

The LEGAL MONITOR

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COST-FREE

AG boob costs villagers *...as lice feast on Gwisai*

HARARE-Lawyers have complained to the Judge President that the State has mishandled the case of Movement for Democratic Change MP, Hon. Douglas Mwonzora and 23 Nyanga villagers – facing charges of committing violence- to prolong their stay in remand prison.

Hon. Mwonzora and the villagers have been in custody variably for more than three weeks despite being granted bail on 21 February.

The State invoked the notorious Section 121 (3) of the Criminal Procedure and Evidence Act (Chapter 9:07) that suspended the bail for seven days pending an appeal against bail by the State. The Appeal was filed on Friday 25 February 2011 and served on Hon. Mwonzora's lawyers the next Monday on 28 February, together with a Notice of Set Down, setting the matter down for last Friday.

But the matter was not heard last Friday because of what defence lawyers suspect was intentional bungling by the prosecutor in the case, Edmore Nyazamba, leaving Hon. Mwonzora and the villagers to endure more time in remand prison.

Zimbabwe Lawyers for Human Rights is representing Hon. Mwonzora and the villagers.

The case, together with that of 45 activists languishing in custody since their arrest on treason charges on 19 February show how the law has been used to punish political and rights activists in Zimbabwe, rights lawyers say.

Lawyers representing Hon. Mwonzora and the villagers on Friday asked Judge President, Justice George Chiweshe, to intervene and ensure justice was done.

"The chain of events is suggestive of vindictive malice on the part of the State, particularly with the regard to the delays being witnessed in bringing respondents to court," wrote ZLHR.

"Our first complaint relates to the date of set down which failed to comply with Rule (3) as read with sub-rule (1) of the High Court of Zimbabwe (Bail) Rules, 1991, SI 109/91 as amended by SI 32 of 1996. The said Rule obliges the Registrar to set the matter within 48 hours of the appeal having been filed. The appeal is date-stamped Friday 25 February 2011. The mandatory 48-hour period lapsed on Tuesday 01 March 2011. For some strange reason, the Registrar chose not to give effect to the requirements of the cited Rules and set the matter down for Friday 04 March 2011 without any explanation as to why the clear provisions of the Rules were not being complied with.

"On the 3rd of March 2011, we filed our Response to the Appeal, and took the precaution of cross checking whether the matter had been put on the court roll for Friday 04 March 2011. To our shock and surprise, the matter did not appear on the roll. Our inquiries revealed that the Attorney General's office only got the Appeal stamped and neglected to return a copy in the record as they had been directed to after stamping it and

serving a copy at our offices. As such, we were advised that there was no copy of the appeal on record and consequently the matter had not been enrolled for hearing on Friday 04 March 2011. The matters that had been put on the roll for 04 March 2011 had been transmitted to Justice Omerjee, whom we understand will be presiding over Bail hearings on Friday 04 March 2011. We were advised by his Clerk that His Lordship, Justice Omerjee indicated that he will only deal with the matters that had been enrolled for Friday 04 March 2011."

Hon. Mwonzora's lawyers said they then liaised with Nyazamba and jointly penned a letter requesting that the matter be heard on Friday 04 March 2011 as originally set down. But the matter was still not enrolled for Friday 04 March 2011 as anticipated on the same argument that it had not been originally included on the Roll for that day.

"This is the basis of our second complaint. The urgency of bail hearings has been made naught in this case. Through no fault of their own, Respondents are being made to bear the brunt of continued incarceration, and thereby suffer continued deprivation of their right to liberty, even after the Magistrates court granted them bail.

"This is not an ordinary case, as it has taken this long due to the invocation of Section 121 (3) of the Criminal Procedure and Evidence Act (Chapter 9:07), which has already ousted the court's jurisdiction, and which in several matters is awaiting argument on constitutionality at the Supreme Court. Already, in our view, our clients have unnecessarily suffered unjustified continued incarceration in contravention of their fundamental rights, in particular, the right to liberty and presumption of innocence. The chain of events described above is suggestive of vindictive malice on the part of the State, particularly with the regard to the delays being witnessed in bringing respondents to court.



Gwisai spotting dreadlocks

On each occasion, the State has brought the Respondents at the very last minute, after intense lobbying to them on our part."

The matter has now been reset for today. Meanwhile, lice have been feasting on Munyaradzi Gwisai in remand prison, where private doctors

eventually managed to examine the detainees last Thursday as ordered Magistrate Munamato Mutevedzi.

