

# The LEGAL MONITOR

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## Villagers in test case

HARARE-The Supreme Court will on Thursday hear a case in which Nyanga North MP Hon. Douglas Mwonozora and 32 other people brutalised by State agents are challenging the constitutionality of their charges.

Hon. Mwonozora and the 32 villagers, all from his constituency, were arrested and detained in filthy cells in Nyanga and Mutare on assault charges last year in February, yet they had been victims of harassment by Zanu PF youths.

They now want charges to be dropped, arguing that the arrest, detention and general harassment they suffered at the hands of the police violated their constitutional rights.

Zimbabwe Lawyers for Human Rights (ZLHR) lawyer Jeremiah Bamu, who is representing the

33, wants the Supreme Court's Full Bench to determine whether or not the assaults, torture and denial of medical attention to their clients constitute inhuman and degrading treatment in violation of Section 15 (1) of the Constitution.

Bamu wants the Supreme Court-sitting as a Constitutional Court-to determine whether or not the raising of the notorious Section 121 of the Criminal Procedure and Evidence Act (CPEA) (Chapter 9:07) against their clients denied them their protection of the law and infringed on their right to liberty in a manner that is not reasonably justified in a democratic society.

Further, he wants the court to determine whether or not in raising Section 121 (3) of the CPEA, the State acted with bad faith and thereby contravening Section 18 (1) (a) of the Constitution.

Hon. Mwonozora and the villagers were in January this year removed from remand at the Nyanga Magistrates court pending final determination by the Supreme Court.

This was after Nyanga Magistrate Ignatio Mhene had granted an application seeking a referral of their matter to the Supreme Court to determine the violation of several of their constitutional rights.

Hon. Mwonozora and the Nyanga residents argue that their rights to liberty, protection of the law and protection from inhuman and degrading treatment as enshrined in the Constitution were violated when they were arrested, abducted and detained in filthy police and prison cells in Nyanga and Mutare respectively.

Police did not inform any of the residents of the reasons of arrest and/or detention as soon as was reasonably practicable in the circumstances.

One of them, 82-year-old Rwisai Nyakauru, succumbed to the torture and passed away in April last year.

In his ruling Magistrate Mhene upheld that the application for referral of the matter to the Supreme Court was not frivolous or vexatious as claimed by State prosecutor Tirivanhu Mutyasira, who had opposed the application filed by Bamu and David Tandiri of Tandiri Law Chambers, who is a member of ZLHR.

*Please see Page 3 for more coverage on the case*

## Taking on Chipangano

*...brave lawyers challenge police practice of outsourcing torture*

HARARE-The mention of the name Chipangano is usually enough to induce fear.

A shadowy terror group reportedly linked to ZANU PF, Chipangano has been linked to a spate of violent activities in Harare and is so menacing that it has been extorting cash from public transport operators and assaulted two soldiers from the elite commando unit when confronted over their behaviour.

But human rights lawyers are not getting intimidated. In fact, they are taking the group head on to challenge an "evil" alliance between police and Chipangano.

The action followed a growing pattern of police handing over people they would have "arrested" on political reasons to Chipangano for torture, a practice which enraged lawyers are calling the "outsourcing of torture".

Human rights lawyers last Tuesday mounted a constitutional challenge against the police practice of outsourcing torture by surrendering suspects whom they would have arrested to Chipangano.

Last month, police arrested two Movement for Democratic Change (MDC) youths Petros Makaza and Golden Nhika accusing them of stealing a soldier's beret and mobile phone after a beer hall brawl in Epworth and surrendered them to a ZANU PF office in Harare's volatile Mbare suburb, where they were assaulted and severely tortured.

In executing the torture, the Chipangano gang assaulted the Epworth residents with iron bars all over their bodies, under the soles of their feet. The residents were periodically attacked with clenched fists and booted feet. The torture was so reckless, indiscriminate and sadistic to the point that Makaza and Nhika lost consciousness and bled profusely. As a result of the torture, Makaza sustained serious injuries which included ruptured tendons, bruises and lacerations while Nhika sustained severe burns on his buttocks and still finds it

hard to sit for long periods of time.

After the assault, the MDC youths, who are out of custody on \$30 bail each were later taken to Mbare Police Station and Epworth Police Station from where they were brought to Harare Magistrates Court on a charge of committing robbery.

