

The LEGAL MONITOR

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COST-FREE

Tough love for Zim women

HARARE-Zimbabwe's women received brickbats from State agents as their counterparts in most parts of the world got hugs and bouquets during International Women Day's commemorations last week.

Some, such as Zimbabwe Congress of Trade Unions (ZCTU) activists, stripped off their clothes-not out of love- but because they were forced to by State security agents.

Police forced three women, including a pregnant one, who participated in a ZCTU protest march to strip off their clothes in central Bulawayo, according to Barbara Tanyanyiwa of the union's Regional Women's Advisory Council.

They were part of dozens of activists taken into police custody last week for embarking on peaceful protests to mark International Women's Day.

The women in Bulawayo were arrested despite furnishing the police with a court order obtained by their lawyers from Zimbabwe Lawyers for Human Rights (ZLHR) on Monday 7 March allowing the ZCTU to stage a peaceful march in the city to commemorate International Women's Day.

International Women's Day is celebrated each year on 8 March to mark the economic, political and social achievements of women. This year's celebrations were marked under the theme "Equal access to education, training and science and technology: Pathway to decent work for women".

The National Constitutional Assembly (NCA), which campaigns for a "people-driven" new constitution, says because of the increase in violence against women, it has launched a campaign dubbed: "Act Now Against Political Violence targeting women".

The campaign seeks to address political violence as the country approaches elections by raising awareness, building support structures, name and shame perpetrators as well as capacitating women and communities to deal with the scourge at two levels: prevention and support for victims.

But, in the meantime, women continue to sing the blues, even on a day internationally recognised as theirs to air their voices.

Over 27 anti-riot police in two truckloads dispersed participants gathered at Luveve Baptist Church for an International Women's Day commemoration organised by ZLHR last Tuesday.

Two ZLHR employees, Prisca Dube, the programmes assistant for ZLHR's Matabeleland Satellite Office and Lizwe Jamela, a senior projects lawyer, were quizzed by the police about the commemorations.

The police told Jamela and Dube that the "obtaining environment" didn't allow for such

commemorations because "unruly elements" could hijack the event to stage violent protests.

Three WOZA members Eneles Dube, Janet Dube and Selina Dube were arrested on Monday during a procession organised by WOZA to commemorate International Women's Day and detained at Bulawayo Central Police Station.

The three WOZA members were charged with contravening Section 38 of the Criminal Law (Codification and Reform) Act for allegedly obstructing or endangering free movement of persons or traffic.

The WOZA members were only released on Wednesday at the police station on summons after three days in detention.



ZCTU president Lovemore Matombo

Beware of *facebook* when in Zim

BULAWAYO-Social networking, which was the main campaign platform for revolutions that toppled two long-serving presidents in North Africa, could be a source of misery in Zimbabwe.

Vikas Mavhudzi, a 39-year-old Magwegwe resident, can testify that the pleasures of social networking can turn nasty.

He is the first Zimbabwean to be arrested for allegedly "subverting a constitutional government" for comments he posted on a *facebook* page allegedly belonging to Prime Minister Morgan Tsvangirai.

According to the State, on 24 February, Mavhudzi "unlawfully or suggested" to Prime Minister Tsvangirai "the taking over or taking over or attempt to take over the Government by unconstitutional means or usurping the functions of the Government, that is to say he sent an e-mail to Morgan Tsvangirai saying: 'I am overwhelmed, I don't want to say Mr. or PM what happened in Egypt is sending shockwaves to dictators around the world. No weapon but unity of purpose worth emulating, hey'."

Since then, Mavhudzi has been languishing in prison.

His lawyers Lizwe Jamela and Nosimilo Chanayiwa, both of Zimbabwe Lawyers for Human Rights, applied for bail on Thursday last week when Mavhudzi appeared at Bulawayo Magistrates Court. The ruling will be delivered on 15 March.



Prime Minister Morgan Tsvangirai

High Court overturn MDC meetings ban

BULAWAYO-High Court Judge Justice Nicholas Ndou has overturned a police ban on Movement for Democratic Change (MDC) meetings to prepare for the party's forthcoming congress.

Lawyers for the party said they were forced to petition the High Court to intervene after the police banned MDC meetings, a decision the party described as an undeclared state of emergency.

In their application, which was granted by Justice Ndou last week, the lawyers argued that the draconian Public Order and Security Act (POSA) only required political parties to notify police whenever they were to hold public meetings and public gatherings and not private meetings.

