

Court Applications

Irregularities in the Electoral Act

Case No HC 1209 / 05

Filed 10th March 2005

Non Compliance with the SADC Principals

Case No HC 1291 / 05

Filed 15th March 2005

**Correspondence to and from the Court Registrar
disputing the filing of applications etc.**

***(These can be construed as Deliberate
Delaying Tactics by the Courts for
Political reasons)***

IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE

1209
CASE NO. HC. /05

In the matter between:

MOVEMENT FOR DEMOCRATIC CHANGE

Applicant

and

ZIMBABWE ELECTORAL COMMISSION

Respondent

INDEX

NATURE OF DOCUMENTS

PAGE NO.

- | | |
|--|---------|
| 1. Chamber Application | 1 – 2 |
| 2. Certificate of Urgency | 3 |
| 3. Affidavit by Ian Muteto Makone | 4 – 7 |
| 3. Letter from MDC to Zimbabwe Electoral Commission dated 15/02/05 – Annexure "A" | 8 – 11 |
| 4. Nomination of Candidates published in the Government Gazette Extraordinary dated 17/2/05 – Annexure "B" | 12 |
| 5. Letter from Coghlan, Welsh & Guest to the Zimbabwe Electoral Commission dated 4 March 2005 – Annexure "C" | 13 – 14 |
| 6. List of Constituency Elections Officers published in the Government Gazette Extraordinary dated 4 March 2005 – Annexure "D" | 15 – 17 |
| 7. National Logistics Committee published in the Government Gazette Extraordinary dated 1 March 2005 – Annexure "E" | 18 |
| 8. Affidavit by Lottie Gertrude Bevier Stevenson-Dickey – Annexure "F" | 19 – 21 |
| 9. Agenda of meeting of Harare Metropolitan Province attached to the Affidavit by L G B Stevenson-Dickey as Annexure "A" | 22 |
| 10. Draft Order – Annexure "G" | 23 – 24 |

Dated at Harare this 10th day of March 2005.

fresh
COGHLAN, WELSH & GUEST

Applicant's Legal Practitioners
3rd Floor, Executive Chambers
George Silundika Avenue
HARARE (Mr Elliot/lc)

TO: THE REGISTRAR
High Court of Zimbabwe
HARARE

AND

TO: ZIMBABWE ELECTORAL COMMISSION
Respondent
VIP Lounge
International Conference Centre
HARARE

m. musandira
ZEC

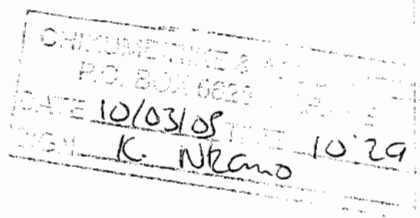
10/3/2005

AND

TO: CHIKUMBIRIKE & ASSOCIATES
Respondent's Legal Practitioners
12th Floor, Old Mutual Centre
Cnr Jason Moyo Avenue/3rd Street
HARARE (Mr Chikumbirike)

1524 hrs

Chikumbirike



IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE

CASE NO. HC. /05

In the matter between:

MOVEMENT FOR DEMOCRATIC CHANGE

Applicant

and

ZIMBABWE ELECTORAL COMMISSION

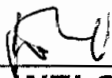
Respondent

CHAMBER APPLICATION

Application is hereby made for an Order in terms of the Draft Order annexed to this application on the grounds that certain important acts and deeds have recently been done or performed concerning the Parliamentary General Election set for 31 March 2005 which the Applicant submits should be declared null and void.

The accompanying Affidavits and documents are tendered in support of the application.

Dated at Harare this 10th day of March 2005.


