

**AN OVERVIEW OF THE NATIONALITY AND  
CITIZENSHIP LAWS OF ZAMBIA.**

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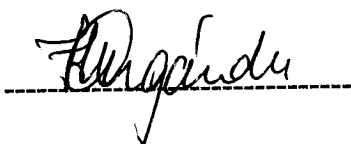
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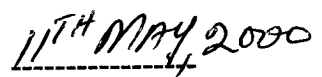
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Dedicated to the memory of my beloved  
Grand mother MALITA YENZANI SIMANGO  
and  
my uncle MORRIS KAZIMILO SIMANGO

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Charles Nhari,  
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## ABSTRACT

It is generally recognised that every sovereign State is competent to decide which persons are, or qualify to be, its members. One form of such membership is citizenship or nationality.

At times, one's citizenship of a particular State may be in issue. This has been the case in Zambia where citizenship of certain persons has been in issue to the extent that some of them have been declared or rendered "stateless". We have also noticed that aliens (non-citizens) have been deported from Zambia for several reasons. In this regard, questions may be posed:

(i) Who is a Zambian citizen?

(ii) How does one acquire Zambian citizenship?

(iii) Under which circumstances can a Zambian citizen lose his citizenship of Zambia?

(iv) How can a purported Zambian citizen become "stateless"?

(v) Which fundamental rights can be exercised by citizens and non-citizens?, and

(v) Under what circumstances and for which reasons can a non-citizen be deported from Zambia?

This work, therefore, is a modest attempt to provide some answers to the above questions. The author would like to mention that personnel involved in administration of citizenship laws were very unwilling to be interviewed.



## THE ORGANISATION OF CHAPTERS

This essay consists of four chapters. Chapter One is devoted to a discussion on the concepts of nationality and citizenship , and the historical background of citizenship laws of Zambia. In this respect it discusses the nationality laws applicable to the former protectorate of Northern Rhodesia (the territory that is now Zambia) under the British Colonial rule and also during the Federation of Rhodesia and Nyasaland.

The discussion in Chapter Two will be centered on the creation , acquisition and loss of Zambian citizenship under the Constitution of Zambia 1964, the Citizenship of Zambia Ordinance of 1964, the Constitution of Zambia of 1973, the Citizenship of Zambia Act No 26 of 1975 and the Constitution of Zambia of 1991 as amended.

Chapter Three deals with issues relating to citizenship of Zambia other than acquisition and loss of citizenship discussed in Chapter Two. It establishes that citizenship laws of Zambia do not entertain the incidence of plural or dual citizenship or nationality. It discusses proof of Zambian citizenship, statelessness, fundamental rights , immigration and deportation of aliens.

Chapter Four constitutes the conclusion . Here, a summary of the important points of the essay will be given. This chapter will end with some recommendations.

## CHAPTER 1

### THE HISTORY OF NATIONALITY AND CITIZENSHIP LAWS OF ZAMBIA

#### 1.1 INTRODUCTION

The ensuing discussion relates to the historical development of nationality and citizenship laws of Zambia. This is because the understanding of the Zambian citizenship and nationality laws as they are today, is to an extent, dependent upon an understanding of their history. It is not possible to write the full history for such laws did not exist prior to colonisation. In this regard, our discussion begins with British nationality laws pertaining to the former British Protectorate of Northern Rhodesia, the territory that is now called Zambia.

The discussion will be done in the following order:

- (i) the meaning of the concepts of citizenship and nationality;
- (ii) the nationality laws applying to Northern Rhodesia under British colonial rule under:
  - (a) the British Nationality Act of 1948;
  - (b) the Citizenship of Rhodesia and Nyasaland and British Nationality Act, 1957.<sup>1</sup>

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<sup>1</sup> 1957, No. 12 as amended by the Citizenship of Rhodesia and Nyasaland and British Nationality Act, 1959 (No.13).

## 1.2 THE CONCEPTS OF NATIONALITY AND CITIZENSHIP.

Nationality and citizenship are two concepts that connote different aspects of the same relationship - membership of a state. Citizenship deals with the domestic or municipal aspects and nationality with the international aspects. In principle, matters of nationality are left within the domestic jurisdiction of states.<sup>2</sup>

Nationality is a 'legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties'.<sup>3</sup> As a concept within the domestic jurisdiction of a state, it serves to determine that the person upon whom it is conferred enjoys rights and is bound by obligations which the state grants to or imposes on its nationals. Whether nationality under domestic law has effect on the international plane is a matter to be determined by international law. Thus, international recognition is the link between international law and nationality under municipal law.<sup>4</sup>

In international law, the concept of nationality has important functions.<sup>5</sup> One such function is the right to protect its nationals abroad.<sup>6</sup> A state may exercise

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<sup>2</sup> See, the Advisory Opinion on Nationality Decrees in Tunis and Morocco(1923) P.C.I.J. Series B. No. 4,24; also Convention on Nationality by Harvard Research, Article 1 (1929) 23 A.J.I.L. Special Supplement 13; U.S.V. Wong Kim Article (1898) 169 U.S. 649, 668

<sup>3</sup> Nottebohm Case ,I.C.J.Rep1955 at 4..

<sup>4</sup> Hague Convention on certain questions relating to the conflict of Nationality Law, 179 L.N.T.S. 89, Art 1.

<sup>5</sup> Nationality is one of the rights enumerated in the Universal Declaration of Human Rights.

its right to protect its nationals abroad if they are not able to obtain satisfaction from another State that has injured them.<sup>7</sup>

In municipal law, nationality or citizenship plays an important part in such matters as deportation and immigration. Citizenship is a term commonly used as being synonymous with nationality.<sup>8</sup> This emphasizes a real connection between the two terms but it is not necessarily correct. Nationality is membership of a nation, citizenship is one kind of membership of a state. The two concepts are synonymous for example, in States which possess only one type of relationship with all individuals for whom they are internationally responsible.<sup>9</sup> This is the case with Zambia.

The concept of nationality also extends, by analogy, to corporations,<sup>10</sup> ships<sup>11</sup> and aircraft.<sup>12</sup> This dissertation is, however, mainly concerned with nationality in its normal application to individuals and not to corporations.

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<sup>6</sup> Jones Mervyn J, British Nationality Law, Revised Edition Oxford 1956 p.1.

<sup>7</sup> See Mavrommatis' Palestine Concessions (1924); P.C.I.J. Series A. No. 2, 12.

<sup>8</sup> Maximilian Koessler, "'Subject', 'Citizen', 'National' and Permanent Allegiance" (19946 - 7) 56 Yale L.J.58.

<sup>9</sup> J.W. Salmond, 'Citizenship and Alliance' (1901) 17L.Q.R. 270; (1902) 18 L.Q.R. 49.

<sup>10</sup> G. Schwarzenberger, International Law, (3rd Edition) Vol.; London Stevens and Sons, 1957 p.388.

<sup>11</sup> United Nations Legislative Series, Laws Concerning the Nationality of Ships (1955).

### 1.3 THE NATIONALITY LAWS APPLYING TO NORTHERN RHODESIA UNDER BRITISH COLONIAL RULE.

Zambia was formerly a British Protectorate known as Northern Rhodesia and it was created through various treaties that were signed between the British South Africa Company representatives and some local chiefs. It was created by the passage of the Northern Rhodesia Orders-in-Council, 1911, which came into effect on 4th August 1911. This resulted in the amalgamation of two territories: The Barotse-North-Western Rhodesia and North-Eastern Rhodesia.<sup>13</sup> By clause 7 of the Northern-Western Rhodesia Orders-in-Council 1911, the administration of affairs of Northern Rhodesia vested in the British South Africa Company in accordance with the terms of the Royal Charter which was granted to the Company by the British Crown. The Company's administration of Northern Rhodesia ended in 1924 when the Northern Rhodesia Orders-in-Council was promulgated. The administration of the territory then vested in the Governor on behalf of His Majesty's Government.<sup>14</sup>

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<sup>12</sup> Chicago Convention, Command Paper. 6614 (1945) Article 20.

<sup>13</sup> North-Western Rhodesia was created by the Barotse-North-Western Rhodesia Orders-in-Council 1899, 1902 and 1909. North-Eastern Rhodesia was created by the North-Eastern Rhodesia Orders in Council 1900 and 1907. They were revoked by the Northern Rhodesia Order in Council 1911.

<sup>14</sup> See Clause 6 of the Northern Rhodesia Order in Council.

Being a protectorate, Northern Rhodesia was different from a colony such as Southern Rhodesia. In the case of Subhuza v Miller, the House of Lords attempted to explain what a British Protectorate is:<sup>15</sup>

"In a general case of a British Protectorate, although the protected country is not a British dominion, its foreign relations are under the exclusive control of the Crown, so that its Government cannot hold direct communication with any foreign power, nor become only semi-sovereign, for the protector may have to interfere, at least to a limited extent with its administration in order to fulfill the obligations which international law imposes on him to protect within it the subjects of foreign powers".

Just as other British protectorates, the former Protectorate of Northern Rhodesia was governed under the Foreign Jurisdiction Acts of 1843, 1890 and 1913 and it is on the basis of these Acts that British Nationality laws extended to the Protectorate.<sup>16</sup>

### 1.3.1 The British Nationality Act, 1948

The British Nationality Act, 1948, came into operation on 1 January 1949 and was the first legislation under a new scheme.<sup>17</sup> Under this scheme, each Commonwealth country (the United Kingdom and Colonies being regarded as one country) was to create a new statutory concept of citizenship, select the classes of persons upon which it desired to confer citizenship and make

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<sup>15</sup> (1926) A.C. 518 at 523. See also the courts decision in Nyali v Attorney General (1955) 2 WLR 649 with regards to the Kenya Protectorate.

<sup>16</sup> See J. Mervyn Jones, British Nationality Law, (Reused Edition) Oxford, Clarendon Press 1956 p.195, See also Appendix 1 in Laws of Northern Rhodesia, (1948 Edition) Vol. X.

<sup>17</sup> Command Paper 7326. (United Kingdom).

permanent provision for its acquisition.<sup>18</sup> There was to be a reciprocal recognition of citizenship this created. Such citizenship would entitle the holder to the common status of a British subject, a term synonymous with 'Commonwealth citizen'<sup>19</sup> Part 1 of the Act contained, inter alia, a definition of the common status<sup>20</sup> and a provision that British protected persons were not to be regarded as aliens for the purpose of the Aliens Restrictions Acts, 1914 and 1919.<sup>21</sup>

Persons who were connected with the Protectorate of Northern Rhodesia were regarded as British protected persons under British Protected Persons Order, 1934,<sup>22</sup> which laid down rules determining these persons who had British protected status by virtue of their connection with British protectorates and mandated territories in Africa. Northern Rhodesia was specified in the Schedule to the Order. According to section 2 (a) of the Order, any person born within the Protectorate who a British Protected person. And so was a person born outside the Protectorate, who did not possess the status of a British subject or the nationality of another state, of a father who at the time of his birth belonged there

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<sup>18</sup> (Live Parry, Nationality and Citizenship Laws of the Commonwealth and of the Commonwealth and of the Republic of Ireland, London, Stevens and Sons Limited 1957 p.217. ff.

<sup>19</sup> Act of 1948 S.1 (2). It was so decided as well in Ullah v. Black, in Times, 23 April 1955.

<sup>20</sup> Clive Parry, Op.cit p.221.

<sup>21</sup> Ibid. p.227.

<sup>22</sup> Northern Rhodesia Government Notice No. 91 of 1934.

and was also born there.<sup>23</sup> Under this Order, it was not possible to be both a British protected person and a British subject.<sup>24</sup>

This Order was revoked by the British Protectorate, Protected States and Protected Persons Orders-in-Council, 1949.<sup>25</sup> These Orders also declared that a persons who was a British protected person connected with the territory became a British protected person if:

- (a) he was born at whatever date within the territory, or
- (b) he was born elsewhere than in the territory before the date of the Order<sup>26</sup> of a father born therein, or
- (c) he was born elsewhere than in the territory after the date of the of the birth.<sup>27</sup>

Posthumous children were treated as being in existence at the date of the death of their father.<sup>28</sup> A person born out of wedlock and legitimized by the subsequent marriage of his parents was treated as from the date of the marriage or the Order, whichever was later, as if born legitimate.<sup>29</sup> It was possible under these provisions to be at birth both a British protected person and a national of a foreign state or a citizen of the United Kingdom and Colonies. Under these

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<sup>23</sup> British Protected Persons Order, 1934 s 2(b).

<sup>24</sup> Ibid. S.4.

<sup>25</sup> 1949 Statutory Instrument No. 140; See Northern Rhodesia Government Notices No. 100 of 1949. This Order was promulgated in line with the British Nationality Act, 1948 as 32(1) and 30.

<sup>26</sup> 28th January, 1949.

<sup>27</sup> The British Protectorates, Protected States and Protected Person Orders-in-Council, 1949, S.9.

<sup>28</sup> Ibid s.4.



Orders at British protected person who possessed foreign nationality might make a declaration renouncing his British protected status and upon registration of the declaration, he ceased to be a British protected person.<sup>30</sup> The Governor had power to withhold registration of a declaration made in time of war. A British protected person's wife might apply to the Governor to be registered as a British protected person.<sup>31</sup>

Under the municipal law of the United Kingdom, the British protected person was not a British subject and his position, before 1949, differed in many respects from that of a British subject and his position, before was that of an alien for the purposes of the Alien Order, 1920.<sup>32</sup> He could not therefore have entered the United Kingdom without special permission.<sup>33</sup> In R v Ketter,<sup>34</sup> the appellant was a British protected person born in Palestine in 1911 and until 1923, he was admittedly a Turkish subject. In 1937 he left Palestine where he lived and went to England with a British passport issued by the British High Commission in Palestine. The British Home Secretary issued an order requiring him to leave the United Kingdom by September 30th 1938. He failed to comply with the order as such he was convicted of offences under the Aliens Orders 1920 and sentenced to 11 days imprisonment and recommended for deportation. It was

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<sup>29</sup> Ibid. S.3.

<sup>30</sup> Ibid.S.13.

<sup>31</sup> Ibid. S.11.

<sup>32</sup> J.Mervyn Jones, Op.cit, p.187.

<sup>33</sup> This disability was removed by the Aliens Order 1943.

<sup>34</sup> (1940) I.K.B. 787, See also, R v Graham Campbell (1921) 2.K.B. 473.

held by judge Singleton that the appellant was an alien and had been rightly convicted he not having become a British subject. He said:<sup>35</sup>

"By section 27, subsection 1 of the British Nationality and Status of Aliens Act, 1914, 'alien' means a person who is not a British subject, and by the same subsection as amended by section 2, subsection 6, of the British Nationality and Status of Aliens Act, 1918, British subject, means a "person who is a natural born British subject, or a person to whom a certificate of naturalisation has been granted, or a person who has become a subject of His Majesty by reason of any annexation of territory".

Further, a British protected person could not exercise the political rights of a British subject within a dominion and had not the benefit of the provisions of the Foreign Marriages Act, 1892, as that Act only applied to British subjects.<sup>36</sup>

The British Nationality Act, 1948, provided that British protected person was not to be considered an alien for its purposes and Orders made there under.<sup>37</sup> He remained an alien for other purposes unless expressly exempted or he also possessed the status of a British subject.<sup>38</sup> For example, he might seek citizenship by naturalization unlike a citizen of another Commonwealth country who might seek citizenship of the United Kingdom by registration as of right.<sup>39</sup> A British protected person could apply to the Governor to be naturalised as a

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<sup>35</sup> Ibid. at 788.

