GWINYAI HENRY MUZOREWA
versus
THE CHAIRPERSON-NOMINATION COURT
and
THE CHAIRPERSON
ZIMBABWE ELECTORAL COMMISSION

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 21 June, 2018 and 26 June, 2018

Urgent Chamber Application

S. Mahuni & V Mutatu, for the plaintiff
C. Nyika & T M Kanengoni, for the defendants

MANGOTA J: The petitioner, a presidential aspirant for the July 2018 harmonised election, is a leader of The United African National Council ("The UANC"). The UANC, as a political party, broke away from the original United African National Council ("UANC") which one Reverend Bishop Abel Tendekai Muzorewa who is now late formed in 1978.

The respondents are the Chairperson of the Nomination Court the proceedings of which took place from 10 am to 4 pm of 14 June, 2018 and the Chairperson of the Zimbabwe Electoral Commission under whose supervision the Chairperson of the Nomination Court operated. They are respectively referred to in this judgment as the first and the second respondents.

The petitioner moved the court to direct the respondents to accept his nomination papers as well as to consider whether or not he qualifies to be a presidential candidate for the forthcoming July, 2018 election. His statement is that:

(a) The UANC nominated him to run for the office of President of Zimbabwe in the harmonised elections which are slated for 30 July, 2018.

(b) The second respondent drew his attention to the documents which were required for one to be nominated as a candidate for the elections.

(c) On the evening of the day which preceded the day of the sitting of the nomination court, he discovered that he did not have his birth certificate which the second respondent required as one of the candidate's qualifying documents.

(d) On the morning of the day of the sitting of the nomination court, he called at the office of the registrar-general with the intention of having a copy of the his birth certificate issued to him.

(e) He was at the mentioned office at 9 am of 14 June, 2018 – the day of the sitting of the nomination court.

(f) He remained at the mentioned office for eight (8) hours as he waited for a copy of the birth certificate to be issued to him.

(g) When the certificate was at hand, he hurried to the nomination court to present his papers for his nomination as a presidential candidate.

(h) He arrived at the seat of the nomination court at 4.15 pm and presented his papers to the first respondent who presided over the court.

(i) The first respondent refused to accept his papers arguing that the court had already concluded its business for the day.

(j) He enlisted the assistance of the second respondent and she, in turn, argued in the first respondent's corner.

(k) The respondents requested him to prove that he was at the office of the registrar-general when the proceedings of the nomination court commenced and remained in progress.

(l) He got a letter which stated the fact from the registrar-general's office.

(m) He showed the letter to the respondents who remained unmoved with the same.

(h) They refused to accept his nomination papers.

(p) He, as his next action, filed this petition in which he moved the court as has already been stated in the foregoing paragraphs.

The respondents opposed the petition. They submitted that the petitioner came to file his nomination papers outside the prescribed period of time. They insisted that the candidates whom they continued to entertain were those who were already at the nomination court when its sitting for the day ended. They moved the court to dismiss the petition.

There is no doubt that the petitioner acted with resolves and speed to file this petition. The nomination court sat on 14 June, 2018. The petition was filed on 19 June, 2018. It was filed four (4) days after the event. It was, therefore, treated with the urgency which it deserved.

The petitioner blames everyone else but himself for the misfortune which befell him. He blames the registrar-general's office for having taken eight (8) hours to issue him with a copy of the birth certificate. He blames the first respondent for having refused to accept his

nomination papers. He also does not have any kind words for the second respondent who, according to him, should have directed the first respondent to accept his papers.

The petitioner, curiously, forgot to blame himself for not having ensured that his papers were in order some days before the evening of the day which preceded the day on which the nomination court was scheduled to sit. He states that the second respondent drew his attention to the requirements of the nomination court on 12 June, 2018. He does not explain why he did not have his papers in order on the mentioned date or on the following day. All he is able to do is to pass the blame on to other persons to his total exclusion.

