

WARSHIP DUMBA  
and  
CELINE EUNICE NYAKUTSIKWA  
versus  
THE CHAIRPERSON OF THE ZIMBABWE ELECTORAL  
COMMISSION  
and  
THE ZIMBABWE ELECTORAL COMMISSION

ELECTORAL COURT OF ZIMBABWE  
WAMAMBO J  
HARARE, 5, 11 & 15 June 2018, 4 July 2018

### **Electoral petitions**

*K. Ncube*, for the applicants  
*T N Kanengoni & C. Nyika*, for the respondents

WAMAMBO J: According to the applicants the matter revolves around malpractices on the part of the respondents in that in 2008 and 2013 applicants were registered to vote under Mt Pleasant Constituency (Ward 17). For the pending 2018 elections, however the applicants are registered to vote under Mazoe South Constituency (Ward 20). Of note is that the applicants reside in Mt Pleasant Heights Suburb. They seek interim relief as follows:

- “1. The decision by the Respondent to shift the Mt Pleasant Heights Suburb from the Mt Pleasant Constituency to the Mazowe South constituency be and is hereby reversed.
2. The Respondents be and are hereby ordered and directed to forthwith facilitate the registration of the Applicants and all the registered voters of Mt Pleasant Heights Suburb, under the Mt Pleasant Constituency for the 2018 General Elections.
3. The Respondents be and are hereby ordered to forthwith produce new voter registration slips for the Applicants and all the registered voters of Mt Pleasant Heights Suburb reflecting registration to vote under the Mt Pleasant Constituency in the 2018 general election.

4. The Respondents be and are hereby ordered to forthwith update its voters roll for the 2018 general elections to reflect the registration of Applicants and all the registered voters of Mt Pleasant Heights suburb under the Mt Pleasant Constituency.

**SERVICE OF PROVISIONAL ORDER**

Service of this Provisional Order shall be effected upon the Respondents by the Sheriff of the High Court or the Applicant's Legal Practitioners."

The background is briefly as follows:

Some Mt Pleasant Heights residents raised a petition dated 16 March 2017 essentially complaining that they should be registered to vote under Ward 17 and not Ward 20. This is encapsulated in Annexure A addressed to the Zimbabwe Electoral Commission (hereafter called ZEC) wherein a document titled

"Ref: Removal of Mt Pleasant Heights from Ward 17 Harare to Ward 20 Mazowe South with names, addresses, contact numbers and signatures spanning two pages."

In 22 March 2017 a follow up letter to the above petition, Annexure B was addressed to the Chairperson of ZEC and received by the Commission the next day. It is however, specifically stated as representative of the first applicant in this case.

A letter from ZEC under the signature of the then Chairperson Justice MAKARAU dated 3 April 2017 is a response to Annexure B. It reads in part as follows:

"We write to advise that there is no exercise, current, immediate or past to delimit Mazowe South or Harare North Constituencies. All Constituency boundaries remain as they were after the Delimitation Report of 2008. All votes will be registered in the wards and Constituencies that were set by the Delimitation Report 2008."

Relentlessly the first applicant's lawyers addressed two other letters to the Chairperson ZEC on the same subject raised, in Annexure D dated 24 October 2017, and Annexure E letter dated 2 May 2018.

Annexure F dated 4 May 2018 is a response to Annexure E by the newly appointed ZEC, Chairperson Justice P. M. CHIGUMBA. It reads on the pertinent portion as follows:-

"We refer to our response of the 3<sup>rd</sup> of April 2017 on the same subject matter. We stick to contents of that letter signed by the then Chairperson of the Zimbabwe Electoral Commissions, Justice Rita Makarau."

Annexures G and H are both certificates of registration as a voter for first applicant. The only differences between the two are the wards, local authority, constituency and district with Annexure G reflecting Ward 17 Local Authority: Harare Municipality Constituency: Mount

Pleasant and District: Harare Annexure H, reflects Ward: 20, Local Authority: Mazowe RDC, Constituency: Mazowe South and District: Mazowe.

Annexure I is first applicant's City of Harare water bill reflecting his address as 707 Mount Pleasant Heights Mount Pleasant.