"The Act does not envisage a situation where political parties seek authority or notify the Respondents whenever they have private meetings within their offices regarding internal issues. The Act clearly defines a 'public gathering' as 'a public meeting or a public demonstration'. It also defines a 'public meeting' as 'any meeting in public place or meeting with the public or any section of the public is permitted to attend whether on payment or otherwise, but does not include a meeting of any organ or structure of a political party or other organisation held in any private place whether or not is wholly or partly in the open,'" read the application.

The Act defines a *public place* as "a thoroughfare, building, open space or any other space of any



Minister Makone

description to which the public or any section of the public have access, whether on payment or otherwise and whether the right of admission is reserved thereto".

"What the applicant was conducting was a private meeting within private premises. It was not at a public place neither was it for the public," argued the MDC lawyers.

The party, which has seen an upsurge in the crackdown of its top members and ordinary

supporters, said the ban on its meetings would disrupt a May congress that could see a change in parts of its leadership.

"Applicant has several meetings planned ahead which are essential for the upcoming party congress. The Respondents have already given themselves authority that they do not have by disrupting an internal and private meeting purportedly under the Public Order and Security Act. There is a strong possibility that the

Respondents will continue to stop Applicant's meetings, thereby prompting the Applicant to seek an order on an urgent basis."

The Officer Commanding Police in Bulawayo, only identified as Chief Superintendent Masina was cited as the first respondent, while Commissioner-General Augustine Chihuri was cited as the second respondent. Co-Home Affairs Ministers, Hon. Theresa Makone, from the MDC and Hon. Kembo Mohadi, from ZANU PF were cited as the third respondents.

Victory for Mwonzora and villagers

HARARE-High Court Judge Justice Susan Mavangira on Friday dismissed an appeal filed by the State seeking to quash a bail order granted to Nyanga North Member of Parliament and Constitution Select Committee co-chairperson Hon. Douglas Mwonzora and 23 Nyanga villagers, who were arrested last month for allegedly engaging in public violence.

Edmore Nyazamba, a law officer in the Attorney General (AG)'s Office had appealed against a bail order which was granted to Hon. Mwonzora and the villagers by Nyanga Magistrate Ignatio Mhene last month arguing that the Magistrate misdirected himself by admitting them to bail.

But Justice Mavangira on Friday dismissed Nyazamba's appeal and reinstated the bail order earlier granted to Hon. Mwonzora and the Nyanga villagers.

Justice Mavangira said the State had failed to prove that the villagers were not suitable

candidates for bail and restored Magistrate Mhene's bail order.

"The respondents are admitted to bail. The appeal is therefore dismissed. Same conditions should be reinstated," said Justice Mavangira.

Justice Mavangira only ordered the villagers and Hon. Mwonzora to report once a week to the police.

At the time when they were granted bail on 21 February, Magistrate Mhene ordered the villagers and Hon. Mwonzora to pay \$50 each and to continue residing at their given residences addresses. The Magistrate also ordered them not to interfere with witnesses.

Hon. Mwonzora and the 23 villagers were arrested in mid February and charged with violating section 36(1)(a) of the Criminal Law (Codification and Reform) Act for public violence.

Amongst the villagers who spent almost a month detained at Mutare Remand Prison is Rwisai Nyakauro, an 82 year old villager, who resides in Nyakauro Village in Nyanga. Nyakauro is partially blind.



Edmore Nyazamba

Bennett's last laugh

HARARE-Tormented deputy Agriculture Minister-designate Senator Roy Bennett is now a free man after Chief Justice Godfrey Chidyausiku dismissed an appeal filed by the State contesting the acquittal of the former Chimanimani legislator.

Attorney General Johannes Tomana had contested the acquittal of Senator Bennett on charges of banditry and terrorism which High Court Judge Justice Chinembiri Bhunu had dismissed last May.

Following the acquittal, Tomana filed a chamber application in the Supreme Court seeking leave to appeal against Justice Bhunu's decision to acquit Bennett at the close of the State's case.

Chris Mutangadura, the chief law officer in the AG's Office who filed the application on Tomana's behalf, had argued in his papers that Justice Bhunu misdirected himself when he acquitted Bennett in that he assessed pieces of evidence in isolation rather than adopting a holistic analysis of the admittedly circumstantial evidence adduced by the State.

Mutangadura said Justice Bhunu had erred in adopting a piecemeal approach to evaluate the weight of evidence brought before him by the State, whose prosecution team was led by Tomana, assisted by Mutangadura and Florence Ziyambi, the Director of Public Prosecutions in the AG's Office. Mutangadura said the existence of a bank account in Mozambique in Peter Michael Hitschmann's name, the email communication between Hitschmann and Bennett, and the emails allegedly containing messages pointing to the funding of firearms acquisition all pointed to a conspiracy between the two men.