Lawyers who accompanied the doctors said Gwisai exhibited a vicious lice-induced rash all over his body.

ZLHR forces tariff cut

BULAWAYO-Electricity consumers who suffer chronic power outages should expect to pay less from this month after legal action by Zimbabwe Lawyers for Human Rights (ZLHR).

The Zimbabwe Electricity Transmission and Distribution Company (ZETDC) confirmed recently that it would slash charges as a result of litigation by ZLHR to force the firm to adhere to an order by the Competition and Tariff Commission (CTC).

Electricity charges will be cut by nearly half of current rates and consumers should begin to see the difference beginning this month, according to ZETDC.

"Please be advised that ZETDC will be implementing the outstanding matter of reducing charges for load limited customers as ordered by the Competition and Tariff Commission. We anticipate that the individual customer accounts should have the credits before the end of February 2011," ZETDC Western Region general manager, Lovemore Chinaka, wrote to ZLHR's Bulawayo office recently.

Electricity billing has been a thorny issue in Zimbabwe for a long time.

Residents accuse ZETDC of charging them exorbitant fees for electricity that is unavailable for most of the time. Almost all areas in Zimbabwe are affected by load shedding that has seen consumers going for days without electricity, only to receive monthly high bills from the power utility.

Irrked residents in Bulawayo, with the help of ZLHR, took up the matter resulting in the reduction of electricity charges.

Lawyers honour Muchadehama

AMSTERDAM-Human rights defender Alec Muchadehama is the inaugural winner of the Lawyers for Lawyers Award that was established by the Dutch Foundation Lawyers for Lawyers.

The soft-spoken lawyer will be presented with the award mid-April in Amsterdam, the Netherlands.

“Alec Muchadehama has worked for Zimbabwe Lawyers for Human Rights since 2003 to defend the many activists, opposition leaders and people who are social midfielders. He travels all across his native country to trace missing activists. Muchadehama is constantly under threat from the government. He has already been arrested and prosecuted on a number of occasions, and after eluding a kidnap attempt, he went into hiding in an embassy,” said the Dutch Foundation Lawyers for Lawyers in a statement last week.

The organisation said it recognised Muchadehama who “continues to devote himself to defending human rights in a country that is in a deep state of crisis”.

In Zimbabwe, Muchadehama has become a target of State persecution because of his work in successfully representing several human rights activists.

Last year he was summoned for trumped-up charges of contempt of court which emanated from allegations that he had facilitated the release of senior MDC officials – Gandhi Mudzingwa and Kisimusi Dhlamini and journalist – Andrsson Manyere - from Chikurubi Maximum Prison. The trio had been languishing in lice-infested prison for months facing charges of plotting to topple President Robert Mugabe.

Human rights lawyers from all over the world were nominated for the Lawyers for Lawyers Award which Muchadehama won. According to the Dutch Foundation Lawyers for Lawyers a jury of experts Heikelien Verrijn Stuart, Theo van Boven, Egbert Myjer and Els Swaab chose Muchadehama because of his exceptional preservation.

“Alec Muchadehama showed extraordinary courage in a country controlled by violence and arbitrary rule, at great risk to his own life,” added the Dutch Foundation Lawyers for Lawyers.

The Award was established on the occasion of the 25th anniversary of Lawyers for Lawyers.



Alec Muchadehama

Ruling on Gwisai today

HARARE- Magistrate Munamoto Mutevedzi is today expected to rule on whether Munyaradzi Gwisai and 44 other social justice activists – facing charges of plotting to topple President Robert Mugabe must be placed on remand.

Last week the activists through their lawyer Alec Muchadehama filed an application for refusal of remand arguing that their detention was illegal.

International Socialist Organisation (Zimbabwe) (ISO) leader Munyaradzi Gwisai and 44 other social justice activists were arrested last month and have been languishing in detention, in a case which has attracted international censure of the coalition government.

The condemnation stems from allegations by Gwisai and his colleagues that they had been tortured while in police cells.

“Gwisai’s defence attorney has reported that several of the 45 people were tortured while in custody, and we understand that the magistrate has ordered physical examinations to substantiate those claims,” US State Department spokesman

Philip Crowley said in a statement. “We call on the government to provide medical attention for those who need it and, if torture occurred, to take immediate action to hold the perpetrators accountable.”

The activists have been in detention since their arrest on 19 February while attending a meeting at the ISO offices in Harare.

The State, led by prosecutor Edmore Nyazamba, has slapped them with treason charges, which carry the death sentence if convicted.

