

MOVEMENT FOR DEMOCRATIC CHANGE (T)  
and  
MOVEMENT FOR DEMOCRATIC CHANGE (N)  
and  
SARAH KACHINGWE  
versus  
ZIMBABWE ELECTORAL COMMISSION  
and  
REGISTRAR GENERAL N.O  
and  
MINISTER OF HOME AFFAIRS  
and  
ZIMBABWE AFRICAN NATIONAL UNION PATRIOTIC FRONT [ZANU PF]

HIGH COURT OF ZIMBABWE  
MUNANGATI-MANONGWA J  
HARARE, 29 November 2017

**Urgent application**

*D Halimani* for the applicants  
*TM Kanengoni* for the 1<sup>st</sup> respondent  
*T Thondlana* for the 2<sup>nd</sup> respondent

MUNANGATI-MANONGWA J: The right to vote lies at the centre of every constitutional democracy. Such a right falls under political rights which a citizen is entitled to enjoy and some are constitutionally protected, and in the Zimbabwean case, under Section 67 of the Constitution of Zimbabwe Amendment (No 20) Act 2013 (hereinafter referred to as the “Constitution”). The right to vote can only be exercised when one is duly registered as a voter. In pursuance of this right to vote the applicants brought the present urgent application, dragging among others, the body constitutionally mandated to register voters, being the Zimbabwe Electoral Commission, the 1st respondent (hereinafter referred to as “ZEC” or “1<sup>st</sup> respondent” interchangeably) to court on an issue pertaining to registration of a certain class of persons referred to as “aliens,” and for the third applicant, her registration, as voters.

Historically the attainment of the right to vote was earned through struggles. Wars in their different forms were fought for the attainment and enjoyment of political rights and freedoms amongst which is the attainment of universal suffrage, put simply the right of all eligible adults to vote. From the French revolution, revolutions world over to various liberation struggles in Africa including Zimbabwe's very own Chimurenga Liberation struggle, central to the interests clamoured for were political rights. So important to citizens is the right to participate in the democratic processes that establish a government to the extent that citizens go to great lengths in seeking to assert such rights. This case is an example of the quest by citizens to exercise and enjoy their political rights.

On the 29<sup>th</sup> November 2017 I granted a final order which in essence *inter alia* allowed a certain category of "aliens" to be able to register to vote upon production of their identity documents endorsed "alien" coupled with production of the registrant's birth certificate showing that such person was born in Zimbabwe; or at least one of the parents was born in Zimbabwe; or is from the SADC region, with anyone relying on the latter showing that he or she was ordinarily resident in Zimbabwe as required by law. The order reads

"IT IS ORDERED THAT:

1. Any person born in Zimbabwe who is of over eighteen (18) years with an identification card endorsed alien and a birth certificate showing that such person was born in Zimbabwe and that at least one of the parents of such person was born in Zimbabwe or from the SADC region with proof that he or she was ordinarily resident in Zimbabwe is forthwith entitled to be registered by the 1<sup>st</sup> respondent to vote without any impediment or additional requirement other than requirement relating to all people.

2. The 2<sup>nd</sup> respondent shall not charge any such person described in paragraph 1 above to obtain fresh identification particulars during the period which the biometric voter registration exercise is taking place as *per* the timelines set out by the 1<sup>st</sup> respondent.

IT IS CONSEQUENTLY ORDERED THAT:

3. The 3<sup>rd</sup> applicant together with any class of persons in a similar predicament be and are hereby entitled to be forthwith registered as voters by the 1<sup>st</sup> respondent in the biometric voter registration exercise upon production of the identification card endorsed 'alien' coupled with a birth certificate showing that they were born in Zimbabwe to parents from SADC region or one of whom is a Zimbabwean and proof of residence.

4. There shall be no order as to costs."

In doing so I made the following remarks which I maintain: that the right to vote is one of the most fundamental rights which a person enjoys in their lifetime and needs to be jealously guarded. At the centre of this matter was the issue of registration as voters of the so called “aliens” who by virtue of s 36 and 43(2) of the Constitution have become citizens. As citizens they are entitled to enjoy political rights enshrined under s 67 of the Constitution and in particular s 67 (3) which reads:

“Subject to this Constitution every Zimbabwean citizen who is of or over eighteen years of age has the right-

- a) To vote in all elections and referendums to which this constitution or any other law applies and to do so in secret; and
- b) To stand for election for public office and, if elected, to hold such office.”

