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Mugabe, Soldier insult case crumbles

MUTARE-A former soldier who spent the last two years fighting false accusations of calling President Robert Mugabe a thief and a foreigner has walked free in a case that exposed that cops fabricate charges to fix human rights defenders.

Magistrate Sekesai Chiundura acquitted Naison Chivandire last week after the State, whose witnesses were inconsistent in court, failed to prove a *prima facie* case.

Crucially, the case exposed disturbing police conduct as well as the lengths to which cops can go to concoct charges in order to fix members of the public who stand up for human rights.

All witnesses against Chivandire were police officers. One of them ended up being declared hostile by the State after he deviated from his statement to the police and told the court that what he termed was "the truth" was that the ex-military man never insulted President Mugabe. Instead, a fellow police officer instructed him to copy a statement nailing Chivandire.



Hon. Pishai Muchauraya

After the conclusion of the State case, Chivandire's lawyer Peggy Tavagadza-Mapfumo expressed concern that police officers would go as far as concocting statements grossly abusive of President Mugabe and attribute them to accused persons.

In Chivandire's case, the insult crafted by the police would make President Mugabe or those who support him quiver with anger.

Some of the alleged insulting words are unprintable in a respected newsletter such as *The Legal Monitor*. But, below we quote part of the police officers' statements which they concocted in a bid to nail Chivandire.

"I am a former soldier in the ZNA (Zimbabwe National Army) and I resigned because of injustices caused by Mugabe. You have been sent by Mugabe who is a thief, he lost the 2008 elections. Mugabe i... (unprintable words), *muforeigner akabva kuMalawi tichamuraya* (and a foreigner who comes from Malawi. We will kill him). Mugabe is a... (unprintable words) and he spoiled you, he is an... (unprintable words) and he uses you,

'Police arrested the 30-year-old Chivandire in April 2011 at one of Mutare's premier nightclubs, Sports Café. He was subsequently charged for allegedly contravening Section 33 of the Criminal Law (Codification and Reform) Act for insulting and undermining the authority of President Mugabe'

Police arrested the 30-year-old Chivandire in April 2011 at one of Mutare's premier nightclubs, Sports Café. He was subsequently charged for allegedly contravening Section 33 of the Criminal Law (Codification and Reform) Act for insulting and undermining the authority of President Mugabe.

Chivandire said he never uttered such words but police were out to fix him after he tried to protect a woman suffering human rights abuses at the hands

of the same officers. As a former member of the ZNA trained in human rights, Chivandire advised the police, who were assaulting a lady accused of loitering, that they were violating her rights.

Said Tavagadza-Mapfumo: "He was arrested so as to fix him and was surprised as to why the police would go to the extent of alleging that he insulted President Mugabe so as to fix him. Chivandire is a human rights defender who was arrested for

challenging police officer's treatment of a suspect." Politicians charged under the insult law include Constitutional Parliamentary Committee co-chairman Hon. Douglas Mwonozora, Chimanimani, West MP Hon. Lynette Karenyi and Makoni South MP, Hon. Pishai Muchauraya. They have argued that the law is unconstitutional and gives unfair advantage to the sitting president against his rivals.

CISOMM GPA Audit

Balancing Liabilities of Political Compromise

2008 - 2013

ZLHR this week launches its latest CISOMM publication entitled "Balancing Liabilities of Political Compromise" which is an audit of the Global Political Agreement signed five years ago

Zvoma gets it wrong on election dates - response to Clerk of Parliament

By Tererai Mafukidze

1. I have read the Clerk of Parliament's article in the Sunday Mail of 21st April 2013, in which he attempts to clarify the constitutional position regarding the fixing of dates for general elections. The net effect of his argument is that the latest date when the next election can be held is 30 June 2013, that being the first day after the automatic dissolution of the current Parliament after the expiry of its 5 year term.
2. This date seems to favour a section of the country's political field. Regrettably, the Clerk of Parliament has relied on a clearly erroneous interpretation of the Constitution to arrive at the conclusion he makes. While he cites the relevant constitutional provisions, I respectfully disagree with his interpretation of those provisions.
3. The relevant provisions are section 63(4), section 63(7) and section 58.
4. There is no issue with section 63(2) which states that the President may at any time dissolve parliament. Neither is there any contest on the effect and applicability of section 63(5) and (6) under which the life parliament may be extended.
5. It is correct that under section 63(4), unless the President dissolves Parliament earlier, the life of Parliament extends up to a period of 5 years. This 5 year period commences on the day the President assumes office, which in our case is, technically, June 29 2008. Therefore unless extended, the current Parliament automatically expires on June 29 2013.
6. Section 63(7) is a provision that anticipates a situation where the President would have exercised his powers under section 63(2) to

