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P BAG 7704, CAUSEWAY
ZIMBABWE

**IN THE HIGH COURT OF ZIMBABWE HELD
AT HARARE**



HC

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IN THE MATTER BETWEEN

**THE NATIONAL CONSTITUTIONAL ASSEMBLY (NCA) And
PROFESSOR LOVEMORE MADHUKU**

1st APPLICANT

2nd APPLICANT

And

**THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O. AND
THE CHAIRPERSON/ ACTING CHAIRPERSON OF THE ZIMBABWE
ELECTION COMMISSION N.O**

1st RESPONDENT

2nd RESPONDENT

URGENT CHAMBER APPLICATION

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MBIDZO, MUCHADEHAMA & MAKONI

Applicant's Legal Practitioners 6 Duthie
Avenue Belgravia
HARARE

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IN THE MATTER BETWEEN

THE NATIONAL CONSTITUTIONAL ASSEMBLY (NCA)

1st APPLICANT

And

PROFESSOR LOVEMORE MADHUKU

2nd APPLICANT

And

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE

1st RESPONDENT

AND

**THE CHAIRPERSON/ ACTING CHAIRPERSON OF THE
ZIMBABWE ELECTION COMMISSION N.O**

2nd RESPONDENT

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DATED AT HARARE THIS 19 DAY OF FEBRUARY 2013.

MBIDZO MUCHADEHAMA & MAKONI
6 Duthie Avenue
Belgravia
HARARE (AM/AMM/an/48/13/BT)

TO **THE REGISTRAR**
High Court of Zimbabwe
HARARE

AND
TO **THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O.**
1st Respondent
Munhumutapa Building
HARARE

AND
TO **THE CHAIRPERSON / ACTING CHAIRPERSON OF THE
ZIMBABWE ELECTORAL COMMISSION N.O. (ZEC)**
2nd Respondent Mahachi
Quantum Building 1 Nelson
Mandela Avenue **HARARE**

AND
TO **THE MINISTER OF JUSTICE AND LEGAL AFFAIRS N.O.**
New Government Complex 4th
Street and Samora Machel
HARARE

AND
TO **THE DIRECTOR, CIVIL DIVISION OF THE AG**
AG's Office
Respondent's Legal Practitioners 3rd Floor,
New Government Complex Cnr 3rd Street /
Central Avenue **HARARE**

IN THE MATTER BETWEEN

THE NATIONAL CONSTITUTIONAL ASSEMBLY (NCA) And

1st APPLICANT 2nd

PROFESSOR LOVEMORE MADHUKU And

APPLICANT

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O.

1st RESPONDENT

AND

**THE CHAIRPERSON/ ACTING CHAIRPERSON OF THE
ZIMBABWE ELECTION COMMISSION N.O.**

2nd RESPONDENT

URGENT CHAMBER APPLICATION

TAKE NOTICE THAT an Application is hereby made for an order in terms of the Draft order annexed to this application on the following grounds:

- a) The 1st Respondent has issued a proclamation announcing the date of the referendum which date has been given as 16 March 2013.
- b) The 2nd Respondent's commission has been ordered to take steps to hold the referendum.
- c) The date has been announced unilaterally and arbitrarily and does not give the electorate adequate time to make up their mind.
- d) If the referendum is held as promulgated, there will be little room for the public, including civil society to debate the constitution and matters arising therefrom.
- e) Applicants submit that the draft constitution as promulgated does not contain the views of the general populace.
- e(i) It is therefore necessary that the people be given an adequate opportunity to scrutinise the constitution in order to make some informed choices.
- f) The constitution itself took about four years to formulate and draft.
- f (i) The general people were not involved in the drafting. It is unfair that they should be given just about a month to make up their minds.
- g) Applicants also submit that the constitution contain numerous undemocratic clauses which need to be debated in order that people in general know what it is that they should vote for.
- h) As Applicants understand it, the vote will be a "yes' or 'no'. There is no referendum for sections or chapters. The vote is thus indivisible. The voters need a holistic understanding of the whole constitution in order to vote wisely.
- i) It is submitted that the passing of any law would require widespread, thorough and meaningful consultations by members of Parliament, politicians, civic society, ZEC and even by individuals having their own views.
- I (i) It is therefore necessary that there should be adequate time for such consultations and debates.
- I (ii) A month is not enough.
- j) It is also submitted that the matter is urgent.
- J (i) The date of the referendum has already been set.
- J(ii) There is no other avenue provided for by the law to engage the Respondents in order that they reconsider their positions.
- k) The accompanying affidavit and documents shall be used in support of the Application.