The applicants being two political parties, the Movement for Democratic Change in their two forms, and the third applicant one Sarah Kachingwe approached this court on an urgent basis alleging that their members (for the political parties) and for the third applicant she herself, their right to vote was in danger of infringement due to the fact that those in possession of identity documents in the form of cards endorsed “alien” were failing to register to vote on account of the endorsement and or that the second respondent has either refused to issue them with identity documents endorsed “citizen” or had placed onerous conditions in terms of fees and other requirements for issuing of such identity documents.

The applicants sought the following provisional order:

“IT IS HEREBY ORDERED THAT:

TERMS OF THE FINAL RELIEF SOUGHT

1. It is hereby declared that any person born in Zimbabwe who is of or over eighteen (18) years with an Identification Card endorsed alien and a Birth Certificate showing that such person was born in Zimbabwe; and that at least one of the parents of such person was born in Zimbabwe is equal before the law and has the right to equal protection and benefit of the law, including the right to be registered as a voter.
2. It is hereby further declared that the person described in paragraph 1 above has the right not to be treated in an unfairly discriminatory manner on the grounds of their descent, ethnic or social origin, by being subjected by the respondent directly or indirectly to a condition, restriction or disability to which other people are not subjected to or other people are accorded directly or indirectly a privilege or advantage which they are not accorded.

3. The 1<sup>st</sup> to the 3<sup>rd</sup> respondents to pay costs of this application if opposed to the relief sought.

#### TERMS OF THE INTERIM RELIEF GRANTED

1. Any person born in Zimbabwe who is of or over eighteen (18) years with an Identification Card endorsed alien and a Birth Certificate showing that such person was born in Zimbabwe and that at least one of the parents of such person was born in Zimbabwe or from the SADC region is forthwith entitled to be registered by the 1<sup>st</sup> respondent to vote without any impediment or additional requirement other than requirements relating to all people pending the final determination of this matter on the return date.
2. Specifically, the 1<sup>st</sup> respondent is required to register any such person(s) described in paragraph 1 above as a prospective voter with immediate effect pending the final determination of this matter on the return date.
3. The 2<sup>nd</sup> respondent shall not charge any such person described in paragraph 1 above to obtain fresh Identification particulars during the period which the biometric voter registration exercise is taking place as per the timelines set out by the 1<sup>st</sup> respondent.
4. The 3<sup>rd</sup> applicant together with any class of persons in similar predicament be and are hereby entitled to be forthwith registered as voters by the 1<sup>st</sup> respondent in the Biometric Voter Registration exercise upon production of the Identification Card endorsed Alien coupled with a Birth Certificate showing that they were born in Zimbabwe to parents from the SADC region or one of whom is a Zimbabwean and Proof of Residence.

#### SERVICE OF THE PROVISIONAL ORDER

1. The applicant/applicant's Legal Practitioners and/or employees be and are hereby permitted to serve copies of this provisional order upon the respondents or their Legal Practitioners as the case may be."

The first respondent ZEC, and the second respondent, the Registrar-General partly opposed the relief sought. The third respondent being the Minister of Home Affairs cited in his official capacity did not oppose the application, neither did the fourth respondent the Zimbabwe African National Union Patriotic Front hereinafter referred to as (ZANU PF). The applicants maintained they had cited ZANU (PF) as an interested party but in my view this was not necessary hence it is no surprise that, that party never bothered to respond. No doubt its members may benefit from the order if they had met such or any impediments by virtue of being 'aliens'.

At the hearing the parties agreed that the matter was urgent and indeed it being so, the matter proceeded as such. Further, the legal practitioners involved rightly agreed that the resultant order was to be a final order and that the terms of the final relief were superfluous as they simply restated the law as espoused in the Constitution. Further, the parties agreed that an order could be issued as *per* the applicants' draft order for clauses 1-3, leaving clause 4 as the term to be decided upon by the court. Despite that consensus as between the parties, I ultimately issued a different amended order because some of the clauses agreed to were not properly couched and superfluous, in particular, Clauses 1 and 2.

