

The LEGAL MONITOR

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COST-FREE

AG harbours fugitive prosecutor

HARARE-A State prosecutor fled court after being slapped with a five-day prison sentence, and in a textbook case of abuse of office, sought sanctuary at Attorney General's (AG) offices.

Prison officers failed to keep pace with Chitungwiza area public prosecutor Andrew Kumire, who bolted out of court soon after Harare Magistrate Chiwoniso Mutongi condemned him to the cells on contempt of court charges.

Magistrate Mutongi ordered Kumire to be imprisoned for banging his hand on a desk and clicking his tongue in protest against an unfavourable ruling.

Kumire was prosecuting in the trial of prominent human rights lawyer Alec Muchadehema, who, ironically, is charged with contempt of court for allegedly facilitating the improper release from prison of a freelance journalist and two senior Movement for Democratic Change (MDC) officials.

Looking unmoved by his imprisonment, Kumire stunned officials when he walked out of the court room before prison guards could take him to serve his sentence.

Kumire fled to the AG's Offices in the company of law officer Austin Muzivi and Detective Inspector Henry Sostein Dowu, the investigating officer in Muchadehema's case.

Prison guards later tracked Kumire and forced him to return to court, where he was briefly detained before being granted US\$30 bail.

Muchadehema's lawyer Beatrice Mtetwa said Kumire's case showed how the law was still applied selectively.

"I have no doubt that if a member of the defence team had been in Mr Kumire's shoes, Mr Mishrod Guvamombe, (Harare Provincial Magistrate) would not have intervened and the prison officers would not have allowed such a person to leave the court building and any successful bail application would have met an invocation of the now notorious Section 121 of the Criminal Procedure and Evidence Act," said Mtetwa.

Mtsetwa said she was disturbed by the conduct of Magistrate Guvamombe who asked junior court officials to compile reports about Magistrate Mutongi's "conduct". This is in violation of international guidelines such as the UN Basic Principles on the Independence of the Judiciary, ACHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, the Harare Commonwealth Declaration and the Commonwealth (Latimer House) Principles on the Three Branches of Government.

Magistrate Guvamombe reportedly defended his actions as meant to "assist" Magistrate Mutongi to avoid being arrested for "criminal abuse of office" as indications were that "they" wanted to arrest her.

Mtsetwa said it had become routine for the AG's representatives to treat Magistrates with disdain and contempt due to the atmosphere of fear that now existed within the criminal justice system.

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Kumire walks out of court after being convicted

President's Office harasses lawyer

HARARE-Security details manning President Robert Mugabe's offices at Munhumutapa Building last week detained a human rights lawyer who intended to serve court papers on the Office of the President.

Zvikomborero Chadambuka, the projects lawyer for Zimbabwe Lawyers for Human Rights (ZLHR) had attended to Munhumutapa Building last Tuesday to serve an Urgent Chamber Application and the Notice of Set Down on the Office of President Robert Mugabe who had been cited in the case, *nominee officio* (in his official capacity) as a respondent in relation to the litigation.

But a security official only identified as Muzawazi who was manning the reception demanded to know what the application was about and accused Chadambuka of trying to sue and intending to hand over the court papers to President Mugabe in person.

Muzawazi detained Chadambuka in a room behind Munhumutapa Building where he was subjected to intensive interrogation by police and other individuals before transferring him to Harare Central Police Station.



Human rights lawyer Zvikomborero Chadambuka

At Harare Central Police Station Chadambuka was advised that he was being released "probably because there had been a misunderstanding". Because of the detention and the confiscation of

his court papers Chadambuka failed to effect a service on the Office of the President prompting ZLHR to petition the Law Society of Zimbabwe (LSZ) to take up the matter and seek assurances

from the Office of the President against the victimisation of legal practitioners during the execution of their jobs.

"If legal practitioners acting in the best of faith in executing their professional duties are being treated with such disdain, one can only imagine what unreported indignities other persons in the community are possibly being subjected to," read part of the letter written to LSZ by ZLHR executive director Irene Petras to protest the harassment of Chadambuka. "We therefore wish to formally place on record with you, as the lawfully mandated representative body for legal practitioners, our strongest objection to such abuses being perpetrated upon legal practitioners by mere reason of them carrying out their lawful and professional duties."