dissolve Parliament, before the expiration of the 5 year term of parliament. It provides that the President may issue a proclamation for the dissolution of Parliament but such dissolution would only take effect on the day preceding the day of the general election fixed in accordance with section 58(1). It is for this reason that parliamentarians have always retained their positions until midnight of the day preceding the general election. The purpose of section 63(7) is to ensure the continuation of Parliament, at least nominally, until the day of electing the new parliament. Otherwise, the President could dissolve parliament and run the country for an unlimited period without the legislative arm of the State.

7. Obviously, this does not apply in situations where the life of Parliament has expired automatically by operation of law, as is provided for under section 63(4). And this is precisely why section 63(7) is made subject to the provisions of section 63(4).
8. Section 63(7) provides for situations when the dissolution or prorogation of parliament takes effect other than in circumstances where section 63(4) applies. This is why section 63(7) begins with the words, "**Subject to the provisions of section 63(4) ...**" The effect of these words is to make the provision conditional upon the applicability of section 63(4). Put differently, section 63(7) does not affect a situation where section 63(4) applies.
9. So what happens in the situation where the parliament expires automatically under section 63(4)? Does it mean the President is constrained to set the date only on the day after the expiration of the life of Parliament? Or is there an allowance to set the date within a period of 4 months after that automatic dissolution?

10. **The correct answer is that the President is not constrained but legally has a period of 4 months within which the date can be set.** This, of course, is quite the opposite of the Clerk of Parliament's argument in his article. With respect, the Clerk of Parliament's argument is flawed.

11. If one looks at section 58, which regulates the fixing of election dates, it all becomes the more obvious. It is important to set out verbatim what section 58(1) states: "58 Elections

(1) A general election and elections for members of the governing bodies of local authorities shall be held on the day or days within a period not exceeding four months after the issue of a proclamation dissolving Parliament under section 63(7) and, as the case may be, the dissolution of parliament under section 63(4) as the President may, by proclamation in the Gazette, fix."

12. This provision is clear enough in regard to a situation where Parliament automatically dissolves under section 63(4). It means that a general election can be held within a period of up to 4 months after the dissolution of Parliament under section 63(4).

13. If one removes reference to the words relating to the situation where the President dissolves Parliament by proclamation under section 63(7), which scenario is different from where Parliament automatically dissolves, section 58(1) would read as follows: "**A general election shall be held on the day or days within a period not exceeding four months after ... the dissolution of parliament under section 63(4) as the President may, by proclamation in the Gazette, fix."**

14. I have removed the words, "**after the issue of a proclamation dissolving Parliament under section 63(7) ...**" for ease of reading and understanding the provision in regard to situations where section 63(4) applies.

15. In his article, the Clerk of Parliament clearly erred in omitting reference to the words in section 63(7) which make its application subject to the provisions of section 63(4) which as I have observed apply to situations where Parliament dissolves automatically by operation of law. In such a situation, there is up to 4 months after automatic dissolution within which to set the date for the general election in accordance with section 58(1). 16. Of course there is an anomalous situation in this case because it means while the President and his/her executive can continue for up to 4 months, the legislative arm of the State would have expired by operation of law. In other words, there will be no parliament for that period, itself a scenario that is a serious hazard to the health of democracy.

17. It is at this point that there is convergence of views with the Clerk of Parliament on the need to find a way, via the process of enacting a new constitution, to extend the life of parliament for a limited period to enable it to conduct its important work on aligning current laws with the anticipated constitutional dispensation.

18. As a word of caution, it is not advisable that the Clerk of Parliament should enter matters of current party political controversy. His attempt at 'clarifying' matters in the Sunday Mail is ill-advised, particularly where his legal position is clearly erroneous.

Tererai Mafukidze is a practising lawyer.