DATED AT HARARE THIS 19th DAY OF FEBRUARY 2013.



MBIDZO MUCHADEHAMA & MAKONI
6 Duthie Avenue
Belgravia
HARARE (AM/AMM/an/48/13/BT)

THE REGISTRAR
High Court of Zimbabwe
HARARE

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O.
1st Respondent
Munhumutapa Building
HARARE

**THE CHAIRPERSON / ACTING CHAIRPERSON OF THE ZIMBABWE
ELECTORAL COMMISSION N.O. (ZEC)**
2nd Respondent Mahachi Quantum
Building 1 Nelson Mandela Avenue
HARARE

THE MINISTER OF JUSTICE & LEGAL AFFAIRS N.O.
New Government Complex
4th Street & Samora Machel Avenue
HARARE

THE DIRECTOR, CIVIL DIVISION OF THE AG's OFFICE
Respondent's Legal Practitioners 3rd Floor,
New Government Complex Cnr 3rd Street /
Central Avenue **HARARE**

IN THE MATTER BETWEEN

THE NATIONAL CONSTITUTIONAL ASSEMBLY (NCA) And

1st APPLICANT 2nd

PROFESSOR LOVEMORE MADHUKU And

APPLICANT

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O. 1st RESPONDENT

AND

**THE CHAIRPERSON/ ACTING CHAIRPERSON OF THE
ZIMBABWE ELECTION COMMISSION N.O**

2nd RESPONDENT

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NOTICE OF ADDRESS FOR SERVICE

TAKE NOTICE THAT the Applicant's address of service is c/o Mbidzo. Muchadehama & Makoni, of No. 6 Duthie Avenue, Belgravia, Harare.

DATED AT HARARE THIS 19TH DAY OF FEBRUARY 2013.

TO THE REGISTRAR

High Court of Zimbabwe

HARARE



MBIDZO MUCHADEHAMA & MAKONI

6 Duthie Avenue

AND

TO

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O.

1st Respondent Munhumutapa

Building **HARARE**

HARARE (AM/AMM/an/48/13/BT)

**THE CHAIRPERSON / ACTING CHAIRPERSON OF THE
ZIMBABWE ELECTORAL COMMISSION N.O. (ZEC)**

2nd Respondent Mahachi

Quantum Building 1 Nelson

Mandela Avenue **HARARE**

THE MINISTER OF JUSTICE & LEGAL AFFAIRS N.O.

New Government Complex 4th Street

and Samora Machel **HARARE**

THE DIRECTOR, CIVIL DIVISION OF THE AG

AG's Office

Respondent's Legal Practitioners 3rd Floor, New

Government Complex Cnr 3rd Street / Central

Avenue **HARARE**

IN THE MATTER BETWEEN

THE NATIONAL CONSTITUTIONAL ASSEMBLY (NCA) And

1st APPLICANT 2nd

PROFESSOR LOVEMORE MADHUKU And

APPLICANT

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O.

Ist RESPONDENT

AND

**THE CHAIRPERSON/ ACTING CHAIRPERSON OF THE
ZIMBABWE ELECTION COMMISSION N.O**

2nd RESPONDENT

CERTIFICATE OF URGENCY BY JEREMIAH BAMU

I, JEREMIAH BAMU a Legal Practitioner duly registered and practising as such in Harare do hereby state that I have read the founding affidavit of Professor Lovemore Madhuku on behalf of The National Constitutional Assembly and on his own behalf and certify that the matter is urgent for the following reasons:-

- 1) 1st Respondent has unilaterally issued a proclamation announcing the date for a referendum.
- 2) The announcement was without prior warning.
- 3) The date of the referendum is fast approaching.
 - 3.1) It has been given as 16 March 2013 and there is very little time left for consultations.
 - 3.2) It is necessary that there be wide consultations before the referendum.
- 4) Unless the date is extended gross injustice will be occasioned if the referendum is held as scheduled.