Mutangadura said Justice Bhunu's finding that the emails found on Hitschmann's laptop were inadmissible was outrageous and hence his arguments had high prospects of success on appeal.

But Justice Chidyausiku on Thursday dismissed Tomana's appeal after ruling that there were no prospects of success.



Senator Bennett

"In the result, I agree with the conclusion of the learned Judge in the court *a quo* that this was a proper case in which a discharge in terms of s 198 (3) of the Criminal Procedure and Evidence Act (Chapter 9:07) was appropriate. I see no prospect of the Supreme Court coming to a conclusion different from that of the court *a quo*. As there are no prospects of success on appeal, leave to appeal against the decision of the court *a quo* is refused," reads part of the judgment, which was delivered on Thursday by Chidyausiku.

Bennett, who had been on trial since October 2009 on charges of insurgency, banditry, terrorism and sabotage, was acquitted in May last year after Justice Bhunu ruled that the State's prosecution team, led by Tomana, had failed to establish a *prima facie* case against the former Chimanimani Member of Parliament.

Justice Bhunu has sued Bennett for \$1 million in damages for defamation. Bhunu's lawyers allege that the damages resulted from wrongful

and defamatory words which were uttered by the former commercial farmer during an interview with a reporter from The Guardian newspaper of the United Kingdom, which he granted in May last year, before the High Court Judge delivered his judgment acquitting the former Chimanimani legislator. The former commercial farmer who is living in exile in South Africa, denies the charges.

Police suppress meeting

CHINHOYI-Police on Wednesday detained and quizzed two employees of Youth Dialogue Action Network and suppressed a meeting organised by Zimbabwe Lawyers for Human Rights (ZLHR) on human rights and constitutionalism.

Police detained Owen Dhliwayo, the board chairperson of Youth Dialogue Action Network and Catherine Mukwapati, the organisation's co-ordinator, who had partnered ZLHR in organising a training on human rights and constitutionalism

for human rights defenders in Chinhoyi, Mashonaland West province.

Dhliwayo and Mukwapati were taken by the police from a church building at United Church of Christ (UCCZ), where the training was underway and detained at Chemagamba police station for four hours.

About 60 human rights defenders from various organisations had attended the meeting which

was disrupted by the police, two hours into the meeting.

The police, who detained Dhliwayo and Mukwapati from 10:00 am to 14:00 pm recorded their identity numbers and residential addresses and advised them that they were going to make a follow up with them for allegedly organizing the meeting in Chinhoyi.

Meanwhile, Bulawayo police on Wednesday freed Stix Mhlanga, a younger brother to

prominent Zimbabwean playwright, actor and theatre director, Cont Mhlanga.

Stix, who was arrested at a poetry session on Monday and detained at Bulawayo Central Police Station, was charged with assaulting an artist, who had allegedly recited a poem in praise of President Robert Mugabe. Mhlanga's case was dropped by prosecutors, who indicated that the State would have to proceed by way of summons if it resolves to prosecute Mhlanga because of conflicting witness statements.

ZLHR vindicated as magistrate frees bulk of detainees

HARARE-Zimbabwe Lawyers for Human Rights (ZLHR) has been vindicated after Harare Magistrate Munamoto Mutevedzi chided the police for carrying out indiscriminate arrests of people who were attending a lecture on democracy and constitutionalism last month.

Magistrate Mutevedzi on Monday freed 39 social justice and human rights activists who were arrested last month and charged with treason and placed on remand six social and human rights activists namely Munyaradzi Gwisai, Hopewell Gumbo, Antonater Choto, Welcome Zimuto, Eddson Chakuma, and Tatenda Mombeyarara.

Magistrate Mutevedzi stated that there were “glaring weaknesses” in the State case and it wasn’t clear from the State what the 39 detainees, who include HIV and AIDS activists did to deserve to be arrested and charged with treason.

The Magistrate said the State’s reliance on one witness, a police officer who attended the meeting surreptitiously and who had allegedly observed all the 45 suspects committing the offence was fictitious.

Magistrate Mutevedzi said the apprehension of the 45 people was a “dragnet arrest” by the police who didn’t verify or attach criminal conduct to each of the accused persons.

Last month, ZLHR issued an alert stating that the apprehension of the 45 people was a random arrest.

“At least 35 police officers suspected to be from the Criminal Investigation Department (CID) Law and Order section and some members of the dreaded Central Intelligence Organisation (CIOs) cast an indiscriminate dragnet at the venue where the academic discussion was being held,” read part of the ZLHR alert which was issued on 21 February, two days after the arrest of the social, justice and human rights activists.

