

GODFREY DON MUMBAMARWO

vs

SAVIOUR KASUKUWERE

HIGH COURT OF ZIMBABWE

MAKARAU J

HARARE 9 July 2001 and 17 January 2002

ELECTION PETITION: MT DARWIN SOUTH CONSTITUENCY

Mr *H Zhou*, for the petitioner

Mr *A Matika*, for the respondent.

MAKARAU J: This is the judgment in the election petition of Godfrey Don Mumbamarwo of the Movement for Democratic Change, (“MDC”), against the respondent, Saviour Kasukuwere, of the Zimbabwe African National Union-Patriotic Front (“ZANU-PF”), the Member of Parliament for the Mt Darwin South constituency.

The Petitioner applied to court for an order in nine parts. I shall not repeat herein the wording of the draft order, which was filed as part of the petition. In essence, the Petitioner prayed that the result of the election in Mount Darwin South be declared void and that the parliamentary seat in the constituency be declared vacant. The draft order also prays for the necessary and appropriate reports in writing to be forwarded to the Speaker of Parliament and to the Attorney General. It also prays for the respondent to be barred from standing as a parliamentary candidate for five years. The order ends with a prayer for costs against the respondent.

The petitioner contends that the respondent is guilty of corrupt practices as defined in Part XX of the Electoral Act, [Chapter 2.02], (“the Act”). In particular, the petitioner alleged that the respondent directly or indirectly by himself or by other persons, made use of or threatened to make use of force, violence or restraint or other unnatural means against the petitioner and/or his supporters and/or other voters in the constituency. He further alleged that the respondent inflicted or threatened to inflict by himself or by other persons temporal or

spiritual injury, damage, harm and loss upon or against the petitioner and/or his supporters and/or other voters in the constituency. He again alleged that the respondent did or threatened to do things to the petitioner's disadvantage or to the disadvantage of his supporters and/or other voters in the constituency. The petitioner alleged that all these corrupt acts by respondent were allegedly aimed at inducing or compelling the petitioner's supporters and/or other voters in the constituency to vote for the respondent and not to vote for the petitioner or not to vote at all. On the basis of these allegations, the petitioner contended that the respondent is guilty of the offence of undue influence as provided for in section 105 of the Act.

The petitioner further alleged that the respondent is guilty of illegal practices and or irregularities in terms of section 81 (2) of the Act. It is alleged that the respondent caused or took part in a gathering of more than 12 people within 100m of a polling station and wilfully obstructed voters at a polling station or on their way to a polling station.

The petition was duly opposed by the respondent and a trial ensued.

To support his case, the petitioner led evidence from himself and from nine other witnesses.

The respondent also gave evidence denying the allegations levelled against him by the petitioner. He in turn called five witnesses. He also led evidence from the Constituency Registrar on the alleged procedural irregularities. One Dickson Mafios, the respondent's election agent and one Terry Marodza, against who allegations of corrupt practices had been personally and specifically levelled also testified denying the allegations levelled against them. This was done in compliance with the provisions of section 127 of the Act, which provides that before any person who is not a party to the proceedings is found guilty of corrupt or illegal practices, the court shall give him a chance to be heard.

To avoid cluttering this judgment, I have taken out from its body the summaries of the evidence led from all the witnesses. These are contained in annexure "A" hereto headed, "The Evidence".

FINDINGS OF FACT

In my view, it is appropriate for me at this stage to set out the facts that I have found to have been proved by the evidence. These are not in any order.

On April 20, 2000, a group of people visited the petitioner's farm in Chesa. The group of people included known ZANU- PF supporters in the area. They were looking for the petitioner. When they failed to find the petitioner, some from the group assaulted Hilda Gondwe who was residing on the farm with her children. One member of the group by the name John Madondo stated that they would return to burn down the farm.

On April 25 2000, the petitioner's farm was burnt down by ZANU-PF supporters and the occupants fled to the garden. The incident was reported to the police at Rushinga. No arrests or prosecutions ensued and the complainants have not been advised of the outcome of their report.

No motive was specifically given for the destruction to the petitioner's property.

Earlier in the same month of April 2000 and at Nembire village, the homestead of one Raphael Shanya a member of the MDC was burnt down and its contents destroyed. Raphael Shanya himself was assaulted by a group of Pf-PF supporters who were wearing ZANU-PF t/ shirts. He was hospitalised for 10 days following the assault. The motive for the assault was to punish him for having rebelled against ZANU-PF by joining the MDC. The incident was reported to the police and four people were arrested as a result. The witness was not advised of the outcome of the investigations.

In Pfura Location, Mt Darwin, Anderson Chingosho, a member of the MDC was assaulted by supporters of ZANU-PF for wearing a t/shirt with the logo of his party. He retaliated by assaulting a member of ZANU-PF who was also wearing a t/shirt with the ZANU-PF logo on it. For this offence, he was arrested and fined \$300-00. Three people were arrested for assaulting him. On a

later day, he was once again assaulted by supporters of the ruling party and was hospitalised overnight as a result of this assault.

In or about April 2000, members of the MDC from Harare and Bindura teamed up and proceeded to Mt Darwin. The police warned the MDC members about possible violence, as the political atmosphere was tense in the constituency. They advised the MDC group to put up for the night at Mt Darwin Police Station. The following day there was a clash between members of the group and supporters of ZANU-PF. As a result of the clash, armed personnel and a helicopter had to be called in to quell the disturbances. A member of the MDC one Nixon Makamure lost his eye as a result of the clash. He accuses the respondent for causing the injury with an iron rod.

Karikoga Bamusi was assaulted by ZANU-PF supporters when found wearing a t/shirt bearing the MDC logo at a public drinking place. He was arrested and fined \$60-00 for singing songs derogatory of the respondent.

Philip Marufu, (“Marufu”), a former member of the MDC defected to ZANU-PF and became part of the community of youths who were based at Hope Along Foundation which the respondent used as his campaign base. His property was burnt down and destroyed by supporters of ZANU-PF in circumstances and for reasons that were not clear. He resumed his membership in the MDC immediately after the elections.

His minor child W took up residence at the same foundation. It was alleged that for the minor child to take up residence at Hope Along Foundation, he had been kidnapped by supporters of the respondent. I do not accept that the minor child W was kidnapped. I further do not accept that the minor child was kept in captivity and against its wishes at the Foundation. This is so because as I indicate in Annexure “A” and for the reasons given therein, I accept the evidence from Sara Makura who was in charge of the Foundation and reject the evidence from the minor child.

The incidents of violence in the constituency were in the form of assaults on the witnesses who appeared before the court and the destruction of their property

through burning and vandalism. The majority of the victims of the violence were members of the MDC. The violence was concentrated in the period stretching from March to April 2000. However, there was peace during the two polling days of 24 and 25 June 2000.