Petras added: "Indeed the right of the general populace to legal representation and therefore to the protection of the law suffers if their legal practitioners are going to be rendered unable to carry out their jobs due to the unacceptable and unlawful conduct of elements in society that choose to ignore the rights of other persons with impunity."

Extortion charges withdrawn

BUHERA-Extortion charges against 33 Buhera villagers crumbled last week after the State withdrew the charges due to lack of evidence to nail the villagers to the offence.

The villagers whose trial commenced last Monday at Murambinda Magistrates Court were accused of seizing property which was looted by some ZANU PF supporters during last year's run-up to the violent June 27 presidential election.

But the State withdrew count one of the extortion charges when their trial commenced last Monday as there was no evidence linking them to the offence.

ZLHR projects lawyer Blessing Nyamaropa who represented the villagers said other counts of extortion were withdrawn at the instance of the complainants.

This was after the complainants told Magistrate Tendai Mahwe that the parties had amicably resolved the matter and were now living together in harmony.

However, the trial of 50 other villagers for extortion failed to commence last Monday after the public prosecutor advised Magistrate Mahwe that he had not yet received the full docket for trial while the State witnesses failed to come to court.

Magistrate Mahwe remanded the villagers to 2 November for trial.

Meanwhile, the mass trial of 88 Nyanga villagers for extortion which failed to commence last month after Magistrate Loice Mukunyadzi failed not turn up will resume on Wednesday.

Magistrate Mukunyadzi, replaced Magistrate Clever Tsikwa, who recused himself from handling the matter due to alleged interference.

Magistrate Mukunyadzi will also preside over a pre-trial conference in which 16 Nyanga villagers filed civil claims against named ZANU PF supporters seeking compensation for property forcibly taken as 'fines' for supporting the Movement for Democratic Change (MDC).



Human Rights lawyer Blessing Nyamaropa

Learn from Botswana election

HARARE-The Zimbabwe Election Support Network (ZESN) says Botswana general elections were conducted under a conducive and favourable environment, and by and large were in accordance with international norms adding that this country could learn from that.

"Despite some challenges during the pre-election period reports of State media bias towards the ruling party, and that election day was not a public holiday, lack of early voting provision for electoral officials thereby disfranchising eligible voters, the elections generally reflected the will of the Botswana people," said ZESN in a statement after it had returned from monitoring the elections, in which the incumbent President Ian Khama retained his post.

Added ZESN: "The peace that prevailed during the poll is commendable especially considering the challenges that its neighbour, Zimbabwe, continues to face to the point of even postponing by-elections fearing the escalation of what has become traditional electoral violence. "The Botswana election provided a shining example of how to conduct acceptable elections for the SADC region and remain a symbol of hope that the region has the capacity to be fully fledged democracies."

Last year local and international community refused to recognise a 'presidential run-off' in which President Robert Mugabe, who was the only candidate, declared himself winner.

ZESN said there was an issue of double registration in the Botswana election which had 750 000 on the voters' roll.

It added: "It was discovered on polling day that some names appeared more than once in the voters' roll resulting in the affected voters being turned away.

"While the numbers of those turned away have been minimal, the issue raises a lot of questions about the accuracy of the registration exercise.



Rindai Chipfunde-Vava the ZESN Executive Director

"Positive though, was the fact that all political parties were furnished with the electronic version of the voters' roll well in advance of the poll to carry out their own analysis and for use on election day in the polling stations."

Zimbabwe's voters' roll has been a major point of conflict between the old administration and opposition parties who alleged that 'ghost' voters were on the voters' roll. Several court applications have been instituted against the Registrar General Tobaiwa Mudede's role in the preparation of the voters' roll. Mudede is an appointee of President Mugabe.

The parties that contested in the elections are the Botswana Democratic Party (BDP), the Botswana National Front (BNF) and the Botswana Congress Party (BCP).

Botswana's parliament has 61 seats, of which 57 are elected using a single-member district plurality system, meaning there are 57 constituencies, each electing a single MP. Four more seats are co-opted and elected MPs vote on who will occupy these.

Legislation update

Bill passed by Parliament but not yet gazetted as Act

The Appropriation (Additional) (2008) Bill was passed in early April but has not yet been sent to the President's Office for the President's assent.

Bills gazetted

Public Finance Management Bill (HB 9, 2009) – gazetted on Friday 16th October. The purpose of this wide-ranging Bill is to enhance efficient and responsible economic and financial management by the Government.

