

The LEGAL MONITOR

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Mother's pain over ZESA sins

HARARE-It remains one of State power utility ZESA's darkest sins.

A 10-year-old boy lost his life on 29 March this year because of negligence by ZESA workers who left naked power cables in the open.

Eight months down the line, young Takudzwa Nyandoro seems a dim memory and it is business

as usual at ZESA, whose shoddy services continue putting more lives at risk.

Not so for Takudzwa's grief stricken mother, who is now suffering hypertension, eating and sleeping disorders and has had to relocate from her home in Harare's Eastlea suburb as she could not bear constantly seeing the scene of her son's death.

She is now pursuing ZESA with the intention of making the beleaguered firm pay for its grave actions.

Lawyers representing Takudzwa's mother, Constance Sinachinga, have turned on ZESA with summons demanding half a million dollars in compensation.

Even that amount cannot not erase the trauma Sinachinga is going through.

But she reckons the action could at least jolt other ZESA victims to push the power firm to become a more responsible entity by holding it to account for its negligence.

In the summons filed at the High Court this month, Sinachinga states that ZESA's negligence is shocking given that the live wires that killed Takudzwa were exposed from January to March.

ZESA only moved in to secure the wires after the schoolboy's death. Belinda Chinowawa of Zimbabwe Lawyers for Human Rights (ZLHR) is representing Sinachinga.

Sinachinga says she has failed to come to terms with the death of her son, whose bright future was taken away by ZESA negligence. States Chinowawa in the summons: "The Plaintiff (Sinachinga) has suffered emotional shock and psychological trauma occasioned by:

- Receiving news that her son had been electrocuted and severely injured
- Witnessing her son struggling for his life
- Receiving news of her son's death
- Losing a favoured child, with whom she had a warm and close relationship



Chinowawa said without resources, Sinachinga's mental anguish had become unmitigated.

In all this, ZESA has shown little contrition.

After Takudzwa's death, ZESA's response was inhuman, offering the family a measly \$300 to meet funeral expenses.

ZLHR, a grouping of lawyers spread countrywide dedicated to promoting and fostering a culture of human rights, says it is taking the matter seriously given ZESA's history.

Several people have lost their lives, while others have seen property painstakingly bought from life savings reduced to ashes because of the power firm's incompetence and casualness.

But it is the death of Takudzwa, a grade four pupil at the police Tomlinson Depot Primary School that torched a storm, with human rights organisations and ordinary people accusing ZESA of taking human life for granted.

Takudzwa was severely burnt after falling into a ditch with naked ZESA power cables. He later died at Parirenyatwa Hospital the next day, due to the extent of the injuries caused by the electrocution.

"This case brings into sharp focus the dangerous levels of negligence prevailing at ZESA which have resulted in the deaths of and injuries to numerous Zimbabweans," said Chinowawa.

"It is shocking that such a young life was lost because a company known for reaping off customers acted so negligently by failing to secure the live cables. For three months the cables were in the open and ZESA only saw it fit to rectify the problem after Takudzwa's death. We shudder to think about the potential of many other cables lying naked and still posing grave danger to people in other parts of the country," said the rights lawyer.

"It is time organisations such as ZLHR and ordinary citizens take the fight to ZESA and force the company to do its job," she said.

At the time of the incident, Sinachinga said she could not come terms with how a life could be lost in such avoidable circumstances.

"I don't think I will ever forgive Zesa. I have lost Takudzwa. It is a very painful loss and right now my son could have been at school," she said at the time she was burying her son.

"No official came to the burial to offer a public apology. They came with \$300 which they said was for food," she said.

A resident in the area told *The Legal Monitor* in the aftermath of Takudzwa's death that people in the neighbourhood had told ZESA about the danger posed by the naked cables. Still ZESA chose to ignore until death struck.