- 4.1) For example there is need for adequate public consultations, debates civic education among other things.
- 4.2) There is need for more copies to be availed including in vernacular languages. People then need to understand, debate and digest the contents of the draft constitution.
- 4.2.1) This cannot justly be done within the time-period left.
- 5) The Applicants have no way of engaging Respondents in order to reason out with them.
- 6) The Respondents and those acting through them are acting in a manner clearly demonstrative of a resolve to hold the referendum on the 16th of March 2013.
- 6.1) The hurry in which things are being done does not accord with democratic practices.
- 7) It is submitted that the Applicants have no other suitable or alternative remedy other than to approach this Court for appropriate relief.
- 8) It is also submitted that there will be no prejudice to the Respondents or those acting on their behalf or those supporting them should the application be granted.
- 8.1) In fact the dictates of democracy are such that reasonable members of society would support the application.

DATED AT HARARE THIS 19th DAY OF FEBRUARY 2013.

Signed

**EREMIAhf BAMU **

IN THE MATTER BETWEEN

THE NATIONAL CONSTITUTIONAL ASSEMBLY (NCA)

1st APPLICANT

And

PROFESSOR LOVEMORE MADHUKU

2nd APPLICANT

And

**THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O. 1st RESPONDENT AND
THE CHAIRPERSON/ ACTING CHAIRPERSON OF THE
ZIMBABWE ELECTION COMMISSION N.O**

2nd RESPONDENT

FOUNDING AFFIDAVIT OF PROFESSOR LOVEMORE MADHUKU

I, Professor Lovemore Madhuku, do hereby make oath and swear that:

1. I am the National Chairperson of the National Constitutional Assembly (NCA), the 1st Applicant herein. I am duly authorised to swear to this affidavit by virtue of my position as the NCA National Chairperson. Further, I can swear positively to the facts of this matter. The facts deposed herein, are to the best of my knowledge and belief, true and correct.
2. I am also the 2nd Applicant, in my capacity as an ordinary voter with an interest in the referendum set for the 16th of March 2013.
3. The Applicants' address for service is care of that of their legal practitioners of record Messrs Mbidzo Muchadehama & Makoni, number 6th Duthie Avenue, Belgravia, Harare.
4. The 1st Respondent is the **President of the Republic of Zimbabwe**, cited herein in his official capacity of Munhumutapa Offices, Samora Machel Avenue Harare.
5. The 2nd Respondent is the **Chairperson/ Acting Chairperson of the Zimbabwe Electoral Commission N.O**, cited herein in his/her official capacity. His/her address is Mahachi Quantum Building, 1 Nelson Mandela Avenue, Harare.

6. The NCA is a voluntary association of Zimbabweans. Its main objectives among other things are:

6.1 To strive to protect, promote, deepen and broaden the concepts and practice of democracy, transparency, good governance, justice and tolerance in the Republic of Zimbabwe;

6.2 To strive for initiation of the constitution making-process in Zimbabwe including:

a) Engaging in the process and processes of enlightening the general public on the deficiencies and weaknesses of the current constitution of Zimbabwe and advocating for a new constitution for Zimbabwe;

b) Preparing a draft or drafts of a new constitutional order for Zimbabwe.

6.3 To strive to protect, deepen and foster a human rights culture and the rule of law in Zimbabwe;

6.4 To implement, incorporate, and protect in Zimbabwe international human rights norms, as contained in important conventions such as, but not limited to, the universal declaration of human rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Elimination of all forms of Discrimination against Women, the United Nations Convention on the Rights of the Child, and the African Charter on People and Human Rights.

6.5 To work with other similarly minded organisations or individuals in Zimbabwe in establishing or striving to establish in Zimbabwe:

a) A new tolerant, transparent and democratic legal, political, social and economic order.