Annexures J and K are certificates of registration as a voter for second Applicant (voter slips). The only differences are the wards, local authority, constituencies and districts in the same manner as Annexure G and H above.

Annexure A to K are part of applicants' application.

The respondent's opposing papers give a totally different picture from that of applicants, respondents insist that the response given to the applicants by the Chairpersons of ZEC in Annexures B and F reflect the correct position. In other words that after the 2008 Delimitation Report, there was no other delimitation exercise carried out.

Respondents' Annexure A dated 8 March 2018 gives a full explanation on why Mt Pleasant Heights is a part of Mazowe South. Part of the explanation is that Mt Pleasant Heights is built on Bunnockburn Farm, which has always been in Ward 20, Mazowe RDC. Further, a bundle of documents inclusive of a map of boundaries set by the 2008 delimitation Report shows that Mt Pleasant Heights is part of Mazowe RDC, under Ward 20.

Sections 161 (5) (a) and (b) of the Constitution of Zimbabwe Amendment (No 20) Act 2013 (hereafter called the Constitution) read as follows:

“(5) In delimiting- the boundaries of wards, the Zimbabwe Electoral Commission must ensure that no ward is divided between two or more local authority areas.

(b) the boundaries of constituencies the Zimbabwe Electoral Commission must ensure that no ward is divided between two or more constituencies.”

Applicants' argument is basically that they pay rates to the City of Harare and have nothing to do with Mazowe South Constituency so if they vote under Mazowe South whilst they pay rates under City of Harare this offends against Section 161 (5) (a) and (b) of the Constitution.

This argument misses the full import of s 161 of the Constitution. Section 161 starts off as follows:-

“(1) Once every ten years, on a date or within a period fixed by the Commission so as to fall as soon as possible after a population census, the Zimbabwe Electoral Commission

must conduct a delimitation of the electoral boundaries into which Zimbabwe is to be divided.”

According to the respondents, applicants deliberately did not attach Annexure “A” of respondent’s papers which was addressed to the applicants in response to their queries. Annexure “A” so the argument goes clarifies in detail the concerns of the applicants.

The respondents contend that the same voter cannot possible be registered under two constituencies with the same serial number on the same day at the same time for two different constituencies. The voters slip Annexures G and H and Annexures J and K however tell a different story. Respondents could possibly be mistaken on this score. In any case as Applicants’ version reflects they are now reflected as registered to vote under Mazowe South.

The applicants refer to provisions of the Constitution and the Electoral Act [*Chapter 2:13*] in particular s 161 (5) (a) and 161 (5) (a) and s 67 (2) of the and s 37 A (1) and (2) of the Electoral Act [*Chapter 2:13*].

The delimitation of boundaries of wards and constituencies is predicated upon a ten year period or a period fixed by the Commission soon after a population census. The Constitution is for 2003 and the population census has not been fixed or done. This means before the delimitation as provided for in the 2013 Constitution, the boundaries that were set up under the 2008 Delimitation Report stand and are extant. Section 161 (5) (a) and (b) of the Constitution is thus not applicable to the 2018 elections.

The Sixth Schedule of the Constitution gives a crisp answer to the issue. In Part 1 of the Sixth Schedule first elections is defined thus:-

“First elections means

(a) the first elections for the office of President under this Constitution.

(b) the first general election of Members of Parliament under this Constitution held after the publication day”

Section 5 under Schedule 6 reads as follows:-

“The boundaries of provinces, constituencies and wards as they were immediately before the publication day apply for the purposes of the first elections.”

Also see Sections 3 (1) (e) and 3 (2) of the Sixth Schedule to the Constitution.

By parity of reasoning the arguments raised based on s 37 A (1) and (2) of the Electoral Act and s 67 (2) of the Constitution fall away. The court cannot perpetuate an error that may have occurred in the voting process in 2008 and 2013. In other words it becomes clear that applicants, have not raised a *prima facie* case for the relief they seek in the light of the applicable laws as postulated above.

In the result I give the following order:

The application is dismissed with costs

*Kossam Ncube and Partners*, applicants' legal practitioners  
*Nyika, Kanengoni and Partners*, respondents' legal practitioner