IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: NYALALI, C.J., KISANGA, J.A., And LUBUVA, J.A.)

CIVIL APPEAL NO. 26 OF 1997

B E T W E E N

DR. AMAN WALID KABOROU. . . . . APPELLANT

A N D

1. THE ATTORNEY GENERAL
2. AZIM SULEIMAN PREMJI . . . . RESPONDENTS

(Appeal from the Ruling and Order of the High Court of Tanzania at Kigoma)

(Chipeta, J.)

dated the 22nd day of November, 1996

in

Misc. Civil Cause No. 3 of 1995

JUDGMENT OF THE COURT

LUBUVA, J.A.:

Following the General Elections held in the country in October, 1995, the appellant, Dr. Aman Walid Kaborou, a candidate sponsored by Chama Cha Demokrasia na Maendeleo (hereinafter referred to as CHADEMA) was declared to be an elected member of Parliament for Kigoma Urban Constituency. The second respondent, Azim Sulaiman Premji was dissatisfied with the results of the election. Consequently, he filed an election petition in the High Court at Tabora. That was Misc. Civil Cause No. 3 of 1995. Because of alleged irregularities and non-compliance with the provisions of the Elections Act, 1985, the petition sought to have the election results in the constituency declared null and void. The first respondent, the Attorney General was joined as a party. In the course of hearing the petition in the High Court, the appellant raised a preliminary point. It was contended that the second

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respondent had no locus standi because he was not properly registered as a citizen and hence a non Tanzanian. After what appears to us a careful analysis of the submissions by both parties, the learned trial judge (Chipeta, J.) overruled the objection. It was held that the second respondent was a citizen of Tanzania because he satisfied all the statutory requirements when he applied to be registered as a citizen of Tanzania on 12.4.1995. From that decision on the preliminary objection, the appellant has appealed. In this appeal, Mr. Boaz, learned Counsel represented the appellant. Mr. Kaduri, learned Principal State Attorney appeared for the Attorney General, the first respondent, and Mr. Mbezi, learned Counsel appeared for the second respondent. A memorandum of appeal containing four grounds was filed. They read:

1. That the learned trial judge erred in law in not finding that the second respondent's application for citizenship and subsequent grant of such citizenship was made under repealed law and therefore void.

2. That in the alternative but without prejudice to ground No.1 the learned trial judge erred in law in not finding that the second respondent did not qualify to be so registered.

3. That further in the alternative, but without prejudice to grounds No.1 and 2, the learned trial judge erred in not finding that, the second respondent's certificate of citizenship was not issued by the competent authority namely the Minister for Home Affairs.

4. That the learned trial judge erred in law in finding that the second respondent has locus standi in the main cause.

In sum total, we think the essence of these grounds of appeal is that the second respondent was improperly registered as a citizer of Tanzania and that the procedure used in the application for citizenship and the granting of it was effected under a repealed legislation, it was therefore void. At great length Mr. Boaz, learned Counsel submitted to the effect that from the available forms on record, the application was made under Section 3 of the Citizenship Ordinance Cap 452, and Section 6 (4) of the Constitution i.e. the Tanganyika Independence Constitution of 1961 which, according to him were by necessary implication repealed by the enactment of the Citizenship Act, 1961. And so, he went on in his submission, the application having been made under a non-existing legislation, the result was that the registration of the applicant, the respondent in this appeal as a citizen of Tanzania was void. He further maintained that the application should have been made under the citizenship Act, 1961 which was in force at the time when the application for registration as a citizen of Tanzania was made. The registration so effected being null and void, Mr. Boaz contended, the second respondent does not qualify under Section 111 of the Elections Act, 1985 to present an election petition. According to Mr. Boaz, the second respondent not being a citizen of Tanzania at the time, he did not qualify to be registered as a voter or to be nominated as a candidate for the General Parliamentary Elections in 1995. When prompted by the Court that the Age of Majority (Citizenship Laws) Act, 1970 (Act No. 24 of 1970) shows that the

Citizenship Ordinance and the Citizenship Act, 1961 are still in force to date, Mr. Boaz adamantly irsisted that these laws had been repealed. With regard to the new Tanzania Citizenship Act, 1995 which has not yet come into force, Mr. Boaz, submitted to the effect that, that was not yet law. Therefore, he stated, it should not be relied upon as proof of the existence of the Citizenship Ordinance and the Citizenship Act, 1961 at the time the second respondent was registered as a citizen.