- b) A new constitutional framework upon which governance can be founded
7. The NCA was formed on 20 May 1997. It has operated since then as a *common law universitas* in terms of its constitution and is now a well established organisation known by all Zimbabweans who follow the public affairs of our country.
 8. The mission of the NCA is to seek to ensure that Zimbabwe gets a new constitution which is democratic and people-driven. The guiding position of the NCA is that a "people-driven" constitution-making process is one which is led by an independent Constitutional Commission, is not dominated by the political leaders of the time and is genuinely inclusive in affording every interested citizen an opportunity, not only to put forward his/her views but also to debate with others the advantages and disadvantages of any propositions being put forward.
 9. The membership of the NCA is open to both individual citizens and organisations (called "institutional members"). Our last membership estimation exercise in August 2012 put our individual membership at one hundred and twenty thousand (120 000). We have forty-five active institutional members, including trade unions, human rights associations, youth groups, women's groups and religious organisations.
 10. From its formation in 1997, the NCA has used two approaches in its quest for a new, democratic and people-driven constitution. The first is civic education on constitutional issues. The second is putting legitimate pressure on the political authorities to embrace constitutional reform.
 11. In the February 2000 referendum, the NCA was the leading organisation in the "Vote No" campaign. The result of that referendum was a victory of the "No" over the "Yes".
 12. After the February 2000 referendum, the NCA continued with civic education on constitutional issues while at the same time calling upon the government to set up an independent Constitutional Commission. The latter involved peaceful protest actions while the former led to the production of constitutional proposals for public debate entitled "Proposed Draft Constitution for Zimbabwe, 2001". These proposals are now popularly referred to as the "NCA DRAFT".
 13. At some point as part of putting legitimate pressure on the government to institute a new constitution-making process after the 2000 referendum, the NCA approached this honourable court seeking an order to compel the President to receive and publicise the "Proposed Draft Constitution, 2001". These efforts are recorded in the case *of National Constitutional Assembly v The President & Others* 2005(2) ZLR 310(H).

14. From 2001 to 2008, the government maintained the position that a new constitution was not a priority and steadfastly refused to entertain the NCA's call for a new, democratic and people-driven constitution. On its part, the NCA intensified its civic education on constitutional issues and on many occasions, its peaceful protest marches led to several arrests of its members.
15. On September 15, 2008 three political parties namely ZANU (PF) and the two formations of the MDC signed an agreement which has come to be referred to as the "Global Political Agreement" (GPA). Article VI of that agreement provided for a constitution-making process led by Parliament. It was described in the agreement as "people-driven". The NCA immediately rejected this process as not "people-driven" precisely on the basis that it was not led by an independent Constitutional Commission. Article VI of the GPA was the exact opposite of what the NCA stood for because it sanctioned a process dominated exclusively by three political parties.
16. It is common cause in the country that on 12 April 2009, Parliament set up a committee called the Parliamentary Constitutional Select Committee (*COPAQ*) which took over three and half years to produce a Draft Constitution. It is the firm view of the NCA that the COPAC process was a mere negotiation platform for the three political parties involved and never an avenue for Zimbabweans to express themselves.
17. On 17 January, 2013 there was an announcement that the leaders of the three political parties had agreed on the final version of the Draft Constitution. There was no official publication of the Draft Constitution. The NCA sought to get an official copy and all its efforts were in vain. Yet, various media outlets published contradictory statements on selected provisions of the Draft Constitution while the spokespersons of the political parties concerned were announcing what was described as a "YES" campaign.
18. The NCA was alarmed by these developments and held a Press Conference on 5 February, 2013 calling upon the government to afford Zimbabweans a genuine opportunity to study the Draft Constitution. A copy of the Press statement is attached hereto as **Annexure A**. At that Press conference, the NCA relied on unofficial versions of the Draft Constitution to make its comments.
19. On Friday, 15 February 2013 at around 1536hrs, the NCA got a copy of the Government Gazette as it was being delivered. The proclamation by the President (Annexure B) contained the first official publication of the Draft Constitution. It also set 16 March 2013 as the date for the referendum seeking the views of voters on the Draft Constitution. A copy of the Draft Constitution which is due to be subjected to the referendum is attached hereto marked ^VC.
20. It is the view of the NCA that the time set by the President is grossly inadequate in light of the importance and complexity of the opinion being sought from voters. At the time of the setting of the date, (a) no official copy had been distributed, (b) there were no translated versions of the Draft and (c) no simplified versions existed. This is still the position at the time of this application.