What ultimately the parties argued upon was whether or not the first respondent, Zimbabwe Electoral Commission should be ordered to register as voters the so called "aliens" upon production of the national identity card, and a birth certificate showing that they were born in Zimbabwe of a parent who was born in Zimbabwe or from the SADC region coupled with requirements applicable/relating to all other people like proof of residence.

This legal issue arises from the historical constituent of the Zimbabwean society which consists of a certain class of persons which the Constitution has acknowledged in Sections 36 and 43(2) to be citizens. These persons had been labelled "aliens" with their identity documents duly endorsed as such. The Shorter Oxford English Dictionary defines an "**alien**" as a "**stranger, a foreigner, a resident of foreign origin.**" Given the circumstances of these persons which included their place of birth and parental origins, the label of "alien" was not in my view appropriate given the aforementioned definition. Constitutional intervention brought clarity to the issue of this class of "aliens". The relevant part of section 36 which impacts upon this case provides

1. Persons are Zimbabwean citizens by birth if they were born in Zimbabwe and, when they were born –
  - (a) Either their mother or their father was a Zimbabwean citizen;

And the relevant section of Section 43 reads

- (2) Every person who was born in Zimbabwe before the publication day is a Zimbabwean citizen by birth if—
  - (a) one or both of his or her parents was a citizen of a country which became a member of the Southern African Development Community established by the treaty signed at Windhoek in the Republic of Namibia on the 17th August, 1992; and
  - (b) he or she was ordinarily resident in Zimbabwe on the publication day.

Put simply section 43(2) provides that any person who was born in Zimbabwe before 22 May 2013 is a citizen by birth if one or both of his parents was a citizen of a SADC member State and he or she was ordinarily resident in Zimbabwe as at that date.

These sections were in my view borne of the realization that a certain part of the citizenry was legally left out and had to go through certain processes to assert their citizenship when to all practical intents and purposes they were indeed citizens of Zimbabwe given their birth status and parental history. It is a fact that Southern Africa experienced migrations from different countries and in the 1950s – 1960 people from Malawi came to the then Southern Rhodesia to look for employment. Mozambique and South Africa are countries which also had their people coming to Zimbabwe either as asylum seekers, or refugees when South Africa was still under apartheid and Mozambique experienced displacement of its citizens due to war. The people of neighbouring Botswana and Zambia have also got a history with Zimbabwe from the liberation struggle where Zimbabwean liberation armies got accommodated there as well as in Mozambique and Tanzania. All this resulted in intermarriages between these people and Zimbabweans and families being created from associations. As a result, a significant part of the Zimbabwean society is constituted by the offspring of such persons and despite being born in Zimbabwe they had been labelled “aliens”. A new Zimbabwean Constitution which came into operation on the 22<sup>nd</sup> May 2013 gave these persons full citizenship status with the entitlement to all rights, benefits and privileges attendant upon a citizen hence this application.

First and second applicants have projected a representative approach in asserting that their members have been unable to register to vote as their identity cards are endorsed “alien” and by reason of that have been turned away. Sarah Kachingwe, the third applicant demonstrated the predicament an alien finds himself or herself in. She was born on the 5<sup>th</sup> January 1960 in Zimbabwe. Her late father was from Malawi and her mother is a Zimbabwean. All this information is on her birth certificate. She holds a national identity card duly endorsed “alien”. She is a confirmed resident of Epworth and when she went to register as a voter the first respondent’s officials refused to entertain her referring her to the second respondent’s office for regularisation of her identification card. It is also worth noting that this applicant had however under the old law been registered as a citizen of Zimbabwe and has placed before the court the certificate of such registration.

She alleges that when she went to the second respondent’s offices to get an identity card, the second respondent’s officials demanded a staggering payment of \$5 000-00 which

she was unable to pay as she is not gainfully employed. Due to this she approached court as she felt her political rights were infringed and, sought the court's intervention to enable her to assert her fundamental rights as a citizen who is entitled to all rights, benefits and privileges attendant to a Zimbabwean citizen specifically the right to vote.