The Movement for Democratic Change found it difficult to campaign in the constituency after 1 May 2000. The visit by members of the Movement for Democratic Change to the constituency in April 2000, was an attempt to use force and violence in a show strength by that party in the constituency. The attempt was met with an equal use of force and violence by ZANU-PF, resulting in an unnecessary and senseless bloody clash.

It was generally dangerous for one to be a member of the Movement for Democratic Change in the constituency from March 2000 to the beginning of the poll.

THE LAW.

I now turn to consider the law applicable to this petition.

Roman Dutch law, the foundation of the common law in Zimbabwe, has no principles governing elections to public office. The whole procedure of parliamentary elections is derived from English Statute law. In Zimbabwe, the procedure of parliamentary elections is provided for by the Electoral Act. It is therefore trite that in deciding election petitions, our courts are to be guided by the provisions of the Act. Recourse may however be made to the English common law but where this serves only to interpret unclear provisions of the Act where such provisions are similar to those of the equivalent English Statute.¹

The petition before me has been brought in terms of section 132 of the Act. A specific allegation has been made that the respondent is guilty of the offence of undue influence as defined in section 105 of the Act. It is clear therefore that the allegation against the respondent is that he committed a criminal offence. Garwe J

as he was then, came to the same conclusion in *Matamisa v Chiyangwa*.² In that election petition, the allegation against the respondent was that he was guilty of corrupt practices in that he had offered bribes to the electorate. Garwe J opined then as follows:

“It is clear to me that the two practices complained of are in fact criminal offences under the Act. This court is required at the conclusion of the trial of the petition to determine whether a charge made in an election petition of a corrupt or illegal practice has been committed at the election to which the petition refers.”

One legal issue immediately presents itself to me at this stage. It is whether or not a court hearing an election petition can return a verdict of guilty or not guilty on a criminal charge. I pose this question because of the wording of Sections 125, 127, 128 and 136 (4)(b) of the Act that provide for the returning of verdicts of guilty during the hearing of an election petition.

Election petitions are essentially civil proceedings brought by one party against the winning candidate who is the Member of Parliament for that constituency. They are not criminal proceedings and any wording in the Act that seems to suggest to the contrary only serves to cause confusion and blurs the legal position.

While it is competent under our law for a disciplinary tribunal to return a verdict of guilty on an alleged act of misconduct and/or professional misconduct which involves a criminal offence or is in itself the criminal offence, such hearings are not thereby converted into criminal trials. They remain disciplinary proceedings in nature.³

A court trying an election petition where the respondent is accused of committing corrupt or illegal practice sits as a civil court. In the absence of the Attorney General or his duly authorised representative, the court cannot in my view pronounce on the guilt or otherwise of the respondent. The court is sitting as a court before which a charge of a criminal offence has been alleged. This unlike a

¹ *Makamure v Mutongwizo* 1998 (2) ZLR 15.

² HH 48-01.

³ See *Mugabe and Another v Law Society of Zimbabwe* 1994 (2) ZLR 356 (S).

disciplinary tribunal where the charge is one of an act of misconduct as defined by the code of conduct allegedly breached.

In my view, by employing language which relates to criminal proceedings proper, the intention of the Legislature in enacting the sections of the Act I have referred to above, has been clouded and creates a grey area for the court trying an election petition. The issue of how a court sitting as a civil court can return a verdict on a criminal charge is in my view an aspect of the Act that the legislature may want to review and clarify.

I have proceeded on the basis that what the legislature meant is that in election petition proceedings, the trial court is not necessarily called upon to return a verdict on the alleged charge. It is called upon to consider whether or not there is sufficient evidence upon which a conviction will ensue under proper prosecution.

This approach commends itself to me on two grounds. Firstly it represents the approach that has been adopted by this court in trying other election petitions.⁴ Secondly, election petitions are more akin to disciplinary proceedings than to purely civil trials in that they seek to enforce a code of behaviour on the part of candidates and their agents. In my view, election petitions therefore assume the character of enforcing election morality and integrity as provided for in the Act.

In determining whether or not the petitioner has led sufficient evidence, the standard of proof used is proof beyond reasonable doubt. This is the position in our law.⁵

The above legal position makes it pertinent for me to comment at this stage that in my opinion, the procedure laid down in the Act for the determination of election results is most inappropriate. A trial where the onus on the petitioner is to prove the guilt of the respondent beyond reasonable doubt casts a most onerous evidential burden upon the petitioner. In this regard, the petitioner alleging corrupt or illegal practices on the part of the respondent is made to assume the role and

⁴ Matamisa v Chiyangwa (supra).

⁵ Mandava v Chigudu HH 1117/00

Matamisa v Chiyangwa (supra).

Farai Maruzani v Meeting Mbalekwa HH 84/2001.

functions normally borne by the State and/or disciplinary authorities that have the investigation machinery, resources and the benefit of procedural and domestic rules to mount and prove a case beyond reasonable doubt. A civil trial, which is primarily adversarial, does not have the safeguards provided the prosecutor and the accused by the procedures of a criminal trial.

The proceedings laid down in the Act, which were copied from an equivalent English Act, are not in my view appropriate to address the issues that arise from an election petition such as the one before me. The procedures are largely unsuited to enhancing electoral morality and integrity as they reduce what ought to be an inquiry into an adversarial trial where the best presented case and not necessarily what actually happened in the constituency is endorsed by the courts. Again I recommend to the Legislature that it may wish to review the entire Act and see if it adequately prevents the mischief that it is set out to.

DISPOSITION

I now turn to consider whether or not the petitioner has proved that he is entitled to the relief he seeks.

The petitioner is complaining of the undue election of the respondent by reason of undue influence. Evidence has been led on the assaults upon the supporters of the petitioner and the destruction of his and his supporters' properties. These constitute violence against the persons and the properties of the complainants.

In my view, violence *simpliciter*, is not a corrupt practice in terms of the Act. It is therefore not a ground upon which an election can be set aside.

Violence is only relevant as an element of the offence of undue influence in terms of section 105 of the Act. In other words, for the violence to be relevant, it must be such as to meet with the specifications of the offence of undue influence as defined in the Act.

Section 105 provides as follows:

- “Any person who, directly or indirectly, by himself or by any other person-*
- (a) makes use of or threatens to make use of any force, violence or restraint or any unnatural means whatsoever upon or against any person; or*
 - (b) inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any person; or*
 - (c) does or threatens to do anything to the disadvantage of any person; in order to induce or compel that person*
 - (i) to sign a nomination paper or refrain from signing a nomination paper; or*
 - (ii) to vote or refrain from voting*
- shall be guilty of the offence of undue influence.*

It is my understanding from the above that for any act of violence to affect an election, it must be:

- targeted at a particular person; and
- be aimed at inducing or compelling that person to sign a nomination paper, to vote or to refrain from signing a nomination paper or from voting at the election under challenge.

In my view, if these two essential elements are absent, then the offence of undue influence has not been proved and consequently, the election cannot be set aside on the basis of undue influence. This is so even where the violence is on account of the victim belonging to a different political thought from that of the assailant. In other words, senseless political violence that seeks to punish the victim for belonging to a different political party is not undue influence under the Act. It remains unpunishable under the Act for as long as it is not intended to induce or compel the victim to do or to refrain from doing the acts specified in the section.