KNOW YOUR RIGHTS

Don't miss your copy of *The Legal Monitor* for our regular column on human rights literacy. In a bid to raise citizens' awareness on human rights issues and the law, *The Legal Monitor* will bring you a weekly **Know Your Rights** section that unpacks the law for citizens to be aware of their rights and how statutes should work in their favour as we seek to foster a culture of human rights in Zimbabwe



Taste of freedom...Movement for Democratic Change Youth President Solomon Madzore waves to supporters after being released from the notorious Chikurubi Maximum Prison last week. Turn to Page 4 for more pictures

Mupedzanhamo fracas lands man in trouble

HARARE-A man is standing trial in a case involving the alleged murder of a trader who succumbed to injuries from a demonstration at the highly politicised Mbare market about three years ago.

Trymore Chidzembwe had been removed from remand after State witnesses failed to show up at court but the State has since summoned him to court. The trial kicked off at the Harare Magistrates Court on Thursday last week.

He is being accused of involvement in a public violence incident leading to Martha Chitambira's death during a demonstration at Mupedzanhamo, a busy second hand clothes market in Mbare in September 2009. President Robert Mugabe attended 70-year-old Chitambira's funeral wake and said the two enjoyed good relations.

Chidzembwe, the only one charged in connection with the case, was arrested with seven others



Jeremiah Bamu

including Paul Gorekore, a Movement for Democratic Change councillor in Harare. He is represented by Jeremiah Bamu and Kennedy



Kennedy Masiye

Masiye of Zimbabwe Lawyers for Human Rights, who said the murder charge was later reduced to culpable homicide and subsequently to

public violence. Mupedzanhamo has been a volatile market for several years. Despite having the majority of councillors in Harare, Prime Minister Morgan Tsvangirai's MDC has struggled to restore order at the market which rights groups say is controlled by council employees loyal to President Mugabe's Zanu PF party.

Residents groups such as Combined Harare Residents Association say the council employees are fiercely backed by party activists who have made the market virtually a no-go area for non-Zanu PF cadres resulting in it being a constant flashpoint for conflict.

In a country where only two in 10 adults are formally employed, markets such as Mupedzanhamo have become a key source of livelihood for informal traders. But they have often turned into war zones because of their lure as fertile ground for winning or forcing favour for politicians ahead of elections scheduled for next year.

Jailed politician appeals

HARARE-Lawyers representing a Movement for Democratic Change official jailed for public violence have launched an appeal, arguing that the court "was predisposed towards" a conviction.

Harare Magistrate Tendayi Mahwe convicted Fani Tsoka on public violence charges. The Magistrate freed Tsoka's co-accused Jairos Kasara.

The two were arrested following disturbances caused by Zanu PF supporters who had disrupted an MDC rally in Harare's Hatcliffe suburb last year.

Jailing Tsoka for an effective two years, the Magistrate said the political activist "was among the MDC youths who exceeded the bounds of self defence" during the skirmishes with Zanu PF supporters.

But Tsoka's lawyers are contesting both sentence and conviction.

In appeal papers filed at the High Court, the lawyers argue that the trial Magistrate relied solely on the testimonies of two Zanu PF members.

"Testimonies he chose to rely upon did not actually implicate the appellant in the commission of the acts complained of," said lawyer Denford Halimani of Wintertons Legal Practitioners and a member of Zimbabwe Lawyers for Human Rights.

In his ruling, Magistrate Mahwe said he had relied on the testimonies of two "elderly" witnesses to which Halimani said: "The learned Magistrate erred and misdirected himself by choosing to believe... (witness) testimonies on the unfounded reasoning that they were 'elderly' witnesses who were on that basis unlikely to have lied against the Appellant.

"By so reasoning, it is clear that the learned Magistrate made a grave and serious error of law as he relied on an unproven, unknown and unrecognised principle, which is that elderly witnesses do not lie as opposed to youthful witnesses."

He added that two of the witnesses did not testify to their ages, while the other one was 50 years old, 10 years older than Tsoka.

"The two witnesses whom he chose to believe were not corroborated

by any other independent and credible witness implicating the appellant. Even worse, the learned Magistrate did not exercise any caution at all to the effect that the single eyewitnesses might have been mistaken or untruthful," he argues.