Disgusted by the blatant selective application of the law, human rights lawyer Tawanda Zhuwarara of Zimbabwe Lawyers for Human Rights on Tuesday 11 September 2012, filed an application for referral of the matter to the Supreme Court before Magistrate Jackie Munyonga. Zhuwarara wants the Supreme Court to determine whether it is constitutionally permissible for the State to prosecute the duo, where there has been a violation of their rights as enshrined in the Constitution.

In the application, Zhuwarara argued that the extensive torture at the hands of members of the vigilante group occurred with the acquiescence of the police who transported Makaza and Nhika from Epworth to Mbare, where they surrendered them to members of Chipangano.

According to Zhuwarara, Makaza and Nhika's fundamental right to protection from inhuman treatment as enshrined in Section 15 of the Constitution was contravened when the police surrendered the MDC youths, who were in their custody to Chipangano, who in turn tortured them in order to solicit a false confession. In addition, the police did not make any arrests, enquiries or investigations into the Epworth residents' injuries confirming that torture occurred with the consent and knowledge of the police.

Zhuwarara charged that the MDC youths' fundamental right to a fair trial as enshrined in Section 18 of the Constitution is likely to be infringed if the State is allowed to proceed to prosecute them. He contended that after the torture of the Epworth residents there can be no legitimate prosecution that can be conducted without further violating their rights.



Chipangano victim

# 'Prophet' Katsiru back in court

MARONDERA-Convicted self-proclaimed prophet Lawrence Katsiru is back in court, this time complaining that he is a victim of a Christmas assault.

He is a complainant and a State witness in a case involving a 49-year-old Marondera man who counterclaims that it was Katsiru who wanted to abduct him.

According to State papers filed at Marondera Magistrates Court, Kumu Betera from Nyameni suburb allegedly assaulted the self-proclaimed prophet three years ago.

"On the 25th day of December 2009 at Ruzawi Service Station, the accused person tripped the complainant in his legs as he was entering into the shop and started accusing the complainant of having killed his son," reads the State outline.

"As the complainant was coming out of the shop, the accused approached the complainant and grabbed his T-shirt and it got torn. The accused went on to throw an empty beer bottle at the complainant but the complainant managed to block it using his left hand."

According to the prosecutors, it was during this scuffle that a police officer passed by and arrested Betera. Betera is denying the assault charges as defined in Section 89 of the

Criminal Law (Codification and Reform) Act Chapter 9:23.

His lawyer, David Hofisi of Zimbabwe Lawyers for Human Rights, has since filed an application for discharge at the close of the State case, which the prosecution has opposed.

In the application for discharge, Hofisi cited that all three State witnesses-Katsiru, Darlington Molai and Godwin Mironga-had "departed significantly from their recorded witness statements."

In response, the prosecutors argued that the application for discharge must be dismissed since the State had managed to prove a prima-facie case against Betera.

A ruling on the application is expected next week.

In a warned and cautioned statement, Betera denied insulting or assaulting Katsiru, a Zanu PF activist. He accused the self-proclaimed prophet of trying to ambush him.

"The complainant actually blocked my way with his vehicle and they grabbed me with his other four colleagues and they attempted to put me into their vehicle and I fought back resisting to board his vehicle," said Betera.

# HIV criminalisation back on spotlight

BULAWAYO-Zimbabwean police have charged a 42-year-old man for deliberately infecting his wife with HIV, bringing in the criminalisation of HIV infection under the spotlight again.

Pitty Mpofu of Sishawe village 3 in Mbembesi, Matabeleland North province, last Tuesday appeared at Tredgold Magistrates Court in Bulawayo to answer to charges of deliberate transmission of HIV to his wife Geziwe Ncube, in contravention of Section 79 of the Criminal Law (Codification and Reform) Act, Chapter 9:23.

Prosecutors charge that Mpofu "unlawfully and knowingly deliberately" infected Ncube with HIV between the period October 2009 and June 2011 during the course of their marriage.

After a month into their marriage, Ncube reportedly tested HIV positive after undertaking an HIV test at a local hospital and went on to inform Mpofu about the test results and asked him to also undergo the same test which he reportedly turned down.

Prosecutors allege that Mpofu finally got tested for HIV sometime in 2010 when he got sick and the results showed that he was HIV positive. Thereafter, Ncube got phone calls from different women advising her to inform her husband to stop "going around spreading HIV" which led her to strongly believe that her husband had deliberately infected her with HIV.