Zim election date debate: What the law says

By Justice Alfred Mavedzenge

This article is a direct response to certain views that have been expressed recently in the media concerning setting of the date for the next election in Zimbabwe. The position of the law is crystal clear even for those with nutty heads or 'vakawoma musoro sedamba' to understand. However, they deliberately choose to misinform the nation because essentially that is the music which they sing for their political supper to come. Truth be told, everyone sings for their supper and there is absolutely nothing irregular about a professor who sings (or cries) for his supper, but one should not display such levels of ignorance in the course of singing for that supper.

The next general elections will be held under the new constitution that the three parties in the Government of National Unity (GNU) agreed to and which was adopted by 3,079,966 Zimbabweans who voted yes in the March 2013 referendum. The Lancaster House constitution has no role to play in terms of setting of dates for the next elections except that some of the provisions under the Lancaster House constitution have been incorporated into the new draft constitution and will therefore apply not as part of the Lancaster House constitution but as part of the new national supreme law. This writer is pretty much aware that the COPAC draft constitution will only become law when it is enacted into law. The prevailing political position is that the next elections must be held under a new constitutional dispensation. This is the position prescribed under the Global Political Agreement (GPA), endorsed through the resolutions of successive SADC meetings held between 2011 to date. This is the position unequivocally adopted by the Principals to the GPA. This is why President Mugabe desperately wanted the constitution making process to be wound up because he knows that the prevailing position within Zimbabwe and in the region is that the next elections should be held under a new constitution. Therefore no amount of hallucination or noise made through foolish opinion articles in the Sunday mail or Herald will ever change that. This position is as solid as a rock! Because of the misconceptions raised about the relationship between the old and the anticipated new constitution, this writer pays particular attention to what the coming constitution says about the application of the old Lancaster House national law in respect of the conduct of the next elections.

In terms of Schedule 6 part 3 Section 8 of the draft constitution, the first election under this constitution (which refers to the next elections) must be conducted in terms of the Electoral law (taken to mean the Electoral Act) in conformity with this Constitution. Inevitably, some of the provisions of the existing Electoral Act will need to be realigned to conform with the new constitution. More precisely, the setting of dates of the next elections will be in terms of this new draft constitution as soon as it is enacted into law. Furthermore, Schedule 6 part 2 section 3 (1) (e) of the draft constitution directs that Chapter 7 of this constitution (which relates to timing and setting of dates of the next elections) shall be one of the chapters of this new constitution which should apply immediately after the draft is enacted into law.

Section 4 in part 2 of Schedule 6 directs that the former constitution is repealed immediately after this draft constitution is signed into law. Simply put, the Lancaster House constitution immediately ceases to operate except for those provisions that are saved through schedule 6 of the draft new constitution, of which those provisions do not relate to the conduct of elections. Of significance here is that this section clearly states that the provisions of the Lancaster House constitution relating to the timing and conduct of elections are immediately repealed and replaced by those of the new constitution as soon as that new constitution comes into force.

Furthermore, Section 3 (3) of Part 2 of Schedule 6 provides that the provisions of this draft constitution (including those in Chapter 7 relating to timelines for elections) shall override those of the old constitution. Thus it is a betrayal of common sense or rather a sign of ignorance of the highest level for someone who claims to have gone to school to make a lot of noise about what the Lancaster house constitution says on the timing of the next elections, when it is clear that the said Lancaster House constitution will not be a valid source of law for purposes of setting the dates for the next elections. This writer is quiet aware that those of nutty heads professorship who have been insisting on the role of the Lancaster House constitution in setting the dates for the next elections have in the past displayed their sluggish but clumsy hatred of the new draft national law. But hey, wake up and smell the coffee, the new law is coming and it cannot be stopped by anyone without attracting heavy political sanctions from the people of Zimbabwe who in March 2013 overwhelmingly voted in favour of the new legal era. The nutty headed professor must not have the attitude of a hen which only sees what is close to it. He must raise his head, as nutty as it is, to see beyond the Lancaster law whose days are now so numbered.

