

# The LEGAL MONITOR

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**COST-FREE**

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## Police boss scares magistrate

LUPANE-A senior Magistrate has recused himself from presiding over the trial of a legislator following interference from a senior police officer in a fresh attack on the judiciary.

Magistrate Edwin Marecha was scheduled to preside over the trial of Lupane East MP Hon. Njabuliso Mguni, who is accused of publishing or communicating false statements prejudicial to the State at a meeting organised by Lupane Agenda in his constituency last year.

However, the trial failed to commence because Magistrate Marecha recused himself after indicating that Detective Inspector Chakaoma, who is the officer-in-charge of Law and Order in Lupane

had telephoned him before the matter went to court.

Detective Inspector Chakaoma, who was involved in the investigation of Mguni's case, allegedly telephoned Magistrate Marecha to discuss the issues involved instead of the normal procedure in which the prosecutor places his case before a Magistrate in open court.

"Magistrate Marecha said Detective Inspector Chakaoma should have telephoned the prosecution office and not him and therefore indicated that it would be prejudicial for him to sit and try the matter and thus recused himself," said Mguni's lawyer Matshobana Ncube of Zimbabwe Lawyers for Human Rights (ZLHR). "The prosecution has to liaise with the provincial and regional representative of the Attorney General's office to see that a new Magistrate is appointed to deal with the matter," he added.

Magistrate Marecha becomes the latest victim among members of the legal profession to face such interference in the execution of their duties. Actions like these have brought the administration of justice into disrepute.

In recent years, Magistrates, Judges, prosecutors and lawyers, particularly those handling human rights-related cases, have had to grapple with an upsurge in threats, harassment and intimidation during the exercise of their duties.

ZLHR executive director Irene Petras condemned the unwarranted interference into judicial officers' duties, which she said were calculated to bring the administration of justice into disrepute.

"It is part of a wider, deliberate, systematic and sustained general attack on the judiciary to manipulate it, reduce its independence and weaken national institutions of protection that are

vital for the restoration of the rule of law and democracy," said Petras.

Petras said the police and State institutions should ensure that the judiciary remained free from political or other interference as enshrined in Article 1 of the United Nations Basic Principles on the Independence of the Judiciary (1985) and Section 79B of the Constitution of Zimbabwe, which states that: "In the exercise of judicial authority a member of the judiciary shall not be subject to the direction or control of any person or authority..."

The ZLHR executive director called upon the transitional coalition government to promptly investigate and prosecute the alleged interference on the exercise of Magistrate Marecha's judicial functions.

## Zuma leaves Zimbos confused

HARARE-South African president Jacob Zuma left Zimbabweans even more confused when he took less than three minutes to announce the results of three days of mediation.

After intense meetings, Zuma announced that: "The parties have agreed to a package of measures to be implemented concurrently. I am very encouraged by the spirit of cooperation displayed by the leaders and all the parties," Zuma told a packed press conference last Thursday.

Zuma refused to take questions from journalists. President Robert Mugabe and Prime Minister Morgan Tsvangirai, dragged along to the press conference, did not show any signs of "cooperation". They were not allowed to speak or take questions.

Their body language however, showed how the two men still lacked trust of each other.

Tsvangirai sat a safe distance from Mugabe and avoided direct contact with his octogenarian rival and coalition government partner by using Zuma as a shield.

Journalists were left to guess what the "package" entailed. But with neither smiles nor handshakes, Tsvangirai and Mugabe showed every inch of the way that they were an unhappy lot being forced onto the podium for a public show.

An impatient photographer at the press conference finally had the guts to ask for a little show of affection.

"Could we have a handshake, please," shouted the photographer.

Zuma, the only man at the top table grinning, complied and one by one shook hands with Zimbabwe's three principals.

But the persistent photographer wanted more: "How about a handshake between the principals?" he requested.

Tsvangirai finally spoke his only words for the day: "Ah, he is a dictator." Journalists were even more confused at this stage, not sure whether Tsvangirai was still referring to the determined photographer.



Miles apart: Tsvangirai (extreme left) Zuma and Mugabe at the press conference



Happier days: Sam plays the guitar alongside his father and mentor Tuku, at a ZLHR organised event in Mutare last December.

