

IN THE CONSTITUTIONAL COURT OF ZIMBABWE

CASE NO. CCZ 54/16

HELD AT HARARE

In the matter between:

PROMISE MKWANANZI

APPLICANT

And

THE PRESIDENT OF ZIMBABWE

1ST RESPONDENT

And

THE MINISTER OF JUSTICE, LEGAL AND
PARIAMENTARY AFFAIRS

2ND RESPONDENT



NOTICE OF OPPOSITION

TAKE NOTICE that the Respondent intends to oppose the application on the grounds set out in the affidavit annexed to this notice, and that his address of service is specified below.

The application was served on the Respondent on the 18th of August, 2016.

Dated at Harare this ^{14th} day of **SEPTEMBER**, 2016.

.....
**CIVIL DIVISION OF THE
ATTORNEY GENERAL'S OFFICE**
2nd Respondent's Legal Practitioners
2nd Floor, Bloc 'A'
New Govt Complex
Cnr S. Machel Ave/Fourth St
Causeway
HARARE (4/JUST/1029/FC/pm)

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

And

TO: **PROMISE MKWANANZI**
Applicant
25 Bath Road
Avondale
HARARE

HELD AT HARARE

In the matter between:

PROMISE MKWANANZI
And

THE PRESIDENT OF ZIMBABWE
And

THE MINISTER OF JUSTICE, LEGAL AND
PARLIAMENTARY AFFAIRS



SECOND RESPONDENT'S OPPOSING AFFIDAVIT

I, **EMMERSON DAMBUDZO MNANGAGWA** do hereby make oath and state that:-

1. I am the Vice President of the Republic of Zimbabwe and am responsible for the Ministry of Justice, Legal and Parliamentary Affairs. The second Respondent in this matter has been cited as the Minister of Justice, Legal and Parliamentary Affairs and I wish to point out that no one answers to that title but for the purposes of assisting the court I will respond to this affidavit as the Second Respondent.
2. I have read and understood the founding affidavit filed by the Applicant in this matter and wish to respond thereto as follows;

IN LIMINE

3. Applicant has made this application in terms of **Section 167 (2) d** of the **Constitution of Zimbabwe Amendment (No. 20) Act 2013** alleging that the President has failed to fulfill his Constitutional obligations.
4. I am advised by my Legal Practitioners, which advice I take that in terms of the rules of this honourable court, such an application must in terms of **Rule 27 (2) of the Constitutional Court Rules 2016**, be filed with the Registrar

and served on all interested parties within two days after the date of such application having been filed. Applicant has not complied with this rule of this honourable court and on that basis alone this application must be dismissed for non compliance with the Rules of this Court.

ON THE MERITS

5. Ad Paragraphs 1 and 2

I have no knowledge of the averments made in these two paragraphs and I do not admit the same

6. Ad Paragraph 3

Admitted.

7. Ad Paragraph 4

There is no one who answers to that title as indicated in this paragraph. I am the Vice President of Zimbabwe and in that capacity am responsible for the administration of the Ministry of Justice, Legal and Parliamentary Affairs.

8. Ad Paragraphs 6-8

I have no knowledge of matters raised in these paragraphs and deny the same.

9. Ad Paragraph 9

I admit that the subject of this application is to determine whether the President has failed to fulfill his Constitutional obligations and duties as required by **Section 90 (1) and (2) of the Constitution** and that **Sections 90 (1) and 90)** constitute part of the President's mandate.

10. Ad Paragraph 11

I admit contents of this paragraph but deny that there has been unchecked and institutionalized abuse of state power and resources for the first twenty (20) years of our independence and put Applicant to the strict proof thereof.

11. **Ad Paragraphs 12-20**

The contents of these paragraphs to the extent that they relate to the jurisdiction and powers of this honourable court in terms of **Section 167 (2) (d)** and the Constitutional obligations of the First Respondent's in terms of **Section 90** are admitted.