On this submission, the issue for determination is whether these two pieces of legislation are repealed. Mr. Kaduri, learned Principal State Attorney was firmly of the view that no repeal has been effected on these laws. In support of this view, he made reference to Act No. 24 of 1970 in which it is shown that these laws are still in force. It was therefore his submission that the application and the registration for citizenship of Tanzania by the second respondent was done in accordance with the applicable law. Mr. Mbezi, learned Counsel for the second respondent was in agreement with Mr. Kaduri on the issue pertaining to the alleged repeal of the Citizenship Ordinance and the Citizenship Act, 1961. Like Mr. Kaduri, Mr. Mbezi maintained that as the registration for the citizenship of the second respondent was effected in terms of the applicable law, the complaint raised on this issue was unfounded in law.

We are respectifully in agreement with the learned Counsel Mr. Kaduri and Mr. Mbezi that the Citizenship Ordinance and the Citizenship Act, 1961 are still in force to date. They are not, to our knowledge repealed. There is of evidence in support of this position. In the first place there is the Age of Majority (Citizenship Laws) Act, 1970 from which it is self evident that

the citizenship laws alleged to have been repealed are still in force. In that Act, citizenship laws is defined to include the Citizenship Ordinance and the Citizenship Act, 1961. Secondly, the Tanzania Citizenship Act, 1995, which seeks to consolidate the law relating to citizenship in Tanzania and also to repeal the Citizenship Ordinance and the Citizenship Act, 1961. See section 29 of the Act. We are aware of the fact that the Act has not yet come into operation as no publication of the notice has been effected in the Gazette. The contention of Mr. Boaz that no reliance should be placed on the Act as supportive evidence to prove the existence of the above mentioned citizenship laws is not correct. It is common knowledge that a statute which has not come into operation cannot be applied in the enforcement of laws. However, we think it can be used as evidence in proof of a factual situation of which the Court can take judicial notice. In the instant case, we take judicial notice of the existence of this Act. From it, it is observed that Parliament in its wisdom has provided in clear terms under Section 29 for the repeal of the Citizenship Ordinance and the Citizenship Act, 1961. If these laws were repealed as Mr. Boaz learned Counsel insists, it is most unlikely that an important organ of state such as the Parliament charged with the heavy responsibility of enacting the laws of country would embark on a legislative exercise which is superfluous. We are therefore with respect in agreement with the learned trial judge that the Citizenship Ordinance and the Citizenship Act, 1961 are still in force.

With the various amendments in relation to the citizenship laws and the constitution passed, the legal frame work emerges as follows: As a result of the amendment introduced by the Age of Majority (Citizenship Laws) Act, 1970, the Citizenship Ordinance

was amended in Section 2 so that reference to the "Constitution" in the Ordinance shall be construed as references to the Citizenship Act, 1961. It is also to be noted that upon Tanganyika becoming a Republic on 9.12.1962, the Republic of Tanganyika (Consequential, Transitional and Temporary Provisions) Act, 1962 was enacted. This was to be read as one with the Republican Constitution. In terms of the provisions of Section 26 of this Act, some of the legislations which were in force at the time of Independence were repealed. At the same time some specified laws were to continue to be the laws of the country after the commencement of the Republic of Tanganyika. In regard to citizenship, the Third Schedule to this Act, was also amended in order to set out categories of persons who would qualify for renouncing the citizenship of their countries as a condition for being registered as a citizen of Tanzania. This includes citizens of Commonwealth countries, India being one of them.

In this case, we are satisfied that from the record, the second respondent's application and registration was done in accordance with Section 3 (1) of the Citizenship Ordinance Chapter 452 of the laws. Under that section the Minister for Home Affairs was satisfied that the second respondent fulfiled the conditions set out therein. On the face of the record, the Minister authorised the registration of the second respondent as a citizen of Tanzania which was effected on 12.4.1995. In terms of Section 6 of the Citizenship Ordinance, the second respondent duly made a declaration renouncing his Indian citizenship. Sections 3 and 6 are indicated in the forms used for the second respondent's application. We can find no fault in the format used as certificate for the registration of the second respondent as a citizen of Tanzania on the ground that in it, Section 3 (1) of the Constitution/Citizenship Ordinance is

shown. As already explained, with the enactment of Act No. 24 of 1970, the Citizenship Ordinance was amended to the effect that in that Ordinance reference to the Constitution shall be construed as reference to the Citizenship Act, 1961. In here, it can only mean one or the other but not both at the same time. At any rate, the Citizenship Ordinance and the Citizenship Act, 1961, do not provide for a specific manner of lodging an application for citizenship. In our view, so long as the forms used for the application and the certificate of registration, sufficiently indicate the authority under which they are issued, that would meet the requirement of the law. In this matter, we are of the considered opinion that the sections shown i.e. Sections 3 and 6 are in accordance with the law involved i.e. the Citizenship Ordinance and the Citizenship Act. With respect, ground one has no merit.

