

IN THE CONSTITUTIONAL COURT OF ZIMBABWE

CASE NO. CCZ 79/14

HELD AT HARARE

In the matter between:-

LOVENESS MUDZURU

FIRST APPLICANT

RUVIMBO TSOPODZI

SECOND APPLICANT

And

THE MINISTER OF JUSTICE, LEGAL &
PARLIAMENTARY AFFAIRS

FIRST RESPONDENT

MINISTER OF WOMEN'S AFFAIRS,
GENDER & COMMUNITY DEVELOPMENT

SECOND RESPONDENT

ATTORNEY GENERAL OF ZIMBABWE

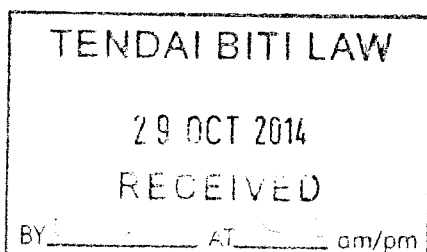
THIRD RESPONDENT

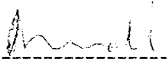
NOTICE OF OPPOSITION

TAKE NOTICE that Respondents intend to oppose the above application and that their address for service is care of their undermentioned legal practitioners.

AND FURTHER TAKE NOTICE that the attached affidavit will be used in support thereof.

DATED at HARARE this 29th day of OCTOBER, 2014.




CIVIL DIVISION OF THE
ATTORNEY GENERAL'S OFFICE
Respondents' Legal Practitioners
2nd Floor, Block "A"
New Govt. Complex
Cnr Samora Machel Ave/Fourth St.

HARARE (4/JUSTICE/895 MC/cc)

TO: **THE REGISTRAR**
Constitutional Court of Zimbabwe
HARARE

AND

TO: **TENDAI BITI LAW**
Applicant's Legal Practitioners
HMB Chambers
28 Rowland Square
Milton Park
HARARE [TB/om/M20]

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ATTORNEY GENERAL OF ZIMBABWE

THIRD RESPONDENT

FIRST AND SECOND RESPONDENTS' OPPOSING AFFIDAVIT

I, **VIRGINIA MABIZA**, do hereby make oath and state that:-

1. I am the Secretary for Justice, Legal and Parliamentary Affairs, and have been duly authorised to depose to this affidavit on behalf of both 1st and 2nd Respondents. The matters of fact which I depose to herein are, save where otherwise indicated or the context so suggests, within my personal knowledge and are true and correct to the best of my knowledge and belief. Where I make submissions on the law this is as a result of legal advice rendered to me by my legal practitioners of record, which advice I accept and verily believe to be correct.

A. IN LIMINE

2. I have had sight of the 1st and 2nd Applicants' founding Affidavits and in response thereto I would like to raise the following preliminary objection. It is my respectful submission that both applicants have no *locus standi* to bring this application before this honourable court in terms of section 85(1) (a) and (d) of the Constitution of Zimbabwe.
3. Applicants have not established any causal link between them and the remedy they seek. Neither of them was married either in terms of the Marriage Act or of the Customary Marriages Act. They are not specific to say how they are affected, nor do they point out which one of their specific rights have been infringed to qualify them to bring this application in terms of section 85(1)(a) and (d) of the Constitution. In the circumstances, the Applicants are therefore not properly before this honourable court.

B. ON THE MERITS

4. Ad Paragraphs 1 – 5

This is admitted.

5. Ad Paragraphs 6 – 15

I have no knowledge of the historical background set out herein by 1st Applicant regarding her personal circumstances, but I do not deny the same. Suffice it to say that this historical rendition does not relate to any marriage into which she entered as she has not yet married anyone.

6. Ad Paragraph 16

1st Applicant must point out which of her particular constitutional rights have been violated to qualify her to bring this application in terms of section 85 (1) (a) and (d) of the Constitution of Zimbabwe. If she has approached this court in a representative capacity then she has failed to clearly indicate the basis of that fact and to justify her representation. The basis of her "public interest" is neither explained or expressed in sufficient detail to properly bring it within the purview of section 85(1)(a) and (d) of the Constitution.

7. **Ad Paragraphs 17 -18**

This is admitted.

