



IN THE CONSTITUTIONAL COURT OF ZIMBABWE

Constitutional Application No. CCZ 71 of 2013

In the matter between

MORGAN TSVANGIRAI Applicant

and

ROBERT GABRIEL MUGABE First Respondent

ZIMBABWE ELECTORAL COMMISSION Second Respondent

RITA MAKARAU N.O. Third Respondent

CHIEF ELECTIONS OFFICER Fourth Respondent

A Constitutional election petition in terms of section 93(1) of the Constitution of Zimbabwe

HARARE: the 19th day of AUGUST 2013

Before the Honourable Mr Justice CHIDYAUSIKU, Chief Justice
the Honourable Mr Justice MALABA, Deputy Chief Justice
the Honourable Mrs Justice ZIYAMBI, Judge of Appeal
the Honourable Mrs Justice GWAUNZA, Judge of Appeal
the Honourable Mr Justice GARWE, Judge of Appeal
the Honourable Mrs Justice GOWORA, Judge of Appeal
the Honourable Mr Justice HLATSHWAYO, Judge of Appeal
the Honourable Mr Justice CHIWESHE, Acting Judge of Appeal
and the Honourable Mrs Justice MAVANGIRA, Acting Judge of Appeal

D S Mehta, for the applicant

T Hussein, for the first respondent

T M Kanengoni, for the second, third and fourth respondents

FMutamangira, for the Attorney-General (*Amicus Curiae*)

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WHEREUPON, after reading documents filed of record and hearing counsel in this application/petition made in terms of section 93(1) of the Constitution of Zimbabwe,

C.A.V.

And thereafter, that is to say, TUESDAY the 20th day of AUGUST 2013

The Constitutional Court unanimously concluded that an application/petition lodged with it in terms of section 93(1) of the Constitution of Zimbabwe challenging the validity of an election of a President or Vice-President is unique, in that it cannot be terminated by a withdrawal. In terms of section 93 of the Constitution of Zimbabwe, once such an application or petition is launched it can only be finalised by a determination of the Constitutional Court by either declaring the election valid, in which case the President is inaugurated within forty-eight hours of such determination, or alternatively by declaring the election invalid, in which case a fresh election must be held within sixty days. Without the said determination there can be neither an inauguration of the President nor the holding of a fresh election. Consequently the purported withdrawal of the application/petition by the applicant before a determination of the matter is of no legal force or effect, save to indicate to this Court that the applicant has abandoned or does not persist with his allegations against the respondents.

In the result, the application is hereby dismissed with costs.

Further, the Constitutional Court, in terms of sections 93 (3) and (4) of the Constitution of Zimbabwe, makes the following determination and *declaratur* -

1. THAT the Zimbabwe Presidential election held on 31 July 2013 was in accordance with the laws of Zimbabwe and in particular with the Constitution of Zimbabwe and the Electoral Act [*Chapter 2:13*];
2. THAT the said election was free, fair and credible. Consequently, the result of that election is a true reflection of the free will of the people of Zimbabwe who voted; and
3. THAT Robert Gabriel Mugabe was duly elected President of the Republic of Zimbabwe and is hereby declared the winner of the said election.

Reasons for the judgment will be given in due course.



BY THE COURT

sgt

CHIEF REGISTRAR