## Chinamasa ‘part of the problem’- Law Society of Zimbabwe

HARARE-The Law Society of Zimbabwe (LSZ) has said Justice and Legal Affairs Minister Patrick Chinamasa, who has accused lawyers of being corrupt, is part of the problems affecting justice delivery.

Chinamasa claimed before the Parliamentary Portfolio Committee on Justice, Legal Affairs, Constitutional and Parliamentary Affairs last Monday that corruption was rampant among legal practitioners both in public and private practice. He blamed “so-called leading criminal lawyers” for conveying bribe money to magistrates and prosecutors.

Chinamasa, a trained lawyer who once served as the Attorney General (AG), bemoaned the lack of cooperation between his ministry and the LSZ. He accused the LSZ of “turning a blind eye” to inappropriate conduct allegedly exhibited by members of the lawyers’ regulatory body.

“I am gravely worried about the state of the legal profession whether in private or public sector. The profession has sunk so low. Their (LSZ) hands are not clean. When was the last time that the LSZ struck out a member from its membership,” Chinamasa said.

But LSZ President Josephat Tshuma said the Justice Minister’s comments were an admission that the bench, which he presided over, was corrupt.

“It takes two to be corrupt. For the circle to be complete you need a corrupt prosecutor, a corrupt bench and a lawyer who is corrupt. If you say corruption is a cancer that has affected the profession you must also say the bench which you preside over is corrupt too,” said Tshuma.

“We should be asking the bigger question why the bench is corrupt and impartial. You must look at the whole problem,” Tshuma added.

Commonwealth Lawyers Association councillor Tino Bere challenged Chinamasa to report the corrupt practices to the lawyers’ regulatory body.

“The attack on the LSZ is unfortunate but not surprising. While the LSZ is a professional body, Chinamasa is a politician and a tactician for ZANU PF. The state of the judiciary and the rule of law are a result of things he has done. This country’s problems are not solved by pointing fingers but by solving the problems. We encourage the Minister to embrace the approach of dialogue started by the LSZ President. He must not play politics by informing the media and the parliamentary committee of alleged corrupt lawyers of which he has not informed the LSZ,” said Bere, who is also the LSZ Deputy President.



Tino Bere

Bere said the LSZ would soon publish a list of unregistered legal practitioners after carrying out a thorough audit.

“There is no district which has not been visited by the LSZ secretary to enforce discipline and inspect the books. We have fewer lawyers giving us problems than before,” said Bere.

During the Parliamentary committee hearing, Chinamasa cautioned prosecutors against recklessly invoking Section 121 of the Criminal Procedure and Evidence Act (CPEA) to reverse the granting of bail by the courts to accused persons.

Prosecutors and law officers from the AG’s office have, on numerous occasions, abused this controversial provision of the CPEA. The practice of invoking Section 121 has had the effect of keeping individuals in custody for a further seven days in order to allow the State time to appeal the granting of bail. In almost all cases the appeals have either never been filed, or were dismissed by the superior courts.

By compiling and highlighting these cases and statistics, Zimbabwe Lawyers For Human Rights has in recent months argued that the provision continues to be used selectively and unlawfully by the AG’s office against human rights defenders and legitimate political activists.

Chinamasa cautioned that Section 121 should not be used carelessly by the AG’s Office. He blamed the unwarranted invocation of the provision on lack of training on the part of prosecutors and law officers from the AG’s office.

## Chinamasa heaps praise on army

HARARE-Justice and Legal Affairs Minister Patrick Chinamasa has praised soldiers for “exceptionally” running the Zimbabwe Prison Service (ZPS), despite the glaring signs of demise that characterise correctional facilities around the country.

Giving oral evidence before the Parliamentary Portfolio Committee on Justice, Legal Affairs, Constitutional and Parliamentary Affairs, Chinamasa defended the appointment of army personnel to senior positions within the ZPS, insisting the military people were talented.

Retired army Major-General Paradzai Zimondi currently heads the ZPS and is assisted by several other retired army officers who serve in various capacities.

“Army people are more multi-skilled than what we found with prison personnel. It (army) is quite a pool of skill. One advantage of the army personnel is especially in areas of management and accepting new ideas which I didn’t find in the current personnel,” said Chinamasa. “We wanted to blend experience. That’s why I brought the current ZPS Commissioner to bring a new and fresh innovation into the system and so far we have been able to do that.”