The Bill covers the ground presently covered by the Audit and Exchequer Act and the State Loans and Guarantees Act, so it provides for the repeal of those Acts. Detailed provision is made to improve the accountability of "public entities", a term embracing statutory bodies, companies controlled by the State, local authorities and partnerships and joint ventures between the State and the private sector. To be introduced by the Minister of Finance.

Audit Office Bill (HB 10, 2009) – gazetted on 2nd October. The purpose of the Bill is to establish an independent office of the Comptroller and Auditor-General outside the Public Service, with its own Audit Office Commission to fix conditions of service for the staff of the office and to be responsible for appointing and disciplining that staff. Also covered are the powers, functions and responsibilities of the Comptroller and Auditor-General, amplifying what is already in the Constitution. To be introduced by the Minister of Finance.

Financial Adjustments Bill (HB 8, 2009) – gazetted on 25th September. This is a short routine Bill providing for condonation of overspending by several Ministries during the 2006 financial year. To be introduced by the Minister of Finance.

Reserve Bank Amendment Bill (HB 7, 2009)– gazetted on 14th August. To be introduced by the Minister of Finance.

Source: Veritas

Police thwart march

HARARE-Police last week stopped civic society groups and the public from marching in Harare's streets to commemorate Africa Human Rights Day, forcing protestors to confine themselves to Harare Gardens where the main event was held.

Organisers had planned to use the day, commemorated throughout the continent, to march through Harare streets to raise awareness

on the need for Zimbabwe's transitional government to protect and promote human rights and urgently end ongoing rights abuses.

Despite the police action, hundreds of people still gathered at the Harare Gardens, where they demanded speedy democratic reforms such as the restoration of the rule of law and the depoliticisation of security agents.

Zimbabwe Human Rights Association (ZimRights), one of the organisers of the event, said the police action undermined the spirit of the Africa Human Rights Day march, whose theme this year was: "Justice paves way for peace."

"Zimbabwe Human Rights Association condemns the decision by the police to thwart the initial proceedings of the day, which were in the end confined to a march around the Harare Gardens.

Such actions are a mockery of the fundamental rights to assembly and movement which were commemorated on the day," read part of a statement by ZimRights.

In a keynote address, Dean Rowan Smith, an emissary of Archbishop Tutu said African leaders should strive to free their populations instead of simply blaming colonialism for current economic and political instability.

Drama in court

HARARE-Timeline of events in the Trial of Alec Muchadehama and the imprisonment of the Public Prosecutor Andrew Kumire on 22 October 2009.

- 09:30hrs -The trial of Muchadehama and Constance Gambara commences before Magistrate Chiwoniso Mutongi with the public prosecutor Kumire leading evidence from the State witness Caroline Mafuka, who is the Assistant Master at the High Court.
- Mafuka tells Magistrate Mutongi that she checked the orders brought before her by Gambara and appended her signature after being satisfied that everything was in order.
- Defence lawyer Beatrice Mtetwa objects to the posing of leading questions to the State witness by Kumire.
- Magistrate Mutongi sustains the objection and cautions Kumire before asking him to rephrase his question.
- Kumire defies Magistrate Mutongi arguing that he had not asked any leading question.
- Magistrate Mutongi further cautions Kumire against undermining the authority of the court stating that "I don't know Mr Kumire whether you want to be the State and the Court at the same time".
- Mtetwa cross-examines Mafuka.
- Gambara's lawyer Denford Halimani cross-examines Mafuka.
- Kumire re-examines Mafuka during which he asks her whether she knew of the existence of an order granting the State leave to appeal against bail to freelance photo-journalist Andriison Manyere and Movement for Democratic Change (MDC) officials Kisimusi Dhlamini and Gandhi Mudzingwa. (The release of the three on bail triggered the arrest and trial of Muchadehama and Gambara.)
- Mtetwa objects to Kumire's line of questioning stating that the public prosecutor was raising issues which were never raised when the State led evidence or during the cross examination of Mafuka.
- Magistrate Mutongi orders Kumire not to pose questions in re-examination on an issue that had not been raised either when the State led its evidence-in-chief or during the cross examination of Mafuka.
- Kumire bangs his hand on the desk and clicks his tongue in disapproval of the order.
- Magistrate Mutongi tells Kumire that; "I heard a sound from you. Your behaviour

is contemptuous," and adjourns proceedings and summons both the State and defence counsels Kumire and Austin Muzivi, Mtetwa and Halimani respectively, to her chambers for a hearing.