A person who wants to take charge of fourteen (14) million Zimbabweans cannot be allowed to act in such a cavalier approach to matters of national interest as the petitioner did. His conduct can, at best be described, as one of indifference and, at the worst, as being akin to reckless abandon. He knew well before the sitting of the nomination court that his political party had fielded his name as a presidential candidate. His attention was drawn to the requirements of the nomination court two days before the siting of the court. He, for reasons known to himself, waited until the eleventh hour to look for the requirements which he was to present to the court. His last minute action caused the misfortune which befell him. He should, in my view, have acted when the need to act arose. What he suffered *in casu* falls into what CHATIKOBO J described, in *Kuvarega* v *Registrar-General*, 1991 (1) ZLR 188 at 195, as self-inflicted injury. He should blame no one else but himself.

The petitioner's statement is improbable. He states that he arrived at the office of the registrar-general at 9 am of 14 June, 2018. He avers that he was at the mentioned office for eight (8) hours running. He states, further, that he arrived at the nomination court at 4:15 pm of the date of the sitting of the court.

Assuming that the registrar-general's office remained open throughout the day, the lunch hour included, the petitioner would only have left the registrar-general's office at 5pm of 14 June, 2018. If the office closed for the lunch hour, he would have left the same at 6 pm of the mentioned date. Simple mathematical calculation leads to the observed conclusion.

The petitioner was, in my view, not being candid when he stated that he arrived at the court at 4:15pm. Mathematics does not support his assertion in the mentioned regard.

The petitioner does not dispute that he arrived after the court had closed its business for the day in terms of the law. He admits that he was fifteen (15) minutes late. He also accepts that s 46 (7) of the Electoral Act which stipulates the sitting times of the nomination court contained mandatory provisions.

The respondents correctly rejected the petitioner's papers. They cannot be faulted for the position which they took. They could not temper with the time limits which are stated in the Electoral Act's clear and unambiguous provisions. They did not and do not have the option to act other than in the manner that they did. They had to implement the law as the legislature stated it.

If they tempered with s 46 (7) of the Electoral Act, as the petitioner is moving the court to do, that would have placed them in a very invidious position. Those who fell into the position of the petitioner would have come forward to have their cases considered. The respondent would have set a precedent from which they could not depart without being seen to be discriminatory.

Adherence to time-lines is a *sine qua non* aspect of any electoral process. Once an implementer of the process tempers with such a requirement, an election would be a very stubborn horse which the implementer would find difficult, if not impossible, to ride.

The petitioner's statement which is to the effect that the first respondent rejected his papers when he (first respondent) was entertaining applications from other candidates is misplaced. The candidates whose applications were being entertained are those who were at the court when it closed its business for the day.

The respondent's unchallenged assertion on the matter is that the *proviso* to s 46 (7) covered the situation of such candidates. Their second unchallenged statement was that the petitioner's case fell outside that group of candidates.

Given the concessions which the petitioner made during the hearing of petition, the court remained unclear as to what exactly he was moving it to do. It is not the function of the court to bend the law to suit a particular situation. Where the law is clear and unambiguous, as it is *in casu*, the court's duty is to ensure that people comply with it without fail. A *fortori* when the provisions of the Electoral Act are, as the petitioner admitted, peremptory.

In s 46 (7) of the Electoral Act, the legislature spoke in clear and unambiguous terms. Its speech lies in its domain. The court has no business in the same. It cannot interfere with the Legislature's clearly stated position. The doctrine of separations of powers amongst the three arms of the State prohibits the interference of one arm of the State into the other arm of the same. Reference is made in this regard to the pertinent remarks which UCHENA J (as he then was) made on the subject matter in *Nyamapfeni* v *Constituency Registrar*, 2008 (1) ZLR 164, 166 C-167 H.

The petitioner's case would have taken a different texture if he reached the nomination court at 4 pm sharp. Such a borderline case could have been argued either way of the electoral divide. His case is, unfortunately for him, way outside the prescribed time. It is beyond repair and it cannot, therefore, be salvaged from the deep well into which it sank. It is completely devoid merit.

It was, in my view, out of sheer compassion that the respondents did not insist that the petitioner pays any costs for this petition. They are commended for the position which they took.

The petitioner failed to prove his case on a balance of probabilities. The petition is, accordingly, dismissed with no order as to costs.

Mahuni and Mutatu, applicant's legal practitioners
Nyika Kanengoni, respondent's legal practitioners