COGHLAN, WELSH & GUEST
Applicant's Legal Practitioners
3rd Floor, Executive Chambers
George Silundika Avenue
HARARE (Mr Elliot/lc)

TO: THE REGISTRAR
High Court of Zimbabwe
HARARE

AND

TO: ZIMBABWE ELECTORAL COMMISSION
Respondent
VIP Lounge
International Conference Centre
HARARE

IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE

CASE NO. HC. /05

In the matter between:

MOVEMENT FOR DEMOCRATIC CHANGE

Applicant

and

ZIMBABWE ELECTORAL COMMISSION

Respondent

AFFIDAVIT

I, IAN MUTETO MAKONE, do hereby make oath and swear that:

1. I am the Election Projects Manager for the Movement for Democratic Change (MDC), the Applicant in this matter and am duly authorised to swear this Affidavit and bring this application on behalf of the Applicant.
2. The Applicant is a political party in Zimbabwe which holds the majority of opposition seats in the current parliament of Zimbabwe. It has sponsored candidates in all 120 constituencies in the Parliamentary General Elections scheduled for 31 March 2005.
3. The Respondent is the Zimbabwe Electoral Commission, a body established by law in terms of the Zimbabwe Electoral Commission Act [Chapter 2:12].
4. The Chairman of the Respondent is Mr Justice George Chiweshe. The address for service of the Respondent is VIP Lounge, International Conference Centre, Harare.
5. On 1 February 2005, the President of Zimbabwe, in terms of Section 38 of the Electoral Act [Chapter 2:13] issued a Proclamation which had the effect of calling a General Election for the Parliament of Zimbabwe to be held on 31 March 2005.
6. On 1 February 2005, the new Zimbabwe Electoral Commission Act [Chapter 2:12] and the new Electoral Act [Chapter 2:13] came into effect in terms of Statutory Instruments 16/2005 and 17/2005 respectively.

7. In the knowledge that the nomination process for the forthcoming Parliamentary General Election was not being conducted in accordance with the law, the Secretary-General of the Applicant Mr Welshman Ncube, wrote to Mr Justice Chiweshe of the Respondent on 15 February 2005 pointing out the requirements of the Electoral Act concerning the nomination process. I attach hereto a copy of that letter as Annexure "A". As far as I am aware, no response has been received to that letter.
8. However, two days after that letter was written on 17 February 2005, the Chief Elections Officer of the Respondent published a General Notice 42A/2005 in a Government Gazette Extraordinary purporting to appoint Constituency Elections Officers. I attach hereto a copy of this Notice as Annexure "B".
9. It is my respectful submission that although this Notice is headed "Electoral Act", it was not published in accordance with any of the provisions of that Act and was in fact issued in breach of that Act.
10. On 4 March 2005, our legal practitioners, Coghlan, Welsh & Guest, addressed a letter to the Chairman of the Respondent. I attach hereto a copy of that letter as Annexure "C". I understand that no response has been received to that letter.
11. On 4 March 2005, in terms of another Government Gazette Extraordinary, the Respondent published a Government Notice purporting to appoint Constituency Elections Officers. I attach hereto a copy of this General Notice as Annexure "D". This Gazette was only available on 7 March 2005, and indeed The Herald of 8 March 2005 for the first time published a list of these officials.
12. I respectfully contend that in terms of the provisions of the Electoral Act, the Respondent ought to have appointed Constituency Elections Officers for each of the 120 constituencies in Zimbabwe on or before 1 February 2005 and not on 4 March 2005 as was done.

13. Consequently, I respectfully submit that all acts and deeds done up to 4 March 2005 concerning the Parliamentary General Election set for 31 March 2005 which should have been performed in terms of the Electoral Act by Constituency Elections Officers but which were performed or must have been performed, by other officials are null and void.
14. On 1 March 2005, in terms of another Government Gazette Extraordinary, the Respondent published a Government Notice purporting to appoint a National Logistics Committee. I attach hereto a copy of this Government Notice as Annexure "E".
15. It is my respectful submission that although this Notice is headed "Zimbabwe Electoral Commission Act", it was not published in accordance with any of the provisions of that Act and it is in fact in breach of that Act. I further respectfully submit that the Zimbabwe Electoral Commission Act does not permit the appointment of such a "committee".
16. Consequently, I respectfully submit that all acts and deeds done by the National Logistics Committee including each of its sub-committees are null and void.
17. In particular, I respectfully submit that the numbers and locations of polling stations must be determined in each constituency by the Constituency Elections Officer concerned. I respectfully contend that to properly perform that statutory duty, each Constituency Elections Officer must give every candidate or their agents in each constituency an opportunity to make representations on those matters.
18. In support of these submissions, I attach hereto an affidavit by Lottie Gertrude Bevier Stevenson-Dickey as Annexure "F".
19. I respectfully submit that this application is urgent because it calls into question the legitimacy and legality of the Parliamentary General Elections set for 31 March 2005.
20. In conclusion, I pray on behalf of the Applicant for an order in terms of the Draft Order annexed hereto marked Annexure "G".

IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE

1291
CASE NO. HC. /05

In the matter between:

MOVEMENT FOR DEMOCRATIC CHANGE

Applicant

and

**THE PRESIDENT OF THE REPUBLIC
OF ZIMBABWE**

HIGH COURT OF ZIMBABWE

First Respondent

and

THE DELIMITATION COMMISSION

15 MAR 2005

Second Respondent

and

THE ELECTORAL SUPERVISORY COMMISSION

PO BOX 775, CAUSEWAY
HARARE

Third Respondent

and

THE ZIMBABWE ELECTORAL COMMISSION

Fourth Respondent

and

**THE MINISTER OF JUSTICE, LEGAL
AND PARLIAMENTARY AFFAIRS**

Fifth Respondent

NATURE OF DOCUMENTS

Court Application

Founding Affidavit by Morgan Tsvangirai

SADC Principles and Guidelines governing
Democratic Elections - Annexure "A".

Check List against the SADC Principles governing
Democratic Elections - Annexure "B1"

SADC Protocol Watch Assessment of period
7 February -25 February 2005 - Annexure "B2"

Four letter from the Zimbabwe Republic Police Mbare
District Headquarters - Annexures "B3(i) - (iv)"

Schedules relating to Delimitation Commission Report
- Annexure "C1" - "C4"

Table from National Census 2002 - Annexure "D"

Draft Order - Annexure "E"

PAGE NO.

1 - 2

3 - 12

13 - 17

18 - 35

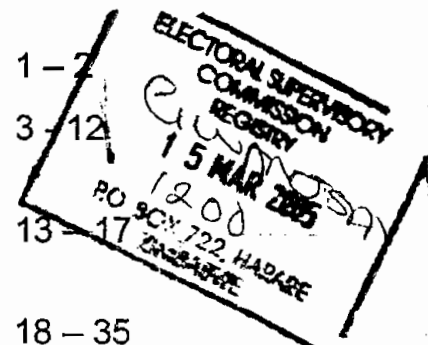
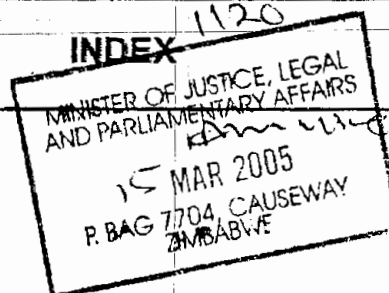
36 - 37

38 - 41

42 - 45

46

47 - 48



Dated at Harare this 15 day of March 2005.

COGHLAN, WELSH & GUEST

Applicant's Legal Practitioners
3rd Floor, Executive Chambers
George Silundika Avenue
HARARE (Mr Elliot/lc)

TO: THE REGISTRAR
High Court of Zimbabwe
HARARE

AND

**TO: THE PRESIDENT OF THE
REPUBLIC OF ZIMBABWE**
First Respondent
Munhumutapa Building
Samora Machel Avenue
HARARE

AND

TO: THE DELIMITATION COMMISSION
Second Respondent
c/o VIP Lounge
International Conference Centre
HARARE

AND

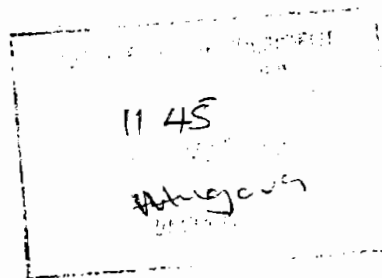
TO: ELECTORAL SUPERVISORY COMMISSION
Third Respondent
Hardwicke House,
Samora Machel Avenue
HARARE