Through their lawyer, Alec Muchadehama, the activists are denying the charge, as well as that of trying to subvert a constitutional government.

The case has resuscitated fears of an intensified crackdown on activists ahead of possible election later this year or early next year.

Gwisai said the torture sessions were aimed at securing confessions from the activists which would implicate them in the commission of treason.



Quote of the week

The State cannot start criminalising prayer. People pray in order to ward off evil. So you cannot criminalise that. It cannot be linked with treason.

Human rights lawyer Alec Muchadehama during the treason case involving 45 social and human rights activists. He was responding to State prosecutor Edmore Nyazamba’s accusations alleging that the activists feigned prayer when the police raided them.

Zimcodd employee freed

MUTARE-An anti-debt campaigner has been freed after prosecutors withdrew charges against her.

Shylene Nyamutswa, the Zimbabwe Coalition on Debt and Development (Zimcodd) programmes assistant for the northern region, who was charged with organising a meeting without police approval was relieved after prosecutors withdrew the charges against her before plea last month.

The withdrawal of the charges came after Nyamutswa’s lawyers from Zimbabwe Lawyers for Human Rights (ZLHR) made representations to the prosecutors when her trial finally commenced last month to the effect that the

meeting, which was allegedly organised by the anti-debt campaigner was exempted under the Public Order and Security Act from notifying the police.

Nyamutswa was arrested at Dangamvura Hall in June last year, where Zimcodd, a socio-economic justice coalition, had convened a workshop focusing on the effects of debt on health and economic, socio and cultural rights.

The police accused her of failing to notify the regulating authority about the meeting in contravention of Section 24 of the Public Order and Security Act (POSA).

Police target Madhuku

HARARE-Police have summoned National Constitutional Assembly (NCA) chairperson Lovemore Madhuku to stand trial for allegedly organising a demonstration in 2006.

Two unidentified plain clothes policemen served Madhuku with the summons at Harare Magistrates' Court, where he was attending the case of 45 social and human rights activists who have been charged with treason.

The police want Madhuku to appear in court on 16 March to answer charges of contravening Section 24 (1) of the Public Order and Security Act (POSA) (*Chapter 9:15*) in that he allegedly failed to comply with an order given by the regulatory authority.

The police allege that Madhuku unlawfully organised a demonstration on 1 November 2006 at Africa Unity Square without notifying the police.

In the past decade the NCA organised demonstrations and led constitutional

reform activists in demanding a people driven constitution.

The constitutional reform coalition body is currently working with the Zimbabwe Congress of Trade Unions (ZCTU) and the Zimbabwe National Students Union (ZINASU) in opposing the ongoing chaotic crafting of the country's governance charter spearhead by the coalition government of President Robert Mugabe and Prime Minister Morgan Tsvangirai.

The Constitutional Select Committee, which is made up of representatives of the country's three main political parties has missed several deadlines due to financial problems and squabbling between the coalition partners.

The NCA, ZCTU, ZINASU and the MDC-then a single party led by Tsvangirai shocked President Mugabe and his ZANU PF party when they successfully mobilised Zimbabweans to reject a government-sponsored draft constitution in 2000.



Lovemore Madhuku

Chihuri lashes out at NGOs, blames MDC for violence

HARARE-Police Commissioner-General Augustine Chihuri on Thursday lashed out at Non-Governmental Organisations (NGOs) accusing them of scuttling President Robert Mugabe and some government representatives' efforts at regional and international summits.

While giving oral evidence on the recent upsurge in violence and police handling of the situation, Chihuri told the Parliamentary Portfolio Committee on Defence and Home Affairs that representatives of NGOs were "destructing and interjecting" President Robert Mugabe and his delegation at regional and international summits.

Chihuri predictably questioned the source of funding for NGOs which enables them to mount lobby and advocacy campaigns at regional and international meetings such as the SADC and UN summits and accused representatives of NGOs of staying in "expensive hotels".

The Commissioner-General, who was accompanied by Home Affairs Permanent Secretary Melusi Matshiya and Lee Muchemwa, the Chief Staff Officer (Crime) said this does not happen with other countries.



Chihuri

Chihuri alleged that, out of a total of 121 people arrested for perpetrating violence since January 2011, 101 were Movement for Democratic Change (MDC) supporters while 20 were ZANU PF supporters.

He named eight MDC legislators for "committing crimes", but failed to mention a single ZANU PF MP for any wrongdoing.