- Outside Magistrate Mutongi's reception, Kumire explains that he involuntarily makes the clicking sound when his mouth is dry and that he had not intended this as an insult to the Magistrate.
- Kumire repeats this explanation to the Magistrate when she put the contempt allegation to him and he apologises.
- Magistrate Mutongi makes it very clear that given the sequence of events and Kumire's general behaviour towards her throughout the trial, she does not accept his explanation. She determined that his conduct was contemptuous and that she would deal with it accordingly.
- When court resumes, Magistrate Mutongi proceeds to deal with the matter as contempt and sentences Kumire to five days in prison. The Magistrate states that; "The court feels insulted by the sound you made before the break. That is contemptuous of court and I sentence you to five days in prison."
- Muzivi, who was assisting Kumire in the prosecution tells Magistrate Mutongi that he is unable to proceed "under the circumstances".
- The Magistrate orders the court orderly to guard Kumire pending the arrival of a prison officer to take him into the cells after the signing of his committal warrant and the court adjourns.
- But Kumire, his prosecuting colleague Muzivi blatantly ignore the Magistrate's order and orders the court orderly to leave the court with them in the presence of stunned court officials, lawyers, and journalists.
- Kumire, Muzivi and the court orderly subsequently leave the court building in Kumire's C.A.M vehicle with Detective Inspector Henry Sostein Dowa (who is the investigating officer in Muchadehama's case) having joined them.
- When the prison officer arrives in Court 17, Kumire has already left and Magistrate Mutongi's decision cannot be executed, further undermining her authority and constituting yet another contempt towards her.
- Muchadehama and Gambara are stranded in court and unable to leave as they have not been properly remanded following the sentencing of Kumire, as Muzivi had inexplicably



Persecuted lawyer Alec Muchadehama

- advised the court that he would not proceed with trial "under the circumstances."
- Around lunch time a prison guard tracks Kumire to the Attorney General (AG)'s Office and locates him in a meeting with some officers in the AG's Office.
- Kumire is finally brought back to court and taken to the prison cells in compliance with the order for his committal by the Zimbabwe Prison Services (ZPS).
- At 14:15hrs Magistrate Mutongi postpones the trial of Muchadehama and Gambara to 17 November 2009 after the State-now represented by Harare area public prosecutor Jonathan Murombedzi applied for a postponement.
- At 15:36hrs Magistrate Mutongi formally commits Kumire, who is now under prison guard to jail for five days.
- After his committal the court doors are closed and only Kumire and some court officials remain in court.
- Mtetwa, Muchadehama and other lawyers and journalists wait outside court.
- At 16:00hrs Kumire, personally applies to be admitted on free bail before Provincial Magistrate, Mishrod Guvamombe. He states that he has not carried any money with him from his Chitungwiza home and that he has not received his salary for the month of October.
- Kumire tells Magistrate Guvamombe that there were gross irregularities in the procedure taken by Magistrate Mutongi in committing him to prison. Kumire also tells Magistrate Guvamombe that he was not given an opportunity to answer to the charges.
- Law officer Chris Mutangadura, who appears for the State in an unexplained capacity as he was also a State witness in the ongoing trial of Muchadehama and Gambara consents to the granting of bail to Kumire.
- Mutangadura who did not oppose bail; nor invoke section 121 of the Criminal Procedure and Evidence Act (CPEA), which the State usually abuses to appeal and suspend a bail order states that the interests of justice will not be prejudiced by the admission of Kumire on bail.
- Mutangadura tells Magistrate Guvamombe that Kumire's sentence of five days is not an incentive for him to abscond.
- Magistrate Guvamombe grants US\$30 Kumire bail.

Forced out of school

NYAZURA-Two primary schoolchildren have been forced out of a school their father, Luke Tembani, built after the family was evicted from their farmer in defiance of a SADC Tribunal ruling protecting the pioneering black commercial farmer.