AND

TO: ZIMBABWE ELECTORAL COMMISSION
Fourth Respondent
VIP Lounge
International Conference Centre
HARARE

AND

**TO: THE MINISTER OF JUSTICE, LEGAL
AND PARLIAMENTARY AFFAIRS**
Fifth Respondent
New Government Complex
Corner Samora Machel Avenue/Fourth Street
HARARE



1145
M. Mucumbira
Delimitation Commission
15/03/2005
15:00 hrs
M. Mucumbira

M. Mucumbira
ZEC
15/03/2005
15:00 hrs
M. Mucumbira

IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE

CASE NO. HC. /05

In the matter between:

MOVEMENT FOR DEMOCRATIC CHANGE

Applicant

and

**THE PRESIDENT OF THE REPUBLIC
OF ZIMBABWE**

HIGH COURT OF ZIMBABWE

First Respondent

and

THE DELIMITATION COMMISSION

15 MARCH 2005

Second Respondent

and

THE ELECTORAL SUPERVISORY COMMISSION

BY CY. 275. CAUSEWAY
ZIMBABWE

Third Respondent

and

THE ZIMBABWE ELECTORAL COMMISSION

Fourth Respondent

and

**THE MINISTER OF JUSTICE, LEGAL
AND PARLIAMENTARY AFFAIRS**

Fifth Respondent

COURT APPLICATION

TAKE NOTICE that the MOVEMENT FOR DEMOCRATIC CHANGE intends to apply to the High Court of the Zimbabwe sitting at Harare for an Order in terms of the attached Draft Order and that the accompanying Affidavit and documents will be used in support of the Application.

IF you intend to oppose this application, you will have to file a Notice of Opposition Form 29A together with one or more Opposing Affidavit(s) with the Registrar of the High Court at Harare within ten (10) days after the date on which this Notice is served upon you. You will also have to serve a copy of the Notice of Opposition and affidavit(s), which may have annexed to them documents verifying the facts set out in the affidavit(s) upon the Applicant's Legal Practitioners.

IF you do not file any Opposing Affidavit within the period specified above, this application will be set down for hearing in the High Court at Harare without further notice to you and will be dealt with as unopposed application.

Dated at Harare this 15 day of March 2005.

IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE

CASE NO. HC. /05

In the matter between:

MOVEMENT FOR DEMOCRATIC CHANGE

Applicant

and

**THE PRESIDENT OF THE REPUBLIC
OF ZIMBABWE**

First Respondent

and

THE DELIMITATION COMMISSION

Second Respondent

and

THE ELECTORAL SUPERVISORY COMMISSION

Third Respondent

and

THE ZIMBABWE ELECTORAL COMMISSION

Fourth Respondent

and

**THE MINISTER OF JUSTICE, LEGAL
AND PARLIAMENTARY AFFAIRS**

Fifth Respondent

AFFIDAVIT

I, MORGAN TSVANGIRAI, do hereby make oath and say that:

A. Parties

1. I am the President of the Applicant and am duly authorised to swear this Affidavit and bring this application on behalf of the Applicant.
2. The Applicant is a political party in Zimbabwe which holds the majority of opposition seats in the current Parliament of Zimbabwe. It has sponsored candidates in all 120 constituencies in the Parliamentary General Elections scheduled for 31 March 2005.
3. The First Respondent is the President of the Republic of Zimbabwe appointed in terms of Section 27 of the Constitution of Zimbabwe. The address of the First Respondent is Munhumutapa Building, Samora Machel Avenue, Harare.

The address of the First Respondent is Munhumutapa Building, Samora Machel Avenue, Harare.