Section 105 of the Act has been narrowly cast (by accident or by design) and in my view, excludes from its operations a variety of acts of violence that are not acceptable in a democratic society. These include incidents of violence between persons of different political persuasions to stop each other from reaching the electorate or to intimidate the electorate from openly associating with a given political party.

The acts of violence complained of by the petitioner fall into the category of unlawful assaults and conduct that is not acceptable in a democratic society.

The petitioner's farm was destroyed because the petitioner belonged to a party opposed to that of the perpetrators of the violence. That act of violence is to be condemned and is not sanctioned under the common law of Zimbabwe. However, it is not undue influence under the Act and cannot therefore be the basis of declaring the election of the respondent void.

The same reasoning applies to the assaults on Anderson Chingosho, Karikoga Bamusi, Hilda Gondwe, Raphael Shanya Phillip Marufu and the others that testified. The evidence falls short in establishing that such violence amounted to undue influence under the Act.

It has been argued on behalf of the petitioner that there was violence in the constituency targeted at members of the MDC. It has been further argued that this violence was aimed at stopping the targeted victims from campaigning for their party. This I have accepted. Since the violence was targeted at the MDC as a party and not at a particular person, the first element of the offence of undue influence is not proved. Consequently, the remedy for the unlawful acts complained of cannot be found in the provisions of the Act.

It was not argued on behalf of the petitioner that the violence was intended to induce or compel any of the victims to vote for the respondent or to refrain from voting for the petitioner. Indeed this argument could not have been supported by the evidence led during the trial which clearly is to the effect that the purpose of the violence was to stop the witnesses from recruiting any further members and voters for the MDC. The target of the violence was the party itself. The aim of the violence was to stop it from gaining ground. The aim was not personal to any of the witnesses that testified.

Again in my view, the second element of the offence of undue influence has not been proved.

On this basis alone I would dismiss the petition. I will however proceed to consider the additional arguments raised on behalf of the petitioner.

It has been additionally argued on behalf of the petitioner that there was general violence in the constituency during the run up to the general elections held in June 2000. The argument proceeded to hold that due to this general violence, the election in the constituency was not free and fair and should be declared void on that basis.

Firstly it is my view that the provisions of section 105 of the Act are narrowly cast. On that basis, even assuming that I accept the petitioner's arguments in full that there was general violence in the constituency, I would not be able to set aside the election result. As I have indicated above, it is my view that general violence which is not targeted at a particular person with the specific intent of inducing or compelling that person to sign or refrain from signing a nomination paper, to vote or to refrain from voting is not undue influence as defined in the section.

I will now turn to consider whether due to the general violence that allegedly prevailed in the constituency, the election in the constituency ought not to have been certified as free and fair and should therefore be declared void on that basis.

It has been held in this court that the electoral law seeks to uphold electoral morality and integrity.⁶ I agree.

To ensure electoral morality and integrity, the Constitution provides for the institution of the Electoral Supervisory Commission ("The ESC") whose constitutional duties include supervision of the registration of voters and the conduct of parliamentary elections. It is common cause that at the conclusion of the general elections held in June 2000, the ESC produced a report in which it certified that the elections in the Mt Darwin South Constituency (and in many other constituencies), were free and fair. This was despite the alleged incidents of violence. It is with this certification in mind that Mr Zhou for the petitioner submitted that the proceedings before me are in essence a review of that finding by the ESC.

Whether or not the findings by the ESC in any constituency that an election was free and fair can be brought before this court on review by way of a petition election is not the issue before me. For reasons that follow, it is not necessary for me to determine whether or not the court has the power to review the findings of the ESC under the provisions of section 132 of the Act. Assuming that the court was being properly called upon to review the findings of the ESC, then in my view, the ESC had to be cited as a party to the proceedings and had to be given a chance to be heard before its report was set aside. This was not done.

Further and in keeping with the rules of procedure of our courts, it seems to me that the report of the ESC had to be made part of the proceedings so that the court would have an appreciation of the basis upon which it was made. In the absence of the report, it is not clear to me whether the incidents of violence complained of by the petitioner were known to the ESC and if so, what import was attached to them.

On the basis of these procedural shortfalls, I would reject the invitation by Mr Zhou to consider these proceedings as a review of the report by the ESC. In my view, I cannot review that which is not before me and without affording the ESC a chance to be heard.

On the basis of the foregoing, the election petition is dismissed with costs.

Kantor & Immerman, Petitioner's legal practitioners.

Hussein Ranchod and Company, Respondent's legal practitioners.

⁶ Makamure v Mutongwizo (supra).p165

ANNEXURE “A”.
THE EVIDENCE.

GODFREY DON MUMBAMARWO.

He is the petitioner. He resides in Chiwaridzo Township, Bindura. He was born in Chiweshe in 1938. He moved to Mt Darwin in 1948 where he was raised. He is a retired teacher.

During the June 2000 general elections, he was the parliamentary candidate for the Movement for Democratic Change, a political party contesting the elections. He polled 2 295 votes while the respondent polled 22 733 votes.

The constituency of Mt Darwin South came into being in June 2000 after a delimitation exercise.

Although he had worked in the constituency with non- governmental organisations before the birth of MDC, he only started campaigning as a candidate for the MDC in March 2000. He thus was a well-known figure in the constituency. The local people invited his candidature, as he was known for bringing development to the area.

When it became public knowledge that he was the MDC candidate, he started receiving threatening calls. Members of the Central Intelligence Organisation called him. Some members of the Zimbabwe Republic Police who had hitherto been his friends were now his enemies. He ignored some of the calls.

In early March 2000, two members of the Central Intelligence Organisation known as Moyo and Chinembiri visited him. This was at his farm in Chesa. They warned him that what he had embarked on could be dangerous for him. After the visit, he appealed to a friend who was close to the CIO Head in the province to make representations on his behalf to restrain members of the CIO from threatening him. He also wanted to find out if respondent was party to the visit to his farm by the CIO.

In late March 2000, he called for a meeting at his farm to set up structures for his party. He was informed that a member of the Central Intelligence Organisation by the name of Hove had attended the meeting.

Thereafter, he continued to receive threats. During the night, he would hear the sound of vehicles on the public road near his homestead. The motor vehicles would then park at his gate. He would also hear of people singing songs denouncing him. The visits to his farm by his political rivals were frequent and spearheaded by local supporters of ZANU-PF and his neighbours. In his opinion and knowledge, the visits were meant to stop him from campaigning for his party.

On April 20 2000, his farm was visited by a group of ZANU-PF supporters, led by the respondent. He was on a road and away from the homestead when he saw the lorry bearing the group approach. The lorry was carrying between 11-15 people. Respondent was sitted in the front part of the lorry.