Mpofu, who was represented by Zimbabwe Lawyers for Human Rights (ZLHR) was released

from custody on free bail granted by Magistrate Mabiye last Tuesday.

He returns to court on 24 September 2012, where his lawyers will apply for referral of the matter to the Supreme Court seeking to determine the constitutionality of Section 79 of the Criminal Law (Codification and Reform) Act, Chapter 9:23.

Mpofu is the latest Zimbabwean to be prosecuted for willful transmission of HIV. In July, Bulawayo Regional Magistrate, Owen Tagu deferred the sentencing of a woman convicted of deliberately infecting her husband with HIV after he referred the matter to the Supreme Court to determine the violation of her rights.

Samukelisiwe Mlilo was convicted of deliberately transmitting HIV to her husband in contravention of Section 79 of the Criminal Law (Codification and Reform) Act, Chapter 9:23 by Magistrate Tagu and was due for sentencing.

But the sentencing was deferred pending the hearing of the Supreme Court application which was filed by ZLHR in which Mlilo wants the court to determine the constitutionality of Section 79 of the Criminal Law (Codification and Reform) Act, Chapter 9:23.

Already, two cases filed by Insiza legislator Hon. Siyabonga Ncube and Harare resident Shirley Tavengwa challenging the constitutionality of Section 79 of the Criminal Law (Codification and Reform) Act are pending in the Supreme Court.

# Bash brings down NGO expo curtain

HARARE-Artists brought the curtain down on the annual NGO Expo which ended in Harare last week with a peace building concert.

The musical and theatre concert, organised by Artists for Democracy in Zimbabwe Trust (ADZT) and the Church and Civil Society Forum (CCSF), affiliated to the National Association of Non Governmental Organisations featured performances from popular musicians, theatre and dance groups such as Dino Mudondo, Sniper and Zvido Zvevanhu dance and theatre group.

The five hour concert was meant to conscientise Harare residents on the importance of committing to peaceful co-existence ahead of the constitutional referendum and elections.

"Peace is what we are here to preach brethren, brother and sister. There is no point in fighting each other. We gotta love thy neighbour," chanted Mudondo as he took to the stage.

He urged the audience to observe peace all the time, emphasising that there was no need to resort to violence when faced with political differences and preferences.

Zvido Zvevanhu theatre and dance group performed a theatre play laced with energetic dances. The play also touched on issues of peace building and political tolerance. It presented real life situations



Steps towards peace and tolerance... Zvido Zvevanhu dance and theatre group

depicting the violence that took place in 2008 and presented a vision for a peaceful Zimbabwe through the play.

"We have been working around issues of peace for a long time and we are quite happy to be sharing our experiences with the public. We hope our efforts will be able to make a change and make Zimbabwe a peaceful country," said Gibson Sarare, the leader of Zvido Zvevanhu theatre and dance group.

An ADZT official said arts were a key driver of the peace message in that they prick people's emotions and help them overcome their differences of the past and build a path to a peaceful future.

"Our efforts alone cannot bring peace to Zimbabwe but we believe arts are a critical tool to organise people and spread across important messages. They can help soften difficult

issues such as those that were faced by the country in 2008. By using theatre and music like we did, we are able to reach out to a lot of people in an educative and entertaining manner," said the official at the end of the three-day expo.

Before the concert held at the Harare Gardens, the musicians had gone on a road show targeting busy bus termini in central Harare.

Different arts genres are increasingly playing a critical role in building democracies around the world and galvanising citizens towards a particular cause. There are various examples on the African continent where art particularly music has been used effectively to bring about social change and help built lasting democracies.

Artists have for a long time been treated as simple entertainers who are called in to be curtain raisers to other programmes but they are now a powerful tool for public engagement on important national issues.

The NGO expo is an annual event organised by the NANGO. It acts as a place where NGOs can exchange ideas and network for greater effectiveness in their programmes as well as interact with the public.



Peace... Dino Mudondo wows crowds at the NGO expo



Giving way... Corner Humpt Road and Coronation Avenue in Harare's Greendale suburb

# Long walk for Nyanga villagers

NYANGA-The prospect of justice at last has kept this terrorised group strong, and on Thursday they walk into the Supreme Court more than a year after their arrest and in the process one of them dying before justice could be served.