4. The Second Respondent is the Delimitation Commission established in terms of Section 59 of the Constitution of Zimbabwe. The address of the Second Respondent is care of the Zimbabwe Electoral Commission referred to in paragraph 6 herein. The Chairman of the Delimitation Commission and the Chairman of the Zimbabwe Electoral Commission is Mr Justice George Chiweshe.
5. The Third Respondent is the Electoral Supervisory Commission established in terms of Section 61 of the Constitution of Zimbabwe. The address of the Third Respondent is Hardwicke House, Samora Machel Avenue, Harare.
6. The Fourth Respondent is the Zimbabwe Electoral Commission established in terms of Section 3 of the Zimbabwe Electoral Commission Act [Chapter 2:12]. The address of the Fourth Respondent is VIP Lounge, International Conference Centre, Harare.
7. The Fifth Respondent is the Minister of Justice, Legal and Parliamentary Affairs to whom the President has assigned the administration of the Zimbabwe Electoral Commission Act [Chapter:2:12] and the Electoral Act [Chapter 2:13]. The address of the Fifth Respondent is New Government Compex, Corner Samora Machel Avenue/Fourth Street, Harare.

B. SADC Principles and Guidelines

8. In August 2004, and in Mauritius, the First Respondent, on behalf of the Government of the Republic of Zimbabwe, signed and agreed to be bound by and to comply with the Principles and Guidelines Governing Democratic Elections of the Southern African Development Committee (SADC) (hereinafter referred to as the "SADC Principles and Guidelines"). I attach hereto a copy of the SADC Principles and Guidelines as Annexure "A".
9. Since the First Respondent agreed that Zimbabwe be bound by the SADC Principles and Guidelines, the Parliament of Zimbabwe has passed two important pieces of legislation to which the First Respondent has assented, namely the Electoral Act [Chapter 2:13] and the Zimbabwe Electoral Commission Act [Chapter 2:12]. Both

Acts are now in force and constitute part of the law in terms of which the Parliamentary Election on 31 March 2005 will take place.

10. I contend that on a proper analysis of these two Acts, the Government of Zimbabwe has failed to incorporate into the law of Zimbabwe the SADC Principles and Guidelines. Furthermore, the Government of Zimbabwe, through the Parliament of Zimbabwe, and the First Respondent, has failed to repeal or amend certain existing laws to make them – and thus the whole of the law of Zimbabwe – conform to the SADC Principles and Guidelines.
11. Thus, I respectfully submit that the Government of Zimbabwe has failed to comply with many of the SADC Principles and Guidelines in various fundamental and important respects.
12. I respectfully submit that the SADC Principles and Guidelines are incompatible with various provisions of:
 - (a) The Public Order and Security Act [Chapter 11:17];
 - (b) The Access to Information and Protection of Privacy Act [Chapter 10:27]; and
 - (c) The Broadcasting Act [Chapter 12:06].
13. In this regard, I attach hereto:
 - (a) A Checklist drawn up in January 2005 of the SADC Principles and Guidelines, the contents of which I agree with and support. This Checklist is attached hereto marked Annexure "B1";
 - (b) An Assessment of the extent to which the Zimbabwe Government is failing to comply with the SADC Principles and Guidelines. This Assessment is for the period 7 February 2005 to 24 February 2005. It is attached hereto marked Annexure "B2".
 - (c) Four recent letters from the Zimbabwe Republic Police refusing the Applicant to hold meetings in Harare South. These letters are attached hereto as Annexures "B3.(i) – (iv)".
14. These annexures show, in part, how the laws of Zimbabwe conflict with the SADC Principles and Guidelines. The matter will be developed in legal argument on behalf of the Applicant.

15. I am aware that since the Checklist was prepared in January 2005 the Broadcasting Services (Access to Radio and Television during an election) Regulations 2005 (SI 22/2005) have been published. However, these Regulations only have a very limited scope and are only for a very limited time period. Even during this period, because of the massive financial resources of Zanu (PF) they are able to afford the very high advertising costs whilst the Applicant is not.
16. Despite the recent Regulations the fact is that for the vast majority of the time the public media, radio, television and newspapers, gives excessive favourable coverage to Zanu (PF) and continually vilifies the Applicant.
17. I am also aware that the Non-Governmental Organisation Bill has not yet been promulgated into law. However, it has been passed by Parliament and it clearly has the support of Zanu (PF). It is therefore anticipated that it will come into law in the near future. Because of this, it is already having detrimental effect in various ways. The position will ofcourse become worse when the Bill is enacted into law.
18. Despite the propaganda in the public media that peace prevails in the country, this is far from the case as will be apparent from the attached assessment conducted in February 2005 and attached as Annexure "B2".

