and without basis, and therefore lacked merit.

It was an affront to the Petitioner's rights as protected under the Constitution, and violated the same. I accordingly find that the decision of the 1st Respondent to place the Respondent on temporary permits was null and void, and order that his resident permit be reinstated forthwith.

The Petitioner also claims damages for false imprisonment for two days. He deposed that he was detained for two days from 28th to 30th April, 2014 for no reason. The Petitioner claims damages in tort.

The Limitation Act 1939, applies to actions instituted. Section 3 (1) and (2) of the Law Reform (Limitation of Actions) Act Chapter 72 of the Laws of Zambia provides as follows;

> ***3. In its application to the Republic, the Limitation Act, 1939, of the United Kingdom, is hereby amended as follows:***
>
> ***(a) by the insertion of the following proviso at the end of subsection (1) of section 2:***
>
> ***Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years.***
>
> ***(b) by the addition at the end of section 22 of the following subsection:***
>
> ***(2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person-***
>
> ***(a) the preceding provisions of this section shall have effect as if for the words "six years" there were substituted the words "three years"; and..."***

Therefore the cause of action for damages for false imprisonment accrued on the date of the false imprisonment, being 30th April, 2014, and proceedings to claim those damages should have commenced within three years of that date. The petition was filed on 27th June, 2017, more than three years after that date, and as such the claim is statute barred, and I dismiss it on that basis. The Petitioner having succeeded on the claim for a declaration, I award him costs to be taxed in default of agreement. Leave to appeal is granted.

DATED THE 23rd DAY OF APRIL, 2018

Kaunda

S. KAUNDA NEWA
HIGH COURT JUDGE