The Justice and Legal Affairs Minister was responding to a question by Mazowe Central MP Hon. Shepherd Mushonga querying the

appointment and promotion of army officers within the ZPS structures ahead of career prisons personnel.

Besides staffing the ZPS with retired and serving army officers, the government has militarised other state institutions such as the National Railways of Zimbabwe and the state-run Grain Marketing Board.

But despite Chinamasa’s defence of such appointments, Zimondi and his lieutenants have presided over the collapse of the prison service from its duty of providing correctional services into a waiting room for death.

Extreme hunger, squalid conditions, exposure to a variety of diseases and stripping people of their dignity are standard practices in Zimbabwe’s jails, resulting in shameful misery hidden away from the public gaze behind high walls and razor wire.

Last year, High Court Judge President Rita Makarau likened any prison sentence to a death sentence because of the gravely inhumane conditions. In 2009, an outbreak of pellagra killed 23 inmates at the notorious Chikurubi Maximum Prison.

Because of this, Zimbabwe’s prisons constitute a unique and especially cruel form of torture that has both physical and psychological impacts on the people affected.



In defence of the army: Chinamasa

# GAPWUZ leaders still in hiding

HARARE-Farm worker unionists say their lives are still in danger, and they remain in hiding because the transitional government has failed to assure them of their safety.

General Agricultural and Plantation Workers Union of Zimbabwe (GAPWUZ) general-secretary Gertrude Hambira last month fled the country after being harassed by members of the Joint Operations Command (JOC). JOC is the security agents’ structure accused of orchestrating the 2008 brutal election campaign that Prime Minister Tsvangirai says left 200 of his supporters dead.

“We take the threats she received seriously, hence she cannot return unless we have been assured of her safety,” a top GAPWUZ official said in a telephone interview.

Hambira fled the country as State agents were hunting for her for reportedly releasing a video showing how President Robert Mugabe’s supporters committed rights abuses and other crimes against farm workers. State agents in Zimbabwe are notorious for torturing human rights activists.

The official said the crackdown was wider than Hambira: “We have sought assurances from the government but nothing has come forth. We know so many international organisations have shown concern and wrote to government but nothing has come up. We are really worried that this harassment of trade unionists still continues under this new government.”

GAPWUZ, local rights groups and the international community have shown serious concern that Prime Minister Morgan Tsvangirai, a former trade unionist, has failed to take active

steps to assist his former colleagues. Tsvangirai launched his political career on the back of the Zimbabwe Congress of Trade Unions (ZCTU), where he was secretary-general. GAPWUZ is a member of the ZCTU.

International support for GAPWUZ leaders have been swelling.

Visiting president of the Confederation of German Trade Unions (DGB) Michael Sommer has said he was worried by the Zimbabwean government’s disregard for workers’ and human rights.

“I’m deeply concerned that the situation has shown significant deterioration over the past few weeks,” Sommer told journalists as he wound up a four-day visit to Zimbabwe.

Sommer said he told Tsvangirai to ensure that Harare respected trade unionism.

“This is unacceptable. Freedom of association and trade union action are basic rights which must be respected by every decent society,” said Sommer.

“There are still (some) challenges. We’ll continue to monitor the situation closely of trade unions in Zimbabwe and show practical solidarity where we deem necessary.”

Sommer heads the biggest coalition of trade unions in Germany - DGB - which has a membership of more than six million. DGB played a vital role in dismantling apartheid in South Africa with the assistance of organisations such as Fredrich Ebert Stiftung.

# Soldiers still bleeding Chiadzwa

MARANGE-Military-led illegal syndicates are still mining and trading Chiadzwa diamonds, while on the other hand the government battles to convince the international community that stones from eastern Zimbabwe are clean.

Abbey Chikane, a Kimberly Process Certification Scheme (KPCS) monitor who undertook a guided tour of commercial operations in Chiadzwa is yet to make public his findings. The KPCS says Chikane's report will not necessarily result in "big decisions"

In the meantime, illicit syndicates spanning soldiers, illegal miners, middlemen, and local and foreign buyers are thriving.

Vast tracts of land still unallocated to commercial players are under the control of security forces. Soldiers and police "guarding" these fields are still providing the first line in illegal mining and trading that the KPCS is trying to eradicate.