The first respondent in its position has not denied the allegation that it turned the third applicant away nor other applicants duly represented by the first and second applicants. In fact there is evidence by way of a report on the Biometric Voter Registration Statistics for phase 1 and phase 2 as at 8 November 2017 (1600hrs) which indicated that thousands of persons were turned away by its officials for various reasons including being "alien". The reports which showed figures from various provinces does not state how many were turned away for the reason of being "alien" and in what circumstances. I note that this reason appears in reports from 8 provinces out of the 10 provinces that constitute Zimbabwe. It is only reports from Matabeleland South and Masvingo that did not have such an indication. The only conclusion is that the issue of "aliens" is a reality and I am bound to believe the first and second applicants when they allege that a significant number of people have been affected.

In their application the first and second applicants allege that they together with the first respondent ZEC and the fourth respondent Zanu PF set up a high level political platform chaired by the Honourable Justice MAKARAU who also represented the first respondent on the platform together with other members of ZEC. The parties had deliberated on the issue of aliens and agreed it was feasible to have them registering to vote using their identity cards endorsed "alien" coupled with a birth certificate pointing to birth and parentage of Zimbabwean or SADC origins. However the first respondent was comfortable with a directive from the court. The first respondent has not categorically denied this. Whilst I am not bound by whatever discussion that may have ensued between ZEC and the political parties, I note that the first respondent has not projected an independent opposition or stance of its own. In its initial opposition, it took a stance that, the Registrar-General, the second respondent, has denied refusing to issue identity documents endorsed "citizen" to the class of persons represented by the applicants nor imposing unduly onerous conditions. It asserted that the Registrar-General has assured ZEC that he is prepared to issue identity documents to the concerned aliens which documents identify them as citizens. It took the position that since the Registrar-General had clarified the issue and made an undertaking the matter stood resolved.

The first respondent further argued that if the second respondent were to renege on the undertaking the applicants could re-approach the court. In the initial affidavit the court

expected more in terms of the position ZEC was adopting not a regurgitation of the Registrar General's position. This expectation arises out of the fact that ZEC is the body constitutionally mandated to deal with the issue of voter registration and compilation of voters' rolls and registers see Section 239(c) and (d). This is a pertinent issue to which an independent position must have been adopted, moreso when the order sought is against the first respondent who when the order is granted is faced with its implementation. The position adopted did not assist the court as expected, moreso, given the special position ZEC occupies *viz* the issue at hand. Despite the fact that ZEC is the first respondent, it had to await the second respondent's opposing affidavit perhaps for a good reason which I struggled to appreciate.

In his opposition and supplementary affidavits the Registrar-General opposed the relief sought on the basis that all such persons in the position of the applicant should simply approach his office and obtain an identity document showing that they are citizens. He denied that his office demanded an exorbitant amount as alleged by the third applicant nor demanded renunciation of citizenship as a requirement to issuance of an identity card to an "alien" in the category in issue. The second respondent argued that foreigners who are not citizens of Zimbabwe also possess the same documents as the "aliens" in issue and hence it would not augur to allow the applicant's members and the third respondent to approach the first respondent with an identity document inscribed "alien" plus a birth certificate. Be that as it may, this remained a bold averment as the second respondent did not provide information which proves the point that any other alien's birth certificate and national identity card would be similar to the ones given to these under consideration whose birth was in Zimbabwe with parentage hailing from Zimbabwe or the SADC region.

The second respondent also raised the issue that, granting the dispensation is likely to induce production of many counterfeit birth certificates which the first respondent's officers cannot identify as, they have no capacity to distinguish between a counterfeit birth certificate and an original birth certificate. To buttress this point, the second respondent, alleged that a birth certificate simply has information on the child unlike an identification document which "is based on the features which include the photographs, finger print, bar code and signature of the holder...."

Clearly there is no supportive evidence that the granting of the order will result in production of counterfeit birth certificates. The people under consideration already have identity cards serve that they are endorsed "alien" and in normal circumstances identity cards are issued to persons with birth certificates. The issue of fake documents does not apply to birth

certificates only, even metal identity cards could be fake and as argued by Mr *Mwonzora* in his answering affidavit “we cannot stop using passports or drivers’ licences or even United States dollar notes because one or two criminals have attempted to produce fake ones”. I agree with these sentiments. In any administration producing a watertight system is a challenge. It is a fact that ordinary Zimbabweans when registering to vote are producing identity documents including metal ones which bore no bar codes nor a signature, and ZEC has no way of knowing the authenticity or otherwise. They have to presume authenticity.

