

IN THE CONSTITUTIONAL COURT OF ZIMBABWE

CASE NO. CCZ 42/2015

HELD AT HARARE

In the matter between:

HILTON CHIRONGA

1st Applicant

RASHID STUART MAHIYA

2nd Applicant

And

MINISTER OF JUSTICE, LEGAL &

PARLIAMENTARY AFFAIRS

1st Respondent

MINISTER OF HOME AFFAIRS

2nd Respondent

MINISTER OF DEFENCE

3rd Respondent

THE GOVERNMENT OF REPUBLIC OF ZIMBABWE

4th Respondent

SECOND RESPONDENT'S OPPOSING AFFIDAVIT

I the undersigned, **ALOUIS DAMBUDZO MATONGO**, do hereby make oath and state that:-

1. I am the Director Policy and Research in the Ministry of Home Affairs and in that capacity I am authorized to dispose to this matter on behalf of the Second Respondent. The matters of fact I depose to herein are to the best of my belief and knowledge, true and correct and are personally known to me save where the context suggests otherwise. Where make submissions on legal issues, I do so upon advice from my legal counsel, which advice I accept and believe to be correct.

2. I have read and understood the Applicants' Founding Affidavit and wish to respond thereto as follows:-

3. Paragraph 1 – 3

No issues arise.

4. Paragraph 4

The Respondent referred thereto is not properly cited.

5. Ad paragraphs 5.1 – 5.3

No issues.

6. Ad paragraphs 5.4 – 5.5

The issues raised therein are disputed. The Applicant has not demonstrated how I have failed or neglected to cause the enactment of such an Act of Parliament.

On my part, I have already taken positive steps to cause the enactment of the contemplated Act of Parliament. I refer to Annexure A of Third Respondent's affidavit, a working document of the proposed legislation which shows amongst other things that I have already started the process of fulfilling the requirements of **Section 210** of the Constitution.

6.1. The process cannot, however, be accomplished overnight. A lot of ground work needs to be covered and this includes close engagement with all relevant security departments and stakeholders. My Ministry and the third Respondent and the Office of the President and Cabinet have so far held three (3) consultative meetings with relevant stakeholders, for their input into the issues at hand before coming up with the relevant principles for cabinet approval.

6.2. The process of aligning our legislation and coming up with legislation in conformity with the Constitution is a mammoth task which cannot be accomplished overnight. A lot of ground work needs to be covered and include close engagement with relevant stakeholders. It is thus my submission that such an exercise cannot be done overnight, neither should it be a rushed process.

6.3. I submit that a lot has taken place to give effect to the provisions of **Section 210** of the Constitution. The process of aligning our legislation and coming up with the legislation in line with the Constitution is a mammoth task which cannot be accomplished overnight. A lot of ground work needs to be covered and this includes close engagement with relevant stakeholders.

6.4. It is my submission that such an exercise cannot be done overnight, neither should it be a rushed process. It therefore follows that, such an exercise cannot be undertaken within 45 days contemplated by the Applicant.

7. **Ad paragraphs 6.1 – 6.9**

This is denied. Our law has always provided for remedies where one is violated even by security forces. Security forces are not immune to arrest and the Applicants and or their organisation were and still are at liberty to report whatever atrocities they complain off if at all they took place. It is however not disputed that this is an important body in our Constitution and that is why efforts are already under way to give effect to the provisions of **Section 210** of the Constitution.

8. **Ad paragraph 6.10 -6.15**

No issues

9. **Ad paragraph 7.1**

Respondents have not failed to enact the law demanded by **Section 210**. The enactment of legislation is not an event but a process moreso when it's a new piece of legislation, it can not be achieved over night.

10. **Ad paragraph 7.2 – 7.5**

I dispute being in breach of any Constitutional provision. I have demonstrated above the steps I have so far taken in an endeavour to ensure compliance with the provisions of the Constitution. The contention that I have failed to enact a law as provided by **Section 210** of the Constitution is therefore denied. I thus dispute that I have breached the provisions of **Section 2**, **Section 5**, and **Section 324** of the constitution of Zimbabwe.

LOCUS STANDI

11. Ad paragraphs 8.1 – 8.4

No issues.

12. Ad paragraphs 8.5 – 8.12

If what Applicant describes is what transpired, this would amount to criminal activities which have prescribed remedies in terms of our law and would not require a law enacted in terms of **Section 210** to address the situation. Even the Applicant himself cannot with certainty state that the said culprits were members of the security forces whose conduct would be regulated by the law envisaged in **Section 210** of the Constitution. These could simply have been criminal elements who ought to have been dealt with in terms of our criminal law.

13. Even if it were to be taken that the perpetrators of the alleged acts were members of the security forces, whose conduct is sought to be regulated in **Section 210**, this law would not assist the Applicants to remedy the harm suffered in 2008 as it would not apply in retrospect. There is no provision in the Constitution that such law will apply in retrospect.

14. It is not as if Respondents have taken no action to bring the intended law into being. As already explained the process has started and might require time to complete as this is a totally new piece of legislation which obviously requires a lot of consultation. I am aware of the fact that the envisaged piece of legislation is quite peculiar in that, it requires wide consultations, which consultation encompass consultative meetings with the relevant stakeholders before the Act can be put together. It is thus my submission that such an exercise cannot be done overnight, neither should it be a rushed process.

15. From the steps indicated above, there is no doubt that Respondents have demonstrated a willingness to come up with the contemplated piece of legislation. Respondents are willing to come up with the intended legislation but are unable to meet the timelines as proposed by the Applicant. This is moreso in view of the current economic challenges in the country. It is my submission that in view of the processes involved and the

fact that Respondents are already doing what Applicant seeks, there thus is no need for a **mandamus**.

16. In the circumstances, the Applicant is devoid of merit and must be dismissed with costs.

Thus sworn at HARARE this.....*22nd*..... day of **JUNE** 2015.

Alois Dambudzo Matongo
.....
ALOUIS DAMBUDZO MATONGO

Before me:-

Garise-Nheta
.....
COMMISSIONER OF OATHS

CHENAI GARISE-NHETA
LLBS (UZ) LEGAL PRACTITIONER
22 JUN 2015
CONVEYANCER AND
COMMISSIONER OF OATHS