The police Commissioner-General listed the eight MDC MPs as Deputy Prime Minister Thokozani Khupe (for allegedly assaulting a police constable at a roadblock); Home Affairs co-Minister Theresa Makone (allegedly violently threatening police officers and undermining police authority); Nyanga North MP and Constitution Select Committee (COPAC) co-chairperson Douglas Mwonozora (alleged public violence); Masvingo Urban MP Tongai Matutu (assaulting a chief); Zhombe MP Rodger Tazviona (allegedly assaulting a chief); Gokwe-Kabuyuni MP Costain Muguti (alleged robbery); Glenview South MP Paul Madzore and Speaker of Parliament Lovemore Moyo (for allegedly selling liquor without a licence).

Madzore chairs the Parliamentary Portfolio Committee on Defence and Home Affairs and presided over the hearing.

He however did not comment on any progress in matters which had been referred to his office or to the police for investigation such as those involving the likes of Local Government Minister Ignatius Chombo.

He said reports of political violence surged during the period preceding the European Union (EU) meeting which was held last month to review targeted sanctions on President Mugabe and some of his party members.

The police Commissioner-General said reports on the upsurge of violence would be aimed at creating a seemingly violent situation in the country so as to justify the imposition and extension of the targeted sanctions, of which he is a victim. He also blamed the media for dramatising violence.

When quizzed on progress in relation to cases of politically-motivated violence related to the March 2008 election aftermath, he refused to answer, saying only that the matter was being dealt with by the Organ on National Healing and Reconciliation.

Chihuri also disclosed before the Committee that the police are under resourced and poorly remunerated.

On trial for a jingle

MUTARE- The trial of three Penhalonga residents accused of allegedly singing a modified version of Mbare Chimurenga Choir's *Nyatsoteerera* song will only start next week after State witnesses failed to attend court.

Magistrate Fabien Feshete will preside over the matter in which Patrick Chikoti, Faith Mudiwa and Phillip Dowera are accused of craftily turning *Nyatsoteerera*-a song that heaps praise on President Robert Mugabe into a "defamatory" funeral hymn. The trio is now being charged for contravening Section 41 of the Criminal Law (Codification and Reform) Act Chapter 9:23.

"On 3 February 2011, at Tsvingwe cemetery, Penhalonga, Patrick Chikoti, Faith Mudiwa and Phillip Dowera or one or more of them engaged in disorderly and ritious (sic) conduct and threatening words i.e. '*Nyatsoterera unzwe kupenga muhofisi mune mboko nyatsoterera unzwe kupenga*' and '*Ngatishandei nesimba*

takabatana tibvise kamudhara aka muoffice mupinde president wenyika Morgan Tsvangirai,' that they would remove President Mugabe from office intending to provoke a breach of the peace, realising that there was a real risk or possibility that a breach of peace may be provoked," reads the State outline.

Nyatsoterera is enjoying unprecedented airplay on all radio stations as well as on television, as ZANU PF heightens its election campaign.

Peggy Mapfumo-Tavagadza of Zimbabwe Lawyers for Human Rights (ZLHR) successfully applied for the trio's bail last month. But the State invoked Section 121 of the Criminal Procedure and Evidence Act (CPEA), which automatically suspended the bail order for seven days while the State decides on whether to appeal or not. Eventually the State did not appeal resulting in the trio being freed.

UN asks for end to torture

GENEVA-The United Nations wants Zimbabwe to stop the harassment of civil society activists, but Justice Minister Patrick Chinamasa says he sees nothing amiss about a crackdown that has resulted in the torture of dozens of human rights campaigners.

Navi Pillay, the UN High Commissioner for Human Rights, last Tuesday expressed concern about the continued detention and ill treatment of 45 members of civil society in Zimbabwe charged with treason.

The activists, some who say have been tortured and denied access to medical treatment while in custody, were arrested on 19 February for allegedly discussing and watching videos of the revolutions in Egypt and Tunisia where mass protests led to the fall of long-serving leaders there.

Pillay called for the immediate release of the activists who face a maximum penalty of death if convicted.

“As many people in North Africa have been pointing out increasingly loudly and clearly, there is no true democracy without freedom of expression and assembly,” Pillay said.

“It is therefore both deeply ironic and disturbing that, in Zimbabwe, activists are being arrested and mistreated simply for discussing North Africans’ efforts to bring about change through largely peaceful protests.”

Police arrested Munyaradzi Gwisai, the coordinator of the International Socialist Organisation and 44 other social justice and human rights activists who were attending a roundtable on recent events in Egypt and Tunisia.