21. It is the experience of the NCA in the over thirteen years of its existence that ordinary citizens are capable of understanding constitutional issues if sufficient scope is created for public debate and for the distribution of simplified and translated versions of the constitution.
22. The NCA is campaigning against the adoption of this Draft Constitution for reasons arising from its fundamental beliefs on constitution-making processes.
23. The NCA has been advised that while the President has power under the Referendums Act to decide to ascertain the view of voters on certain issues and to set dates for a referendum, he cannot act arbitrarily. The advice received by the NCA is to the effect that the President must act reasonably and anything grossly unreasonable or irrational would, for that reason alone, be ultra vires the Referendums Act.
24. The NCA has also been advised that it has a constitutional right to the protection of the law under section 18 of the Constitution. In terms of that right, we are advised that the President must act in accordance with the rule of law and at the very least, the President must afford citizens adequate time. How can voters form an opinion on such complex matters without being given copies of the Draft Constitution?
25. The NCA is urgently seeking the intervention of this Honourable Court to set aside the 16 March date and order the President to give voters not less than two months from the date of its proclamation such time will enable voters to share the few copies being distributed and more importantly to listen to different opinions on the issues at stake.
26. I am also advised that in terms of section 20 of the Constitution of Zimbabwe, my freedom of expression entitles me, as a voter, to impart my thoughts and opinions to other voters before the day set by the President for the

referendum. It is my firm intention to exercise this freedom extensively as I have observed several bad provisions in the Draft Constitution. The period set by the President is far below the reasonable period I require in this regard.

27. The NCA is urgently seeking the intervention of this Honourable Court to set aside the 16 March date and order the President to give voters not less than two months. Recently Kenya adopted its constitution after allowing its citizens four months of debate before it was taken for a referendum. Additional time will enable voters to share the few copies being distributed and more importantly to listen to different opinions on the issues at stake. The NCA seeks more time to do the following:
 - 27.1 Distribute its objections to, and observations on, the Draft Constitution to all potential voters, including observations by others. In this regard, the NCA intends to distribute the analysis documents prepared by the Zimbabwe Lawyers for Human Rights;
 - 27.2 Organise meetings with potential voters throughout the country urging them to reject the Draft constitution;
 - 27.3 Organise debates on some of the contentious issues in the Draft constitution with a view to enabling voters to form informed opinions;
 - 27.4 React through Press Statements and public meetings to the blatant propaganda by politicians campaigning for the Yes vote; and
 - 27.5 Inculcate the notion of a constitution for the people and not for political leaders.
28. Participating in constitutional or other debates is every person's right including voters.

- 28.1 During the constitutional making process a lot of debate and interest was generated including whether or not the process was people driven and whether or not the views of the people and their interests in general were captured.
- 28.2 In the limited time that I have had, I have observed numerous shortcomings in the constitution.
- 28.2.1 These are captured in our press statement of 05 February 2013 Annexure 'A' above.
- 28.2.2 Other civic organisations namely Zimbabwe Lawyers for Human Rights (ZLHR) have had preliminary observatory observations about the draft, which observations are critical of the draft. I attach a copy of this analysis as Annexure TJ'.
- 28.3 The constitution is a relatively voluminous document and contains unfamiliar legal language.
- 25.4.1 There is need for translations for shorter versions, the brail versions and thereafter adequate time to read. The translations are yet to be done.
29. I have read constitutions of other countries particularly South Africa, Malawi, Uganda, Kenya to name but a few.
- 29.1 In comparison our draft falls far short of the requirements of constitutionalism.
- 26.1.1 A further reading reveals a lot of cut and pasting clauses of constitutions of other countries.
- 29.2 I have no doubt that if granted time people must be able to see into the ruse that is being peddled as a draft constitution.
- 29.3 There are fundamental shortcomings in this draft constitution.
- 29.4 To imagine it took almost four years and over fifty million United States of America Dollars to produce the current draft dazzles the mind.
- 29.5 Voters must know and be able to decide what exactly it is that they will be voting for.
- 29.6 I also make the observation that the draft was prematurely concluded for political expedience.
- 29.6.1 It is public knowledge that the COPAC Management Committee having reached a deadlock, issues were 'parked' and referred to Political Principles who are leaders of Political parties.
- 29.6.2 The Principals then agreed and compromised on issues to suit themselves. An example is the postponement of the issue of running mates.
- 29.6.3 Surely members of the public especially those who may want to exercise their right to vote must be given adequate time to scrutinise these issues.
30. In any representative democracy it is the right of the public to be informed and to have an input in any law passing process, especially the constitution of a country.