Having demonstrated that the new constitution and not the current one will determine the setting of the dates for and general conduct of the next election, I wish to now deal with how the new constitution will prescribe the setting of dates for the next election. I draw the attention of the reader to section 143 (1) which dictates that the current Parliament's tenure is five years and this tenure is calculated from the date when "President Mugabe was sworn" into office, which is June 29 2008. Of significance is section 158 (1) (a) which states that "a general election must be held so that polling takes place not more than thirty days BEFORE the expiry of the five year period specified in section 143". First thing to note here is that this provision means elections can only be held from the time when it is 30 days towards the expiration of the tenure of the current Parliament. The effect of this provision is that elections cannot be held prior to the commencement of the 30 days towards the expiration of the tenure of Parliament. Effectively that means the date for the next elections cannot be any time BEFORE 29 May 2013 because that would be more than 30 days from the expiration of the tenure of the current Parliament! The second thing to note is; whilst this provision prohibits

holding elections before 29 May 2013, it does not necessarily demand that elections must be held by 29 June 2013. I say so because the provision says 'elections must be held not more than 30 days before 29 June 2013' and this is very different from saying 'elections must be held within 30 days period before the expiry of the term of tenure on 29 June 2013'. To say elections must be held not more than 30 days before 29 June 2013 puts an emphasis on the fact that elections cannot be held any time before 29 May 2013 whilst to say elections must be held within the 30 day period before 29 June 2013 puts an emphasis on the position that elections cannot be held after 29 June 2013. I submit that the constitutional provision simply says elections must be held not more than 30 days before June 29 2013, which means they cannot be held any time before 29 May 2013 but it is not unconstitutional to hold them even after 29 June 2013 because the prohibition is not against holding elections after 29 June 2013 but against holding elections on any date before 29 May 2013.

I submit that this provision was poorly constructed. Usually constitutional provisions on election dates put a ceiling on a time frame after the date the tenure of Parliament expires. For instance the South African constitution in section 49 (2) provides that when the term of the Parliament expires, the President... must call and set dates for an election which must be held within 90 days of the date the term expired... and the proclamation may be issued before or after the expiry of the term of the National Assembly". Hypothetically speaking, suppose the tenure of the South African parliament expires on June 29 2013, elections would be due by the expiration of the 90 day period calculated from 29 June 2013. Section 86 (3) of the SA constitution provides that the Chief Justice must set the dates for presidential election and that date must not be more than 30 days after the vacancy occurs. Again hypothetically speaking, suppose the SA President's office is vacant on 29 June 2013, the election for the new president would be due by the expiration of 30 days from 29 June 2013. Other constitutions within the SADC region follow this similar pattern. In my opinion, the drafters of our new coming national law, did not do a good job in drafting section 158 (1) (a). Nonetheless, 29 June 2013 is not the cut off date for the next elections in Zimbabwe.

This writer submits that the correct political and legal position is that the draft national law must first be enacted into law and by its operation through Chapter 7, particularly section 158 (1) (a) read together with section 143 (1), the life of the current Parliament will end and the political principals must consult each other to set the dates for the next election, a date that must allow the new constitution to be implemented for purposes of creating an environment for a free and fair election in which all parties are equal and the electorate is free to choose whom so ever they want to be the governor of this great nation.

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Workers Day's Death

HARARE-Up to about two decades ago, Workers' Day, also known as May Day was like a second Christmas for many Zimbabweans.

That is all history.

In different parts of the country, vans showcasing products of various companies would create a spectacle as they made their way to local stadia, dishing out products to people lining along the roads.

After Christmas Day, The Workers' Day was the next big deal on the calendar.

And, of course, during those days President Robert Mugabe would sit and deliver speeches side by side with men like Morgan Tsvangirai and the late Gibson Sibanda, then powerful trade union



The late Gibson Sibanda

leaders with a leaning towards the then ruling ZANU PF party.

As Zimbabwe joins the world in commemorating Workers Day on Wednesday, all this seems a distant, fading memory – with a huge part of the population under 20 years only getting to know such a Zimbabwe once existed through tales.

How things change.

Now a Prime Minister, Morgan Tsvangirai left trade unionism for opposition politics in 1999 and turned into a fierce critic of President Mugabe. In 2009 he joined President Mugabe in government as a reluctant coalition partner.

Fireworks are expected when the two men cross swords again in presidential elections scheduled for later this. The two are yet to agree on a date, making the exact timing of the watershed poll uncertain.

But on May 1, one thing is certain. No fireworks will go off. There will be no cheer.

