

JOSEPH DEYSEL AND OTHERS

versus

THE CONSTITUENCY REGISTRAR

HIGH COURT OF ZIMBABWE  
CHIWESHE J  
BULAWAYO 8 MARCH 2002

CHIWESHE J: In this appeal I am of the view that the matters referred to me by the magistrates' concerned are points of law - primarily the relevance/applicability of the provisions of the Electorate Act to the appellants' cases.

These have been inter alia raised by the appellants as points in limine.

I have three options:

- Decide on the points in limine and refer the matter back to the magistrates' court.
- Decide the matter both on the points in limine and the merits immediately.
- make a declaratory order as to the law applicable.

Given the urgency of the matter and the time constraints I prefer to adopt the

third option. In this regard I am guided by the ruling in the case of Registrar-General

of Elections and Others vs Morgan Tsvangirai SC 12/2002 in which it was held at pages 23 and 30 of the cyclostyled judgment, respectively, that;

"Where the loss of citizenship is common cause, the consequent loss of the right to vote is by operation of the law making the procedures set out in section 25 of the Act superfluous or non-applicable. In such cases the constituency registrar, or anybody else for that matter, cannot reverse such a loss nor does he have any discretion in the matter. The law has taken its course, the voter has lost his or her right to vote by operation of the law and the loss cannot be revived in any way." and

24/02

-2-

"(4) That, by a majority of four to one, a person who ceases to be a citizen also ceases to be a voter by operation of law namely paragraph 3(3) of the Third Schedule of the Constitution of Zimbabwe".

Declaration

Any person including the appellants are entitled to vote in the Presidential

Elections set for the 9th and 10th March 2002 provided that they can prove to the

satisfaction of the Registrar General of Elections that at the relevant time they are

citizens of Zimbabwe and that they meet the criteria set down for eligibility as a

voter in the said elections.

Chiweshe J