12. **Ad Paragraph 21**

The first Respondent merely spoke to the contents of the ZANU PF election manifesto. ZIM ASSET is a government economic programme not a ZANU PF economic programme and the First Respondent is not solely responsible for its success. In any event it is an ongoing programme which cannot produce results over night.

13. **Ad Paragraphs 22-29**

Other than to admit that some demonstrations did take place, I have no knowledge of the rest of the contents of these paragraphs. Applicant is telling his own story of what he alleges transpired and I have no knowledge of the events and therefore do not admit them and put Applicant to the proof thereof.

14. **Ad Paragraphs 30-31**

The contents of these paragraphs relate to utterances allegedly made by the First Respondent whose precise content I have no recollection of and believe would be best responded to by the first Respondent.

15. **Ad Paragraph 32**

Admitted.

16. **Ad Paragraph 33-35**

I admit that I attended the burial of the late Dr Charles Utete and while I have no precise recollection of the words uttered by the First Respondent, I admit that part of the First Respondent speech was generally along the lines alleged by the Applicant. I however deny that the views and conclusions expressed therein by the Applicant reflect a fair evaluation of the speech in question.

17. **Ad Paragraph 36**

Serve to deny that the First Respondent has caused divisions in the manner alleged; I have no knowledge of the rest of the contents of this paragraph and do not admit them.

18. **Ad Paragraph 37-38**

I have no knowledge of what Applicant alleges in these paragraphs and deny it.

19. **Ad Paragraph 39**

Applicant is expressing his opinion and I am unable to comment.

20. **Ad Paragraph 40**

I have no knowledge of whether the words alleged were the precise words uttered by the First Respondent and put the Applicant to the proof thereof.

21. **Ad Paragraph 41.1**

I do not see the relevance of what the First Respondent is alleged to have done in the past to the issue of his violation of the present Constitution. I find it difficult to deal with some of the averments made by Applicant in these paragraphs as he tends to mix alleged facts and his own opinion. The rest of the contents of this paragraph relate to Applicant interpretation of the words allegedly uttered by the First Respondent and I cannot respond to same. I do however deny the unjustified greasly and unbecoming behaviour which Applicant attributes to First Respondent. I find it to be uncalled for, disrespectful and abominable.

22. **Ad Paragraph 41.2**

I have no knowledge of such intentions nor of any instructions from Second Respondent as allegedly depicted in the attachment and I put Applicant to the proof thereof.

23. **Add Paragraph 41.3-44**

Whilst these allegations are directed at the First Respondent, I deny that the averments are factually correct and I aver the Applicant is being merely morbid in his criticism of the First Respondent. I find that Applicant is being extravagant with his allegations against the First Respondent. The language employed by Applicant suggests that he harbours a deep sitted hatred of the First Respondent and it would appear that is what has motivated this application. I do not agree with Applicant's opinion expressed in these paragraphs and deny the contents thereof

24. **Ad Paragraph 45**

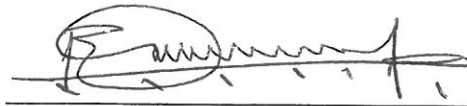
The contents of these paragraphs to the extent that they relate to First Respondents obligations are admitted. I however deny that the First Respondent is now the chief threat to these ideals.

25. **Ad Paragraph 46-47**

Serve to admit that this honourable court has the powers as stated by the Applicant, I deny that the First Respondent has engaged in conduct that is contrary to his core duties as provided in **Section 90 of the Constitution**.

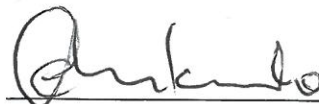
Applicant's application is devoid of merit and I pray that it be dismissed with costs.

THUS DONE and sworn to at **HARARE** this 14th day of **SEPTEMBER** 2016.



EMMERSON DAMBUDZO MNANGAGWA

Before me:



COMMISSIONER OF OATHS

EPHRAIM MUKUCHA
LLBs (UFH) LLM (UP)

14 SEP 2016

LEGAL PRACTITIONER,
COMMISSIONER OF OATHS