<sup>36</sup> J. Mervyn Jones Op.cit p.187.

<sup>37</sup> Act of 1948 S. 3(3). This charge had already been done by the Aliens Order, 1943.

<sup>38</sup> British Protectorates, Protected States & Protected Persons Order-in-Council 1949. S.13(1).

<sup>39</sup> Clvie Parry, Op.cit. p353, See also the British Nationality Act, 1948, S.6 (1) (3).

citizen of the United Kingdom and Colonies and had to fulfill the following requirements;<sup>40</sup>

- (a) that he was ordinarily resident in the Protectorate and had been so resident throughout the period of twelve months, or such shorter period as the Governor might accept, or
- (b) that he was in Crown service under His Majesty's Government in the United Kingdom; and
- (c) that he was of good character; and
- (d) that he had sufficient knowledge of the English language or any other language in current use in the Protectorate; and
- (e) that he intended in the event of a certificate of naturalization being granted to him-
  - (i) to reside in the Protectorate, or
  - (ii) to enter or continue in Crown service under His Majesty's Government in the United Kingdom, or service under an international organisation of which His Majesty's Government in the United Kingdom was a member, or service in the employment of a society, company or body of persons established in the Protectorate.

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<sup>40</sup> Ibid pp.266 - 267; Act of 1948 s. 10(3), (4).

Upon naturalisation, he had to take an oath of allegiance in the same manner as an alien. He might not, under the law of the United Kingdom, be guilty of treason in respect of acts done outside the dominions of the Crown.<sup>41</sup>

While abroad in foreign countries, although he was not a British subject, a British protected person was regarded as a British national and entitled to the same protection as was accorded to a British subject.<sup>42</sup> While a British protected person was in protectorate, his position was very precarious. Being a British national, no foreign power could exercise diplomatic protection on the international level on his behalf against the Crown.

### **1.3.2. The Citizenship of Rhodesia and Nyasaland and British Nationality Act, 1957.**

1953, the Federation of Rhodesia and Nyasaland was established in accordance with a United Kingdom enactment.<sup>43</sup> It consisted in Northern Rhodesia and Nyasaland, which were protectorates of the United Kingdom, and Southern Rhodesia which was a country of the Commonwealth in terms of the British Nationality Act 1948<sup>44</sup> and had already introduced a scheme of local

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<sup>41</sup> But, a British protected person in possession of a British passport might guilty of treason committed abroad; see Joyce v. Director of Public Prosecutions (1946) A.C. 347.

<sup>42</sup> J, Mervyn Jones, Op.cit to 190 ff.

<sup>43</sup> Rhodesia and Nyasaland Act, 1953. (U.K).

<sup>44</sup> British Nationality Act 1948 S.1(3).

citizenship by local enactment.<sup>45</sup> The status of persons belonging to Nyasaland and Northern Rhodesia, as discussed above, was that of British protected persons in accordance with the British Nationality Act, 1948.<sup>46</sup>

A person who became a citizen of Southern Rhodesia under the system of Southern Rhodesia citizenship also acquired the status of a British subject in accordance with the system of 'common status' that was introduced by the British nationality Act, 1948.<sup>47</sup> Since the system of Southern Rhodesian citizenship was replaced by a Federal citizenship system<sup>48</sup> governed by Citizenship of Rhodesia and Nyasaland Act, 1957, persons who attained citizenship of the Federation became at the same time British subjects. By the provisions of the British Nationality Act, 1958, Northern Rhodesia and Nyasaland were excepted from the operation of any reference in the British Nationality Act of 1948 to a 'protectorate',<sup>49</sup> but this was expressed to be without prejudice to the definition of a "British protected person" or to the generation of the principal Act with reference to the state of affairs existing before March 1, 1958, which was the date of commencement of Federal citizenship.<sup>50</sup> Therefore, the status of British protected persons continued to attach to persons born in Northern Rhodesia at whatsoever date and to persons born before January 26, 1949,

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<sup>45</sup> Southern Rhodesia Citizenship and British Nationality Act, 1949, & amended, see also Clive Parry, *Op.cit* pp 750 ff.

<sup>46</sup> See the British Protectorates, Protected States and Protected Persons Orders-in-Colonial 1949 Schedule 1.

<sup>47</sup> Act of 1948 S1(1),(2),(3).

<sup>48</sup> British Nationality Act, 1958. See Clive Parry, *Op.cit* p.1059 ff.

<sup>49</sup> *Ibid* S. 1. (1) (b), Clive Parry, *Op.cit* p.1059.

whose fathers were born, or elsewhere born on or after that whose fathers were born and there and were born and were British protected persons at the date of their birth. Further, possession of the status of British protected person was not prejudiced by the acquisition of Federal citizenship by any person.

British protected persons aged 21 or more years and of sound mind belonging to Northern Rhodesia attained Federal citizenship by registration as of right,<sup>51</sup> subject only to the qualification that ministerial consent was requisite in the case of a person who had once been, and had ceased to be a citizen.<sup>52</sup> This covered British protected persons born in Northern Rhodesia as well as those born outside the territory before January 1929, 1949, of fathers born in the territory and being British protected persons at the time of their births.<sup>53</sup> It also covered British protected persons born on or after January 29, 1949 of fathers born in the territory and being British protected persons at the time of their births.<sup>54</sup> However, any persons who was a child of a polygamous marriage solemnised outside the federation was excluded whether or not he was born in Northern Rhodesia.<sup>55</sup> All applicants registration under this provision had to take an oath of allegiance.<sup>56</sup>

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<sup>50</sup> Ibid. S.1(4).

<sup>51</sup> Citizenship of Rhodesia and Nyasaland and British Nationality Act, 1957. S.12.

<sup>52</sup> Ibid S.12(1) (b) read together with S.18.

<sup>53</sup> See the British Protectorates States and Protected Persons Orders in Council 1949 59 read with the definition of a "British protected person" in S.2(1) of the Citizenship of Rhodesia at Nyasaland and British Nationality Act, 1957.

<sup>54</sup> Ibid, S.9.

<sup>55</sup> Ibid, S.9.

<sup>56</sup> Citizenship of Rhodesia and Nyasaland British Nationality Act, 1957 S.2 (1),(2).

Wives of citizens of the Federation who were British protected persons by virtue of connection with Northern Rhodesia also attained Federal citizenship by registration as of right.<sup>57</sup> This rule applied whether or not the applicant was of full age. She had to take an oath of allegiance whether or not she was of full age.<sup>58</sup> However, this right was only accorded to the wife of a citizen, and not, for instance, to a widow.<sup>59</sup> Her marriage was not supposed to be a polygamous union solemnised outside the Federation.<sup>60</sup> A woman who had once been a citizen of the Federation and had ceased to be such was not entitled to registration as of right unless she had the written of the Minister of Home Affairs.<sup>61</sup>

Children of British subjects who were British protected person by virtue of their connection with Northern Rhodesia acquired Federal citizenship by birth<sup>62</sup> or by descent.<sup>63</sup> A person was a Federal citizen by birth if he was born in Northern Rhodesia in lawful wedlock or should have been legitimated by the subsequent marriage of his parents.<sup>64</sup> At the time of his birth, his father must have been a British subject - be it in the right of citizenship of the Federation, or of the United Kingdom and Colonies, or citizenship of any other country of the

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<sup>57</sup> Ibid.S. S. 14.14. See also the Citizenship of Rhodesia and Nyasaland Regulations, 1958, reg3.

<sup>58</sup> Ibid. S. 18(a).

<sup>59</sup> Ibid. S. 14(b). Semble, the marriage had to continue to subsist.

<sup>60</sup> Ibid. S.14(2).

<sup>61</sup> Ibid S. 18(b).

<sup>62</sup> Ibid. S.6.

<sup>63</sup> Ibid. S.7.

Commonwealth.<sup>65</sup> Thus in so far as it concerned Northern Rhodesia, citizenship of the Federation by birth was not citizenship *jure soli*, but was in part determined by parentage. It should be emphasised that citizenship by birth only applied to children born of fathers who were British subjects. A child whose father was a British protected person only could not therefore become a Federal citizen by birth; he could do so by registration as of right as pointed out above.<sup>66</sup>

A person was a Federal citizen by descent if he was outside Northern Rhodesia of a father who was a British subject and born in Northern Rhodesia and naturalised or registered in the Federation as a citizen of the United Kingdom and Colonies. His father must have been born in Northern Rhodesia and a citizen otherwise than by descent. This extended to a post humously born person,<sup>67</sup> and to a person born out of wedlock and legitimated by the subsequent marriage of his parents.<sup>68</sup> The father had to be in all cases a British subject at the time of the birth. Thus, a child whose father was naturalised and had subsequently renounced his citizenship of the United Kingdom and Colonies was outside the qualification.

## Illustrations

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<sup>64</sup> Ibid. S.34.

<sup>65</sup> Ibid. S.3.

<sup>66</sup> Supra, P.12n51.

<sup>67</sup> Ibid.S. 35.

<sup>68</sup> Ibid.S.35.



1. A, was born in Northern Rhodesia in 1900 and was naturalised in Northern Rhodesia as a British subject. His son, B, was born in Northern Rhodesia in 1958. B was a citizen of the Federation by birth (hence a British subject).
2. B, the illegitimate child of M and W was born in Northern Rhodesia in 1950. In 1955 M and W who were citizens of the United Kingdom and Colonies, married each other and B was thereby legitimated. B was a citizen of the Federation by birth.
3. A, a native inhabitant of Northern Rhodesia and a British protected person became a citizen of the United Kingdom and Colonies by naturalised in Northern Rhodesia in 1950 and had not ceased to be such a citizen at the time of the birth of his son in Portuguese East Africa in 1956. B was a citizen of the Federation by descent.
4. As in illustration 3 except that A was naturalised in the United Kingdom. B was not a citizen of the Federation by descent.
5. A and B, native inhabitants of Northern Rhodesia had a child, C, born of a polygamous marriage between them in Portuguese East Africa in 1959.

C was not a citizen by descent as A was not himself a citizen of the Federation<sup>69</sup>

Citizen of the Federation could be lost by British protected persons by way of connection with Northern Rhodesia on several grounds. He could automatically lose Federal citizenship if he acquired the nationality of a foreign country by any voluntary act other than marriage done outside the Federation.<sup>70</sup>

He could also lose his citizenship if after he had attained twenty-one years he resided abroad for a continuous period of three years or such longer period as the Minister of Home Affairs, at that person's request, might have fixed before the expiration of the three years period. This was so regardless of whether or not such residence was in a foreign country of the Commonwealth or of the Republic of Ireland.<sup>71</sup> But, residence abroad was to be discounted where such residence was in the service of an international organization of which the Federation was a member or of a person or body resident or established or incorporated in the Federation, or was residence for reasons of health or education.<sup>72</sup> This applied to his spouse and other persons so resident with such citizen<sup>73</sup>.

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<sup>69</sup> See, Ibid S.6(c)(11). Even if A were such a citizen, C, would still not have become a citizen by descent being a child of a polygamous union; S.7 (3).

<sup>70</sup> Ibid. s.31A, introduced in 1959.

<sup>71</sup> Ibid. S.31.

<sup>72</sup> Ibid. S.31. proviso

The Federation of Rhodesia and Nyasaland was dissolved immediately before 1st January, 1964.<sup>74</sup> At that time, therefore there were British protected persons by virtue of connection with Northern Rhodesia as well as Commonwealth citizens by reason registration under the Federation or through naturalisation before the Federation. It should be noted however that the acquisition or loss of Commonwealth citizenship or indeed Federal citizenship did not affect the status of native inhabitants of Northern Rhodesia as British protected persons. These persons automatically became Zambian citizens on 24th October 1964, the date of independence of Zambia. This will be discussed in the next Chapter.

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<sup>73</sup> Ibid.S.33.

<sup>74</sup> Federation of Rhodesia and Nyasaland(Dissolution)Order in Council 1963,s.1.

## CHAPTER 2

### CREATION, ACQUISITION AND LOSS OF ZAMBIAN CITIZENSHIP

#### 2.1. CREATION OF ZAMBIAN CITIZENSHIP\*

Northern Rhodesia gained a fully responsible status and became an independent country on 24th October, 1964, by virtue of the Zambia Independence Act, 1964<sup>1</sup>.

Before independence, the local legislature was not empowered to create a local citizenship or enact any legislation relating to matters of nationality; such powers vested in Her Majesty's Government in the United Kingdom by virtue of an Imperial statute applying to the Protectorate of Northern Rhodesia<sup>2</sup>

With the grant of independence on 24th October, 1964, came Zambian citizenship and it is the Constitution of Zambia, 1964 which made provision for the first time for citizenship of Zambia<sup>3</sup>. Among the changes effected by this Act was the inclusion of Zambia in the list of Commonwealth countries having separate citizenship in Section 1(3) of the British Nationality Act, 1948, thereby conferring upon a person who then became a citizen of Zambia the status of a 'Commonwealth Citizen'<sup>4</sup>. The British Protectorates, Protected State and Protected Persons Orders, 1949 ceased to apply to Northern Rhodesia<sup>5</sup>. It is

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<sup>1</sup> See Appendix 3 of Laws of Northern Rhodesia (1965 Edition) Vol. X

<sup>2</sup> By virtue of the Foreign Jurisdiction Acts (1843, 1890 and 1913). It was normally the case, that a new constitution for a Protectorate was promulgated under this Act: T.O. Elias, British Colonial Law. Stevens & Sons Limited, London, 1962 p 43.

<sup>3</sup> Zambia Independence Act. 1964. S.3; see also: The Zambia Independence Order, 1964, S.6

<sup>4</sup> See The British Nationality Act. 1948 (U.K.) S. 1 (1)(2). See also S.9 of Zambia Independence Order, 1964 Chapter II

<sup>5</sup> Zambia Independence Act, 1964, S.3 (1)(a)

however noteworthy that British protected persons by virtue of their connexion with Northern Rhodesia did not cease to be such until they became citizens of Zambia.<sup>6</sup> The same principle applied in respect of citizens of the United Kingdom and Colonies<sup>7</sup>. These provisions involved the enactment of further legislation in relation to citizenship. Parliament was empowered to make provisions for the acquisition of citizenship of Zambia by other modes not provided for in the Constitution and for the deprivation of certain persons of their citizenship. This power still vest in Parliament by virtue of Article 7 of the Constitution<sup>8</sup>. Under this constitutional power Parliament enacted the Citizenship of Zambia Act, 1975<sup>9</sup>. Before proceeding to discuss acquisition of Zambian citizenship, it has to be noted that the citizenship provisions at independence made no suggestion that being native or indigenous or of any particular race would be part of the qualification for Zambian citizenship. No doubt had the position been otherwise it would have been contrary to the spirit of the 1964 Constitution which introduced a bill of rights which included a non-discrimination clause<sup>10</sup> In Akar v Attorney General of Sierra Leone<sup>11</sup>, the appellant was born in 1927 in the former British Protectorate of Sierra Leone of a Lebanese father and an indigenous mother. He had lived in Sierra Leone for 56 years and never been to Lebanon. On attainment of independence on 27th April, 1961 he became a citizen of Sierra Leone by virtue of Section 1(1) of the Constitution of Sierra Leone. By

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<sup>6</sup> Ibid. S.3(2)

<sup>7</sup> Ibid. S.4

<sup>8</sup> Constitution of Zambia Act No. 1 of 1991

<sup>9</sup> Act No. 26 of 1975, as amended,

<sup>10</sup> Constitution of Zambia, 1964: Article 25

section 2 of Act No. 12 of 1962, the Government of Sierra Leone purported to amend the Constitution retrospectively to limit citizenship to persons of negro African descent. By Section 23 of the constitution, laws discriminating, amongst other things, on the ground of race were prohibited unless they were reasonably justifiable in a democratic society. The House of Lords reversed the decision of the Court of Appeal by holding that Act No. 12 of 1963 was unconstitutional, it was discriminatory within the meaning of Section 23 of the Constitution since different treatment was accorded to different people on the basis of race.