That is the story of Nyanga North legislator Hon. Douglas Mwonzora and 32 people from his constituency.

Some were arrested without being informed of the charge, others were denied access to food, spent nights in police cells, denied access to lawyers, assaulted and then slapped with assault charges!

Rwisai Nyakauru, the octogenarian Nyanga headman was among them and last year he succumbed to injuries sustained from the torture he suffered at the hands of State agents before he could clear

his name. He should be turning in his grave as his fellow accused step into the Supreme Court.

Even the slow walk to the Supreme Court has been a rollercoaster.

Earlier this year, the Supreme Court wrote to defence lawyers, claiming that Nyanga Magistrate Ignatio Mhene never granted a referral to the superior court tasking it to determine the violation of several of Hon. Mwonzora and the villagers' constitutional rights.

This is despite the fact that the same Supreme Court had earlier asked lawyers to file heads of argument, which confirmed that the Magistrate granted the application for referral. Hon. Mwonzora and the villagers were arrested on separate occasions in February last year and locked up in remand prison for several weeks charged with

committing public violence under the Criminal Law (Codification and Reform) Act.

Magistrate Mhene granted an application filed by the lawyers from Zimbabwe Lawyers for Human Rights seeking to refer their matter to the Supreme Court for a determination on possible violation of their rights during their arrest and period of detention.

Magistrate Mhene, who presided over the referral application, ruled in May last year that the application was not frivolous or vexatious and allowed Mwonzora and the villagers to approach the Supreme Court sitting as a Constitutional Court for a determination of their rights.

Now they hope their application will be granted and maybe, make up for all that pain.

Below, *The Legal Monitor* gives a timeline of the suffering of Hon. Mwonzora and the villagers, one of them dead, at the hands of the police and prosecutors.

**13/02/11**

Hon. Douglas Mwonzora holds a constituency development fund feedback meeting at Chatindo Primary School grounds, Nyakomba in his Nyanga North Constituency.

The meeting is disrupted by rowdy ZANU PF youths claiming allegiance to Hubert Nyanhongo, who is reportedly eyeing the same constituency in the next elections. Violent clashes ensue. No immediate arrests are made by the police.

Later that night, ZANU PF youths begin rounding up perceived MDC supporters and illegally detaining them overnight at Taziwa Restaurant at Nyakomba Business Centre. They are subjected to severe assaults and torture. The late Headman Rwisai Nyakauru (then 88 years old) is among those illegally abducted. Taziwa is a ZANU PF supporter who runs a small business in Nyanga. The next morning, the kidnapped MDC supporters are handed over to police details from Nyamaropa Police Station.

**14/02/11**

ZANU PF youths continue rounding up MDC members and supporters.

**15/02/11**

Hon. Douglas Mwonzora is arrested as he exits Parliament Building in Harare on his way to fulfil an appointment with his doctor. He is taken to CID Law and Order Section at Harare Central Police Station and subsequently detained at Rhodesville Police Station in Harare without being given access to his medical doctor. He is only able to access his medication which he had on him and also brought from home.

The MDC supporters and members detained at Nyamaropa Police Station are transferred to Nyanga Police Station and CID Law and Order at Mutare Central Police Station is now handling their matter. Detective Inspector Chipangura is the appointed Investigating Officer in the matter.

**16/02/11**

Hon. Douglas Mwonzora is sneaked away to Nyanga in the early hours of the morning in a police attempt to evade his lawyers with whom they had arranged to meet at 08:00hrs to discuss the matter further.

He is detained for the night at Nyamaropa. The Officer in Charge at Nyamaropa Police Station denies that he is detained there. Fears begin to rise over his whereabouts.

**17/02/11**

Lawyers attend at Nyamaropa Police Station and note that Hon. Mwonzora is detained there after seeing him in the perimeter fence to the cells. They shout greetings at one another, in full hearing of the Officer in Charge before proceeding to see the Officer in Charge. The Officer in Charge now makes an about turn and confirms that he had been detained there overnight. He declines to grant the lawyers access to their client and in the middle of the discussions, Hubert Nyanhongo arrives. The Officer in Charge abruptly abandons his office from where he was meeting the lawyers and rushes to attend to Nyanhongo leaving the lawyers in his office. He later sends another police officer to eject the lawyers from his office and declines to entertain them any further.