- 30.1 The public was deprived the opportunity to participate before the constitution passed through parliament.
- 30.2 The parliamentary process was a sham as the members of parliament simply went there to agree with each other. The Global Political Agreement itself stipulated that the draft would be debated in parliament for a month, yet it was debated in just three or four days. This fell short of the requirements.
31. Now the public is about to be deprived an opportunity to scrutinise the undemocratically adopted constitution.
- 31.1 It is only fair that the public be given an opportunity to debate the constitution before they cast their vote.
32. It is to my understanding that the voting will be for a 'YES' or 'NO'.
- 32.1 This is undesirable. This is the more reason why people need to understand all the issues before they exercise their vote.
33. I also submit that a referendum is an election and must be held in terms of principles governing the holding of elections.
- 33.1 Such principles are captured in Section 3 of the Electoral Act (Chapter).
- 33.2 These principles are also envisaged in the SADC Guidelines and Principles Governing Democratic Elections. The same is reflected in the African Union Declaration on the Principles Governing Democratic Elections in Africa as well as various other international covenants.
34. When general elections are to be held, they should be so held within four months of the proclamation of the elections, in terms of section 58 of the current constitution.
- 34.1 In terms of Article 6(i)(c)xiii of the Global Political Agreement, the referendum was to be held within three months of the proclamation.
- 34.1.2 I submit that the mentioning of the three and four months connotes the need to give adequate time.
- 34.2 One month is not such adequate time especially for issues as fundamental as the constitution of a country.
35. I am informed and verily believe that in order for the court to hear a matter such as this, a litigant must establish that the matter is urgent so much that it must be heard ahead of other cases that have been filed against it and litigants run the risk of their matters being held as not urgent if they delay in approaching the court.
36. We implores this honourable court to hold this matter as urgent for the following reasons:
- a) The date of the referendum was proclaimed on the 15 of February 2013, giving 30 days for the public to familiarise themselves with the draft constitution.

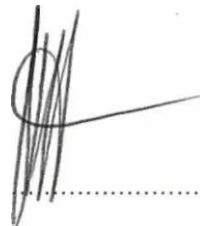
- b) The public only started accessing the draft constitution on the 18th of February 2013, less than 30 days before the referendum. Even so, only a fraction of the population was able to access the draft, those who were able to buy the Herald, and a few copies distributed from 18 February 2013.
- c) As most of our citizens are not trained to understand the legal language contained in legal documents such as a constitution, the draft needs to be simplified and translated into vernacular languages and brail. CAPAC itself said as much. That has not been done.
- d) There are only 26 days left before the scheduled referendum, and if the matter was to be heard in the ordinary way, there is no way the matter would have been finalised by the 16th of March 2013, given the requirement to give the other party at least 10 working days to respond to the application, filling of answering affidavit, and heads of argument. Already there are matters set down for hearing on the opposed roll beyond the date of the referendum. If the matter would have to fit into the roll, then it will be merely an academic exercise, as its turn will practically only come after the 16th of March 2013.
- e) It was not practical to file this application before the proclamation, as we had no way of knowing that the President or the Principals in the inclusive government were to give a 30 day notice. Only after the proclamation we were able to learn about this short notice. Having learnt about the proclamation we immediately set in motion these proceedings. We acted expeditiously in the circumstances.
- g) The matter is of such national importance that it must be prioritised ahead of other matters at least because the remedy being sought is the deferment of an event that takes place in 30 days.
- h) No prejudice will be suffered by the Government and the people of Zimbabwe. In fact a deferment will give the Government time to source resources for the referendum. At the time of this application Government has been struggling to raise the resources for the referendum.
- i) We therefore pray that the matter be treated as urgent.

37. We pray that the provisional order be granted in terms of the draft.

THUS DONE AND SIGNED AT HARARE THIS 19TH DAY OF FEBRUARY 2013



PROFESSOR LOVEMORE MADHUKU



COMMISSIONER OF OATHS

Before me

DENFORD HALIMANI

LEGAL PRACTITIONER
COMMISSIONER OF OATHS

In the matter between:-

NATIONAL CONSTITUTION ASSEMBLY

1st APPLICANT

AND

PROFESSOR LOVEMORE MADHUKU

2nd APPLICANT

AND

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE N.O

1st RESPONDENT

AND

**THE CHAIRPERSON/ACTING CHAIRPERSON OF THE
ZIMBABWE ELECTORAL COMMISSION N.O (ZEC)**

2nd RESPONDENT

PROVISIONAL ORDER

TO: RESPONDENTS

TAKE NOTICE THAT, on the day of 2013, the Honourable Justice
....., sitting at Harare issued a provisional order as shown
overleaf.