Then Mr. Boaz argued ground three. He complained that there was no evidence to show that the Minister had signed the certificate of registration. As pointed out by Mr. Kaduri and Mr. Mbezi and correctly so in our view, the relevant law is such that it does not matter whether the certificate was signed by the Minister himself or by some other official. We think what is important is the authorisation of the Minister that the applicant having satisfied the requisite conditions for registration is to be issued with the certificate. In this case there is no basis for suspecting that there was no such authorisation by the Minister as Mr. Boaz, learned Counsel was urging. There is no provision in the law which requires the Minister's personal signature in the certificate. What is more, this is an aspect which it seems to us goes into the details of the processing of the issuance of the certificate.

This, we do not think can appropriately be done before us on appeal. It was neither raised at the trial nor was it one of the issues pleaded. With respect, this complaint is without foundation. For these reasons, we dismiss ground three.

In further elaboration of ground two, Mr. Boaz, learned Counsel for the appellant strenuously contended that the second respondent did not qualify to be registered as a citizen of Tanzania. The reason he advanced was that in his view, the second respondent was not ordinarily resident in Tanzania because as he stated, the meaning to be ascribed to the word 'ordinarily' in this context means "lawfully". That is, according to him, the second respondent not being a citizen of Tanzania, he was staying in the country in contravention of the law. Such a stay, he maintained, could not be described as ordinary. Mr. Kaduri, learned Principal State Attorney and Mr. Mbezi, learned Counsel strongly countered this argument. They submitted that the word 'ordinarily' in its ordinary plain meaning cannot mean anything else other than the usual ordinary place of residence. We think both Counsel Mr. Kaduri and Mr. Mbezi are correct. With due respect to Mr. Boaz, learned Counsel it is inconceivable that the word 'ordinarily' resident could mean anything else other than the ordinary place of residence. It is a cardinal principle of construction that words are given their plain meaning. According to the Oxford Paper back Dictionary, Fourth Edition, the word 'ordinary' means: usual, customary, not exceptional. It is apparent therefore that the second respondent was customarily or usually resident in Tanzania. This is also self evident from the record which shows that he was born and has been staying in Tanzania. It is our view that Mr. Boaz's interpretation of the word "ordinarily" is far fetched, it has

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nothing to do with lawfulness or otherwise. If Parliament in its wisdom had intended the word 'ordinarily' to mean "lawfully", it would have said so. Like the learned trial judge, we are satisfied that the second respondent satisfied the condition of the law regarding residence in Tanzania. In the circumstances, it is our view that ground two is unfounded.

In view of the position we have taken in disposing of grounds one, two and three, it is needless to go into the details of ground four. Consequently, ground four also fails. We agree with the learned trial judge that the second respondent, has locus standi in the main cause.

We would now briefly deal with the provisions of sub-section (c) of Section 111 of the Elections Act, 1985. It provides -

> 111 -
>
> (a) ...
>
> (b) ...
>
> (c) a person alleging to have been a candidate at such election (underlining supplied)

It was the submission of Mr. Boaz that even though under the provision of this sub-section, a person who alleges to have been a candidate is allowed to present a petition, the second respondent not being a citizen of Tanzania did not qualify. The question arises as to the use of the word 'alleged' as it appears within the context of this section. Mr. Mbezi, learned Counsel took the view that Parliament used the word "alleged" deliberately in order to accommodate controversial situations such as the instant case where the candidature of the second respondent is disputed. We agree with Mr. Mbezi that the word 'alleged' used under

Section 111 (c) of the Elections Act, 1985 was deliberate. In our view, the reason is that with the use of that word, it is possible to accommodate cases of petitioners in which there is controversy about their qualification as voters or candidates. In the absence of such a provision, we think it is possible that some of the petitioners who may have reasonable grounds for believing to have been candidates would not be entertained. For instance, in this case, the second respondent reasonably believed that he was a citizen of Tanzania and hence a qualified voter or candidate. His petition was thus properly entertained under the provisions of sub-section (c) of Section 111 of the Elections Act, 1985.

In the event, we are satisfied that the second respondent's application for citizenship and the grant of it was properly done under the applicable laws. We are also satisfied that the learned trial judge properly directed himself in his finding that the second respondent qualified to be registered as a citizen of Tanzania and that the certificate of citizenship was granted according to the law.

For these reasons the appeal is dismissed with costs.

DATED at DAR ES SALAAM this 19th day of June, 1997.

F.L. NYALALI
CHIEF JUSTICE

R.H. KISANGA
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(B.M. LUANDA
SENIOR DEPUTY REGISTRAR