C. The Delimitation Commission

19. I respectfully submit that the findings of The Delimitation Commission, as set out in Proclamation 1 of 2005 (SI 3A/2005), are grossly inaccurate in several important and fundamental respects and that therefore the decision to reduce the seats in certain Provinces and to increase the seats in other Provinces is based on a false basis and is without substance.
20. In support of this submission, I attach hereto the following documents:
 - (a) A Summary which I have caused to be prepared of the information contained in Proclamation 1 of 2005 (SI 3A/2005), Annexure "C1";

- (b) Appendix 6 of the Report by the Electoral Supervisory Commission on the 2000 Parliamentary Elections showing the votes cast in each province, Annexure "C2";
 - (c) A Comparison of Voter Populations in each Province between the Parliamentary Elections in 2000 as per the Appendix to the Electoral Supervisory Commission Report and the Voter Populations contained in the Delimitation Commission Report contained in Proclamation 1 of 2005 (SI 3A/2005), Annexure "C3;
 - (d) A comparison of Increases/Decreases in Voter Populations in 2000 and 2004 including the figures supplied by the Electoral Supervisory Commission and the Delimitation Commission, Annexure "C4".
21. I also attach hereto as Annexure "D" a Table from the National Census conducted in August 2002. This shows that Harare, in particular, has experienced a population growth of more than three times that of any other province. In the period 1992 to 2002 Harare's population grew by some 424 670 compared to Manicaland's growth of just 29 213. It is self-evident that Harare's population in the last two years has continued at a similar rate.
22. Despite this, the Delimitation Commission has seen fit to reduce the number of seats in Harare by one and to increase the number of seats in Manicaland by one. It has decreased by one the number of seats in Bulawayo and Matebeleland South and increased the number of seats by one in Mashonaland East and Mashonaland West provinces.
23. I respectfully submit that the Delimitation Commission had no proper reason to alter the number of constituencies in each province in the manner it did.

D. The Electoral Supervisory Commission

24. The Electoral Supervisory Commission should, in terms of Section 61 of the Constitution of Zimbabwe consist of a Chairman and a total of four other members.
25. At the time of the Presidential Election was held in March 2002, the Electoral Supervisory Commission was not properly constituted in that it only had four members. This was referred to in the Election Petition challenging the outcome of the Presidential Election (Case No. HC. 3616/2002).

26. Since the Presidential Election was held, I verily believe that no Notices have been gazetted appointing members of the Electoral Supervisory Commission. This is contrary to the requirements of Section 31 of the Interpretation Act [Chapter 1:01] requiring appointments such as these to be published in the Government Gazette.
27. I understand from media reports that Mr Gula-Ndebele was replaced as Chairman of the Electoral Supervisory Commission by Mr T P Gambe. I also understand from other sources that the other members of the Commission are:
Ms J L Kazembe;
Ms Ndewere-Musasa; and
Mr T M Mberi.
28. This means that as was the position at the Presidential Election in 2002, the Electoral Supervisory Commission is not properly constituted in terms of the provisions of the Constitution of Zimbabwe.
29. Consequently I respectfully submit that all acts and deeds done by the Electoral Supervisory Commission are unlawful and of no force or effect.
30. I refer to the submission made later that the role of the Electoral Supervisory Commission is very confusing. It seems to be passive despite the fact that, unlike the Zimbabwe Electoral Commission, it is established in terms of the Constitution.