Tsoka has since applied for bail pending the determination of his appeal and his lawyers remain hopeful of success on the grounds that Magistrate Mahwe relied on witnesses who were "sufficiently discredited and unworthy of belief by a reasonable court properly applying its mind to the facts."

"The reasoning of the learned Magistrate clearly shows that he never had the benefit of the doubt to the Appellant simply because he was a youth leader in his party. In the other words, the learned

Magistrate was predisposed towards convicting the Appellant no matter what he had to say in his defence, although his defence was not discredited.

"Consequently, the learned Magistrate convicted the Appellant despite his unchallenged and credible protestations of innocence."



Selby Hwacha leaves Bindura Magistrates Court last week after Magistrate Felix Mawadze postponed the trial of his client, Hon. Elton Mangoma. Hon. Mangoma is accused of undermining or insulting the authority of President Robert Mugabe

Knowing Your Security Laws

The Public Order and Security Act (POSA)

Security laws affect your right to expression, association and assembly as enshrined in the African Charter on Human and Peoples' Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR).

When enjoying your right to associate and assemble in meetings and gatherings you must not interfere with human rights of others.

The Public Order and Security Act (POSA) was promulgated into law by Parliament in 2002. POSA (as amended in 2008) seeks to regulate the exercise of the right to associate and assemble as enshrined in the Constitution of Zimbabwe.

The Dos:

- Organisers of public gathering to appoint a responsible person (convenor), a deputy and given names and addresses to regulatory authority (police).
- Organisers of gathering or meeting must give written notice to Officer Commanding District or most senior police officer in the area of gathering.
- Written notice must be given seven days before demonstration or procession and five days before public meeting.
- During an election period written notice for a public meeting must be given three days in advance.
- If convenor not able to write notice police must do it for you.
- Police can call for a meeting if credible information is received on oath that the gathering can result in some disorder.
- Gatherings of 15 or less people are excluded from giving notice.
- Meetings of organisations and political parties that are not public are exempt from giving notice to police.
- Failure to give notice can result in arrest, payment of a fine or imprisonment.

Written notice checklist

For a public meeting:

- Name, address, telephone or fax number of convenor and the details of the person acting as the deputy.
- Name of organisation, or convenor.
- Time, date, duration and purpose of gathering.
- Place where meeting is to be held, number of participants.
- Number and names of marshals who will be appointed by convenor and any distinguishing features of marshals.

For a procession:

- The exact and complete route, time, place where participants must assemble.
- Time of commencement of demonstration.
- Time and place where the procession or public demonstration is to end and the participants are to disperse.

- The manner in which the participants will be transported to the place of assembly and from the point of dispersal.
- Number and types of vehicles in any, which are to form part of the procession.
- In cases where there is a petition to be handed over, the names and place where the petition is to be handed over.

Meeting with regulating authority:

- The Police can request for a meeting or consultation to negotiate with the convenor to amend the contents of a notice; upon such amendment the police must notify the convenor of the amendments.
- If there is a threat to public order in various forms the police can call for a consultation with the convenor together with other interested stakeholders.
- If the police make a decision the convenor must be notified in writing. When the convenor cannot be reasonably identified notification from the police can in various forms such as the newspaper circulation in his/her area, the radio or television etc.

The DON'Ts:

- Do not gather within 100 metres of the vicinity of the Magistrates Court, High Court, Supreme Court or any other protected area. Unless you have written permission from the Chief Justice, Judge President, or responsible authority of the concerned place.
- Do not gather within 20 metres from Parliament unless you have written permission in writing from the Speaker of Parliament.
- When instructed to disperse by the police do not defy, the police can use force!

Appeals to Court:

Where the convenor of a public meeting or demonstration is aggrieved by any decision of the police prohibiting a demonstration or meeting **must appeal at the Magistrates Court** within area where or demonstration is to be held.

- Appeal must be made as soon as possible and will be dealt with on an urgent basis;
- The noting of an appeal shall not have the effect of suspending any prohibition order appealed against;

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In the deep end-Nigel's long and bumpy road

By Kumbirai Mafunda

BANKET-Sitting between fertile farming soils and a rich mining belt, Banket could easily be heaven on earth. Yet it is quite the opposite for a mother and son here.