He saw people disembark from the lorry and go into his homestead. Immediately thereafter, he heard the sound of crying. He then knew that the group was looking for him. He ran away into the bush and a kilometre away, he boarded a bus for Bindura. He did not return to the farm.

Four days later, he learnt that his farm had been burnt down. He later visited the farm in the company of the police and he found all houses of brick under iron sheets and all huts of brick under English thatch destroyed. His granaries were also destroyed. A petrol and a diesel engine had been burnt down to ashes and so were his furniture and books. Some of the property was looted. He estimated his loss at between 10 and 15 million dollars.

He did not go back to his constituency to campaign, as it was impossible for him to do so. He found it terrifying.

The terror unleashed on the people of the constituency was systematic and respondent, Nicholas Goche, Norman Nzizi and Mrs Mujuru developed it and sustained it.

He did witness the incident at the junction of the Rushinga and Mount Darwin roads where there was a battle between Job Sikhala and Elliot Pfebve, of

the MDC, and supporters of ZANU-PF. This incident occurred in March 2000, before the poll.

Prior to the incident, he had asked his campaign team to hold a rally for him at Mt Darwin and at Chesa. The rally at Chesa was cancelled and instead, one was to be held at Rushinga Growth Point. He was on his way to the rally when he came to the scene of the battle. He saw a group of people screaming. The police had arrested some and some were lying down by the roadside. He did not stop but went to Mujana Supermarket where he met a group of ZANU-PF people from whom he tried to establish what had happened. He then proceeded to his farm.

On the two polling days, he went back to the constituency. He was met by people whom he described as very frightening. These people were singing songs denouncing him.

At Chiunye polling station, he could not cast his vote. Initially he was told that his name was not on the voters' roll. When he identified himself, he was again denied the right to vote on the allegation that he had already voted. He only managed to cast his vote later in the evening and under the authority of the Officer in charge of Mt Darwin Police Station.

At Mtandwe polling station, he observed a group of people who stood at the entrance to the polling station, holding up a ZANU-PF poster with an X against the respondent's name. He observed people who upon seeing that poster would turn away and take to their heels. He raised this issue with the presiding officer.

At Chatumbama polling station, he saw a terrifying crowd singing threatening songs. He went into the station and questioned the presiding officer as to why there were so many people inside the station. He then saw that a crowd of some 300-400 people had surrounded the polling station. He was frightened and asked the presiding officer to remove the crowd. Before this he had pulled down a poster with an X against ZANU-PF.

Respondent was called to the polling station and he came in the company of the police. He then addressed the crowd. The crowd thereafter dispersed and the witness managed to get out in a police vehicle.

He did not attend the counting of the votes. He had been chased away and the police refused to take him to the counting venue in a police vehicle.

The petitioner was understandably excited in the manner he gave his evidence. As a result, his evidence did not flow very well. He was also prone to exaggeration. For instance, the visits by the two police officers Gudo and Majasi had nothing to do with the respondent yet their visit was linked to the pre-election violence, thereby giving the impression that even these two officers were part of the sustained terror campaign against him. The witness spoke of numerous evening and night visits to his farm by members of Pf-pf in March and April 2000. Hilda Gondwe, who lived on the farm as manageress, denied this. She said there was only one night visit and this was when her daughter was allegedly rapped.

Due to these unsatisfactory features, I shall not rely on the evidence of the petitioner where it is at variance with any other credible evidence.

ANDERSON CHINGOSHO.

He resides in Pfura Location, Mt Darwin. He was born in 1974. He is a member of the MDC. He is the party's Chairman in Mt Darwin.

As a party, MDC started by putting up membership structures in March 2000. They succeeded to do this at Mudzengere. At Chiutsa, they were disturbed by certain former freedom fighters who wanted to attack them. The police protected them. They then proceeded to Dotito where they managed to set up their structures and market their cards. The ZANU-PF supporters who were present did not manage to disrupt their meeting because of the police who were present and escorted them back to Mt Darwin. At Nyakasikana, they were disrupted by ZANU-PF youths in the company of one Terry Marodza. A police Patrol Unit and police from Rushinga came to their assistance.

On their way back to Mt Darwin, part of the road was filled with people armed with logs and sticks. They numbered up to 70. He sped through the group that dispersed when it realised that he was not going to stop.

At Madondo he was badly assaulted by a group of ZANU-PF youths one of whom wanted to use a knife on him. His assailants wanted to remove the t/shirt he was wearing. A police patrol unit rescued him and arrested his assailants. On his way to the hospital, he saw a ZANU-PF supporter wearing a t/shirt with the party's logo printed on it and in retaliation, he assaulted him and tore off the t/shirt. For this offence, he was fined \$300-00.

During the weekend of April 8-9, he met with seven members of his party who were badly injured. He took them to the police station where a report was made. He left for Bindura to report the incident to his party bosses.

Later on he was severely assaulted by members of ZANU-PF including Dickson Mafios, the respondent's polling agent. They left him for dead. Following this assault his house and property were destroyed, including his dog which went missing. He then removed to Masembura where he resided with his father-in-law.

During the two polling days, he went back to Mt Darwin and managed to carry out his duties as a polling agent without incident.

The witness gave his evidence well and was not shaken in cross-examination. Accordingly, I shall accept his evidence as credible.

NIXON MAKAMURE MABIKA

He is 37 years old. He resides in Bindura. Some time in April, he and other members of his party were campaigning for the petitioner in Rushinga. On their way to Rushinga, they put up at Mt Darwin Police Station after being advised by the police that the situation was tense and could deteriorate into violence if they proceeded. In the following morning, members of ZANU-PF came to the police station, where they were sleeping, armed. The police dispersed them.

He and his group then proceeded to Rushinga.

On their way back, at a place called Madondo, they saw a group of youths that had barricaded the road with stones. After the youths were tear gassed by the police, they managed to pass. A motor vehicle in his group was then rammed into and damaged by a ZANU- PF vehicle. They then saw respondent in a brown Mercedes Benz, parked by the side of the road, wielding a firearm. Respondent thereafter discharged the firearm.

A ZANU-PF lorry passed them by from the direction of Mt Darwin with more people in it. Respondent, who had gotten back into his vehicle, overtook them and parked on the side of the road. There was another vehicle blocking their further passage on the road. Respondent was now holding the firearm and an iron rod. Dickson Mafios was also there. Respondent then damaged the lights of the witness's vehicle using the iron rod. He proceeded to damage the windscreen of the vehicle. A helicopter then flew past. When the witness tried to get out of the vehicle, the Respondent struck him on the right eye. White liquid discharged from the eye. He ran away and into the bush. Later, he was assisted back to the road, as he could not walk on his own. He was ferried to Bindura hospital by one of the police vehicles.

There were about sixty supporters of the MDC, including Job Sikhala and Tafadzwa Musekiwa who had brought in some youths from Harare for their protection. They were using three vehicles. The group had set out for Mt Darwin on Friday in the afternoon and arrived in Mt Darwin around 5.00pm. The police then escorted the group to Rushinga.