The annexed Chamber Application, affidavit(s) and documents were used in support of the application for this provisional order.

If you intend to oppose the confirmation of this provisional order, you will have to file a Notice of Opposition in Form No. 29B, together with one or more opposing affidavit(s), with the Registrar of the High Court at Harare within ten (10) days after the date on which this provisional order and annexures were served upon you. You will also have to serve a copy of the Notice of Opposition and affidavits on the Applicant's legal practitioners at the address for service specified in the application.

If you do not file an opposing affidavit within the period specified above, this matter will be set down for hearing in the High Court at Harare, without further notice to you and will be dealt with as an unopposed application for confirmation of the provisional order.

If you wish to have the provisional order changed or set aside sooner than the Rules of Court normally allow and can show good cause for this, you should approach the Applicant/Applicant's legal practitioner to agree in consultation with the Registrar, on a suitable hearing date. If this cannot be agreed or there is great urgency, you may make a Chamber Application, on notice to the Applicant, for directions from a judge as to when the matter can be argued.

Date

JUDGE/REGISTRAR

Statutory Instrument 19 of 2013.

[CONSTITUTION

Proclamation 1 of 2013

PROCLAMATION

by

HIS EXCELLENCY THE HONOURABLE ROBERT GABRIEL MUGABE,
Grand Commander of the Zimbabwe Order of Merit, President of
Zimbabwe and Commander-in-Chief of the Defence Forces of
Zimbabwe.

WHEREAS it is provided by section 3 of the Referendums Act
[Chapter 2:10] that, whenever the President considers it desirable to ascertain
the view of voters on any question or issue, he may by proclamation in the
Gazette—

- (a) declare that a referendum is to be held in order to ascertain the view
of voters on that question or issue; and
- (b) appoint a day or days for the holding of the referendum; and
- (c) state the hours at which voting for the purposes of the
referendum will commence and will close;

AND WHEREAS, by Article VI of the Global Political Agreement (the
provisions of which are embodied as the "Interparty Political Agreement" in
Schedule 8 to the Constitution of Zimbabwe), the Committee on Standing
Rules and Orders of Parliament appointed the Constitution Parliamentary
Select Committee on the drafting of a new constitution for Zimbabwe
(referred to as "COPAC") on the 12th April, 2009, which consisted of certain
Members of Parliament from the political parties that participated in the
Global Political Agreement and a representative of the Council of Chiefs who
sits in Parliament;

AND WHEREAS COPAC duly prepared a draft Constitution for
Zimbabwe, under cover of a report that was tabled before Parliament
on the 6th and 7th of February, 2013, and adopted by Parliament;

AND WHEREAS I consider it desirable to ascertain the view of
voters on whether or not the said draft Constitution, should be enacted as
the Constitution of Zimbabwe;

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Proclamation 1 of 2013

AND WHEREAS it is the function of the Zimbabwe Electoral
Commission to conduct referendums in terms of section 100C of the
Constitution of Zimbabwe:

NOW, THEREFORE, under and by virtue of the powers vested in the
President as aforesaid, I do, by this my Proclamation —

- (a) declare that a referendum is to be held in order to ascertain the
view of voters on whether or not the draft Constitution which
is published in a *Gazette Extraordinary* together with this
Proclamation should be adopted as the Constitution of
Zimbabwe; and
- (b) appoint Saturday the 16th March, 2013, as the day on which
the referendum will be held; and

- (c) state that, on the day on which the referendum is held, voting at polling stations will commence at seven o'clock in the morning and close at seven o'clock in the evening.

Given under my hand and the Public Seal of Zimbabwe at Harare this fourteenth day of February, in the year of Our Lord two thousand and thirteen.

R. G. MUGABE,
President.

By Command of the President.

Supplement to the Zimbabwean Government Gazette Extraordinary dated the 15th February, 2013. Printed by the Government Printer, Harare.