Only six detainees, International Socialist Organisation (ISO) general coordinator Munyaradzi Gwisai, anti-debt campaigner Hopewell Gumbo, Antonater Choto, Welcome Zimuto, Tatenda Mombeyarara and Eddson Chakuma remain in remand prison after Magistrate Mutevedzi ruled that there was reasonable suspicion that they committed a crime.

The Magistrate said Gwisai, Choto and Mombeyarara convened the meeting to discuss the uprisings in Egypt and Tunisia and were responsible for the programme for that meeting while Gumbo, Zimuto and Chakuma, who were speakers at the lecture allegedly, took turns to incite participants to revolt against the government.

The six activists will appear in the High Court on Wednesday for a hearing of their bail application which was filed by their lawyers Alec Muchadehama and Marufu Mandevere. High Court Judge Justice Susan Mavangira on Friday postponed the bail hearing to Wednesday to allow the State to respond to the bail application.

The detainees’ lawyers last week lodged complaints against prison authorities after they placed their clients in solitary confinement and subjecting them to hard labour.

Lawyers, Marufu Mandevere and Charles Kwaramba told Magistrate Mutevedzi that prison authorities moved 17 male detainees from Harare



Hopewell Gumbo

Remand Prison to Harare Central Prison, where they placed them into solitary confinement.

The lawyers said the activists were only allowed to spend 30 minutes outside their cells while “entertaining” visiting relatives and friends in the morning and another 30 minutes in the afternoon.

The lawyers protested against what they termed a “serious form of punishment.”

The lawyers said all the female activists who were detained at Chikurubi Maximum Prison prior to their release last Monday were subjected to hard labour before being brought to court. They said

female detainees were forced to work three hours a day between Monday and Friday, cutting grass.

However, prosecutor Edmore Nyazamba, who conceded that solitary confinement and hard labour were a serious violation of the activists’ rights, denied the allegations. Nyazamba said the submissions by Mandevere and Kwaramba were designed to smear the image of the administration of prisons.

Those who were freed are Michael Sozinyu, Phillip Magaya, Prolific Mataruse, Godknows Biya, David Mupatse, Douglas Muzanenhamo,

Ganizani Nunu, Reki Jimu, Josphat Chinembiri, Strutton Muhambi, Trevor Chamba, Clarence Mugari, Munyaradzi Maregedze, Willie Hlatswayo, Ian Muteto, Tinashe Muzambi, Tinashe Mutazu, Pride Mukono, Lenard Kamwendo, Tinashe Chisaira, Trust Munyama, Peter Garanewako, Elizabeth Makume, Megline Malunga, Daison Bango, Malvern Hobwana, Tashinga Mudzengi, Ednar Chabalika, Thokozile Mathe, Francisca Thompson, Masline Zvomuya, Nhamo Kute, Annie Chipeta, Tabeth Chideya, Charles Mubwandarikwa, Thomas Chibaya, Fatima Manhando, Blessing Muguzayaya and Robert Muhlaba.

Mangoma fights for freedom

HARARE-The High Court will on Tuesday hear a bail application filed by Energy and Power Development Minister Hon. Elton Mangoma, who was arrested and detained last week for alleged criminal abuse of duty.

Hon. Mangoma’s lawyers filed the bail application on Friday after the Movement for Democratic Change (MDC) deputy treasurer-general was indicted for trial at the High Court and committed to Harare Remand Prison.

Chris Mutangadura, the chief law officer in the Attorney General’s Office on Friday

presented the formal legal documents setting out the charges against Hon. Mangoma and fixed the trial date as 28 March.

Hon. Mangoma was arrested on Thursday at his offices and detained overnight at Braeside Police Station.

The prosecutors accuse Hon. Mangoma of unlawfully abusing his office as Energy and Power Development Minister by ordering his subordinates to procure five million litres of diesel from a South African company, Nooa Petroleum without following tender procedures.

The State has lined up six witnesses to testify against him during the trial. These include Hon. Mangoma’s permanent secretary Justin Mupamhanga, Morgan Mudzinganyama, a director for Petroleum in the Ministry of Energy and Power Development, Griefshaw Revanevako, the acting chief executive officer of Petrol Trade, Sikwila Tanaka, the National Oil Company of Zimbabwe finance manager, State Procurement Board (SPB) executive chairperson, Charles Kuwaza and Samson Mutanhaurwa, the SPB’s acting principal officer.