## 2.2. ACQUISITION OF ZAMBIAN CITIZENSHIP

The practice of states shows that nationality may be acquired according to *jus soli* or *jus sanguinis*. It may also be acquired by naturalisation, by marriage as when a wife assumes her husband's nationality, or by legitimation, or by official grant of nationality on application to the State authorities. Inhabitants of a subjugated or conquered or ceded territory may also assume the nationality of the conquering state, or of the state to which the territory is ceded. The *jus soli* is the rule under which nationality is acquired by the mere fact of birth, within the territory of the state irrespective of the nationality of the parents<sup>12</sup>. On the other hand, children acquire the nationality of their parents irrespective of their place of birth under the system of *jus sanguinis*<sup>13</sup>.

Before 1st April, 1986, the system of *jus soli* was the principal method for conferring nationality upon persons born in Zambia such that a child whose

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<sup>11</sup> (1969) 3 All ER 384

<sup>12</sup> Shearer, I.A., Starkes's International Law, (11<sup>th</sup> Edition), Butterworths, London 1994, p. 310

father was an established resident at the time of his birth became a citizen<sup>14</sup>. The term "established resident" was defined in relation to any date as "a person who is not a citizen of Zambia or a prohibited immigrant, under any law and who has been ordinarily and lawfully resident in Zambia for the period of four years, immediately preceding that date."<sup>15</sup> The position changed with the passage of the Citizenship of Zambia (Amendment) Act, 1986; the *jus sanguinis* is now the principal method for conferring Zambian nationality upon children. In this regard, Article 5 of the 1991 Constitution of Zambia states;

"5. A person born in or outside Zambia after the commencement of this Constitution shall become a citizen of Zambia at that date of birth if on that date at least one of his parents is a citizen of Zambia."

On the whole, Zambian citizenship can be acquired either under the transitional provisions or under the permanent provisions. Under the transitional provisions Zambian citizenship is acquired by operation of law. Under the permanent provisions a person attains citizenship at birth - by birth or by descent, by registration and naturalisation. The transitional provisions under the Zambia Independence Constitution will be dealt with first.

#### **2.2.1 ACQUISITION OF ZAMBIAN CITIZENSHIP UNDER THE TRANSITIONAL PROVISIONS OF THE INDEPENDENCE CONSTITUTION 1964 AND CITIZENSHIP OF ZAMBIA ORDINANCE, 1964:-**

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<sup>13</sup> Ibid, p. 310

<sup>14</sup> The Constitution of Zambia, 1973: Article 7(1)

<sup>15</sup> Ibid: Article 12(3)

The transitional provisions of section 3 of the Constitution, which was a schedule to the Zambia Independence Order 1964 confer citizenship of Zambia by operation of law on 24th October 1964 on two categories of persons born before 24<sup>th</sup> October, 1964. The Constitution does not distinguish between these two categories though they fall neatly into the categories that are usually designated as 'citizens by birth' and 'citizens by descent'. Its provisions do not employ such designations but both categories can be combined under the description 'persons who became citizens on 24th October 1964'.

Section 3(1) of the Independence Constitution relates to the first category and confers citizenship of Zambia on 24th October 1964 on every person born in the former Protectorate of Northern Rhodesia and who was a British protected person on 23rd October 1964. It will be noticed that this transitional provisions employs the principle of *jus soli*. The *jus soli* influences the requirement that the person concerned should possess British protected status on 23rd October 1964 which was the day before the commencement of the Constitution. Any person born at whatsoever date in the former Protectorate of Northern Rhodesia became a British protected person on 28th January 1949 or at his birth if born after that date<sup>16</sup>. Possession of that status on 23rd October, 1964 is all that the requirement calls for. It logically follows that a person who had lost such status but regained it before 23 October 1964 would satisfy the requirement.

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<sup>16</sup> British Nationality Act, 1948: S. 32(1) and the British Protectorates, Protected States and Protected Persons Orders, 1949, S. 9 (1)(a) and schedule 1



## Illustration

1. C was born in the Protectorate of Northern Rhodesia in 1950 and remained a British protected person on 23rd October 1964. C. became a citizen of Zambia on 24th October 1964.

The second category of persons who became citizens of Zambia on 24th October, 1964 is the citizen by descent (though the constitution does not refer to them as such). It relates to those persons born outside the former Protectorate of Northern Rhodesia of a father who was born therein and was a British protected person on 23rd October 1964. If the father died before that date, he would have become a citizen of Zambia but for his death.

As regards the qualification of being a British protected person on 23rd October 1964, a person born outside the limits of the present Republic of Zambia before 28th January 1949 was a British protected person if his father was born in the former Protectorate of Northern Rhodesia.<sup>17</sup> If such a person was born after that date of a father born in the Protectorate and being a British protected person at the time of the birth, he became a British protected person at birth<sup>18</sup>.

Citizenship under this provision of the Constitution is derived through a father who was born within Northern Rhodesia and who possessed British protected

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<sup>17</sup> British Protectorates, Protected States and Protected Persons Orders, 1949 S. 9(1)(b)

<sup>18</sup> Ibid. S.9(1)(c)

status immediately before the commencement of the citizenship legislation,<sup>19</sup> or at his earlier death. It is clear from this that the jus sanguinis is thus confined to the male line. citizenship does not descen to a person who or whose father had divested himself of his British protected status without regaining such status by 23rd October 1964.

### Illustration

1. F was born in Northern Rhodesia in 1924. His son, B, was born in the Protectorate of Nyasaland in 1950. F and B retained British protected status on 23rd October 1964. B became a citizen of Zambia on 24th October, 1964.
2. F. was born in Northern Rhodesia in 1920. His son B, was born in the trust territory of Tanganyika in 1955. F and B retained British protected status on 23rd October, 1964. B became a citizen of Zambia on 24th October 1964.
3. F. was born in Northern Rhodesia in 1922. His son B, was born in Southern Rhodesia in 1957<sup>20</sup>. F and B retained British protected status on 23rd October, 1964. B became a citizen of Zambia on 24th October 1964
4. M, a woman, was born in the former Protectorate of Northern Rhodesia in 1922. Her son, B, was born in the former Protectorate of Nyasaland in 1950. Both retained their British protected status on 23rd October, 1964. B. did not become a citizen of Zambia.

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<sup>19</sup> 23<sup>rd</sup> October, 1964

<sup>20</sup> B became a British protected person by virtue of British Protectorate Protected States and Protected Persons Orders 1949 S.9(1)(c)

5. F. was born in Northern Rhodesia in 1920. His son B, was born in Bechuanaland Protectorate in 1940. F died in 1947. B remained a British protected person on 23rd October, 1964. B became a citizen of Zambia on 24th October 1964.<sup>21</sup>

## 2.2.2. CITIZENSHIP OF ZAMBIA UNDER THE PERMANENT PROVISIONS OF THE ZAMBIA INDEPENDENCE CONSTITUTION 1964

### 1. CITIZENSHIP AT BIRTH

This mode of acquisition is provided for in Section 5 and 6 of Chapter II of the Constitution of Zambia of 1964. Citizenship at birth comprises citizenship by birth and citizenship by descent. The Constitution does not employ the designations 'citizenship by birth' and 'citizenship by descent' though it adopts the *jus soli* or *jus sanguinis*. The two categories embraced by the designation 'citizenship at birth' will be discussed separately under (i) citizenship by birth which relates to persons born in Zambia and (ii) citizenship by descent for the first foreign-born generation of citizens of Zambia.

#### (i) **Citizens by Birth**

Any person born in Zambia after 23rd October 1964 becomes a citizen of Zambia by birth.<sup>22</sup> This is the rule of the *jus soli* which governs the acquisition of the status of a British protected person as regards the former Protectorate of Northern Rhodesia. This rule is qualified by two provisos which exclude from Zambian citizenship a person at the time of whose birth (i) neither of whose

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<sup>21</sup> F would have become a British protected person on 28<sup>th</sup> January, 1949 but for his prior death  
<sup>22</sup> Chapter II of the Constitution of Zambia, 1964, S.5

parents was a citizen of Zambia and whose father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Zambia,<sup>23</sup> or

- (ii) whose father was a citizen of a country with which Zambia was at war and the birth occurred in a place then under occupation of that country.<sup>24</sup>

Where the father is dead, the national status of the father is construed as a reference to his national status at the time of his death.<sup>25</sup> Where the death occurred before 24th October, 1964, the national status that he father would have had if he had been alive on that date is deemed to be his national status at the time of his death.<sup>26</sup>

The first proviso is confined to the children of a father who possesses diplomatic immunity accorded to a foreign envoy accredited to Zambia. Under the Diplomatic Immunities and Privileges Act<sup>27</sup> persons who possess the immunity 'accorded to a foreign envoy' are stated, and such immunity may also be granted to the representatives of Governments attending conferences in Zambia by Order in the Gazette.<sup>28</sup>

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<sup>23</sup> Ibid. S.5(a)

<sup>24</sup> Ibid. S.5(6)

<sup>25</sup> Ibid. S.12(3)

<sup>26</sup> Ibid. S.12(3)

<sup>27</sup> Act No. 30 of 1965

<sup>28</sup> Ibid. S.6

The second proviso to section 5 is identical with that in the law of the United Kingdom under the British Nationality Act 1948.<sup>29</sup>

The two requirements contained in the proviso must be satisfied in order to bring a child within it. Thus a child born of a father whose country was at war with Zambia in a part of country not in hostile occupation is a citizen of Zambia.

### Illustrations

1. A. was born in Australia in 1934. His son, B, was born in Lusaka in 1967. B became a citizen of Zambia by birth.<sup>30</sup>
2. A., the son of French nationals was born in Ndola in 1966. A became a citizen of Zambia by birth.<sup>31</sup>
3. A. is the Ambassador of Egypt in Zambia. His son, B, born in Lusaka in 1966 is not a citizen of Zambia.<sup>32</sup>
4. H., is the Ambassador of Nigeria accredited to Zambia. He married W, a citizen of Zambia. Their son, C, born in Lusaka 1967 is a citizen of Zambia.<sup>33</sup>
5. A, the son of a citizen of a country with which Zambia is at war was born after 23rd October 1964 in a part of Zambia then in the occupation of the enemy forces of that country. A is not a citizen of Zambia.<sup>34</sup>

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<sup>29</sup> British Nationality Act, 1948 (U.K.) S.4(b)

<sup>30</sup> By virtue of S.5 of Chapter II of the Constitution of Zambia, 1964

<sup>31</sup> Ibid. S.5

<sup>32</sup> Ibid. S.5(a)

<sup>33</sup> Ibid. S.5(a)

<sup>34</sup> Ibid. S.5(b)

**(b) Citizen by Descent**

A person born<sup>35</sup> outside Zambia after 23rd October, 1964 becomes a citizen of Zambia at the time of his birth if his father was such a citizen and acquired his citizenship by birth,<sup>36</sup> by registration or by naturalisation. The acquisition of citizenship by this mode - the *jus sanguinis* - is limited to the first foreign-born generation. A male citizen of Zambia who himself acquired his citizenship by transmission from his father either by virtue of the transitional provisions of Section 3(6) or under this rule contained in section 6 cannot transmit such citizenship to his foreign-born children.

This provisions is similar to the United Kingdom provision relating to citizenship by descent under the British Nationality Act (United Kingdom) of 1948. But whilst in the law of the United Kingdom a child born abroad of a father who was a citizen of the United Kingdom and Colonies by descent can also become a citizen by descent if he satisfies certain conditions,<sup>37</sup> in Zambian law such a child of a person who acquired citizenship of Zambia by descent cannot become a citizen of Zambia at the time of his birth. This restriction in the Zambian legislation may also lead to a condition of statelessness. For example, a child born of a Zambian father and mother, the father being a Zambian citizen by descent, in a country which does not adopt the simple rule of the *jus soli* to confer nationality, e.g. Germany, will be stateless.

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<sup>35</sup> As to births on ships and aircraft see Ibid. S.12(2)

<sup>36</sup> Citizenship under and by virtue of S.3(a) of the transitional provisions of the Constitution of 1964 is regarded as citizenship by birth

<sup>37</sup> See British Nationality Act (U.K.) 1948 S.5 provisos (a)-(d)

The hardship caused by such a restriction of the transmission of Zambian citizenship is however ameliorated to a certain extent by section 4 of the Citizenship of Zambia Ordinance 1964<sup>38</sup>. Under this provision the Minister of Home Affairs can cause, a person not of full age who has association by way of descent, residence or otherwise with the Territory, to be registered as a citizen of Zambia.<sup>39</sup>

Transmission of citizenship under this provision can only be effected through males. In the case of a posthumous child, the national status of the father at the time of the child's birth will be construed as his status at the time of his birth.<sup>40</sup> Where the death occurred before 24th October, 1964 and the birth occurred on or after that date, the national status of the father is deemed to be that which he would have had if he had died on that date.<sup>41</sup>

### Illustrations

1. A was born in the former protectorate of Northern Rhodesia in 1921, his son, B, was born there in 1941. C, B's son was born in Canada in 1965. B became a citizen of Zambia on 24th October, 1964. C acquired citizenship of Zambia by descent.
2. As in illustration 1 except that C was born posthumously as B died in 1964. C acquired a citizenship by descent.

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<sup>38</sup> Chapter 273 of Laws of Northern Rhodesia (1965 Edition) Vol. IX

<sup>39</sup> Ibid. S. 4(2)

<sup>40</sup> Constitution of Zambia, 1964 Chapter II S.12(3)

<sup>41</sup> Ibid. S.12(3)

3. A, a woman, was born in Lusaka in 1942 and acquired citizenship of Zambia on 24th October 1964. She married H, a citizen of Malawi. Their son B, born in Malawi in 1965, did not acquire citizenship of Zambia.
4. A became a citizen of Zambia by registration in 1968. His son, B, was born in the United Kingdom in 1965, another son, C, was born there in 1969. B did not acquire a citizenship of Zambia. C. is a citizen by descent.