With 70 percent of people estimated to be formally unemployed, very few Zimbabweans still identify with a day which used to be marked with pomp and fanfare.

According to labour unions, the few workers toiling in industry and government service for low pay are regularly suffering abuse of their rights.

But the majority of Zimbabweans remotely connect to such talk. Many say they will not even "take advantage" of the public holiday.

"I have to do this everyday otherwise my family will starve. There are no jobs out there so we have to work ourselves," says an air time

vendor who chose to be identified only as "Nhekauro."

With the spectacular collapse of the economy largely credited to haphazard government policies, Zimbabwe has turned into one huge informal economy.

Citizens out of jobs have to hustle on the streets selling anything from airtime and sweets to skin lightening creams and medicines.

In the rural and farming communities, many have resorted to risky "professions" like gold panning, poaching and commercial sex work as poverty bites 33 years after independence from Britain.

While government officials gloat about the success of the often violent land reform programme, figures recently released by government agency, the Zimbabwe National Statistics Agency (ZimStat) paint a grim picture.

The report notes that poverty is far worse in rural areas, where the majority of Zimbabweans live, than in urban areas.

"It is observed that 62,6 percent of Zimbabwean households are deemed poor while 16, 2 percent of the households are in extreme poverty," states the ZimStat report. "The key finding is that poverty is more widespread and prevalent in Zimbabwe's rural areas than urban areas. About 76 percent of rural households are poor compared to 38, 2 percent in urban areas."

The elderly, who in normal circumstances should be enjoying their sunset years after building a comfortable pension, are hardest hit, according to the report.

"Poor households in Zimbabwe are characterised by high dependency ratios, and, on average, older heads of households are associated with higher prevalence of poverty than younger heads of household," states the report, which notes that access to employment for the household head is closely associated with household poverty status.

"In the rural and urban areas, households headed by an own account worker are more likely to be affected by a high poverty incidence. Casual or temporary workers, similarly, suffer from high rates of poverty," reads the report, noting that households headed by a permanently paid employee or employer have the lowest likelihood to be poor.

Still, that is not stopping labour federations from organising what are likely to be low key events to mark the day.

As part of preparations, labour union leaders will probably have an army of lawyers on standby as it has become routine for police to pounce on events to mark the day.

Such is the fate of the Zimbabwean worker, as highlighted by an International Labour Organisation report, which stated that there was "a clear pattern of arrests, detentions, violence and torture by the security forces against trade unionists that coincide with Zimbabwe Congress of Trade Unions nationwide events, indicating that there has been some centralised direction to the security forces to take such action."



Former ZCTU leadership



Workers attending May Day celebrations in 2010

Global support for Zim lawyers, judiciary

WALES-The Bar Council - one of the most influential legal organisations globally - has passed a resolution to support the rights of lawyers in Zimbabwe to practise freely and fairly, and to promote the independence of the country's judiciary.

The resolution comes as lawyers and members of the Judiciary come under attack from State agents while Zimbabwe drifts towards a watershed election which is being closely watched by the world.

"Upholding the Rule of Law is crucial to the proper functioning of a democratic state and an independent legal system. It is central to a fair and free society. We offer our full support to our colleagues in Zimbabwe who are forced to practise under severe restrictions to their professional freedom, and who live in fear of the consequences of performing their duties as lawyers," Maura McGowan QC, Chairman of the Bar, said last week.

The Bar Council represents barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services, fair access to justice for all and the highest standards of ethics, equality and diversity.

Two recent cases show how lawyers and members of the Judiciary could be under attack in Zimbabwe.

Prominent human rights advocate Beatrice Mtetwa was in March arrested while in the course of conducting her professional duties. She spent eight days in remand prison accused of obstructing or defeating the course of justice.

Mtetwa was arrested after asking police officers to provide a search warrant before they could ransack the home of her client, Thabani Mpofu, an official in Prime Minister Morgan Tsvangirai's office.

Immediately after that, High Court Judge Justice Charles Hungwe, who issued an order for her release from custody, was himself subjected to professional and personal attack by the state-controlled and other partisan media.

McGowan said such actions should not be tolerated.