**18/02/11**

Lawyers demand the appearance of their clients in court citing over detention. The police appear unwilling. The lawyers indicate they are proceeding to file an urgent chamber application for their clients to be taken to court or released. Having travelled almost sixty kilometres from Nyanga for these purposes, the lawyers are called back to Nyanga by the Police District Chief Investigating Officer. They hold consultations at around 16:00hrs in which it is confirmed

that arrangements had been made for court appearance that day and ZESA had been given specific instructions not to effect its load shedding schedule to the court premises. Several complaints are raised against police in court. Bail is granted to all accused persons. The State invokes Section 121 of the Criminal Procedure and Evidence Act and the bail order is suspended.

**25/02/11**

The State files its appeal on the last day it was permitted to do so, after the accused persons had spent seven days in remand prison following their first court appearance. Oddly, the bail hearing is set for 04 March 2011 which is contrary to the High Court bail rules which require bail matters to be set down within 48 hours.



*The late Nyakauru and Mwonzora*

**03/03/11**

Lawyers for the accused persons file their response to the bail appeal. They cross check with the bail court roll for 04 March 2011 and to their shock and surprise, the matter does not appear on the roll. They are advised that the Attorney General's office did not leave a copy of the appeal in the court record and as such there was nothing to set down.

The lawyers engage the AG's office and a copy is returned to court, with a letter requesting that the matter be inserted onto the court roll as it had been set down for that day. Justice Yunus Omerjee, who was presiding over bail matters for that day, declined this request and said he was only dealing with matters appearing on the roll already submitted to him.

A letter of complaint is addressed to the Judge President Justice George Chiweshe, protesting at several irregularities taking place in this matter. The matter is subsequently set for 07 March 2011.

**07/03/11**

The matter is deferred to 09 March 2011 to enable a typed record of proceedings to be furnished to the bail appeal court.

**08/03/11**

The typed bail record is obtained from Nyanga Court and transmitted to the bail appeal court in Harare

The Judge President of the High Court responds to the letter of complaint dated 04/03/11, promising to look into the complaints and revert back to the accused persons in due course.

**09/03/11**

The bail appeal is argued in court. Judgement is reserved to Friday 11 March 2011.

**11/03/11**

The appeal is dismissed and bail is confirmed. The bail orders are processed and rushed to Nyanga Court and the bail payments are made.

**12/03/11**

The accused persons finally taste freedom after being released from Mutare Remand Prison.

**23/03/11**

Accused persons applies for refusal of further remand. The State is given one more chance to furnish a trial date. Lawyers give formal notice of intention to request for referral of the matter to the Supreme Court for determination of the infringements of various fundamental rights.

**16/04/11**

Headman Rwisai Nyakauru passes away due to torture related illnesses while receiving medical attention in Waterfalls, Harare.

**10/05/11**

Accused persons apply for the referral of the matter to the Supreme Court and also apply for the release of a COPAC motor vehicle belonging to Hon. Mwonzora and being held by the police. Judgement is reserved to 23 May 2011.

**23/05/11**

The matter is referred to the Supreme Court and an order for the release of the motor vehicle is granted.

**27/09/11**

The AG files an application for the review of the Magistrates' decision to refer the matter to the Supreme Court.

**11/10/11**

The accused persons file their response opposing the application.

**15/11/11**

The Registrar of the Supreme Court sends a letter dated 11/11/11 requesting for the Accused to file their Heads of Argument in the matter referred to the Supreme Court.

**22/11/11**

The AG files an answering affidavit in the application for review.

The Accused write to the Judge President making a follow up on the outcome of their complaint.

**06/12/11**

Accused persons file their Heads of Argument in the Supreme Court.

**26/01/12**

Accused persons are removed from remand at the Nyanga Magistrate's court pending the final determination by the Supreme Court.

**10/09/12**

The Supreme Court Registrar advises defence lawyers and the Attorney General's Office representing the State through a "Notice of Hearing" indicating that Thursday 20 September 2012 is the hearing date for the constitutional application.

# Women power in motion

HARARE-Hundreds of activists under the banner of Women of Zimbabwe Arise successfully staged street protests in Harare and Bulawayo last week demanding an end to the disruption of peaceful

demonstrations by the police and the holding of a Second All Stakeholders conference on the stalled draft constitution. *Below are scenes captured by The Legal Monitor during the Harare protest*