Mr *Halimani* for the applicants argued that the fear of the use of counterfeit or fake birth certificated was baseless. This is because the registrant would not only have a birth certificate, but will also be in possession of his identity card which will reflect not only his details but his photograph as well. The only difference with the rest of the identity documents produced by other registrants is that it is endorsed “alien”. This indeed is the correct scenario.

Of interest is the fact that the second respondent annexed to his supplementary affidavit a specimen of an authentic birth certificate. The information is clear and informative such that one wonders how it is that the second respondent alleges that the first respondent would be unable to interpret a birth certificate. The names on the specimen appear as “HELLEN MATANDA” giving the sex, place and date of birth of the holder. The names of the father are indicated as JOSEPH ISAAC MATANDA who was born in ZIMBABWE with the National Identity document card indicating district of issue and district of origin. As for the mother Windi Chasara, she was born in Goromonzi and the information on her national identity card being duly provided. A comparison with third applicant’s birth certificate shows that her parents’ origin are from Zimbabwe and Malawi respectively and her birth certificate shows her birth place as Zimbabwe.

I thus do not consider the second respondent’s argument to be meritorious. Nothing has moved me to believe that the first respondent’s officials would not be able to perceive the requirements stated in s 36 or 43 of the Constitution.

In the absence of such a demonstration I also found quiet baffling the argument by the second respondent that the birth certificate issued to different categories of people do not reflect the citizenship classification of the “birth certificate holder” (my emphasis). If a child is born in Zimbabwe of a Zimbabwean citizen parent, what classification would deviate from a conclusion that the child concerned is a Zimbabwean citizen in the light of s 36. In *Mawere v Registrar General & Others CCZ27/13* Garwe JA stated as follows

“Section 36 is not made subject to any other section in the Constitution. It stands alone. The ordinary grammatical meaning of the section is clear and allows of no ambiguity. A person born in Zimbabwe to a parent who, at the time of birth, was a Zimbabwean citizen, is a Zimbabwean citizen. That section does not oblige a person in this category to do anything further to qualify for Zimbabwean citizenship.”

The effect of the above findings by the Constitutional Court renders redundant the classification argument by the Registrar-General, that the concerned person’s identity card is endorsed “alien” becomes cosmetic and of no legal significance or importance as the person needs not do anything further as he or she automatically is a citizen by virtue of his or her circumstances.

There seems to be a lack of understanding of the provisions of s 43 of the Constitution by the second respondent given the examples he gives in his supplementary affidavit in view of the relief sought. In one instance he argued that a birth certificate coupled with a national identity document endorsed “alien” does not expressly reflect the citizenship status of the potential registrant. This to me is a question of fact, was the potential registrant born in Zimbabwe to one or both parents of SADC origin and whether the registrant was ordinarily resident in Zimbabwe before 22 May 2013. The birth certificate would reflect the information on place of birth and origins of parents involved. Citizenship is based on the facts as prescribed by the law. The issue of proof of residence would rest on the registrant to satisfy the officials on that aspect. Further it was argued, this will result in a flawed process as other people who are holders of identity documents endorsed “alien” may end up registering as voters. This becomes more intriguing if one considers that the second respondent in his opposing affidavit annexed a dispensation directive issued by the Government during the harmonised elections of 2013. I find it imperative to reproduce same as is for a proper appreciation of the issue at hand.