8. **Ad Paragraph 19**

I deny that the position is that the legitimate age of marriage in Zimbabwe is 18 years. No law stipulates that as far as I am aware.

9. **Ad Paragraph 20**

By being silent on the minimum age of marriage the Customary Marriages Act Chapter 5:07 is not unconstitutional in any way. Following on from my paragraph 8 above I deny that the differentiation between the sexes as to the minimum age of marriage is in any way unconstitutional.

10. **Ad Paragraph 21**

I submit that this application is academic and speculative to the extent that none of the protected rights of either Applicant have been violated or are likely to be violated. The public interest aspect alleged by the Applicants does not relate to any identifiable person or children, but to marriage statistics, which in themselves are not deserving of the protection of this honourable court.

11. **Ad Paragraphs 22-25**

It is true that the Marriage Act, Chapter 5:11 differentiates between the minimum age of marriage for boys and girls, and that the Customary Marriages Act, Chapter 5:07 does not specify any minimum age for either boys or girls. I, however, deny that there is anything unconstitutional about that state of affairs. The differentiation is simply that, and is necessitated solely by the sexual difference itself and the implications therefor for married life. As far as I am aware the differentiation arises from biological and psychological maturity levels for boys and girls.

12. **Ad Paragraphs 26 – 29**

I deny that the differentiation amounts to child abuse, discrimination or unequal protection under the Constitution.

13. **Ad Paragraphs 30 – 31**

I submit that the meaning of section 78(1) of the Constitution is not to make 18 the age of marriage in Zimbabwe. It simply confers a right on every person who has attained the age of 18 years to found a family. Had the Constitution intended to establish the age of 18 years as the minimum age of marriage then it would have said so in clear and express terms without any equivocation.

14. **Ad Paragraphs 32 – 33**

While it is true that early marriages prejudice the livelihood and opportunities of girl children particularly those from poor backgrounds it is not the correct position that the Constitution makes 18 years the minimum age of marriage in Zimbabwe. I may point out in this connection that neither of the Applicants has been

subjected to the vagaries of an early marriage against their wish. They simply opted to live in unregistered unions when they were minors. They do not explain or identify which girl children are being subjected to the vagaries of early marriages before age 18.

15. **Ad Paragraph 34**

As I dispute that the relief set out in paragraph (a) is competent, it follows that I dispute that the relief set out in the succeeding paragraphs (b), (c) and (d) is also competent.

16. **Ad Paragraph 35 – 47**

The statistical data is not in dispute. The data does not, however, in itself establish the existence of any prejudice on any girl who got married prior to attaining the age of 18 years, or how many girls who did get so married are from poor backgrounds or are necessarily vulnerable.

17. **Ad Paragraphs 48 – 54**

This is not in dispute.

18. **Ad Paragraphs 55 – 61**

International law is merely persuasive and is not necessarily binding on our courts unless it has been domesticated into local law. The international law cited in the above paragraphs therefore remains merely persuasive.

19. **Ad Paragraphs 62 – 63**

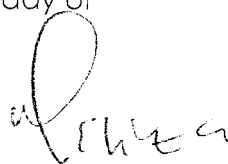
This is not in dispute.

20. **Ad Paragraph 64**

To issue a declarator that the minimum age of marriage in Zimbabwe for all types of marriages is 18 years would be to usurp the role of the legislature. If the intention of the legislature was to make 18 years the minimum age of marriage for all types of marriages, the legislature would have clearly said so. In the circumstances it would not be proper for this honourable court to issue a declarator on the minimum age of marriage.

21. I therefore pray that the application be dismissed, with costs.

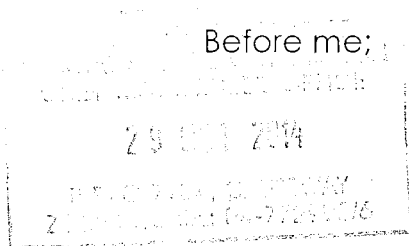
THUS DONE and SWORN to at HARARE this day of 2014.



VIRGINIA MABIZA



COMMISSIONER OF OATHS.



**CIVIL DIVISION OF THE
ATTORNEY GENERAL'S OFFICE**
Respondents' Legal Practitioners
2nd Floor, Block "A"
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