The activists have been charged with treason under the Criminal Law Act of Zimbabwe.

“These arrests appear to be part of a growing crackdown on civil society and members of the political opposition, and are a clear sign that the establishment of a consolidated democracy in Zimbabwe is still very far from assured,” Pillay said.

“All those who are being illegally held in detention should be released without delay. Freedom of expression and freedom of assembly are rights guaranteed under Zimbabwean and international law.”

Minister of Justice and Parliamentary Affairs, Chinamasa, however, responded harshly to Pillay’s remarks, suggesting countries hostile to President Robert Mugabe’s rule were using her.

He told the UN Human Rights Council on Wednesday that Gwisai and other detainees were being held for plotting to unseat President Mugabe. Chinamasa said Pillay’s support for the detainees’ release was tantamount to interfering with Zimbabwe’s judicial processes.

But Pillay, a former judge in South Africa, described the respect for diversity of political opinion as “the bedrock of democracy and good governance”, as espoused in the Global Political Agreement that set the basis for President Mugabe and Prime Minister Morgan Tsvangirai’s two year-old unstable power sharing government.

She called on the government of Zimbabwe “to fulfil its promise to put an end to the polarisation,

divisions, conflict and intolerance’ that have caused so much damage to the fundamental fabric of what could and should be a peaceful, prosperous and democratic nation.”

“I see these unwarranted arrests as a serious step backwards, especially with elections possibly taking place later this year,” she said. “The Government needs to take measures, beginning with the release of these activists, to restore some faith in the country’s political processes.”



Detainees at Harare Magistrates Court

Magistrate wants Sikhala complaints probed

MUTARE-Magistrate Fabian Feshete has ordered State prosecutors to investigate complaints filed by MDC 99 leader, Job Sikhala alleging assault at the hands of the police and violations of his rights.

Sikhala lawyers Obey Shava, Jeremiah Bamu and Peggy Mapfumo raised several complaints against the police such as the police failure to notify the militant opposition leader of the reasons for arrest, over-detention, assaults by the police which resulted in the MDC 99 leader dislocating the pelvis of his left leg, the denial of medical treatment and being subjected to inhuman and degrading conditions during his detention.

Magistrate Feshete made the order when he granted bail to Sikhala on Wednesday after the police who detained him since his arrest on Friday 25 February finally took him to court following an urgent chamber application filed by lawyers seeking his release.

Sikhala was transferred by the police from St Mary’s Police Station in Harare on Wednesday morning to Mutare Magistrates Court where he appeared before Magistrate Feshete to answer charges of kidnapping or unlawful detention as defined in Section 93(1) (a) of the Criminal Law (Codification Reform) Act Chapter 9:23.

Prosecutors added another charge of contravening Section 132 of the Criminal Law (Codification and Reform) Act Chapter 9:23 for criminal trespass. They allege that Sikhala entered the Chiadzwa diamond fields on 19 February 2011 without authority.

Magistrate Feshete ordered the MDC 99 president and founder to deposit \$500 with the Clerk of Court and to report once a week on Fridays at St Mary’s Police Station. The Magistrate ordered Sikhala not to interfere with State witnesses and to continue residing at his given residential address.

Sikhala was arrested while at his shop in Chitungwiza by four uniformed police officers and two unknown men in plain clothes who advised him that the police wanted to re-record statements in a fraud matter which he reported early this month.

Upon arrival at St Mary’s Police Station in Chitungwiza, Sikhala was then advised that he was under arrest and was detained in connection with minerals and that statements would be recorded on Saturday 26 February.

At the time of his arrest, the MDC 99 leader was informally told that his arrest was linked to a purported one million men march which the police said was scheduled to take place on 1 March in a bid to topple the government through the “Egyptian style” and that Sikhala was going around the country mobilising people to participate.

But on Saturday 26 February, Sikhala was advised that he was being charged with kidnapping or unlawful detention as defined in the Criminal Law (Codification and Reform) Act, and was taken to CID Minerals Unit for the recording of a warned and cautioned statement and thereafter returned to St Mary’s Police Station for his continued detention. The alleged kidnapping is said to have happened at Zengeni Shopping Centre in Mutare, Manicaland Province on 19 February but was only reported six days later in Chitungwiza, Mashonaland East Province.

Sikhala’s lawyers last week on Monday filed an urgent chamber application at the High Court.

The lawyers argued in their application that the MDC 99 leader was unlawfully arrested and detained and continues to be in unlawful detention.