**“PRESS STATEMENT**

**HARMONISED ELECTIONS 2013**

**Voter Registration: Clarification on Aliens.**

**The Honourable Minister of Justice, legal and Parliamentary Affairs Hon Patrick Chinamasa (MP) advised the public that all citizens of Zimbabwe who are 18 years and above are eligible to register as voters. This applies to the following persons:**

**Citizens by birth**

- (i) **This refers to persons born in Zimbabwe where both parents are citizens of Zimbabwe by birth, or**
- (ii) **Persons born in Zimbabwe where either parent is a citizen of Zimbabwe by birth, some of whom are holding aliens' identity cards or documents.**

**It should be noted that there are different categories of "Aliens" as indicated below;**

**A child born in Zimbabwe where either parent is a Zimbabwean citizen by birth and the other parent being a foreign national who did not renounce foreign citizenship.**

**Any person who arrives in Zimbabwe and resides in Zimbabwe for a period of six months or more is issued with an identity document denoting the citizenship status as "Alien" (AA).**

**Refugees are classified as aliens (RFG).**

**The category of aliens we are referring to who qualify to register to vote are those person who are born in Zimbabwe where either parent is a citizen of Zimbabwe and those whose parents have been in Zimbabwe for a long time (prior to 1980). This covers children whose parents originated from Malawi, Zambia, Mozambique, Botswana, South Africa, Tanzania, and others within the region.**

#### **Requirements for Voter Registration**

**Documents required for one to register as a voter:**

- a) **Full original birth certificate for persons born in Zimbabwe together with;**
- b) **National identity documents (metal, polythene-synthetic or legible green waiting pass with holder's photograph);**

**Or**

- c) **Valid Zimbabwean passport and;**
- d) **Proof of residence."**

The above press statement was clear as regards the "aliens" that were being given the dispensation. Equally this application is clear as to the class of persons for whom relief is sought, which incidentally is the same class granted that dispensation in the 2013 harmonised election. Whilst there may be different categories of "aliens" the relief sought is clear that it covers those born in Zimbabwe to either a Zimbabwean citizen, or persons born in Zimbabwe before 2013 where one parent was a citizen or both parents were citizens of a SADC country and the person is ordinarily resident in Zimbabwe. The argument by the second respondent that because there are different categories of 'aliens' confusion will reign does not hold water given the specificity in the class that sought this relief. It is important for litigants to appreciate the

nature of relief being sought in order for an appropriate opposition to be presented. Failure to do so will result in a litigant going on a wild goose chase.

The first respondent sought to argue that the dispensation sought worked in 2013 as the Registrar-General had the data at his disposal and now the Registrar is not involved. Suffice it to say that registration then was decentralised and no evidence was given by the Registrar-General himself that during that period they had to do a special verification exercise on the documents produced by “aliens.” Apart from bold averments the Registrar-General failed to demonstrate how the voter’s roll would be distorted if the proposed course of action is adopted.

Evidence presented by the applicants on the Registrar-General’s office’s reluctance to co-operate in registration issues remains unchallenged in particular that his officers in September 2017 continued to charge for issuance of documents despite a waiver by government in terms of s 78 (1) of the Public Finance Management Act [*Chapter 22:09*]. Applicants averred it had to take the then ZANU PF Secretary for Administration Dr Ignatius Chombo to order the second respondent to comply. To then leave such an important issue in the hands of the Registrar-General where the parties herein had seen reason and agreed on the proposed course would not be in the interest of justice, more so when ZEC is now the body responsible for the management of the voter’s roll.

It is not a secret that the final position taken by ZEC is informed by the Registrar-General. The following statements extracted from Mr Magade’s supplementary affidavit are informative:

- “7. Had there been no acknowledgement of his constitutional duties by the Registrar-General the special dispensation may have been necessary but that is not the case.
8. In the result, and upon the strength of the representations by the Registrar-General, as appear in Annexure “A” here to (the Registrar-General’s supplementary affidavit) the Commission is of the view that there need not be any special dispensation relating to production of birth certificates extended to the third applicant and persons in similar circumstances.”

I interpret these statements to imply that, for ZEC, the Registrar-General has spoken so shall be it. There is no indication on its part how in their own opinion the dispensation would compromise the voter’s roll and impact upon ZEC’s integrity. It has been made clear by the first respondent that the crux of the commission’s objection is the Registrar-General’s affidavit which brought up issues in their consultation. As this is the situation, having found the grounds raised by the Registrar-General to be of no merit the result is the crumbling of the first respondent’s opposition by virtue of solely being based on the Registrar-General’s position.