## 2. CITIZENSHIP BY REGISTRATION

A person who did not automatically become a citizen of Zambia on the 24th October, 1964, could acquire such status by registration.<sup>42</sup>

Citizenship by registration was made available to certain persons either by right or at the discretion of the citizenship officer.<sup>43</sup> For discretionary registration, the discretion of the Ministry of Home Affairs was absolute. He was not required to assign any reason for the grant or refusal. A residential qualification is required for certain categories of persons who wanted to register as citizens.<sup>44</sup> Citizenship by registration take effect from the date of registration.<sup>45</sup> This is important as children born

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<sup>42</sup> Zambia Independence Constitution, Chapter II SS. 4,7,8;

<sup>43</sup> A Citizenship Officer was a public officer specifically appointed to administer citizenship laws: Citizenship of Zambia Regulation 2.



abroad to a person who is a citizen by registration before the date of registration are not citizens of Zambia, but children born to him after that date are citizens. With the exception of minors, any person who may be registered as a citizen is required to make a declaration in writing of his willingness to renounce any other nationality that he may possess and take the oath of allegiance. He is not to be registered until he has complied with these requirements.<sup>46</sup> No application for registration must be made by a person of unsound mind.<sup>47</sup>

Under the Zambian citizenship legislation, marriage has no automatic effect on citizenship or nationality<sup>48</sup>. Perhaps in consideration of the unity of nationality within the family, non-citizen women who are or have been married to Zambian citizens have an easier mode in which they can acquire local citizenship. No similar concessions exist in respect of a non-citizen male married to a female citizen.

The Constitution of Zambia, 1964 provided for the categories of persons who are entitled to be registered as citizens of Zambia. The Citizenship of Zambia

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<sup>44</sup> Under the Zambia Independence Constitution Article 8(1)(b), Commonwealth citizens and citizens of Ireland, had to be in Zambia for a period of four years immediately preceding the application for registration

<sup>45</sup> Citizenship of Zambia Ordinance 1964 S.5

<sup>46</sup> Ibid. S.17, Regulation 11

<sup>47</sup> Constitution of Zambia, 1964 Article (3)

<sup>48</sup> Common Law, see *Bacon v. Bacon* (1641) Cro. Car. 601, Baty, "The Nationality of a Married Woman at Common Law" (1936) 52 L.Q.R. 247

Ordinance, 1964, re-enacted these provisions and prescribed the manner in which applications for registration should have been made. The categories are:

- (i) Persons who, on 23rd October, 1964 were citizens of the United Kingdom and Colonies by reason of naturalisation or registration in the former Protectorate of Northern Rhodesia.<sup>49</sup>
- (ii) Four categories of women who are or have been married:
  - a) Women who, on 23rd October, 1964, are married or have been married to persons who became, or but for their prior deaths would have become citizens of Zambia on 24th October 1964.<sup>50</sup>
  - b) Women who, on 23rd October 1964, are or have been married to persons who became citizens of Zambia by registration and who on the date of such registration were citizens of the United Kingdom and Colonies or British protected persons.<sup>51</sup>
  - c) A widow who, on 23rd October, 1964, has been married to person who, but for his death prior to 24th October, 1964 would have been entitled to be registered as citizens of Zambia.<sup>52</sup>
  - d) Women who, after 23rd October, 1964, are or have been married to a citizen of Zambia.<sup>53</sup>

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<sup>49</sup> Constitution of Zambia, 1964, Article 4(2)

<sup>50</sup> Ibid. Art. 4(1)(a), (b)

<sup>51</sup> Ibid. Art. 4(3)

<sup>52</sup> Ibid. Art. 4(4)

<sup>53</sup> Ibid. Art. 7

The Constitution and the Citizenship of Zambia Ordinance, 1964 also provided for discretionary registration of other categories of persons as Zambian citizens.

These are:

- i) Citizens of other countries of the Commonwealth and of the Republic of Ireland.<sup>54</sup>
- ii) A minor child of a citizen or any minor child.<sup>55</sup>

### **A Registration as of Right**

- i) Registration of Persons Naturalised or Registered in the Former Protectorate of Northern Rhodesia.

Before 24th October 1964 aliens residing in the former Protectorate may have become citizens of the United Kingdom and colonies by naturalisation. This may have been done in two ways. Aliens naturalised in Northern Rhodesia before 1949 as British subjects<sup>56</sup> became on 1 January 1949 citizens of the United Kingdom and Colonies.<sup>57</sup> After 1948 aliens were naturalised as citizens of the United Kingdom and Colonies in the Protectorate.<sup>58</sup> The British Nationality Act, 1948, enabled citizens of Commonwealth countries or their wives and minor children residing in Northern Rhodesia to be registered as citizens of the United Kingdom and Colonies.<sup>59</sup> An applicant for Zambian Citizenship must have been

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<sup>54</sup> Ibid. Art 8(1)

<sup>55</sup> Citizenship of Zambia Ordinance, 1964, S.4

<sup>56</sup> British Nationality and Status of Aliens Act, 1914. S.8

<sup>57</sup> British Nationality Act, 1948 SS.12(1)(b), 32(b). See Clive Parry, Nationality and Citizenship Laws of The Commonwealth and of the Republic of Ireland, London, Stevens & Sons Limited 1957, p.275 and p. 339

<sup>58</sup> British Nationality Act 1948, S.10 and Second Schedule

<sup>59</sup> Ibid. SS. 6-9

a citizen of the United Kingdom and Colonies on 23rd October 1964<sup>60</sup> and such citizenship must not have been revoked before submission of his application. He was required to make a declaration of his willingness to renounce his citizenship other than that of Zambia<sup>61</sup> and take an oath of allegiance.<sup>62</sup> Registration was of no force and effect until these requirements had been fulfilled<sup>63</sup>.

### Illustrations

1. A, an alien, became naturalised as a British subject in the former Protectorate of Northern Rhodesia in 1946. He became a citizen of the United Kingdom and Colonies on 1 January 1949. He retained that citizenship on 23rd October 1964. A was entitled to be registered as a citizen of Zambia.
2. A, an alien, became naturalised in 1952 in the former Protectorate of Northern Rhodesia to be a citizen of the United Kingdom and Colonies. Such citizenship he retained on 23rd October 1964. A was entitled to be registered as a citizen of Zambia.
3. A, a British protected person born in the former Protectorate of Nyasaland of parents and grand parents also born there, became naturalised in 1951 in the former protectorate of Northern Rhodesia as a citizen of the United

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<sup>60</sup> Constitution of Zambia 1964, Article 4(2)

<sup>61</sup> Citizenship of Zambia Ordinance, 1964, First Schedule, Form B

<sup>62</sup> Ibid. Regulation 30

<sup>63</sup> Ibid. S.6 read together with Regulation 30

Kingdom and colonies. A retained that citizenship on 23rd October 1964.

A was entitled to be registered as a citizen of Zambia

ii) **Registration of women Entitled to Registration**

As indicated above, there are four categories of women entitled to registration as citizens of Zambia by virtue of their marriages to citizens of Zambia.<sup>64</sup>

The first category relates to women who are or have been married to persons who became or but for their prior deaths would have become citizens of Zambia on 24th October, 1964. To be entitled to registration, their husbands must be persons who were born in the former Protectorate of Northern Rhodesia and were on 23rd October 1964, British protected persons.<sup>65</sup> Women who are married to British protected persons in the former Protectorate of Northern Rhodesia who died before 24th October, 1964 are entitled to register as citizens under the same grounds.<sup>66</sup>

The second category relates to women who are or have been married to persons who became citizens of Zambia by registration.<sup>67</sup> To be entitled to registration, their husbands must possess citizenship of the United Kingdom and Colonies which was acquired in the Former Protectorate of Northern Rhodesia by registration or naturalisation before they became citizens of Zambia.<sup>68</sup>

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<sup>64</sup> Supra p. 14

<sup>65</sup> Their husbands must have been persons who became citizens of Zambia on 24<sup>th</sup> October, 1964 by operation of law under Article of the Constitution of Zambia 1964

<sup>66</sup> Ibid. Article 4(1)(b)

<sup>67</sup> Ibid. Article 4(3)

<sup>68</sup> See Supra p.14-15

The third category relates to widows who on 23rd October 1964, have been married to persons who, but for their death prior to 24th October, 1964, would have been entitled to be registered as citizens of Zambia<sup>69</sup>. To be entitled to registration, their husbands Colonies in the Former Protectorate of Northern Rhodesia at the time of their death.<sup>70</sup>

The fourth and last category relates to women who after 23rd October, 1964, are or have been married to citizens of Zambia. The difference in the dates in this category and the first three categories mentioned above should be noted. The first three categories relate to women who are or have been married before 23rd October, 1964 whilst the last category relates to women who are or have been married to a citizen of Zambia after 23rd October 1964.

As mentioned above,<sup>71</sup> in Zambian law, marriage does not have an automatic effect upon citizenship such that a wife does not become a citizen on the date of her marriage to a Zambian citizen, but the wife of a citizen of Zambia may become a citizen of Zambia by registration whether or not she is of full age and capacity.<sup>72</sup> The provisions relating to the acquisition of citizenship by registration are not confined to wives of citizens of Zambia but relate to any woman 'who is or has been married' to a person who becomes a citizen of Zambia.<sup>73</sup> It follows that the termination of the marriage either by the death of the husband or by

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<sup>69</sup> Constitution of Zambia 1964, Article 4(4)  
<sup>70</sup> Ibid. Article 4(4) read together with Article 4(2)  
<sup>71</sup> Supra p.13  
<sup>72</sup> Citizenship of Zambia Ordinance, 1964, S.2(2)(c)

divorce is immaterial to those provisions and the marriage could have been terminated before the husband became a citizen of Zambia. It is immaterial also whether the marriage was a monogamous or polygamous union.<sup>74</sup> There must however have been a valid marriage which is recognised by the laws of Zambia, such that a married woman was required to produce a marriage certificate or swear an affidavit to the effect that she was married when applying for registration.<sup>75</sup> In the cases of the annulment of a monogamous marriage, the distinction between void and voidable marriages must be employed to determine whether there has been a marriage. If a marriage is annulled on the ground that it is bigamous, then it is void and there never was a marriage. If, however, it is annulled on the ground of impotence, then there was a marriage until the date of the annulment. In the case of De Reneville v. De Reneville, Lord Greene MR attempted to distinguish between void and voidable marriages in the following words:<sup>76</sup>

*'A void marriage is one that will be regarded by every court in any case in which the existence of the marriage is in issue as never having taken place and can be so treated by both parties to it without the necessity of any decree annulling it: a voidable marriage is one that will be regarded by every court as a valid subsisting marriage until a decree annulling it has been pronounced by a Court of competent jurisdiction.'*

It has to be noted that many a woman who comes within those categories would have acquired citizenship of Zambia in her own right under the transitional

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<sup>73</sup> Cf. The British Nationality Act 1948, (U.K.) S.6 (2) which uses the phrase 'has been married to a citizen of the United Kingdom and Colonies'.

<sup>74</sup> Cf. The Southern Rhodesia Citizenship and British Nationality Act 1949 – 53, S. 25A which precluded polygamous marriages from application of its provisions.

<sup>75</sup> Citizenship of Zambia Ordinance, 1964 First Schedule Form C.

<sup>76</sup> (1948) p. 100, at 111

provisions of the 1964 Constitution. For example, the wife of a citizen of Zambia who herself being a British protected person on 23rd October 1964, and was born in Northern Rhodesia became a citizen of Zambia in her own right.<sup>77</sup>

The Citizenship of Zambia Ordinance, 1964, laid down the manner in which applications should be made.<sup>78</sup> Women applying for registration as citizen of Zambia required to declare their willingness to renounce any other citizenship other than that of Zambia which they might have and take the oath of allegiance.<sup>79</sup> They are also required to state the mode by which their husbands acquired Zambian citizenship.<sup>80</sup> No residential qualifications were required under these provisions.

### Illustrations

1. H was born in Lusaka in 1930 and became a Zambian citizen on 24th October 1964. He married W on 23rd October 1964. W is entitled to be registered as a citizen of Zambia (category 1).<sup>81</sup>
2. H was born in Canada in 1930. He became registered as a citizen of the United Kingdom and colonies in Northern Rhodesia in 1950 and retained that citizenship on 23rd October 1964 and was registered as a citizen of Zambia in 1964. H married W, born in Nyasaland Protectorate having parents born there. W is entitled to be registered as a citizen of Zambia (category 2).<sup>82</sup>

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<sup>77</sup> Constitution of Zambia 1964 Article 3.  
<sup>78</sup> Citizenship of Zambia Ordinance, 1964. First Schedule.  
<sup>79</sup> Ibid. First Schedule Form C  
<sup>80</sup> Ibid. Form C  
<sup>81</sup> Constitution of Zambia, 1964 Article 4(1)(a)



3. H was born in the former Protectorate of Northern Rhodesia in 1930 and became a British protected person on 1 January 1949. He married W in 1959 and died in 1962. W is entitled to register as a citizen of Zambia (category 1).<sup>83</sup>
4. H was born in Southern Rhodesia in 1910 and was registered as a citizen of the United Kingdom and Colonies in the former Protectorate of Northern Rhodesia in 1952. He married W in 1957 and died 1960. W is entitled to be registered as a citizen of Zambia (category 3).<sup>84</sup>
5. W, a South African national married H a citizen of Zambia in 1965. W is entitled to be registered as a citizen of Zambia (category 4).<sup>85</sup>

### **Discretionary Registration**

- i) Registration of Citizens of other Countries of the Commonwealth and of Republic of Ireland, and citizens of certain African countries.<sup>86</sup>

Section 8 of Chapter II of the Constitution of Zambia of 1964 enables a citizen of another country of the Commonwealth or of the Republic of Ireland, or of a prescribed African country of full age and capacity<sup>87</sup> to seek a citizenship of Zambia by discretionary registration.<sup>88</sup>

Registration is at the discretion of the Citizenship Officer who must be satisfied that the applicant has been ordinarily resident in Zambia for four years immediately preceding his application and such application includes

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<sup>82</sup> Ibid. Article 4(3)

<sup>83</sup> Ibid. Article 4(1)(b)

<sup>84</sup> Ibid. Article 4(4)

<sup>85</sup> Ibid. Article 7

<sup>86</sup> Ibid. Article 8

<sup>87</sup> For definition see Ibid Article 8 (2) (2) of Citizenship of Zambia Ordinance 1964

a certificate of residence signed by a person in the prescribed class.<sup>89</sup> The expression 'ordinarily resident' is not defined in the Constitution and in the Ordinance. In Stransky v Stransky however Judge Karminiski said:<sup>90</sup>

"Clearly, mere temporary absence from England, such as for holidays abroad, would not make a gap in the period of ordinary residence. Not, in my view, would be longer gap of some months, such as one caused by a journey overseas by a wife accompanying her husband on a business trip, necessarily breaks the period of ordinary residence."

Thus an applicant applying for citizenship of Zambia under the provision would still satisfy the residential qualification if he has been staying in Zambia for four or more years despite his going out of Zambia for holidays during that period.

It should be noted that a person seeking local citizenship under this provision is required before his registration to produce his passport and other documents relating to his nationality other than that of Zambia.<sup>91</sup> He <sup>was</sup> also required to declare his willingness to renounce any other nationality or a citizenship he may possess.<sup>92</sup>

### Illustrations

1. A, a citizen of Malawi, has resided in Zambia for the past six years. He may apply to be registered as a citizen of Zambia.
2. A, a citizen of the Republic of Ireland, has been resident in Zambia for the past five years. He may apply to be registered as a Zambian citizen.