This witness, by his own admission, suffers from loss of memory following the injury to his eye. This may in part explain why his evidence and that of other witnesses who were at the scene differs in some respects. For this reason, it is not safe to rely on his evidence where such evidence differs from the evidence of other credible witnesses.

RAPHAEL SHANYA.

He resides in Nembire village, Mt Darwin. He is a member of the MDC. On the April 7 2000, supporters of ZANU-PF visited him at his residence at night. His house was then burnt down by the group which included Dickson Mafios, Jonga and others wearing ZANU-PF t/shirts. His wife and grandchildren ran away. As he tried to leave the now burning house, he met Dickson Mafios who fell him to the ground. Someone struck him with an axe and a grinding stone. He then lost consciousness. Following these injuries, he was hospitalised for 10 days.

The matter of his assault was reported to the police by his 28 year old son and four people were arrested as a result of the report. Two of those arrested were released after investigations while the other two were remanded out of custody on bail. Dickson Mafios was not arrested for his role in the assault.

His property was destroyed as a result of the arson. He did not vote, as he was unable to walk. Upon being discharged from hospital, he went to Bindura where he stayed with the petitioner.

The witness was attacked because he was labelled a rebel who had moved from ZANU-PF to the opposition. He believes the respondent and Dickson Mafios should be held responsible for the assault and destruction of his property by his neighbours as the respondent and Dickson Mafios are the leaders of ZANU-PF in the province.

The witness gave his evidence well. He remained consistent after cross-examination. He however tended to exaggerate his loss after the arson and attack at his residence. He also exaggerated his plight after the election when he testified that he was reduced to living like a street kid with his wife in Harare. Regarding the identification of Dickson Mafios at the scene when his home was destroyed and he was assaulted, while the witness may be genuine in his belief, I am hesitant to accept his evidence, as there is no other evidence tending to corroborate his identification. This was in the dark and there was a crowd attacking the homestead. The scene was highly mobile and the witness was under attack.

HILDA GONDWE.

She resides at the petitioner's farm where she is employed as a manageress. She is a member of the MDC, having joined the party in 2000.

Sometime in April 2000, at about 11.00 p.m., a group of young people came along the road that passes by the farm, singing. She did not see them. She later received a report from her 16 year old daughter that the daughter had been rapped by the young men who had been singing. She did not report the alleged rape to the police because her daughter told her that if she did, both of them would be killed.

On April 20, 2000, the petitioner came to the farm with money for the employees and for food. On her way back to the farm after seeing the petitioner off, a motor vehicle passed her. When she got to the farm, she found that the motor vehicle was parked at the homestead. Some people disembarked from the vehicle and asked for the petitioner. When she indicated that the petitioner was not present, some of the people from the lorry started assaulting her and in the process, indecently exposed her. The group left after John Madondo, who was with the group, promised to return and burn down the farm.

The witness recorded down the registration number of the vehicle as 359-755 P. She did this before she got to the house.

On April 25, the group came back. This was at about 6 o'clock in the evening. This time the group came on foot and it was large. In the group, the witness recognised a few of the people who had been present on April 20. These included John Madondo. The group once again asked for the petitioner and when told that he had not yet returned, started torching the homestead. The witness and her children then ran away towards the garden. Later they went to Rushinga Police Station where they made a report of the attack. They returned to the farm in the company of the police and observed that all the huts had been burnt down.

The witness could not vote because her identity document was burnt down in one of the huts.

During the polling days, the witness saw the respondent at Chatumbana polling station. When she saw him she was so scared that she started her monthly periods and spoiled her dress.

At the same polling station were people who wanted to damage the vehicle that she and petitioner were travelling in and to assault them. Police were called by the presiding officer and rescued them.

The witness was very angry and bitter in the way she gave her evidence. This tended to colour her evidence. She was not consistent in some respects. She alleged in her evidence in chief that ZANU-PF supporters raped her daughter. Under cross-examination she admitted that her daughter had eloped to a known man and with whom she was co-habiting at the time of the trial. Her objection to this man is that he is a ZANU-PF supporter.

The witness was also discredited under cross-examination regarding how she remembered the registration number of the vehicle that ferried people to the farm on April 20.

For these reasons, I find her evidence unreliable.

WALTER TOM.

He is a teacher by profession and teaches Agriculture in Bindura. He is a member of the MDC.

On April 24 2000, he was at the petitioner's farm in Chesa. He was assisting the petitioner with farming. When coming back to the homestead from the bush, he heard the noise of a vehicle approaching. The motor vehicle stopped and people disembarked. They were shouting and the witness sensed that all was not well. He climbed onto a mango tree from where he saw the people from the lorry abusing Hilda Gondwe. He only got down from the tree after the people had left.

The witness gave his evidence well and his evidence had a ring of truth about it. I will accordingly accept it.

KARIKOGA BAMUSI.

He resides in Mt Darwin in Madondo Township. He is a member of the MDC.

In April or May 2000, he was at a bottle-store at about 11o'clock in the morning, when a group of young people clad in ZANU-PF t/shirts arrived at the bottle-store. He was with a friend. The group of young people was armed with sticks and baton sticks. The witness was handcuffed after being accused of being a member of the MDC. As he was being handcuffed, some members of the group were beating him about the head while others were pushing him around. The witness was wearing an MDC t/shirt when he was so attacked. He was taken to the premises that the group used as a base.

At the base, respondent and his election agent ordered him and his friend to sit down. When they refused to do so, some of the young people at the base assaulted them. Later, respondent took them to the police station while still in handcuffs. The respondent then lodged a report with the police that they had been singing songs derogatory of the respondent. For this, they were each fined \$60-00.

Upon being released by the police the witness returned home and found all his property burnt. He then left for Bindura.

In June 2000, before the elections, he returned to Mt Darwin. He was putting up posters for the MDC. He had only put up four posters when the police arrested him. He was then formally charged with an offence he had committed earlier on and was brought before a magistrate where he pleaded guilty and was fined. Upon his release from custody, he again went to Bindura, as he was afraid that the respondent would kill him. He did not vote as a war veteran known as Kambanje took his identity documents away.

The witness had very poor demeanour in the witness box, hanging his head down most of the time and avoiding eye contact. His evidence is not credible and is self-contradictory in places.

KEFASI MADZONGERA

He resides in Bindura. He is a member of the MDC. Sometime in April 2000, he was with Karikoga Bamusi at Motsi Bottle-store when they were apprehended by a group of ZANU-PF youths. They were accused of being members of the MDC. They were frog-marched to the base established by the ZANU-PF youths. At the base, Karikoga Bamusi was slapped on the face by some of the youths. He also had his money and shoes taken from him.

Later, the respondent came to the base and took them to the police station. He was in the company of his election agent. On the way to the police station, the respondent's election agent slapped the witness after accusing him of selling the country to the whites. When they got to the police station, the respondent kicked him on the legs and was restrained by the police from further assaulting him. The police charged them under the Miscellaneous Offences Act and fined each \$60-00.