The only independent fact raised by the first respondent is that allowing the relief sought to prevail creates an unfair advantage for persons in the class of the third applicant as against the rest of the citizenry. This is premised on the fact that no other classes of citizens will be allowed to register to vote outside production of identity documents provided for in the Electoral Act [*Chapter 2:13*] as a birth certificate is not part of the definition of proof of identity. According to Mr *Kanengoni* for the first respondent, this creates an additional right. He argued that the Electoral Act defines proof of identity as “identity document, valid passport and a valid driver’s licence” hence a birth certificate is not covered. To me, it is clear that there is no violation of the Electoral Act. The definition of proof of identity in the said Act reads:

“proof of identity” means a valid Zimbabwe passport, or a notice or identity document issued in terms of section 7 of the National Registration Act [*Chapter 10:17*], or a valid driver’s licence containing an identity number assigned to the holder thereof under the National Registration Act [*Chapter 10:17*];

A look at section 7 of the National Registration Act [*Chapter 10:17*] shows that there is no perceived differentiation. The section speaks to the identity of a person and the accuracy of the information followed by the issuance of an identity document in a form prescribed: and thus the document would contain the person’s photograph and such other particulars of the person as directed by the Minister. No argument was presented by the 1<sup>st</sup> respondent that the identity cards held by the persons in issue are not issued in terms of Section 7 of the National Registration Act. The said section reads as follows:

**Issue of identity documents**

- (1) If a registration officer is satisfied as to the identity of an applicant for registration and the accuracy of any information given in connection with the application for registration, he shall issue to the applicant a notice in writing indicating the date on which the applicant has applied for registration and the place at which and time when the applicant may receive his identity document.
- (2) When an applicant for registration surrenders to a registration officer the notice issued to him in terms of subsection (1) at the place and within the period specified in that notice, the registration officer shall, if he is satisfied as to the identity of the applicant, issue to him an identity document which shall—
  - (a) be in a form prescribed and of materials approved by the Minister; and
  - (b) contain a photograph and such other particulars of the registered person as the Minister may direct.

The persons concerned herein are producing an identity card, it is only that they need to go further and prove that indeed they are citizens by referring to their birth certificates. How it can be said to be an additional right is puzzling. Any other citizen need only produce an identity card or valid passport and proof of residence. If anything it becomes onerous for the class of persons in issue, because it is them who need to go the extra mile to prove that they are covered by the Constitution in asserting their endowed rights. In passing I need state that an Act of Parliament cannot come in the way of the full enjoyment of a right bestowed by the

Constitution. The argument that the granting of the dispensation provides more rights to the class of persons in issue has no merit and deserves to be discarded without further ado. Should there be a category of citizens who have any issues and feel discriminated upon, it is incumbent upon them to bring up such issues. The first respondent cannot plead their case. The law will assist the diligent and those who seek to assert their rights as the applicants have done.

Overall, in my view, the only pertinent issue which should have exercised the litigants' mind should have been the challenges presented by Section 43(2)(b) which entail proving that the person relying on the section was ordinarily resident in Zimbabwe on the publication day of the Constitution being the 22 May 2013. This is an additional requirement for one to qualify as a citizen under that section. The issue of being born in Zimbabwe before May 2013 to one or both parents who are citizens of a SADC member country would not be a challenge as the birth certificate would clearly stipulate this information. None of the parties raised this issue which in my view ZEC as the body implementing the voter registration exercise might have considered as a challenge in implementing the relief sought. Without any submissions on possible challenges likely to be encountered on this note, the court simply had to assume there were none.

The national voter registration blitz will end in December 2017. After that, voter registration will continue at the usual 63 or so voter registration centres resulting in prospective registrants meeting considerable costs to access those centres. It was therefore pertinent that the relief that was sought be granted given the strength of the applicant's case and the circumstances attendant thereto. The balance of convenience was in favour of the applicants. The courts would be failing in their duty to breathe life into constitutional provisions if but for perceived administrative niceties they deny relief where same is justified. It is due to the foregoing reasons that I granted the stated relief to the so called "aliens" who practically and legally are Zimbabwean citizens with every right to enjoy the privileges and constitutionally protected rights attendant to their true status.

*Wintertons*, applicant's legal practitioners  
*Nyika Kanengoni & Partners*, 1<sup>st</sup> respondent's legal practitioners