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<sup>88</sup> For the form of Application see Citizenship of Zambia Ordinance First Schedule Form A.  
<sup>89</sup> The prescribed class includes Magistrates, Legal Practitioners, Medical doctors  
<sup>90</sup> (1954) p.428 at 437  
<sup>91</sup> Citizenship of Zambia Ordinance 1964, First Schedule Form A.  
<sup>92</sup> Ibid. Form A

3. A, a citizen of Kenya has resided in Zambia for the past three years. He is not eligible to apply but may do so if the President so decides.<sup>93</sup>

ii) **Registration of Minors**

The Citizenship of Zambia Ordinance, 1964, provided for the discretionary registration of minors.<sup>94</sup> There are two classes of minors:

Firstly, the minor child of a citizen of Zambia may, upon an application by a parent or guardian in the prescribed manner,<sup>95</sup> be registered.

Secondly the Minister of Home Affairs if he thinks fit may cause any minor to be registered as a citizen if that child be associated by way of descent, residence or otherwise with Zambia.<sup>96</sup> No residential qualification is required in the case of minors seeking registration. They will however be required when they come of full age and capacity<sup>97</sup> to renounce any other nationality or citizenship they may possess and take the oath of allegiance.<sup>98</sup>

**Illustrations**

1. A, became a citizen of Zambia by naturalisation. His minor son, B, may be registered as such a citizen.
2. As in illustration 1 except that A dies before completing his naturalisation. B may be registered as a citizen of Zambia.

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<sup>93</sup> Ibid. S. 4A

<sup>94</sup> Ibid. S. 4.

<sup>95</sup> Ibid. first Schedule Form E

<sup>96</sup> Ibid. S. 4(2)

<sup>97</sup> For definition see Ibid. S. 2(2)

<sup>98</sup> Ibid. S.10

3. H, an alien, married W, a citizen of Zambia. their Son, B, born in Germany, may be registered as a citizen of Zambia.

### 3. CITIZENSHIP BY NATURALISATION

Naturalisation is the process by which a person renounces his former allegiance becomes the subject of another state<sup>99</sup>. Citizenship of Zambia by naturalisation is available to persons of full age and capacity. A person is of full age if he has attained the age of twenty one years or is a married woman and if of full capacity if he is "not a mentally disordered or defective person, so found and not discharged as sane, under the provisions of the Mental Disorders Ordinance."<sup>100</sup>

Any person of full age and capacity who possesses the qualifications for naturalisation making application in the prescribed manner<sup>101</sup>, may be granted a certificate of naturalisation<sup>102</sup>. The application for naturalisation must be supported by four sponsors who are Zambian citizens two of whom are in the prescribed class<sup>103</sup>. The granting of a certificate of naturalisation is at the discretion of the Citizenship Officer. Stateless persons are included in this provision for naturalisation<sup>104</sup>. The oath of allegiance must be taken and a declaration in writing renouncing any other citizenship or nationality the applicant

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<sup>99</sup> D.M. Walker, oxford Companion To Law, Oxford, Clarendon Press 1980 p.871

<sup>100</sup> Citizenship of Zambia Ordinance S.2(2)

<sup>101</sup> Ibid. S.6 read together with Regulations 12-14

<sup>102</sup> Ibid. S.6(1)

<sup>103</sup> Ibid. Regulation 28

<sup>104</sup> S.6(1)

may possess must also be made, otherwise the certificate of naturalisation is of no force and effect<sup>105</sup>.

An applicant for naturalisation as a Zambian citizen must show<sup>106</sup>:

- a) that at the date of his application, he has been ordinarily resident in Zambia throughout the period of five years preceding the date of the application;
- b) that he is of good character;
- c) that he has an adequate knowledge of the English language or any other language commonly used by indigenous inhabitants of Zambia.
- d) that he intends, if naturalised, to continue to reside in Zambia or enter or continue in the service of the Government;
- e) that he has not been refused naturalisation as a citizen within the period of two years immediately preceding his application.

It is noteworthy that that section of the Ordinance only or and requires a declaration showing willingness to renounce any other nationality or citizenship which the applicant may possess and does not require the actual renunciation to be made before the certificate of naturalisation takes effect<sup>107</sup>.

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<sup>105</sup> Ibid. S.6(3)

<sup>106</sup> Ibid. S.6(1)

<sup>107</sup> Ibid. S.6

## Illustrations

1. A, a French national, has lived continuously for the past seven years in Zambia. A can apply for naturalisation.
2. A, a Danish national, was in Zambia from 1950 to 1963. He returned in 1965. A can apply for naturalisation.
3. The Citizenship Officer grants a certificate of naturalisation to A, a Swiss National. He did not take the oath of allegiance. A is not a citizen of Zambia until he takes the oath.
4. As in illustration 3 except that A refused to declare his willingness to renounce his Swiss nationality. A is not a citizen until he does so.

### 4) CITIZENSHIP BY ADOPTION

A child adopted, who on the date of such adoption was not a citizen, would become a citizen if the adopter was at the date of the adoption a citizen<sup>108</sup>.

## 2.3 LOSS OF ZAMBIAN CITIZENSHIP UNDER THE CITIZENSHIP OF ZAMBIA ORDINANCE 1964

The Constitution of Zambia 1964 does not contain provisions relating to renunciation of citizenship of Zambia but empowers Parliament to make provisions for depriving any person of his Zambian citizenship who has such a citizenship other than by virtue of sections 3(1)<sup>109</sup>, 5<sup>110</sup> and 6<sup>111</sup> of Chapter II of

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<sup>108</sup> Ibid. S.3

<sup>109</sup> Section 3 relates to British protected persons present in Northern Rhodesia at Independence Day

<sup>110</sup> Section 5 relates to persons born in Zambia after 23<sup>rd</sup> October, 1964

<sup>111</sup> Section 6 relates to persons born outside Zambia after 23<sup>rd</sup> October, 1964

the Constitution unless such person was also a citizen of another country<sup>112</sup>. It also empowers Parliament to make provisions for renunciation of his Zambian citizenship. In this regard provisions for renunciation and deprivation of citizenship were made in the Citizenship of Zambia Ordinance, 1964<sup>113</sup>.

**a) Renunciation of Zambian Citizenship**

Any person of full age and capacity<sup>114</sup> who is a citizen of Zambia and is also a citizen of another country may renounce his citizenship of Zambia by means of a declaration made in the prescribed manner<sup>115</sup>. Such a declaration is no effect unless and until it is registered. The Minister of Home Affairs must register such a declaration and upon registration the declarant ceases to be a citizen of Zambia<sup>116</sup>. But the Minister has the discretion to decline registration of a declaration which is made during a war in which Zambia is engaged<sup>117</sup>. In Zambian law, marriage by itself has no effect upon citizenship. A married woman is therefore competent to make a declaration of renunciation. For this purpose, a woman who has been married is deemed to be of full age<sup>118</sup>.

The pre-requisite to making a declaration of renunciation is the possession by a citizen by a citizen of Zambia of the citizenship or nationality of another country<sup>119</sup>. The Zambian citizenship law does not, however, expressly mention the means of proving such prerequisite citizenship or nationality by a declarant.

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<sup>112</sup> Citizenship of Zambia Ordinance 1964 S.11(2)

<sup>113</sup> Chapter 273 of Laws of Northern Rhodesia 1965 Edition

<sup>114</sup> Ibid. S.8

<sup>115</sup> Ibid. S.8 read together with Citizenship of Zambia regulation 16

<sup>116</sup> Ibid. S.8(3)

<sup>117</sup> Ibid. S.8(2)

<sup>118</sup> Ibid. S.2(c)

Since the possession of the nationality or citizenship of another country is a question of law for the country, it might not always be possible to determine conclusively that a declarant possesses such nationality or citizenship without reference to the country concerned and in some cases to a judicial determination of that country<sup>120</sup>. However, this problem is meliorated by the rule that the renunciation of citizenship of Zambia does not affect his status as a Zambian citizen if he does not become a citizen of another country within six months from the date of registration of his declaration of renunciation<sup>121</sup>.

### Illustrations

1. A was born in Northern Rhodesia in 1912. His son B was born in Washington in 1932. Both became citizens of Zambia on 24th October 1964. B also possesses citizenship of the United States of America and is entitled to make a declaration of renunciation of citizenship of Zambia and register it<sup>122</sup>.

If the declaration is made during a war in which Zambia is engaged, the Minister of Home Affairs may decline to register it<sup>123</sup>.

2. A was born in Northern Rhodesia in 1913. His son, B, was also born in Northern Rhodesia in 1933. Both became citizens of Zambia on 24th

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<sup>119</sup> Ibid. S.8(a)

<sup>120</sup> As to the difficulties involved here see Parry, op. Cit.p.320

<sup>121</sup> Citizenship of Zambia Ordinance 1964, S.8(4)

<sup>122</sup> ibid. S. 8(1)(a)

<sup>123</sup> Ibid. S. 8(2)



October 1964. B cannot make a declaration of renunciation of Zambian citizenship<sup>124</sup>.

3. W was born in 1944 in Lusaka, Northern Rhodesia and became a citizen of Zambia on 24th October 1964. She marries a citizen of Malawi, and acquires Malawian citizenship. W is entitled to make a declaration of renunciation of citizenship of Zambia and register it<sup>125</sup>.

## 2. DEPRIVATION OF ZAMBIAN CITIZENSHIP

The citizenship of Zambia Ordinance, 1964, contains several grounds for the deprivation of citizenship. Deprivation of citizenship is at the discretion of the Minister who may by order deprive a person of his citizenship. The Minister has no powers to deprive a wife or child of citizenship merely on the grounds that the husband or father has been deprived of his citizenship. This is different from the position of the federation of Rhodesia and Nyasaland in which the Minister was empowered to do so<sup>126</sup>.

The grounds for deprivation are contained in section 9 of the Citizenship of Zambia Ordinance, 1964. The Minister must be satisfied that it is not conducive to the public good that the citizen concerned should continue to be a citizen of Zambia before making the Order of deprivation<sup>127</sup>. A citizen may be deprived of his citizenship if the Minister is satisfied that he<sup>128</sup>:

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<sup>124</sup> This is so because B is not a citizen of another country besides being a Zambian citizen: S. 8 (1)(a)

<sup>125</sup> Ibid. S.8

<sup>126</sup> See S.30 of Citizenship of Rhodesia and Nyasaland Act, 1957, see also Clive Parry, op. Cit. P.1230

<sup>127</sup> Citizenship of Zambia Ordinance, 1964 S.9(3)

<sup>128</sup> Ibid. S. 9(1)(d)

- a) obtained the certificate of registration or naturalisation by means of fraud, false presentation, or the concealment of material fact; or
- b) has shown himself by act or speech to be disloyal or disaffected towards Zambia<sup>129</sup>; or
- c) has, during any war in which Zambia was engaged, unlawfully traded or communicated with the enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist the enemy in that way<sup>130</sup>; or
- d) has been absent from Zambia for continuous period of seven years without registering with the Zambia Consulate in such manner as may be prescribed, or declaring in writing to the Minister of his intention to retain citizenship of Zambia<sup>131</sup>.

But residence outside the country is to be discounted for the purposes of the rules not only where it is residence for purposes of government service, but also where it is residence in the service of an international organisation of which Zambia is a member at the time of such service<sup>132</sup>.

Another reason of deprivation is to be found in section 10 of the Citizenship of Zambia Ordinance, 1964. It applies to any citizen of Zambia of full age and capacity who is also (or on ceasing to be a citizen of Zambia will become) a

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<sup>129</sup> Ibid. S. 9(1)(c)

<sup>130</sup> Ibid. S. 9(1)(b)

<sup>131</sup> Ibid. S.9(1)(c)

<sup>132</sup> Ibid. S. 9(2)

citizen of some other country. This reason arises from the power given to the Citizenship Office to require any such citizen to renounce the other citizenship or nationality he possesses.

If he fails to do so within a period of one year from the date on which such person became a citizen of Zambia or attained full age, whichever is the later, on such later period as the Minister of Home Affairs may allow, the Citizenship Officer may be ordered to deprive him of his citizenship of Zambia<sup>133</sup>.

### **Illustrations**

1. A was born in Lusaka of a father who was born in the Former Protectorate of Nyasaland and a mother who was also born in Lusaka. A became a citizen of Zambia on 24th October, 1964. He also possesses citizenship of Malawi. The Citizenship Officer may require him to renounce his citizenship of Malawi. Should he fail to do so, he is liable to be deprived of his citizenship of Zambia.
2. A was born in Lusaka in 1910. His son, B, was born in the United States of America in 1940. Both became citizens of Zambia on 24 October 1964. B also possesses citizenship of the United States of America. B may be required to renounce the latter citizenship and if he fails to do so, he is liable to be deprived of his citizenship of Zambia.

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<sup>133</sup>

Ibid. S. 10(5) Note that in respect of a registered or naturalised citizen of Zambia, the period within which to renounce citizenship of another country is three months.

3. A was born in the Former Protectorate of Northern Rhodesia and became a citizen of the Federation of Rhodesia and Nyasaland in 1959 by registration. On 24th October 1964 he became a citizen of Zambia. He also possesses citizenship of the United Kingdom and Colonies. He may be required to renounce the latter citizenship and if he fails to do so, he is liable to be deprived of his citizenship of Zambia.

Having discussed acquisition and loss of citizenship of Zambia under the Independence constitution 1964 and the Citizenship Ordinance 1964 we now turn to a discussion on acquisition and loss of citizenship under the 1973 Constitution and the Citizenship of Zambia Act, 1975. this is the citizenship law that is now applicable to Zambia.

#### **2.4 ACQUISITION OF CITIZENSHIP OF ZAMBIA UNDER THE 1973 CONSTITUTION OF ZAMBIA AND THE CITIZENSHIP OF ZAMBIA ACT 1975 (THE PRESENT CITIZENSHIP LAWS)**

The Constitution of Zambia of 1964 was revoked in 1973 by the Constitution of Zambia of 1973<sup>134</sup>. Among the changes introduced by this Constitution in chapter II with respect to Zambian Citizenship were the acquisition of Zambian Citizenship jure soli by children of established residents<sup>135</sup> and the non distinction in qualifications for citizenship of Zambia between Commonwealth citizens and other non-citizens. Under the Constitution, Zambian Citizenship is acquired at birth, 'by birth' and by 'descent' even though the Constitution

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<sup>134</sup> Chapter 1 of Laws of Zambia (Revised Edition) Vol. 1; S. 3

<sup>135</sup> Ibid. S. 7

does not employ these terms. Citizenship is also acquired by registration. These constitutional provisions involved the enactment of further legislation relating to citizenship. By Section 9, Parliament was empowered to make provisions for the acquisition of citizenship of Zambia by other modes not provided for in the Constitution, for the renunciation of citizenship of Zambia and for the deprivation of certain persons of the citizenship subject to the rule that the person who acquired citizenship of Zambia by birth and descent under the previous Act were only to be deprived of their citizenship upon the ground that they are citizens of a country other than Zambia. Under these constitutional powers Parliament enacted the Citizenship of Zambia Act, 1975<sup>136</sup> which is the Act that now governs the acquisition and loss of Zambian citizenship. It should be noted that sections of this Act relate to the provisions of the Constitution of Zambia, 1973, and not the Constitution of 1991<sup>137</sup>.

Thus, the present citizenship laws of Zambia are to be found in the Citizenship of Zambia Act, 1975, the 1991 Constitution of Zambia and, to an extent, the 1973 Constitution of Zambia. Under these Acts, citizenship of Zambia may be attained by 'birth', by 'descent', by registration and by adoption.