It is Saturday and popular musician Tedias Matsito is belting out sungura beats in the dingy Musadaro Bar at Hot Springs, 85 km south of the eastern city of Mutare and a stone's throw from Chiadzwa. The packed crowd at the sprawling shopping centre is liquid with cash, and beer runs out by midnight.

As Matsito churns out more tunes, the crowd reverberate: "Chiadzwa mukoma (Chiadzwa my brother)," a popular chant among illegal miners who would have made rich pickings.

This dusty shopping centre provides proof of continued illegal mining by artisanal miners, known locally as gwejas, in syndication with army soldiers.

Activity here, and tales told by illegal miners spending their "fortune" contradict official information given to Chikane that the government has done enough to meet KPCS minimum standards.

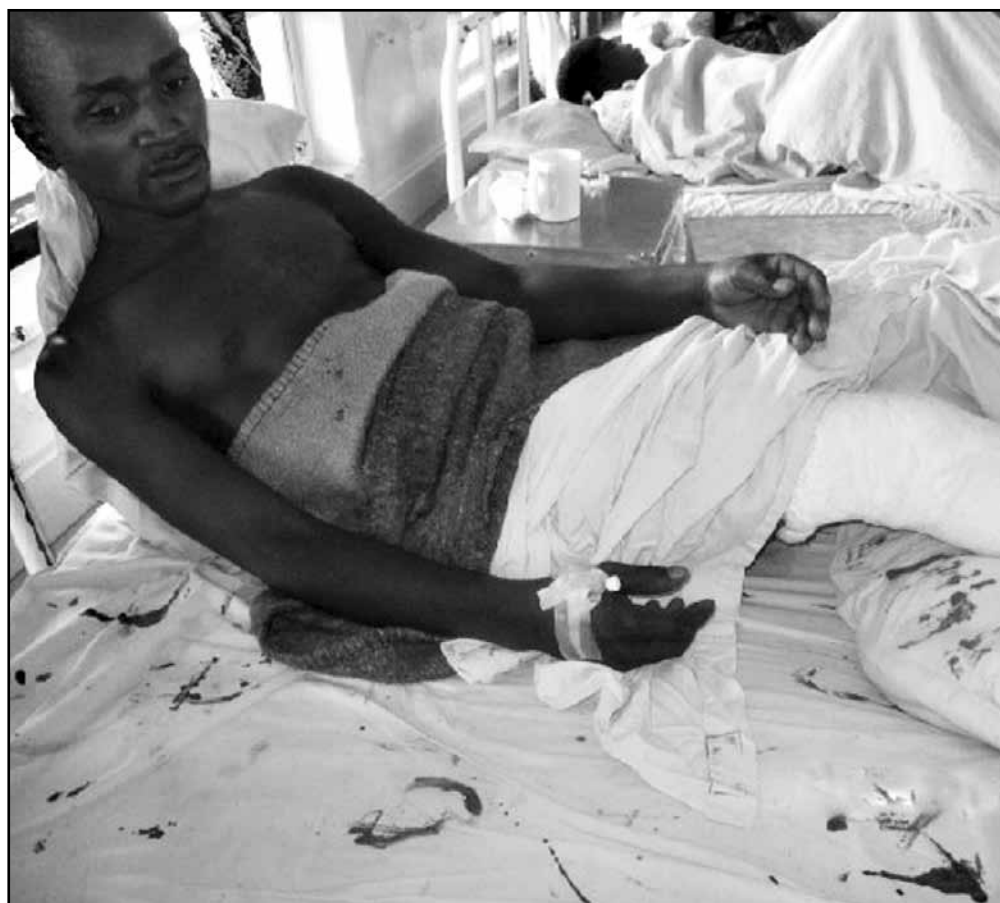
"As long as the soldiers are here, we will continue mining. Pane musoja pane mari," an illegal miner who identifies himself as James tells us while shuffling wards of crisp US\$20 dollar notes, apparently a show to attract the ladies that litter the place.

"Buyers come here because that's where they find stuff. Soldiers in need of labour come here to forge syndicates," says James, admitting that he has never heard of the KPCS and expresses anger that some foreign countries are pushing for illegal mining to be stopped.

"Most of us do not mine in areas controlled by the whites (Mbada and Canadile claims). We only work with soldiers on claims that are not protected," chips in James' haggard looking middle-aged colleague, Taurai. And other personal details don't matter here.