At some time before the elections, he was requested by the petitioner to set up party structures in Humbasha village. The respondent came to the village after the MDC members had gathered. A DDF truck full of respondent's supporters and a police escort followed. Respondent's supporters then disrupted the rally and forced the MDC members to flee.

The witness was part of the group of MDC members that left Bindura in a convoy of vehicles, for rallies in Mt Darwin. They were meet by the police just outside the town of Mt Darwin and were told that there would be violence if they proceeded to hold their rallies. They put up at the police station. When the group was making its way back to Bindura, trucks bearing ZANU-PF supporters followed it. To avoid a confrontation, the MDC group diverted its route and drove eastward towards Rushinga.

The respondent followed in his Mercedes Benz and bumped into the truck the witness was riding in. The respondent stopped his vehicle in front of the truck and when the officer in charge of Mt Darwin Police tried to restrain him, respondent who appeared very angry slapped the policeman in the face.

The police tear-gassed the crowd that had gathered and was threatening the MDC group. After the smoke had cleared, the crowd came back and started assaulting the witness and his group. The police stood by helplessly.

While they were still under the protection of the police, the respondent assaulted Nixon Makamure with an iron bar resulting in him losing his eye. The helicopter circled above the group and people then dispersed. Calm returned after soldiers from the helicopter had ordered every one to lie down or risk being shot. They were all taken to the police station where they were put in cells. Later they were released and they headed back for Bindura.

The witness was prone to exaggeration at times and gave his evidence in a manner suggesting that he found the happenings he was describing to the court amusing in a way. He gave the impression of being a storyteller. He was imprecise when answering questions under cross-examination. I find his evidence unreliable unless where it is supported by other credible evidence.

TRANSWELL KOTI

He resides in Bindura. He is a member of the MDC.

On April 20, 2000, he was at the petitioner's farm where he intended to mend the fence at the farm. Around 4 O'clock in the afternoon, he was behind the petitioner's huts carving some wooden handles when he saw a motor vehicle approach. He saw the respondent and his election agent in the motor vehicle. He saw four people from the vehicle walk into the petitioner's yard. He then heard the noise of a clap and thereafter he heard a child cry out. Later, he heard Hilda Gondwe, the farm manageress, cry out. Her assailants indicated that they were looking for the petitioner, MDC receipt-books and t/shirts.

The witness gave his evidence well. He was not shaken in cross-examination and I will accept his evidence.

PHILLIP MARUFU.

He joined the MDC in December 1999. He is a district vice-chairman for the Mt Darwin District.

In March 2000, he was holding a meeting in Mt Darwin near the Bata shoe shop. The respondent came near to where the meeting was held and parked his vehicle very close to the group. He observed what was happening at the meeting.

After the meeting the witness went to board a lift to Madondo Township. He met with a vehicle carrying ZANU-PF youths. The youths were singing derogatory songs about the MDC.

Later on, on a date that is not mentioned, members of ZANU-PF assaulted him until he lost consciousness. When he regained consciousness, he made his way to the police station where he made a report. He was hospitalised for two days.

The night following his release from hospital, he was called by the respondent's election agent who then forcefully took him to the premises used by the respondent as his campaign base. Respondent was told of his presence at the base and came into the room where the witness was being held. The respondent asked the witness to tell all he knew about the MDC. The respondent produced a firearm that he proceeded to cock. The witness was convinced that his life was endangered. He revealed all that he knew about the MDC.

Six people were directed to accompany the witness to his residence for the purposes of collecting MDC t/shirts and cards, which they did.

The witness was asked to withdraw charges against the ZANU-PF youths who had assaulted him earlier on. This he did out of fear of exposing his wife and children to danger.

He continued to stay at the respondent's base in a disused refrigeration container where he was held under lock and key.

Thereafter, using the information he had supplied them, the respondent's supporters went in search of all MDC members, door to door. They would raid

houses and assault whoever they found at such houses. MDC members then fled the area to Bindura and to Harare.

The witness was made to attend every rally and denounce the MDC.

The witness also went all over the constituency in a group of youths known as "Tata" which was very violent and was under the direct control of the respondent. The group was used to beat people into attending rallies and party meetings called for by ZANU-PF.

The witness was released from the base for one day to check on his wife and children. He was given bus fare. Once out of captivity, he left for Harare where he went into hiding. Two days later, his wife followed him to report that their homestead had been burnt down. The whereabouts of his child were not known. He arranged to return to Mt Darwin to look for his child. He found his child W at Hope Foundation the respondent's campaign base. He was once again captured and ordered to work with the respondent's supporters. This was after he had been assaulted.

He was kept at the Foundation together with his son until the elections were over. He did not vote.

The witness did not impress at all. His evidence was inconsistent. He was untruthful and did not immediately reveal that he had defected firstly from ZANU-PF to the MDC and back. His evidence in some respects was clearly fabricated and cannot possibly be true. For instance, his alleged capture by the agents of respondents is highly improbable and so is his testimony on how he and his minor child W lived at Hope Foundation.

He had poor demeanour in the witness box and was evasive under cross-examination.

W.

He is the minor child of the last witness, Phillip Marufu. He was born in 1989. He attends Glen View II Primary School where he is in grade 3.

On April 16, 2000, he was at home in Mt Darwin. He was playing football in the road when he saw ZANU-PF supporters approach. The group burnt down their two huts and then inquired as to where the child was. They were referring to him. He was pointed out by a certain woman and thereafter, he was asked by the ZANU-PF supporters to go with them and show them where his father was. He was told that if he did not show them where his father was, they would kill him.

In the motor vehicle on the way to Mt Darwin, he was made to lie on the floor. One Mhembere who was in the group then struck him with an electric cord.

He was taken to Hope Foundation where he was placed in an old and disused refrigeration container. There was no light in the container and he was told to relieve himself in the container. The ZANU-PF supporters would come into the disused container the night with their women and indulge in sexual activities in his presence. The container was never cleaned.

He had no blankets and had to use some sacks he found discarded in the container. He was fed only once per day on bread only and the ZANU-PF supporters assaulted him regularly, using an electric cord.

In doing all this, the ZANU-PF youths wanted him to tell them where his father was, as they wanted to kill his father.

On one occasion, he met the respondent who asked whether he was the child of his enemy. The respondent warned him that if he did not tell the truth, he would be killed.

He could not remember for how long he was kept in captivity at the base. While at the Foundation, the ZANU-PF youths who resided at the base attempted to sodomise him. He refused and was assaulted. These youths indicated that they wanted to sodomise him until his father turned himself in at the foundation.

Subsequently, his father was brought to the Foundation. His father then started singing at all ZANU-PF rallies and meetings. After each meeting or rally, his father would be beaten on the soles of his feet to prevent him from running away. From the time his father was brought to the base, the two of them were now

sleeping together in the windowless and unlit container which was locked from the outside.