## **1. CITIZENS AT BIRTH**

### **a) Citizens by birth.**

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<sup>136</sup> Act No. 26 of 1975, as amended. It came into operation on 28<sup>th</sup> February 1977: Statutory Instrument No. 55 of 1977

<sup>137</sup> Act No. 1 of 1991

A person born in Zambia becomes a citizen of Zambia at the date of his birth if on that date at least one of his parents is a citizen of Zambia<sup>138</sup>. Thus the acquisition of citizenship by birth is not only citizenship jure soli, but is in part determined by parentage. It should be emphasised that a parent must be a citizen at the time of his or her child's birth for that child to be a citizen by birth. Thus a child whose parents subsequently renounced their citizenship of Zambia before his birth would fall outside the qualification.

Children born in Zambia between 25th August, 1973<sup>139</sup> and 1st April, 1986 of established residents are citizens of Zambia subject to the requirement that they are to confirm his citizenship of Zambia and renounce citizenship of a country other than Zambia that they may have upon attaining 21 years of age<sup>140</sup>. The term "established resident" is defined in relation to any date as<sup>141</sup>:

*"a person who is not a citizen of Zambia or a prohibited immigrant, under any law and who has been ordinarily and lawfully resident in Zambia for the period of four years, immediately preceding that date."*

For the purpose of this definition, any period which a person spends in as an inmate in a mental institution, a prison consequent on a sentence of

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<sup>138</sup> Constitution of Zambia 1973, Article 6, see also Constitution of Zambia 1991 Article 5 for a similar provision

<sup>139</sup> Date of commencement of the Constitution of Zambia 1973

imprisonment imposed by a Court, or stays in Zambia for a limited period on the basis of statutory permit is not taken into account<sup>142</sup>.

It should be noted that the non-citizen parent must be an established resident at the time of birth of his child to be a citizen by birth. Thus, a child who is born of a non-citizen who is not an established resident at the time of his birth will fall outside the qualification even though his parent subsequently attains that status. The position is the same in respect of a child who is born at a time when his parents have lost that status.

It should also be noted that the child in question must have been born in Zambia in order to be a citizen by birth.

The rule permitting children of established residents to acquire citizenship of Zambia at birth was repealed on 1st April 1986 by the Citizenship of Zambia (Amendment) Act, 1986<sup>143</sup>.

This amendment was prompted by alarming influx of illegal immigrants who crossed into and stayed in Zambia<sup>144</sup>.

#### b) **Citizen by Descent**

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<sup>140</sup> Constitution of Zambia 1973: Article 7

<sup>141</sup> Ibid. Article 12(3)

<sup>142</sup> Ibid. proviso

<sup>143</sup> Act No. 17 of 1986

<sup>144</sup> See: Daily Parliamentary Debates, No. 70W of Wednesday 26<sup>th</sup> February, 1986

A person born outside Zambia becomes citizen at the date of his birth if on that date at least one of his parents is a citizen of Zambia<sup>145</sup>. The acquisition of citizenship by this mode - the jus sanguinis - is not limited to the male parent as was the case with citizenship by birth for the Federation of Rhodesia and Nyasaland<sup>146</sup>.

It should be mentioned that where only one parent is a citizen of Zambia and the other a non-citizen, their child may be a potential holder of citizenship of a country other than Zambia. Such a child will be or may be required to renounce his other citizenship upon reaching 21 years of age in default of which he may be deprived of his Zambian citizenship<sup>147</sup>. The same applies to a citizen of Zambia by birth where only one of his parents is a Zambian citizen.

Noteworthy is also the provision that a person born aboard a registered ship or aircraft shall be deemed to have been born in the country which the ship or craft was registered<sup>148</sup>.

### **Illustrations**

1. A, was born in Zambia of Zambian parents in 1984. A is a citizen of Zambia by birth.

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<sup>145</sup> Constitution of Zambia 1991: Article 5

<sup>146</sup> Citizenship of Rhodesia and Nyasaland and British Nationality Act 1957 S.7, see Supra, p.14

<sup>147</sup> Citizenship of Zambia Act, 1975, S. 19

<sup>148</sup> Constitution of Zambia, 1991, Article 10



2. X, was born in Zambia in 1980 of a Zimbabwean father and a Zambian mother. X is a citizen by birth. He may be required to renounce Zimbabwean citizenship upon reaching 21 years of age.
3. X, was born in Zambia in 1980 of Zimbabwean father and a Malawian mother both of whom are established residents in Zambia. X is a citizen of Zambia by birth. He will be required to renounce Zimbabwean and Malawian citizenship upon reaching 21 years of age.
4. X was born in Botswana in 1982 of a Zambian parent. X is a citizen of Zambia by descent.
5. X was in South Africa in 1985 of a Zambian mother and South African father. X is a citizen of Zambia by descent. He will be required to renounce South African Citizenship upon attaining 21 years of age.

## **2. CITIZENS BY REGISTRATION**

Non-citizens who cannot attain citizenship of Zambia by birth or by descent can do so by registration<sup>149</sup>. The Constitution provides for the categories of persons entitled to be registered as citizens of Zambia. The Citizenship of Zambia Act 1975, has re-enacted these provisions and prescribed the manner in which applications for registration should be made. The categories are:-

- i) Two categories of women who are or have been married:

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<sup>149</sup> See Part IV of the Citizenship of Zambia Act. See also, Constitution of Zambia 1991: Article 6

- a) Women married to citizens of Zambia and have been ordinarily resident for a period of more than three years in Zambia preceding their application<sup>150</sup>.
- b) Women who are or have been married to non-citizens and have been ordinarily resident in Zambia for a period of more than ten years<sup>151</sup>.
- ii) Persons who have been ordinarily residents in Zambia for more than ten years<sup>152</sup>
- iii) A minor child of a citizen or any minor child<sup>153</sup>
- iv) Registration by virtue of Presidential directive<sup>154</sup>.

#### 1. **Registration of Non-citizen Women entitled to Registration**

- a) Registration of women who are or have been married to citizens of Zambia

As indicated above, in Zambian law, marriage does not have an automatic effect upon citizenship, but the non-citizen wife of a Zambian citizen may become a citizen of Zambia by registration whether or not she is a full age and capacity<sup>155</sup>. The provisions relating to the acquisition of citizenship by registration are not confined to wives of Zambian citizens by relate to any woman 'who is or has been married' to a citizen of Zambia. It follows that the termination

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<sup>150</sup> Ibid. S.15, see also Constitution of Zambia 1991 Article 6

<sup>151</sup> Ibid. S. 16

<sup>152</sup> Ibid. S. 16

<sup>153</sup> Ibid. S. 12

<sup>154</sup> Ibid. S. 13

<sup>155</sup> See Constitution of Zambia 1973, Article 8(1)(6) and Citizenship of Zambia Act, 1975, S. 2(2)(c)

of the marriage either by divorce or death of the husband is immaterial to these provisions. As long as the marriage is valid, it is immaterial, whether or not it was monogamous or polygamous.

In order to qualify for registration under the provisions, the women in question must have been ordinarily resident in Zambia for a period of not less than three years<sup>156</sup>.

Further, Parliament has prescribed the manner in which the application for registration by a woman married to be a citizen is to be done<sup>157</sup>. She is required to undertake to renounce citizenship of a country other than Zambia that she may possess and take the oath of allegiance and unless she does this her registration as citizen will have no effect<sup>158</sup>.

b) Registration of women who are or have been married to non-citizens

Qualifications for registration as citizens by women whose or have been married to non-citizens are more stringent than those of women who are or have been married to non-citizens. Her registration as a citizen is at the discretion of the Citizenship Board which must be satisfied that she:

- i) has been ordinarily resident<sup>159</sup> in Zambia for a continuous period of not less than ten years immediately preceding her application<sup>160</sup>

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<sup>156</sup> Ibid. Article 8(1)(b)

<sup>157</sup> Citizenship of Zambia Act, 1975, S.15, Regulation 8 First Schedule Form 4

<sup>158</sup> Ibid. Regulation 13(1)

<sup>159</sup> Ibid. S. 16

- ii) is of good character and has adequate knowledge of the English language or another prescribed language<sup>161</sup>.
- iii) intends in the event of her application being granted to continue to reside in Zambia or to enter or continue in the service of the Government of Zambia.
- iv) has not been refused registration as a citizen within the period of five years immediately preceding her application.

Further, her intention to apply for citizenship of Zambia must be published in the Gazette and in two issues of newspaper that circulates in her area of residence. Her application for citizenship must be supported by the certificate of four sponsors who are citizens of Zambia and none of them should be her lawyer or agent. Two of the sponsors must be in the prescribed class<sup>162</sup>. She must be known to the sponsors who should be able to vouch for her good character and the correctness to the best of their knowledge and belief of her particulars<sup>163</sup> as stated in the application.

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<sup>160</sup> See Stransky v. Stransky (1954) p.428 at 437 discussed above on page 21, for the meaning of the expression "ordinarily resident".

<sup>161</sup> The prescribed languages are Bemba, Kaonde, Lozi, Lunda, Luvala, Nyanja and Tonga: Citizenship of Zambia Act, Regulation 17

<sup>162</sup> Citizenship of Zambia Act, 1975, Regulation 9 Form 5

<sup>163</sup> The applicant is also required to submit proof of certain particulars for example, date and place of birth

Furthermore, she should declare her willingness to renounce citizenship of a country other than Zambia that she may possess and take oath of allegiance<sup>167</sup>.

## **2. Registration of other non-citizens**

The qualification for registration as citizens by other non-citizens are essentially the same as those of women who are or have been married to non-citizens just discussed above. The only difference is that the former must be in all cases persons of full age as opposed to the married women who need not be<sup>164</sup>.

## **3. Registration of Minors**

Section 12 of the Citizenship of Zambia Act, 1975 provides for the discretionary registration of minors. There are two classes of minors. firstly, the minor child of a citizen of Zambia may, upon an application by a parent or gaurdian in the prescribed manner, be registered as a citizen<sup>165</sup>. Secondly, the Citizenship Board may cause any minor to be registered as a citizen where such minor has associations by way of descent or otherwise with Zambia<sup>166</sup>. No residential qualification is required in the case of minors seeking registration. They will however be required when

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<sup>164</sup> Citizenship of Zambia Act, 1975 S. 2 (2)

<sup>165</sup> Ibid. S. 12 (1)

<sup>166</sup> Ibid. S. 12 (2)

they become of full age and capacity to renounce any other nationality or citizenship they may possess and take the oath of allegiance<sup>167</sup>

#### **4. Registration by virtue of Presidential directive**

The Republican President is empowered to, cause any person otherwise not entitled to or eligible for citizenship of Zambia to be registered as a citizen of Zambia<sup>168</sup>.

It must be emphasised that in all cases of application for registration as a citizen, the applicant must be of sound mind<sup>169</sup>.

#### **3. CITIZEN BY ADOPTION**

A non-citizen child may acquire citizenship of Zambia by adoption on the date of his adoption if on that date the adopter is a Zambian citizen. He, too, may be required to renounce citizenship of a country other than Zambia that he may possess when he reaches majority.

#### **2.5 LOSS OF ZAMBIA CITIZENSHIP UNDER THE CITIZENSHIP OF ZAMBIA ACT, 1975**

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<sup>167</sup> Constitution of Zambia 1991. Article 9 (2)

<sup>168</sup> Citizenship of Zambia Act 1975, S. 13

<sup>169</sup> Constitution of Zambia 1991; Article 6 (2)

The grounds upon which a person may lose his Zambian citizenship under the provisions of the 1973, 1991 Constitutions of Zambia and the citizenship of Zambia Act, 1975 are essentially identical to those under the Constitution of Zambia 1964 described above.

Thus, Zambian citizenship may be lost due to cesser, deprivation and renunciation<sup>170</sup>

## **1. CESSER OF CITIZENSHIP OF ZAMBIA**

A person may cease to be a citizen of Zambia if he fails to renounce citizenship of country other than Zambia that he may have. This is so in respect of children born between 25 August 1973 and 1st August and 1st April 1986 of established residents who do not renounce the other citizenship upon reaching twenty-one years<sup>171</sup>. Where it is not possible to make such renunciation under the law of that other country, a mere declaration of his willingness to do so suffices<sup>172</sup>. This rule also applies in respect of Zambian citizens by descent who may be born with a latent right to a foreign nationality.

A person also ceases to be a citizen of Zambia if he acquires citizenship of another country by a voluntary act other than marriage<sup>173</sup>. The nationality or citizenship of a foreign country that is acquired must be that of a political unit

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<sup>170</sup> Citizenship of Zambia Act, 1975, Part V and Constitution of Zambia 1991. Article 9

<sup>171</sup> Ibid. S. 19

<sup>172</sup> Ibid. S. 19(5)

<sup>173</sup> Ibid. S. 19(2)

which is a foreign state and recognised as such for international purposes. The requirement that the acquisition of citizenship of a country other than Zambia should be by a voluntary act excludes from the operation of this provision the acquisition of that other country's citizenship at birth or by mass or involuntary imposition of nationality upon a Zambian citizen. Naturalisation in an enemy country amounts to the acquisition of the nationality of the enemy State<sup>174</sup>.

There may be cases where a person may be born with a latent right to a foreign nationality which he may claim by a declaration on attaining his majority and which is lost if he fails to do so. Claiming such a nationality by declaration at majority is a voluntary act. It is doubtful however, whether it amounts to an 'acquisition' of nationality or whether it is merely the assertion of a right<sup>175</sup>.

However, a person who ceases to be a citizen of Zambia may have his citizenship restored if he satisfies the Citizenship Board that he was at the time of the cesser of citizenship aware of it<sup>176</sup>.

## 2. DEPRIVATION

A person may lose Zambian citizenship through deprivation. But a citizen 'by birth' and 'by descent' will only be deprived of citizenship if he is a citizen of a country other than Zambia<sup>177</sup>. The Citizenship Board must be satisfied that it is not conducive to the Public good that the citizen concerned should continue to be a citizen of Zambia before making an

<sup>174</sup> See *in re Chamberlain's Settlement* (1921) 2 Ch. 533

<sup>175</sup> See Oppenheim, *op.cit.* Vol. 1, p.656, para. 300

<sup>176</sup> Citizenship of Zambia Act, 1975 S. 21

<sup>177</sup> Constitution of Zambia 1991: Article 7(b)



order of deprivation<sup>178</sup>. A citizen by registration may be deprived of his citizenship if the Board is satisfied that the registration was obtained by means of fraud, false representation, through corrupt practice or other concealment for a material fact<sup>179</sup>. He will also be deprived of citizenship of Zambia if the Citizenship Board is satisfied that he:

- a) has shown himself by act or speech to be disloyal, or disaffected towards Zambia;
- b) has, during any war in which Zambia was engaged, unlawfully traded or communicated with the enemy or been engaged in or associated with any business that was of his knowledge carried on in such manner as to assist an enemy in the war.
- c) has been guilty of currency smuggling or of harbouring criminals or prohibited immigrants; and
- d) has been absent from Zambia for a continuous period of seven years without registering with a Zambia Consulate or by declaring by notice in writing to the Board of his intention to retain his citizenship of Zambia.

It would be noted that before the order of deprivation is made, the person against whom it is proposed to be made should be informed in writing of the ground on which it is imposed to be made and of his right to have his case referred to inquiry before a commissioner<sup>180</sup>.