With an official salary of below US\$200, soldiers use the opportunity to pocket a few thousands more by recruiting civilians to dig for stones while they watch over, AK rifles loosely dangling, according to witness accounts.

"It is still regarded as an honour and opportunity of a lifetime to be assigned to Chiadzwa. Some (soldiers) are buying houses, others just squander the money," said an army major who talked to *The Legal Monitor* in the city of Mutare. The soldier, who speaks on condition that he is not named, says he now runs a small removals business with a three-tonne truck he bought with proceeds from Chiadzwa.



*Muchazondida Guseni at Mutare Provincial Hospital after being assaulted by soldiers in Chiadzwa: Pic courtesy of CRD*

Most soldiers, including high ranking ones, view the KPCS as a "spoiler", he says.

The KPCS was formed in 2002 as a voluntary multi-government, civic society and business organisation to stop the flow of conflict diamonds or those used to fund conflict. Members whose diamonds are not certified by the KPCS, which controls over 98 percent of the global rough

diamonds market, could have problems selling their stones.

Zimbabwe diamonds cannot be strictly classified as "conflict stones" and contribute little in terms of global trade.

According to the World Diamond Council, stones from Zimbabwe contributed only 0.4% of the

global diamond trade, a tiny proportion of the \$8.5 billion of diamonds produced each year by the continent.

Zimbabwe's African peers account for more than half the diamond global trade.

Locally, mining's potential has largely remained in untapped resources. Mining makes up only 4 percent of the Gross Domestic Product.

In the case of Chiadzwa, middlemen ensure that most of the stones mined here contribute nothing to the real economy.

The fact that diamond trade is flourishing in Mozambique's Manica, a little border town that does not produce any stones is worrying industry players—particularly because these diamonds are from Zimbabwe.

A KPCS team that investigated the flow of Chiadzwa diamonds said in its report that Zimbabwe's own figures indicated that 59 percent of Chiadzwa production in 2008 was exported through unofficial channels.

Industry players fear that not only does this undermine KPCS efforts, but provides an avenue for diamonds mined in conflict zones such as the Democratic Republic of the Congo to be mixed with stones from Zimbabwe for smuggling into the official market.

This fear is heightened by what civic society organisations, as well as the KPCS itself, describe as lax security even in the commercially mined Chiadzwa fields.

Some illegal miners sick of being "reaped off" by soldiers still "just sneak" into these fields, without neither the approval of security forces nor corrupt private security guards manning the fields.

"Soldiers are greedy and unpredictable so it's better to just work independently," says an illegal miner who identified himself as Amos.

But that can prove costly.

Mutare-based Centre for Research and Development (CRD) which conducts regular research on abuses in Chiadzwa, says soldiers are still torturing illegal miners caught working without their permission.

Take the case of Muchazondida Guseni. Soldiers caught the 25-year old digging for diamonds on the night of 25 February. He narrated his story to CRD from a hospital bed at Mutare Provincial Hospital because the soldiers who caught him brutally assaulted him and his friends for "trying to eat alone".

"The group of soldiers told him that they were going to teach him a lesson he was not going to forget. One of them took the iron rod he was using to dig and beat him on the right leg and foot. He suffered multiple fractures. Soldiers in Zimbabwe have been in the forefront of committing gross human rights violations against civilians," said CRD, executive director, Farai Maguwu.

However, what soldiers and gwejas, the visible faces of illegal mining in Chiadzwa, are fighting for are just the crumps. Local and international rights groups say the big cash is with the elite that surrounds President Robert Mugabe.

According to an International Crisis Group (ICG) report published early this month, Mugabe is using Chiadzwa diamonds to placate cronies who, for two decades, have lived on patronage

## Chiadzwa investors should cooperate-Parly

HARARE-Two private companies controversially mining Marange diamonds are set to appear before a Parliamentary committee probing cloudy operations in eastern Zimbabwe's alluvial diamond rich fields.

Mbada Holdings and Canadile Miners have on three occasions dodged the committee in a bid to avoid giving answers to their questionable licensing and shareholding structure.

Edward Chindori-Chininga, the chairman of the Parliamentary Portfolio Committee on Mines and Energy said despite the fact that Cabinet last Tuesday authorised the operations of the two companies, the Legislature still had questions on the hazy goings on in Marange.