The seemingly sleepy town, where locals live in abject poverty despite the resources surrounding them, is home to a juvenile and a mother living a life of hell.

It is a bumpy ride to get to Banket's Kuwadzana suburb where Violet Mupfuranhewe stays with her six-year-old son Nigel.

But bumpy is nothing compared to the path that has left Violet from being a "normal" political activist to a mother nursing life wounds from the worst torture at the hands of the State security officials.

That Nigel became Zimbabwe's "youngest terrorist" at the age of two years appears enough for a shock story.

Now six years old, Nigel is much unlike his age mates. While the country has "moved on" from the volatile 2008 election violence which affected Violet and her husband Collen, the scars are too deep to ignore.

Nigel was christened the "world's youngest terrorist suspect" at the age of two. For allegedly plotting to topple President Robert Mugabe's previous administration, he became one of Zimbabwe's youngest prisoners and had to endure three months in both police and prison detention.

This is the life of Nigel Mutemagawu, a six year-old boy who was abducted by state security agents in October 2008 during the height of Zimbabwe's political crisis together with his parents and held incommunicado at various secret locations for allegedly plotting to overthrow President Mugabe.

Together with 19 other political and human rights activists, Nigel was captured alongside his parents in Banket located in President Mugabe's home province of Mashonaland West and was allegedly beaten by State security agents.

His parents' captors denied knowledge of their whereabouts and only surrendered them to a police station in Harare in December 2008 after human rights lawyers mounted a vigorous search on them. Nigel was only released to his relatives in January 2009 in a moving incident while his parents remained incarcerated at Chikurubi Maximum Prison.

During the illegal detention, the alleged terrorists, who included 75-year-old Fidelis Chiramba,

also from Banket, were severely tortured to confess to allegations of plotting to unseat the government through bombing and burning bridges, police stations and undergoing military training in Botswana, charges which they denied.

The parents only secured freedom in February 2009 when they were released on bail.

Their trial in the High Court has been stayed pending the outcome of their application for a stay of proceedings in the Supreme Court in which they want the Constitutional Court to determine the violation of several of their rights.

That State security agents believed a two-year old minor could plot to destabilise the country and carry explosives to blow up bridges and police stations still boggles the mind.

Nigel's story is no ordinary schoolboy tale as his parents can testify.

As a result of the abduction and detention at Chikurubi Maximum Prison, Nigel still suffers from hallucinations. His father Collen told *The Legal Monitor* that his son was behaving strangely.

"We are worried that his behaviour is no longer normal. He seems not to have forgotten the wild experience that he endured because the image of what transpired while in detention is very much in his mind," said Mutemagawu, who together with other abductees have sued their captors including

ministers for more than \$20 million for illegal arrest, detention and torture.

"Up to this day he still shouts at his friends statements such as 'D1-Terror', which are names that were called out by prison guards while we were detained at Chikurubi," Mutemagawu added.

Chikurubi Maximum Prison, where Nigel was held, is notorious for its atrocious conditions even during Zimbabwe's better days. Now, the conditions are much worse as prison authorities do not have enough food and resources to feed and clothe inmates.

Ever since his ordeal, Nigel's life has been full of misery.

In 2009, just about a year after his abduction, the then three-year-old boy dropped out of kindergarten school.

His parents said he quit attending kindergarten classes after finding it difficult to cope with life at the pre-school following months of detention at various torture centres around the country where his parents were subjected to rigorous torture.

"He is fearful and is refusing to go to crèche. He doesn't like crowds and if he hears voices of people singing he starts crying," her mother said.

It is not Nigel alone.



Fidelis Chiramba was locked in a freezer by State security agents

Although international treaties stipulate that juveniles must be detained in separate facilities from adults and that their detention should be a last resort and for the shortest period, that was not the case with Nigel. He endured incarceration with adult suspects and convicts. This has a detrimental impact on juveniles where conditions within juvenile systems remain unsafe.