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<sup>178</sup> Citizenship of Zambia Act, 1975 S. 22(5)

<sup>179</sup> Ibid. S. 22(3)

3. RENUNCIATION OF CITIZENSHIP

The provision relating to renunciation is almost identical to that contained in the Zambia Citizenship Ordinance of 1964. Any person of full age and capacity<sup>181</sup> who is a citizen of Zambia and is also a citizen of another may renounce his citizenship of Zambia by means of a declaration made in the prescribed manner<sup>182</sup>. Such a declaration is of no effect unless and until it is registered. The Citizenship Board must register such a declaration and upon registration the deciarant ceases to be a citizen of Zambia<sup>183</sup>. But the Citizenship Board has the discretion to withhold registration of a declaration which is made during a war in which Zambia is engaged by a person who is a national of a foreign country<sup>184</sup>. However, if a citizen who has renounced Zambian citizenship does not become a citizen of another country within six months after the renunciation, he will be deemed to have remained a citizen of Zambia<sup>185</sup>.

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<sup>180</sup> Ibid. S. 22(6), (7), (8)  
<sup>181</sup> For definition see Citizenship of Zambia Act, 1975, S. 2(2)  
<sup>182</sup> Ibid. S. 23  
<sup>183</sup> Ibid. S. 23(4)  
<sup>184</sup> Ibid. S. 23(3)  
<sup>185</sup> Ibid. S. 23(5)

## CHAPTER 3

### OTHER MATTERS RELATING TO ZAMBIAN CITIZENSHIP

#### 3.1 INTRODUCTION

There are other aspects of Zambian citizenship laws that merit our attention besides the acquisition and loss of Zambian citizenship discussed in the previous chapter. In this regard, this chapter discusses these aspects which are: dual nationality or citizenship, statelessness, proof of Zambian citizenship, fundamental rights enjoyed by citizens and non-citizens and immigration and deportation of aliens.

#### 3.2 DUAL CITIZENSHIP OR NATIONALITY

As indicated in Chapter 1 of this essay, it is a principle of International law that each state is competent to lay down its own rules for the acquisition and loss of nationality. Application of this principle leads to situations of dual or plural nationality. Bar-Yaacov, in his study, *Dual Nationality*, puts forward the following situations whereby acquisition of dual nationality is possible by the combined operation of the laws of two states:

"Dual nationality is acquired at birth by children born in a state which has adopted the principle of *jus soli*, by virtue of which nationality is acquired by the fact of birth within the territory of the state, of parents who are nationals of another state which applies the principle of *jus sanguinis*, under which nationality is acquired by descent, irrespective of place of

birth. Dual nationality also arises when an individual who acquires a new nationality by naturalisation does not thereby lose the nationality of his home state. Marriage causes dual nationality when one of the spouses acquires the nationality of the other spouse while also retaining the earlier nationality. Transfer of sovereignty may bring about the acquisition of dual nationality by residents of the transferred territory who obtain the nationality of their new sovereign while retaining the nationality of the state within whose territorial jurisdiction they were prior to transfer".<sup>1</sup>

Dual nationality can also arise through registration, legitimation, adoption, recognition of paternity, enlisting in the armed forces of a foreign country or appointment to a public office.<sup>2</sup> Nationality or citizenship may not only be dual but may also be plural.

Dual citizenship presupposes rights of citizenship in each country and also subjects the individual to claims from both countries. This may lead to difficulties in respect of a dual national who is called upon to fulfil his obligations, especially those of a military character, towards his two states which are at war with each other. Where there is no special agreement, he becomes a deserter to one or other of the countries involved. In Inouye Kanao v. The King,<sup>3</sup> a person born of Japanese parents in British Columbia was convicted of treason for having taken part in the torture of persons accused of being Allied agents in the Japanese counter-espionage in Hong Kong. He contended that at all material times he

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<sup>1</sup> N. Bar-Yaacov, Dual Nationality, (London, 1961) pp.3-4

<sup>2</sup> Daniel C. Turack, The Passport in International Law, London, Lexington Books, 1972 p.229.

<sup>3</sup> (1947) Annual Digest, Case No. 39; 31 Hong Kong L.R 66. see, also Ex parte Freyberger (1917) 2.KB. 129; R.v. Lynch (1903) 1KB 444

owed allegiance to Japan and that he owed no allegiance to the British Crown.

In rejecting his contention the Court said:

.... if a person possesses dual nationality ... it does not mean that he owes any the allegiance to this country than a person who is only a British subject. Dual nationality is not half one nationality and half another but two complete nationalities so far as our law is concerned"

Some countries allow dual citizenship and some do not such that they take away citizenship of a person who acquires another citizenship.<sup>4</sup> The United Kingdom<sup>5</sup> and the United States of America<sup>6</sup> recognize the fact of dual nationality in their laws.

The citizenship legislation of Zambia does not entertain the incidence of dual nationality or dual citizenship. The Constitution and the Citizenship of Zambia Act expressly provide for the loss of Zambian citizenship by a person who is such a citizenship and who also possesses the nationality or citizenship of another country.<sup>7</sup> Such a citizen ceases to be a Zambian unless he renounces that other nationality or citizenship upon the attainment of the age of twenty-one, if he fails to do so before he is twenty-one years old, he ceases to be a citizen of Zambia on his twenty-second birthday.<sup>8</sup> As discussed in chapter 2 of this essay,

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<sup>4</sup> Bar-Yaacov, Op.cit. p44ff.; E.M, Borchard, *Diplomatic Protection of Citizens Abroad*, London (1915) p.590.

<sup>5</sup> Clive Parry, *Nationality and Citizenship Laws of the Commonwealth I* (1957) 124ff.

<sup>6</sup> McNair, Lord and Watts, A.D. *The Legal Effects of War* (3rd ed.), Cambridge University Press, 1948 p.24.

<sup>7</sup> Constitution of Zambia 1991, Article 9, Article 9; Citizenship of Zambia Act, s 22.

<sup>8</sup> Citizenship of Zambia Act 1975, as amended, s. 19(1)

He is also required to take the prescribed oath of allegiance. Recall that the Citizenship Board has powers to deprive a person of his citizenship of Zambia when he voluntarily acquires a foreign nationality or does acts indicating his intention to adopt or make use of other nationality or citizenship<sup>9</sup>.

### 3.3. PROOF OF ZAMBIAN CITIZENSHIP

“The first essential of an international claim” said Hackworth, “is a showing that the claimant is entitled to the protection of the state whose assistance is invoked... Until (that) right ... has been established, there is no occasion to consider the facts and law of the case for the purpose of determining, whether there is a just grievance against a foreign State”.<sup>10</sup>

This statement is true in respect to a claim of any of the rights of Zambian citizenship which may require proof of such citizenship, for example, in the issue of a Zambian passport or a claim to the diplomatic protection of the Zambian Government. The principal methods of providing Zambian citizenship are by evidence of birth within the Republic, or of birth abroad of a citizen parent or parents, or by registration or naturalization in the country. A person claiming Zambian citizenship by operation of law has to prove the possession of British protected status immediately before 24<sup>th</sup> October, 1964, his birth within the present limits of the Republic and also the birth of one of his parents therein; or if born outside the prerequisite status at the commencement of the citizenship law on 24<sup>th</sup> October, 1964.

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<sup>9</sup> Ibid. S. 19(2)

<sup>10</sup> G.W. Hackworth, Digest of International Law, Vol. 3, Washington, Government Printers 1942, p.802

The documentary means of proving Zambian citizenship are the birth certificates<sup>11</sup> of the persons concerned, or the certificates of registration and of naturalization<sup>12</sup>. Certified true copies of these certificates are *prima facie* evidence of citizenship<sup>13</sup>. The possession of a Zambian passport is also evidence of citizenship. In R. v. Brailsford, Lord Alverstone defined a passport as:

"a document issued in the name of the sovereign on the responsibility of a Minister of the Crown to a named individual, intended to be presented to the Governments of foreign nations and to be used for that individual's protection as a British subject in foreign countries and depends for its validity upon the fact that the Foreign Office in an official document vouches the respectability of the person named."<sup>14</sup>

Proof of citizenship is always required for the issue of a passport, as it certifies that the holder is a citizen of Zambia. The passport is also a request to all Zambian diplomatic and consular representatives abroad to give the holder all the assistance and protection of which he is in need. International law and many municipal laws however do not recognize the passport as conclusive proof of nationality or citizenship.<sup>15</sup>

In the Nottebohm, Case the International Court of Justice regarded the acceptance of Nottebohm's liechtenstein passport by Guatamala, through the

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<sup>11</sup> Unfortunately there were no birth registries in certain places in the former Protectorate of Northern Rhodesia. In the circumstances a sworn affidavit of the birth may be accepted in lieu of a birth certificate.

<sup>12</sup> This is implied in Citizenship of Zambia Act, 1975, as amended S.25

<sup>13</sup> Ibid. S. 25(2)

<sup>14</sup> (1905) 2SK.B. 730, 745. This definition was adopted in Joyce v. Director of Public Prosecution (1946) A.C. 347, 369, 375; see also Urtetiqui v. D' Arcy & D' Arbel 9 L.Ed. 276, 279 (1835).

<sup>15</sup> P. Weis, Nationality and Statelessness in International Law, 1956, p. 226

act of affixing a visa, as an act to facilitate his entry into Guatemala, "and nothing more."<sup>16</sup> The Court looked behind the passport to determine Nottebohm's effective nationality. This approach indicates that the role of the passport as evidence before the World Court is insignificant. The Federal Republic of Germany does not accept the passport, by itself, as conclusive proof of nationality but only as *prima facie* or rebuttable proof.<sup>17</sup> It may be attacked on the grounds that it was obtained by fraud or granted under a mistake.

The Citizenship of Zambia Act, 1975, provides for the registration of persons as citizens of Zambia and for the granting, of the necessary certificates. As regards evidence, the Act provides<sup>18</sup> that every document which purports to be a notice, certificate, order or declaration, entry into a register, granted or made under the Act or under Part II of the Constitution shall be received in evidence, and shall, unless the contrary is proved, be deemed to have been given, granted or made by or on behalf of the person by whom or on whose behalf it purports to have been given, granted or made. *Prima facie* evidence of such documents may be given by the production of a certified true copy thereof and any entry in any register is to be received as evidence of the matters stated in the entry.

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<sup>16</sup> *Nottebohm case (Liechtenstein v. Guatemala)*, Judgment (second phase) ICJ Reports 1955 p.17.

<sup>17</sup> P. Weis, Op cit. 228.

<sup>18</sup> Citizenship of Zambia Act, 1975, s.25.



The Citizenship Board may in such cases as it thinks fit on the application of any person with respect to whose citizenship of Zambia a doubt exist, certify that person is a citizen of Zambia.<sup>19</sup> Such a certificate in the absence of fraud, false representation or the concealment of a material fact is *prima facie* evidence that he is such a citizen on the date thereof but it is not prejudicial to any evidence that he was such a citizen at an earlier date. The doubt may be a question of law or of fact.<sup>20</sup> The certificate can only be issued on the application of the person concerned. The provision can therefore not be used to establish the citizenship of a deceased person. This provision is relevant in respect of persons who claim Zambian citizenship but cannot wholly substantiate their claims because of doubts either of fact or law.

### 3.4 STATELESSNESS

A person not having a nationality under the law of any state is called stateless.<sup>21</sup> This is as a result of combined operation of municipal laws.<sup>22</sup> It may arise from the divergence between the principles of the *jus soli* and *jus sanguinis* adopted by different countries. Thus, a person may either be stateless at birth, as a result of the fact that he does not acquire a nationality at birth according to the law of any State, or he may become stateless subsequent to birth by losing nationality without acquiring another. Statelessness may also arise due to mass denationalisation decrees,<sup>23</sup> and due to "verification" of a country's citizens.<sup>24</sup>

<sup>19</sup> Ibid s. 24.

<sup>20</sup> Ibid. s. 24 (1).

<sup>21</sup> P, Weis, Op.cit p.161.

<sup>22</sup> Samore, 'Statelessness as a Consequence of the Conflict of Nationality Laws' (1951) A.J.I.L. 476.

<sup>23</sup> For example the Nazi decrees denationalizing Jews.

English courts did not recognise the condition of statelessness until 1921 in the case of Stoeck v. Public Trustee.<sup>25</sup> It was held that Stoeck, who had been a German national but had lost his nationality under German law, was not a German within the meaning of Article 297 of the Treaty of Versailles and section 1 of the Treaty of Peace Order, 1919, and that his property was therefore not subject to charge. The fact that Stoeck had lost his German nationality and was, according to German law, stateless, had to be recognised by the English Courts. This is a consequence of the rule that international law leaves it to each State to determine who are its nationals.<sup>26</sup> In this regard Russell J. Said in Stoeck v. Public Trustee:

"Whether a person is a national of a country must be determined by the municipal law of that country. Upon this I think all text writers are agreed. It would be strange were it otherwise. How could the municipal law of England determine that a person is a national of Germany? It might determine that for the purpose of English municipal law a person shall be deemed to be a national of Germany; but that would not constitute him a national of Germany if he were such according to the municipal law of Germany. In truth there is not and cannot be such an individual as a Germany national according to English law..."<sup>27</sup>

The English Courts however will not recognize an enemy decree made during war purporting to make its subjects stateless person.<sup>28</sup>

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<sup>24</sup> For example, the "verification" of Uganda citizens of Asian origin carried out by the Ugandan government in 1972.  
<sup>25</sup> (1921) 2 ch. 67.  
<sup>26</sup> Convention on certain questions relating to the conflict of nationality laws of April 12th, 1930. Articles 1,2  
<sup>27</sup> (1921) 2 ch. 67 at 82. 2 ch.67 at.  
<sup>28</sup> *The King v. The Home Secretary ex parte L. and another* (1945) 1 K.B.7.

A Zambian case with respect to statelessness is that involving the former Republican President of Zambia, Dr. Kenneth Kunda.<sup>29</sup> In that case the first Respondent, Dr. Kaunda's citizenship of Zambia was challenged. Dr. Kaunda was born in the former protectorate of Northern Rhodesia, the territory that is now Zambia, of a father born in the former Protectorate of Nyasaland. Nyasaland attained independence on 7th July, 1964, earlier than Northern Rhodesia and on that date Dr. Kaunda became a citizen of Malawi (formerly Nyasaland) by operation of law since he was a British protected person by virtue of connection with Nyasaland as his father was born there.<sup>30</sup> He renounced Malawian citizenship on 21st June, 1970 and did not acquire Zambian citizenship. Judge Chalendo Salaka therefore held that Dr. Kaunda is a stateless person.

Another Zambian case with respect to statelessness is that involving one William Banda a former District Governor for Lundazi District in the Eastern Province of Zambia. In William Banda v. Chief Immigration Officer and Attorney General,<sup>31</sup> the High Court for Zambia held that William Banda was a Malawian and not a Zambian citizen. He lost his appeal in the Supreme Court.<sup>32</sup> In the appeal

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<sup>29</sup> *Dr. Kabanda Kaindu Mushota and Geofrey Katyoka v. Dr. Kenneth Kaunda and the Attorney-General* (1998) Unreported. At the moment of writing this essay the Respondents had appealed to the Supreme Court and the appeal had not yet been decided.