The witness appeared small for his eleven years. He has a wild imagination. His story is incredible and is full of wild exaggerations. His young mind appears totally convinced that “the people of ZANU-PF” as he calls them are a people apart from him and his father. They are his and his father’s enemies.

Despite knowing the distinction between what is right from what is wrong, has no capacity to tell the truth. The witness, who is only 11 years old, is clearly repeating what an adult told him to say. His evidence is full of hatred for “the people of ZANU-PF”. It is reprehensible that a minor child should be taught to hate so much at such an early age. It is equally disturbing that such a young Zimbabwean has been taught that people who do not share your father’s political views are your father’s enemies.

SAVIOUR KASUKUWERE.

He is the Member of Parliament for the Mount Darwin South Constituency. During the elections, he polled 22 700 votes. The constituency has a total of 39 000 registered voters.

The constituency is about 4000 square kilometres in area.

He became the candidate for his party in March 2000 after the Delimitation commission had finalised its report that divided the former Rushinga constituency into Mt Darwin North and South constituencies.

After his appointment, his party mobilised its political structures and started holding meetings in the constituency at which they sold to the people a programme that included the land reform programme.

The allegations of violence by the petitioner were centred in Mt Darwin the town and in particular from Motsi and Madondo Bars. Elements of the opposition party (the MDC), were drawn from these places. These were mainly unemployed youths, who were generally quarrelsome.

Mt Darwin south as a constituency did not witness serious acts of violence. The violence that was there in the constituency was limited to drinking places and to the political players who held meetings at these places.

When he held the first meeting with business people in the constituency, he made it clear that they would reject violence in the constituency.

His party is the product of Mt Darwin, which is the traditional stronghold of ZANU-PF. This should be contrasted with such constituencies as Chipinge where ZANU Ndonga has its base.

The poor showing by the opposition party in the constituency is testimony of the poor candidates they offered.

He denied that on the 20th April 2000, he visited the Petitioner's farm. He does not know where the farm is.

He further denied that he was the coordinator of violence in his province or the leader of a group called 'Tata'. To him violence is a barbaric way of trying to achieve power.

The witness Marufu was not threatened by anyone who would have been part of his team. When he got back from the constituency where he had been campaigning, Terry Marodza informed him that there was an MDC man who wanted to tell them about an alleged assassination plot. Marufu then gave them some information including the attempt on his life by some farmers in the constituency. After giving them this information, Marufu became an ally. There is no way the witness could have been kept at Hope Foundation against his will.

He could not think of why one would have found it necessary to abduct Marufu's child, W. He did not know Marufu until he came to tell his story.

Information additional to what Marufu had said was received to the effect that MDC was filtering into the constituency. The MDC hired a group of thugs. The group came at night and the following morning, they attacked the home of his election agent, Dickson Mafios. He was in Harare when he received phone calls about the assaults on his supporters.

He drove to Mt Darwin in a brown Mercedes Benz. He got to Mt Darwin Police Station. He met with a group of terrified supporters. He decided to drive along the Rushinga road to check on his parent's home. As he was driving, he came across a huge convoy of vehicles. As he went past the convoy, he heard the sound of an object hitting his car. He then made an about turn and followed the convoy. When he realised that the convoy was not going to the police station but was headed for Harare, he flagged the police to stop the convoy, as he wanted to report the stoning of his vehicle.

He did not feel safe. Immediately an army helicopter landed. A number of the MDC supporters started to jump out of their vehicles and to run in all directions. Some had sticks. The police threw teargas canisters into the group. A group of ZANU-PF youths followed but before it got to the scene, the police cordoned it off.

He denied that he assaulted Makamure as alleged or at all. He did not know Raphael Shanya or of the attack on his home.

During one of the polling days, he got information that the petitioner had been denied the vote at Chiunye School. He drove to the school and told the youth who were 200m from the polling station that he did not want them to be violent. The petitioner was not prevented from leaving the polling station but became afraid of the youth due to his behaviour at the polling station where he was putting up posters.

The witness gave his evidence and was not shaken in cross-examination. I will rely on his evidence.

PHOEBE CHIKUNI

She was married to the witness Philip Marufu. They separated in December 2000. W is her stepson.

When she started living with Marufu, she did not know that he was a gambler who played a street game of chance commonly known as *feja feja*. He did not stop playing this game until they separated.

After meeting with Marufu in Mt Darwin, they later established a rural home at Hotera village which is her village of birth. She went to stay in the village while he remained in Mt Darwin. He then joined the MDC and after joining, he spent a month without visiting her at the rural home. She was staying with W, his son.

Later she received word that Marufu was not feeling well and she should go to him. She went to Mt Darwin town and found him at Motsi Bar. He had come out of hospital. They put up for the night at Rufaro Hotel and the following day she returned to the village.

Three weeks later, he followed her to the village. Two days after his arrival, ZANU-PF youths came and asked him about his membership of the MDC. He informed them that he had left that party.

The following day, he left for Mt Darwin. He did not come back on the same day as he had promised. She followed him. She found that he had changed parties and was now a member of ZANU-PF. She accompanied him to an office where he was issued with a letter that confirmed that he was now a member of ZANU-PF. They went back to the village together with his young brother Itayi.

He left her at the village the following day. On the same day, their hut was burnt down by ZANU-PF youths. W, the minor child was not present when this happened. She left the village to look for Marufu to tell him of the incident. The child W was still with her mother in Kachokoto village.

Marufu and his child were later united when she sent word that her brother should bring the child to its father in Mt Darwin.

The witness was subjected to rigorous cross-examination under which she admitted that she is working for the Sara Kasukuwere the respondent's sister. She also admitted under cross-examination that she also played the game of chance with Marufu. She was confused as to whether or not W was staying with her at the time their homestead was burnt down.

On the basis of the foregoing, I will not rely on her evidence.

ISAAC CHIKUNI.

He is a brother to Phoebe Chikuni, the last witness. He knows that Marufu's homestead was burnt down before the general elections. At the time, W was at their home in Kachokoto village.

After the incident, W remained at their home for a month before he was taken to his father in Mt Darwin.

He denied that the persons who had burnt down the homestead abducted W.

Under cross-examination, the witness admitted that he was a member of the ZANU-PF youth group known as Tata. He then realised his mistake and sought to distance himself from the group. The witness was discredited under cross-examination and I shall not rely on his evidence.

SARA MAKURA.

During the period leading to the elections she was based at Hop Along Foundation where she and others were involved in the care of orphans and the aged. She is the Chairperson of the Foundation.

She knows Phillip Marufu and his minor son W as they used to lodge accommodation near each other. She also saw Marufu at the Foundation as one of the youths who hung around.

Marufu came to the Foundation and asked to see Terry Maroodza. He returned in the evening and after meeting with Marodza he declared that he had returned to ZANU-PF. She did not witness his captivity as he used to move freely with the other youths. W was with his father and he used to move freely as well. At times, she would send him to buy paraffin. He used to sleep in the kitchen on a

mat she would spread for him. W used to play with her children and would have his meals with them.