Tembani, a successful pioneer indigenous commercial farmer was evicted a fortnight ago by a Mutare Deputy Sheriff from the remainder of his Minverwag Farm at Clare Estate Ranch, which he bought in 1983. The new owner, Takawira Zembe claims to have bought the farm from the Agricultural Bank of Zimbabwe (Agribank), formerly Agricultural Finance Corporation (AFC).

Tembani's twin children Luke and Terrylee, who were in Grade 3 at the time of eviction at the farm's Chimwanda Primary School have dropped out of school as a result of the displacement. They are now staying with their parents in Rusape where they are temporarily occupying a single room.

So insulting and distressing is the fact that Tembani is the one who built the farm school in 1986. The school opened its doors to students in 1987, offering free education to 321 pupils from Grade 1 to Grade 7.

Tembani said the huge cost incurred during the construction of the farm school was one of the reasons why he ended up failing to service his debts to AFC.

"In 1990 I had to purchase school furniture which cost me a lot of money. This was worsened by the national drought of 1992/1994 and as a result I became very short to service my AFC loans...It really pains me," said Tembani.

Meanwhile, Zembe has proposed an "outrageous" proposal to allow Tembani's children back on the farm school.

In a letter to Tembani, Zembe asked the former owner to first withdraw his appeal against the eviction and cede total ownership of the farm to him for Luke and Terrylee to be allowed back on the farm school.

Zembe said he would be willing to accommodate Tembani's children at the farm on condition that he provided a maid to take care of them.

Tembani, who became one of the country's first black commercial farmers shortly after independence in 1980 was evicted from his Nyazura farm in Manicaland which he has occupied for the past 26 years in defiance of a Southern African Development Community (SADC) Tribunal ruling barring his eviction.

The Windhoek-based Tribunal recently ruled that the repossession and sale of the farm by the State-run Agribank in order to recoup an outstanding loan was "illegal and void."

The Tribunal ordered the government to take all the necessary measures through its agents not to evict Tembani or his family from the property and to stop interfering with his use and occupation of the farm.

But the government has refused to comply with the regional Tribunal's orders. Justice and Legal Affairs Minister Patrick Chinamasa unilaterally pulled Zimbabwe out of the SADC Tribunal, a decision which was disproved by Prime Minister Morgan Tsvangirai.



Tsitsi Tembani and her children Terrylee and Luke

'Raid ploy to jail MDC officials'

HARARE-The Movement for Democratic Change (MDC) has described the raid on a house that accommodates senior party officials as the "clearest sign yet" that some senior ZANU PF and security officials were heightening tensions to force the collapse of the transitional coalition government.

Over 50 armed police on Friday night raided a residence leased by the MDC in Highlands suburb on the pretext of searching for an arms cache again. Police have in the last decade been routinely raiding MDC offices and officials' houses in search of "weapons".

But these searches have not yielded anything. Tendai Biti, the MDC secretary-general (pictured right) said the party used the Highlands property to house senior MDC officials from out of Harare, including Deputy Prime Minister Thokozani Khupe who stayed at the house prior to getting government accommodation.



Biti, who is also the finance minister, told journalists at the weekend that the police failed to find the supposed weapons, but had confiscated valuable party material. He expressed fear that the raid could be a pretext by anti-reformists still

running the security and judiciary to jail MDC leaders en-masse.

"We think this is gross provocation but more importantly we regard this as further evidence of the lack of a paradigm shift on the part of ZANU PF in respecting us as an equal partner," said Biti. "What we are seeing is evidence of a few components and elements in ZANU PF and the security who are unhappy with this transitional government shifting another gear in order to create evidence that justifies the total collapse of this transitional government."

The MDC has said it will not pull out of the government, formed last February following intense negotiations and pressure by African leaders who rejected last year's violent June presidential election runoff as a nullity. Biti said the regional Southern African Development Community Troika on Politics, Defence, and

Security Cooperation will visit Harare on 29 October to try and break the impasse.

Most Zimbabweans who had pinned hopes on the transitional administration to restore economic and political stability and the rule of law are getting disillusioned by the shaky administration's failure to reform.

Biti said until the formation of the transitional government, Khupe and Speaker of Parliament Lovemore Moyo were some of the high ranking officials who used the Highlands house for accommodation.

"Police who raided the house took with them valuable party material from a room being used by our deputy organising secretary, Morgan Komichi. They also beat up the wife and sister of Moffat Nyandure, who is the caretaker at the house," he said.