"The Bar Council of England and Wales continues strongly to condemn the arrest and detention of the Zimbabwean lawyer, Beatrice Mtetwa, simply for acting on behalf of her client. It also deplores the subsequent charge of misconduct laid against the judge who granted her bail. We will not stand by and allow such a contravention of the Rule of Law, and we offer our full support to lawyers and judges



Beatrice Mtetwa in Zimbabwe who continue to fight for a fair and open justice system," he said.



Justice Hungwe The Bar Council describes itself as a unique pool of specialist advocates and advisers with over 15 000 practising lawyers.

ZESA petition lands 23 activists in court

BULAWAYO-Two residents are being prosecuted for participating in a march to protest against State-run electricity firm, ZESA Holdings.

For taking action to highlight ZESA's shortcomings, Mqondisi Moyo and Busani Sibindi are now before the courts charged with contravening section 25 of the harsh Public Order and Security Act.

Prosecutors accuse Moyo and Sibindi of "unlawfully" leading a procession without giving notice to the police. According to prosecutors, the two led close to two dozen residents to march from Bellevue Shopping Complex towards the city centre with the intention of delivering a petition to the ZESA Holdings Western Region office.

Lawyers say the two were not leaders of the procession but were merely invited by fellow residents to participate in the procession.

Moyo and 22 others are facing a separate charge of causing an offence to persons of a particular race or religion as defined in section 42 (2) of the Criminal Law (Codification and Reform) Act Chapter 9:23.

They are accused of holding a "march from Bellevue Shopping Complex carrying a petition document to the ZESA Western Regional Management demanding that all Mashonaland contract employees contracted by the company return to their region and pave way for the people of Mthakwazi thereby making a provoking statement".

Down but not out

...Maseva fights on

CHIVHU-Down but not out is what might sum up the situation of Edwin Maseva, a teacher at Makumimavi Primary School, who continues to fight to fulfill his passion.

The Grade 7 teacher last week appealed against a ruling for his eviction from a homestead which is at a farm where his school is located.

"Acting on misdirection and gross error, the court a quo allowed itself to be abused into meddling in the rot within the Ministry of Lands and Rural Settlement where the future of hundreds of children at Makumimavi Primary School is sacrificed in favour of an individual," wrote his lawyer Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR) in an appeal filed at the High Court last week.

ZLHR is fighting Maseva's eviction from the homestead at Doornkasteel Farm by "new farmer" Angela Christwish Chisora, a senior prison officer in the Zimbabwe Prison Services.

Makumimavi Primary School is located at the farm and teachers would have to travel long distances to execute their duties if Chisora has her way and evicts them from the farmhouse.

Chisora wants Maseva evicted so that her workers can move into the homestead used to house Makumimavi Primary School teachers.

On 17 April Magistrate Archie Wochiunga sitting at Chivhu Magistrates Court ordered that Maseva be evicted from the homestead.

'Acting on misdirection and gross error, the court a quo allowed itself to be abused into meddling in the rot within the Ministry of Lands and Rural Settlement where the future of hundreds of children at Makumimavi Primary School is sacrificed in favour of an individual'

In the High Court appeal, Bamu said Maseva wanted the judgment set aside.

"The court a quo grossly misdirected itself and erred on the facts in concluding that appellant (Maseva)'s 'being at the homestead in question is not a condition of employment otherwise he would have produced such proof' when that fact was common cause," argues Bamu. Bamu argues that Maseva is occupying the homestead because he is an employee of the Ministry of Education, Sports, Arts and Culture.

"What was in dispute was whether the State can issue itself a permit, lease or offer letter with respect to its own property with the contemplation of the Gazetted Lands (Consequential Provisions) Act (Chapter 20: 28).

"In other words, does the Act require the Ministry of Lands and Rural Settlement to issue a permit, lease or offer letter to the Ministry of Education, Sports, Arts and Culture in respect of State land or this is an issue which is subject to internal arrangements within the ministries' portfolios of the same State which has title over the said land?" Bamu questions in the appeal papers.

Over the past few years, Maseva has had more headaches on how to defend himself in the courts of law than planning his classroom work.

He has faced one charge after another since refusing to vacate the farmhouse to make way for Chisora and her workers.

Besides the eviction wars, Maseva has another charge hanging over his head.

Two weeks ago he was yet again served with fresh summons to appear at Chivhu Magistrates Court to answer to two charges of contravening Section 60 of the Electricity Act after he allegedly tampered with electricity connections.