Such callous actions by the government of Zimbabwe were in breach of Article 37 of the United Nations' Convention on the Rights of the Child, which binds State parties to take adequate legislative and other measures to reduce the use of pre-trial detention.

The government violated Article 10 of the International Covenant on Civil and Political Rights which states that: "Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication."

In Zimbabwe, the detention of innocent juveniles together with parents or guardians, is rampant. They share the same prisons with adults awaiting trial for their crimes.

While the police and other authorities paid no heed to the respect for these international treaties including the Zimbabwean Constitution and the Children's Act, the detention of the "world's youngest terrorist suspect" attracted the wrath of High Court Judge Justice Charles Hungwe, who castigated the police for violating children's rights by abducting and holding incommunicado the then two-year-old minor.

Justice Hungwe warned that such treatment puts people at risk of torture or other forms of ill-treatment if they are detained in solitary confinement.

"People are at risk of torture or other forms of ill-treatment if they are detained incommunicado. The risk increases the longer they are held as this allows for a longer period for injuries to be inflicted and visible marks of these injuries to fade," Justice Hungwe said in his judgment.

The Judge said despite being a signatory to the Convention on the Rights of the Child, the government, through the acts of its public officials, failed to protect Nigel's rights.

"To subject a two year old to the rigours of detention simply on the grounds that its mother may have committed some criminal offence is totally unconscionable and immoral. This is made worse by the denial of basic rights to the mother in the present case. It cannot be over-emphasised that the police can only act within the law... "It hardly needs me to point out that being a signatory to the Convention on the Rights of the Child, the Republic of Zimbabwe must be seen, through the acts of its public officials, to be protective of the rights of the child," Justice Hungwe said in his judgment.

However, for his bravery and the yawning scars he endured, Nigel has a consolation: the Crisis in Zimbabwe Coalition in 2009 awarded him its 'Democracy and Governance Individual Award'.

Four years after his harrowing tribulation, it remains to be seen whether justice will finally be done to him or it would once again be a long and bumpy road for Nigel.



Nigel...A life of torment

His brother Allan is failing to cope as well. According to his parents, Allan, now 10, at one time refused to stay at his parents' home in Kuwadzana Township in Banket, where they were forcibly seized by State security agents.

"He doesn't stay at home and if he sees big vehicles he runs away," said Collen.

Four years after the torment and long forgotten by the government and institutions that ruined his life and exacted anguish on him, Nigel, now six, finds himself in the deep-end again.

He has failed to enroll for Grade One lessons at a local school in Banket because his parents cannot raise money to pay school fees in a special class that needs \$350 to cover for his tuition fees and uniforms.

"We were advised to register him in a special class because he is still retarded in comprehending things. I need my son to be in school," said an emotional Violet while fighting to contain tears.

Nigel, Violet says, still needs counseling and psychotherapy support.

"He is hardened now to the extent that he can't play well with others. He beats them and sometimes throws stones at them. He doesn't respect me to the extent of calling me Vie (short cut for Violet) because he says that is what prison wardens called me in prison," Violet said.



Life upside down...Nigel's parents Violet and Collen

Solo's freedom march

HARARE-Parts of Harare came to a standstill last week when Movement for Democratic Change youth leader Solomon Madzore walked out of Chikurubi Maximum Prison after a year behind bars. He is being charged together with 29 others for the murder of police Inspector Petros Mutedza

in May last year. Madzore and co-accused Lovemore Taruvinga Magaya were granted \$500 bail each by High Court Judge Justice Chinembiri Bhunu after noting changed circumstances. Their trial on a murder charge is on-going at the High Court where State witnesses, including senior

police officers, have taken turns to contradict each other, further poking holes in the State case. Defence lawyers led by feisty human rights lawyer Beatrice Mtetwa say they are working round the clock to secure the release of all of the accused persons, whose bail appeal in the Supreme Court

will be heard today by Justice Mary-Anne Gowora. *The Legal Monitor* virtually camped at Chikurubi Maximum Prison to witness Madzore's release and captured the freedom procession from Chikurubi, through Harare Remand Prison to Harvest House where he received a heroes' welcome.