"They (Mbada and Canadile) are coming, possibly next week (this week). The committee is writing to them and spelling out the consequences of their failure to cooperate with a Parliamentary hearing," he said.

Evidence heard so far by the Parliamentary committee indicates that Mbada and Canadile were unprocedurally licensed and were forced down on the government-owned Zimbabwe Mining Development Cooperation (ZMDC) by Mines and Mining Development Minister Obert Mpofu.

ZMDC is into a 50-50 partnership with both companies. ZMDC chief executive officer Dominic Mbaiwa told the committee last month that Mpofu instructed the ZMDC to partner with Mbada and Canadile, when the correct procedure should have been the opposite. Procedurally, it should have been the ZMDC short listing its own partners, with the government only restricted to choosing from the ZMDC short list.

Curiously, Canadile Miners told the Parliamentary committee last week that it was the Mines ministry that advised the company to refuse to cooperate with the Parliamentary probe, claiming this would be sub-judicial to an ongoing court case.

The Parliamentary committee however, ruled against the ministry's bid to use the case in which British-listed Africa Consolidated Resources is challenging the government's decision to strip it of claims now being mined by Mbada and Canadile as an excuse for snubbing the committee.

Mpofu and his permanent secretary Thankful Musukutwa were both forced to appear before the committee last week, although there is now concern that the "public" hearings are now being heard in secrecy.

Both Mpofu and Musukutwa refused to give evidence in the presence of journalists, a trend Mbada and Canadile are likely to follow.

# The future robbed



Tuku and Daisy sing for Sam and Owen



MDC's Nelson Chamisa, ZANU PF's Saviour Kasukuwere and Jocylene Chiwenga at the funeral



Mourners follow proceedings at the funeral



Sam poses for a picture with journalist Kumbirai Mafunda in December 2009



## Tribute to Sam Mtukudzi and Owen Chimhare: Tireless young human rights defenders

The Board, Members and Staff of Zimbabwe Lawyers for Human Rights (ZLHR) express their deep sorrow at the untimely death of Sam Mtukudzi and Owen Chimhare who died on Monday 15 March 2010 in a road accident.

We have lost two colleagues, friends and brothers who radiated warmth and camaraderie to those who knew and associated with them as human rights defenders.

ZLHR had the privilege of working very closely with Sam and Owen - particularly during musical concerts that were organised to commemorate crucial dates on the international and regional human rights calendar.

In June 2009, Sam and his father Oliver delivered a majestic performance at the Dominican Convent High School in Harare during celebrations organised by ZLHR's Rights Clubs to mark the Day of the African Child.

In December 2009, Sam and Owen traveled to Mutare where they provided entertainment alongside the Black Spirits during celebrations to commemorate the Sixteen Days of Activism Against Gender Violence and International Human Rights



The saxophone was his best friend. Sam plays at a ZLHR organised event in Mutare last December.

Day which were jointly organised by ZLHR and the Royal Netherlands Embassy.

During both shows, Sam played the saxophone with dexterity and exuded the aura of legendary artistry that came to characterise his career.

The loss of Sam and Owen during their prime is beyond words and the gap left is immense,



Master engineer, Owen does what he knows best in Mutare

particularly due to the dedication and fearlessness they showed by participating in human rights promotion activities at a time when many artists - young and old - still shy away from the important role they can play in this regard as opinion leaders in society.

Sam and Owen will be sadly missed for their courage, humour and commitment as well as their

professionalism. It is not only ZLHR that will mourn them but their loss is Zimbabwe's loss.

ZLHR sadly but yet fondly bids them farewell. We mourn their death but yet celebrate their lives as "tireless young human rights defenders".

It is a harsh reality that Sam and Owen are no more amongst us but their legacy in terms of their brave work will inspire us to continue our struggle for the establishment of a just and equitable world in which the rights of all - particularly the youth - are promoted and respected. It is hoped that other young artists will continue the fine tradition set by these young men in highlighting human rights issues through the important and popular medium of music and the arts.

ZLHR extends its deepest sympathies to the Mtukudzi and Chimhare families and the music and entertainment community as they try to come to terms with so sudden and tragic a loss.

May their dear souls deservedly rest in eternal peace.

**Rest in Peace Samanyanga and Mazvimbakupa**