Marufu and W left after a battery had gone missing at the Foundation. I found this witness to be refreshingly honest, forthright in the manner she gave evidence and responded to questions under cross-examination. I accept her evidence.

DICKSON MAFIOS.

He was the election agent for the respondent during the general elections held in June 2000. He resides in Mt Darwin but works in Bindura.

He denied having gone to the petitioner's farm on April 20, 2000. He does not know where the farm is. He does not drive, as he does not have a licence and so could not have been driving the lorry to the petitioner's farm.

He denied meeting with Anderson Chingosho while in the company of the respondent. He however met Chingosho while in the company of respondent's brother and advised Chingosho to formally resign from ZANU-PF as he had joined the MDC.

He denied that he visited MDC members who were detained in hospital after being assaulted by ZANU-PF members.

He denied having assaulted Raphael Shanya with a grinding stone. The people who assaulted Shanya were arrested.

He further denied that he had had a firearm when Nixon Makamure was assaulted. He was not present when the alleged assault took place. He had proceeded to Matope upon hearing that people in the convoy had stoned his house. Four windows were broken. He did not know Makamure before the trial.

He denied that he assaulted Karikoga Bamusi as alleged. When he and the respondent got to Mt Darwin on the day in question, they heard that at the Foundation were people who had been involved with the MDC. They thereafter went to the police and got an officer who they took to the Foundation. The people

involved were handed over to the police officer who requested for transport back to the police station.

He denied having assaulted the witness Bamusi as alleged. He did not see the respondent kick the witness as alleged.

He got to know of Phillip Marufu when he found him at the Foundation, narrating his story and his desire to return to ZANU-PF. Marufu told them about a plot to kill senior ZANU-PF leaders in the province. They believed that Marufu was genuine and left him together with the other youths at the Foundation. Marufu was never made to stay against his wish and he was never threatened with a firearm.

He had no knowledge of the abduction of W after Marufu's homestead was burnt down. He heard of the incident in court.

He denied knowledge of the group called Tata. He was a leader of ZANU-PF youths in the province. He is the provincial chairman of the youth wing.

The witness gave his evidence well and was not shaken in cross-examination.

LUKE TERRY MARODZA.

He was part of the respondent's election team.

He denied that he went to the petitioner's farm. He doesn't know the place.

He denied knowledge of the occasion when Anderson Chingosho was assaulted.

He met Marufu for a short while when Marufu told him that there was a plot to kill the respondent and Nicholas Goche, a Cabinet Minister. When the respondent came, Marufu narrated his story to him. After looking at him and hearing his story, he did not believe Marufu. He did not want to have anything to do with Marufu who he looked upon with contempt. On a later date, Marufu requested for money to go back to his rural home, which had been burnt. He gave

him \$500. Thereafter he used to see him from time to time in Mt Darwin. He remembers seeing him at some rallies but did not go with him to the rallies.

He has no knowledge of the fact that W was abducted and kept at the Foundation against his will. He does not know W.

He denied knowledge of Tata.

The witness was evasive under cross-examination and had difficulties in answering simple questions even under re-examination by respondent's counsel. I therefore find his evidence unreliable.

BESTER NEVANJI

He is the District Registrar in Mt Darwin and was the constituency registrar for the Mt Darwin South constituency during the June 2000 general elections. He adhered to the contents of the affidavit he swore to in the matter, annexure "A." As constituency registrar, he did not visit polling stations but stayed at the command post. He did not personally witness anything that was happening at he polling stations and relied on the radio messages he got from his officers.

The witness was subjected to perfunctory cross-examination. He gave his evidence well.

PRISCA CHIGOGO

In April 2000, she was residing in Matope Township. She is a member of ZANU-PF.

One evening she was coming from the borehole, carrying a container of water on her head when she met a group of people coming towards her carrying switches. They caused her to drop the container of water. They got hold of her and removed the T/shirt she was wearing which had the ZANU-PF logo on it. Three people out of the group then assaulted her and took the t/shirt away, leaving the

top part of her body exposed. They stuck a poster with the words "*Chinja Maitiro*" on her shoulders before proceeding on their way. The group of people had come in four vehicles. She made a report of the incident to the police at Matope.

The witness gave her evidence well and was not shaken in cross-examination. She impressed as an honest witness.

TAFIREYI MUKOKI

He is a Superintendent in the Zimbabwe Republic Police. During the June 2000 general elections, he was the Constituency Commander for Mt Darwin South Constituency. He abided by the contents of the affidavit he swore annexed hereto as Annexure "B".

During the elections he visited all the 28 polling stations in the constituency. He received a call from his officers on the second day of voting and in response to that call he visited Chatumbama polling station. Upon arrival at the polling station, he saw a number of people milling around. He summoned the officer in charge of the station who briefed him on the problem concerning the petitioner. This was the only polling station to where he was called. He did not observe anything serious when he arrived at the polling station. He then escorted the petitioner out of the polling station.

The witness gave his evidence well and was not shaken in cross-examination. He answered all the questions candidly and without hesitation.

I therefore accept his evidence.

ERNEST MAJONI

In the year 2000, he was residing in St Mary's Township, Chitungwiza. He was a member of the MDC. He was the youth chairman for St Mary's.

Sometime before the elections, he went to Mt Darwin. A total of eighty-eight people left St Mary's for Mt Darwin. They were in two vehicles, a lorry and a pick up truck.

They passed through Bindura where they were looking for ZANU-PF supporters and assaulting them. More youths and two more vehicles joined them in Bindura.

They left Bindura around midnight and arrived in Mt Darwin in the morning. The police told them to return to Harare but they decided to go to Rushinga instead. At Matope Township, they disembarked from their vehicles and ran around looking for Dickson Mafios. Some of the youths met a woman who was wearing a ZANU-PF t/shirt and they undressed her and left her bare-breasted. She was also assaulted.

They left Matope and proceeded to Rushinga where the police stopped them from toyi-toying. The police then searched their vehicles and recovered an assortment of weapons including axes, a machete, a chain a catapult and a sjambok. Also in the vehicle were stones they had picked up on the way. The police told them to off-load these.

The police offered to escort them back but Job Sikhala refused the offer. They were escorted anyway.

At one spot along the way, they came across the police tear-gassing some youths. They then saw a Mercedes Benz that was struck by some object thrown from the vehicle he was riding in. They saw other lorries pass them and stoned the people in these lorries, as they believed them to be ZANU-PF supporters.

When they turned into the Mt Darwin-Rushinga Road, the Mercedes Benz, a police vehicle and another vehicle, blocked their path. The people started to fight and teargas was thrown from a helicopter. People ran into the cotton field nearby. Soldiers from the helicopter called upon people to come back and others did apart from seven people who were not accounted for.

Under cross-examination the witness testified that he had appeared twice on the national TV denouncing the MDC. As such the court treated him as a suspect

witness and will only rely on his evidence where it is corroborated by other reliable evidence.