<sup>30</sup> Note that Malawi had similar provisions relating to citizenship on independence day as those of Zambia at independence discussed in the second chapter of this essay.

<sup>31</sup> 1991 HJ/12. Unreported.

<sup>32</sup> *William Banda v. Chief Immigration Officer and Attorney-General*, Appeal No. 16 of 1994. Unreported. For an account of the deportation of William Banda and John Lyson Chinula, see Amnesty International Report - AFR 63/04/97 titled "Forcible Exile to Suppress Dissent".

Deputy Chief Justice Bweupe upheld the trial court's decision that the Appellant was a Malawian. His decision however is flawed on two points of fact. Firstly, the State failed to bring its principal witness. Secondly, the Deputy Chief Justice introduced evidence which was not argued upon by the state in the High Court when he found:

"Investigations carried out by the state against (Banda) showed that his parents came from Nkono Village, Nkhotakota Malawi."

In fact, this point was disregarded in the High Court, when it was testified upon by witnesses, on the ground that it was hearsay. Besides, an affidavit sworn by a Malawian Immigration Officer, recording a statement by the alleged Malawian father of the Appellant, was presented in Court but no witnesses were called to corroborate the evidence.

William Banda was later deported to Malawi by the Zambian Government. He, together with one John Lyson Chinula who had also been deported to Malawi by the Zambian Government, applied to High Court in Lilongwe, Malawi, for judicial review of the Malawi, government's decision to accept them and demanded for a declaration that they were not Malawian.<sup>33</sup> Judgment was entered in their favour as they were declared non Malawian citizens. Despite this judgment the Zambian Government has not accepted that the two are Zambians and has not

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<sup>33</sup> See "Summary notes on the Meeting on Zambian Deportees", Malawi Human Rights Commission, 12 June 1996.

accepted their return to Zambia. Thus, William Banda (John Lyson Chinula is now dead) is effectively a stateless person.

There are no provisions in the Zambian citizenship legislation specifically dealing with the reduction or elimination of statelessness. It will be recalled however that the provisions for the renunciation of Zambian citizenship takes account of the possibility of statelessness and therefore gives the right of renunciation only to a citizen of Zambia who is also (or when he ceases to be such a citizen will become), a citizen of a country other than Zambia.<sup>34</sup> These provisions do not, however, touch statelessness in consequence of deprivation of nationality such as occurred in the case of Dr. Kaunda already discussed in this chapter. This is very unfortunate for the legal position of a stateless person is very precarious as illustrated by the dictum in the Dickson Wheel Company Case before the Special Claims Commission between the United States and Mexico in 1931:<sup>35</sup>

"This (i.e, the bond of nationality) is the link existing between the law and individuals and throughout it alone are individuals enabled to invoke the protection of a state and the latter empowered to intervene on their behalf.

A State, for example, does not commit an international delinquency in inflicting an injury upon an individual lacking nationality, and consequently no state is empowered to intervene or complain on his behalf either before or after the injury."

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<sup>34</sup> Citizenship of Zambia Act, ss. 23 Chapter 124 of Laws of Zambia.

<sup>35</sup> UN Reports, Vol. IV, p.688; Annual Digest, 1931 - 32, Case No. 115.

Statelessness is, therefore, undesirable from an individual's perspective, but the existence of "stateless persons" is also undesirable from the point of view of States as it may lead to friction between States. The United Nations has thus made efforts for the reduction, and elimination of statelessness. The Universal Declaration of Human Rights of December 10, 1948, proclaims the "right to a nationality" and that "no one shall be arbitrarily deprived of his nationality."<sup>36</sup>

### 3.5 FUNDAMENTAL RIGHTS

The Constitution of Zambia guarantees certain rights to citizens and non-citizens. These are contained in Chapter III of the Constitution and are termed fundamental rights and freedoms of the individual. These provisions safeguard not the rights of minorities but of individuals generally.

The Constitution distinguishes between rights available to all persons and those exclusive to citizens. Non-citizens are not entitled to political rights. This stems from inherent disabilities and disqualifications which are closely associated with the notion of alienage. As a result non citizens are not entitled to exercise the franchise as an elector at local government<sup>37</sup> or national elections.<sup>38</sup> They are also unqualified for election as members of parliament or as members of local councils.<sup>39</sup> These rights are available to citizens only.

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<sup>36</sup> Universal Declaration of Human Rights: Article 15.

<sup>37</sup> The Local Government Election Act 1970, s.16, Chapter of Laws of Zambia

<sup>38</sup> The Election Act, s.7.

<sup>39</sup> Constitution of Zambia: Article 64.

Other rights are available to all person. All persons have the right to move freely throughout Zambia and to reside in any part thereof.<sup>40</sup> There is also the right to form and belong to associations or unions which are so formed for lawful purposes.<sup>41</sup> These rights are subject to certain exceptions for the maintenance of public safety, order, morality and health. They may be curtailed where the security, peace and order are threatened within the State's frontiers.

The Constitution also guarantees freedom of conscience which provides that no individual shall be hindered in the enjoyment of his freedom of conscience which includes the freedom of thought and of religion; freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.<sup>42</sup> Therefore, every individual in Zambia is free to profess, practice and propagate his religion without being hindered by any other person or state.

Citizens and non-citizens who reside in Zambia with valid documents are entitled to engage in any trade, occupation or profession. No learned profession is closed to these persons provided they have the requisite qualifications prescribed for admission to the profession or calling. However, the State is competent to regulate in such cases where the calling or occupation is one which

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<sup>40</sup> Ibid, Article 22.

<sup>41</sup> Ibid, Article 21.

<sup>42</sup> Ibid, Article 19.

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<sup>40</sup> Ibid, Article 22.

<sup>41</sup> Ibid, Article 21.

<sup>42</sup> Ibid, Article 19.



Though lawful, is subject to abuse and likely to become injurious to the community.<sup>43</sup>

The other fundamental rights in the Constitution are also made available to all persons, citizens and non-citizens alike.<sup>44</sup>

### 3.6 IMMIGRATION AND DEPORTATION

Lord Atkinson said in a Canadian appeal that 'one of the rights possessed by the supreme power in every State is the right to refuse to permit an alien to enter that State, to annex what condition it pleases to the permission to enter it, and to expel or deport from the State, at pleasure, even a friendly alien, especially if it considers his presence in the State is opposed to its peace, order and good government, or to its social or material interest.'<sup>45</sup> An alien lawfully within a country does not normally enjoy any security as to the duration of his stay.<sup>46</sup> This stems from the State's authority as a sovereign nation and its authority over commerce with foreign nations.

Non-citizens have no enforceable right to enter Zambia<sup>47</sup>. This is illustrated in Thornton v. The Police,<sup>48</sup> in which a citizen of the United Kingdom and Colonies from the United Kingdom contended that the Local Immigration Ordinance of Fiji

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<sup>43</sup> Wright v. May 127 Minn 150; 149 NW 9.

<sup>44</sup> Article 12-18 & 24, Constitution of Zambia, 1991

<sup>45</sup> Attorney-General for Canada v. Cain (1906) A.C. 542, 546

<sup>46</sup> The U.S. Supreme Court has held that even aliens admitted for Permanent residence acquire no vested right to remain in the country: Harisades v. Shaughnessy 342 U.S. 580 (1951).

<sup>47</sup> Cf. Musgrove v. Chun Teen Toy (1891) A.C. 272

<sup>48</sup> (1962) A.C. 339

was inconsistent with the British Nationality Act, 1948 and therefore void by virtue of the Colonial Laws Validity Act, 1865. The Board rejected this contention. Thus, a non-citizen can only enter Zambia legally with the previous permission granted by the Minister of Home Affairs who is the Minister responsible for the immigration and deportation law in Zambia. The Immigration and Deportation Act, 1967, Chapter 129 of Laws of Zambia administers the entry of non-Zambians into the country allowing them to stay for a specified period.

Every non-Zambian, on entering Zambia has to present himself before the nearest immigration officer who may examine anybody whom he reasonably suspects to be a prohibited immigrant as described in the second schedule and ask for his passport for the purpose of ascertaining his identity.<sup>49</sup> In certain situations when a person either does not have<sup>50</sup> bonafide permit to remain in Zambia or is a holder of a visiting permit only, an immigration officer may by notice in writing require such person to appear before him at such place, time and date as specified in the notice.<sup>50</sup>

For the purposes of deportation, the Act provides several classes of prohibited immigrants who are to be refused admission into Zambia or to be deported.<sup>51</sup> These are, *inter alia*, those who are infected with contagious disease or likely to become capable of transmitting to any other person such disease; prostitutes or

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<sup>49</sup> Immigration and Deportation Act, 1967; section 10.

<sup>50</sup> Ibid. s.11.

<sup>51</sup> Ibid. s. 22 (Second Schedule); see also s.26.

persons previously deported or barred from Zambia; vagrants without sufficient funds; those who have violated any provisions of the Act or regulations made thereunder or have failed to comply with any lawful requirement made under the Act or regulations framed thereunder; those who have been convicted of a violation of any law under the law of any other country; persons whose permits to stay in Zambia have been revoked; persons who do not have proper travel documents; persons whose permits to remain in Zambia have become invalid and finally persons who are not in the opinion of the Chief Immigration Officer, <sup>not</sup> of good character.

Further, the State may deport a non-citizen whose presence in the country is or is deemed to be detrimental to its peace, order or good government or to its social material interest. This right is as absolute and unqualified as the right to admit and receive an alien in the country. It matters not whether the non-citizen is only a temporary visitor has settled down permanently pursuing his profession or calling peacefully on its territory. This absolute and unqualified right to deport non-citizens may exercised in an arbitrary manner. Thus the distinction between discretion and arbitrariness must be kept alive when dealing with issues of deportation. While a State can deport justiciably all alien enemies residing or staying temporarily within its territory during the time of war, it cannot make such an order deporting an alien in time of peace unless it is based on reasonable

grounds and executed reasonably because such a right is "of a very high nature."<sup>52</sup>

The Act is very specific as to the procedure of deportation and the Minister of Home Affairs is bound to follow it. The person to be deported is entitled to know the charges against him and prepare to put up his defence either by himself or through counsel.<sup>53</sup> In Paton v. The Attorney-General for Zambia and Mainza Chona in his capacity as Minister of Home Affairs,<sup>54</sup> the deportation notice served on the plaintiff contained no period, nor was the route specified for the deportation and this procedural requirements were not met, the court observed that "the section does not enable officers of immigration department merely to bundle a person into a motor car and deliver him to the border".

It has to be noted that the Minister's judgment, that the deportation of an alien is in the public interest cannot be challenged before the courts of law. Because the right of a state to self-preservation and the integrity of its dominion and its sovereignty is said to be superior to personal liberty and international agreements to which the State may be a party.

However, the possibility of abuse of the Minister's discretion, cannot and should not be dismissed. Thus while aliens may be deported from Zambia by serving

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<sup>52</sup> G.H. Hackworth., *Digest of International Law*, vol. III, Washington, Government Printers, Washington D.C., 1942, p.690.

<sup>53</sup> Immigration and Deportation Act, s. 24.

<sup>54</sup> The Zambian Law Reports 1968 p. 185.

notice on such person, it is, submitted that the final decision to deport a person should not be left in the hands of the Minister alone. There should be a Board consisting of a number of persons with legal background, which must examine each case on a case-to-case basis. Similarly, in the absence of a detailed definition of public interest, it is necessary that the Minister should not be given absolute and exclusive power to declare the presence of any person in Zambia as inimical to the public interest under section 22(2) unless he can substantiate his allegations supported by the facts before a Court.

## CHAPTER 4

### GENERAL CONCLUSION AND RECOMMENDATIONS

#### 4.1 SUMMARY

This dissertation has examined the nationality and citizenship laws of Zambia.

Chapter One discussed the concepts of nationality and citizenship and <sup>an</sup> historical background of citizenship laws of Zambia was given. It has been observed that the native inhabitants of Northern Rhodesia were British protected persons and as such were British nationals. Their status as British protected persons was not lost by virtue of their acquisition of citizenship of the Federation of Rhodesia and Nyasaland nor was it lost by their becoming British subjects.

Chapter Two discussed the creation, acquisition and loss of citizenship of Zambia. It has been established that Zambia citizenship, in the strictest sense, came with the attainment of independence in 1964. In this respect, Zambian citizenship laws were inserted in the Independence Constitution of Zambia of 1964 and are also contained in the Citizenship of Zambia Ordinance, 1964. We have established that under these statutes, citizenship of Zambia could be acquired by operation of law, by birth, by descent, by registration, by naturalization and by adoption. It has been observed that citizenship of Zambia under these two pieces of legislation could be lost by failure to renounce citizenship of a foreign country by a citizen of Zambia, by deprivation of citizenship and by acquisition of

citizenship of another country. We have observed that Constitution of Zambia of 1973, the Citizenship Act of 1975 and the Constitution of Zambia of 1991 have replaced the 1964 Constitution and the Citizenship of Zambia Ordinance of 1964. It has been established that the rules regarding acquisition and loss of citizenship are essentially the same as those under the Independence Constitution and the Citizenship of Zambia Ordinance, 1964 except that the present citizenship laws have discarded acquisition of citizenship by operation of law and naturalisation.

In Chapter Three, matters relating to Zambian citizenship other than acquisition and loss of it were discussed. It has been established that the international law principle that each State is competent to lay down its own rules for the acquisition and loss of its nationality leads to situations of dual or plural nationality. We have observed that the citizenship laws of Zambia do not entertain the incidence of dual or plural nationality such that a Zambian citizen who acquires citizenship of a country other than Zambia loses his Zambian citizenship. It has been established that proof of Zambian citizenship may be necessary in claiming rights of Zambian citizenship and in international claims. In this respect proof of Zambian citizenship may be in the form of a passport, certified birth certificates, certificates of registration and naturalization. This chapter has also indicated that the combined operation of municipal laws may lead to situations of statelessness either at birth or subsequent to birth. There are no provisions in the Zambian citizenship legislation specifically dealing with the reduction or elimination of statelessness. It has been observed that citizens and non-citizens of Zambia are

entitled to the same fundamental rights except that the latter are not entitled to exercise the franchise as electors at government or national elections and that they are unqualified for election as members of Parliament or members of local councils.

Chapter Three ended with a discussion on the law of immigration and deportation. It has been observed that the State has powers to refuse entry, into Zambia by aliens and to expel or deport them from Zambia. In this regard we have discussed the requirements to be fulfilled by aliens for entry into Zambia. The classes of prohibited immigrants have also been discussed. It has been established that the Immigration and Deportation Act, 1967 vests wide powers in the Chief Immigration Officer and Minister of Home Affairs which powers are bound to be abused.

## **4.2 RECOMMENDATIONS**

In this essay, it has been observed that there is no provision in the *Zambian* citizenship legislation specifically dealing with the reduction and elimination of statelessness. It is, thus, proposed that the Government, should legislate in regard to reduction and elimination of statelessness. The case of Dr. Kaunda discussed in Chapter Three herein should indicate to the Government the possibility that there may be other persons in Zambia that are potentially stateless, especially those persons born in Northern Rhodesia of fathers born outside the territory.



It has also been observed, in regard to deportation that the Minister of Home Affairs has wide powers in deciding whether to deport a person or not. It has been submitted that there should be a Board consisting of a number of persons with legal background, which must examine each case on a case-to-case basis.

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