E. The Zimbabwe Electoral Commission

31. The Zimbabwe Electoral Commission was established in terms of the Zimbabwe Electoral Commission Act which came into effect on 1 February 2005. Section 4 of that Act sets out the functions of the Zimbabwe Electoral Commission.
32. Sub-section (1) of Section 4 states as follows:

"Functions of Commission

- S4 (1)** The Zimbabwe Electoral Commission shall have the following functions –
- (a) to prepare for and conduct –

- (i) elections to the office of President and to Parliament; and
 - (ii) elections to the governing bodies of local authorities ; and
 - (iii) referendums;
- and to ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law;
- and
- (b) to direct and control the registration of voters by the authority charged with that responsibility under an Act of Parliament; and
 - (c) to compile voters' rolls and registers; and
 - (d) to ensure the proper custody and maintenance of voters' rolls and registers; and
 - (e) to design, print and distribute ballot papers, approve the form of and procure ballot boxes, and establish and operate polling centres; and
 - (f) to conduct voter education; and
 - (g) to give instructions to –
 - (i) the Registrar-General in regard to the exercise of his or her functions under the Electoral Act; and
 - (ii) other persons in the employment of the State or of a local authority for the purpose of ensuring the efficient, proper, free and fair conduct of elections; and
 - (h) to keep the public informed about –
 - (i) the delimitation of constituencies and other electoral boundaries; and
 - (ii) the location of polling stations and when they are open; and
 - (iii) voters' rolls and the times and places at which they are open for inspection; and
 - (iv) political parties and candidates contesting every election or supporting or opposing any question put to a referendum; and
 - (v) voting at an election or referendum and the results thereof; and
 - (vi) generally, all matters relating to the Commission's work and the electoral process;
- and
- (i) to exercise any other functions that may be conferred or imposed on the Commission or any other enactment.

33. In terms of Proclamation 1 of 2005, the registration of voters closed on 4 February 2005. As the Zimbabwe Electoral Commission only came into operation on 1 February 2005 in terms of Statutory Instrument 16/2005, I respectfully submit that contrary to the provisions of Section 4 of the Zimbabwe Electoral Commission Act, the Zimbabwe Electoral Commission failed:
- (a) To direct and control the registration of voters by the authority charged with that responsibility under an Act of Parliament; and
 - (b) To compile voters' rolls and registers; and
 - (c) To ensure the proper custody and voters' rolls and registers.
34. I also respectfully submit that in breach of Section 4(1) (f) of the Zimbabwe Electoral Commission Act the Zimbabwe Electoral Commission has failed in its fundamental and crucial duty "to conduct voter education".
35. I further respectfully submit that the Zimbabwe Electoral Commission has failed to keep the public informed of the matters set out in paragraph (h) of Section 4 (1) of the Zimbabwe Electoral Commission Act.
36. Generally, I respectfully submit that the Zimbabwe Electoral Commission has failed to ensure that these elections are conducted efficiently, freely, fairly, transparently and in accordance with the law.
37. In this regard, I refer to the application filed by the Movement for Democratic Change on 10 March 2005 against the Zimbabwe Electoral Commission in Case No. HC 1209/05.
38. There is an obvious overlap of the functions of the Third and the Fourth Respondent. The Constitution obliges the Third Respondent to supervise the registration of voters and the conduct of elections. The Third Respondent has not been provided with the staff and funding to fulfil its constitutional duty in this regard. Furthermore, the Zimbabwe Electoral Commission gives to the Fourth Respondent the function of preparing for and conducting elections and directing and controlling the registration of voters. I contend that these functions are already included in the role of the Third Respondent. The Fourth Respondent is not a body mentioned in the Constitution.

39. Therefore the conflicting constitutional and statutory provisions at the very least make it extremely difficult to determine which body is responsible for the various aspects of the registration of voters and the actual mechanics of the election process itself. This confusion makes it very difficult for the general public – the voters - to know which party is in charge of the whole electoral process. I respectfully submit that this is a deliberate ploy on behalf of the Government of Zimbabwe to confuse the electorate.

F. Conclusion

40. Section 3 of the Electoral Act sets out the General Principles of democratic elections which are supposed to be adhered to in Zimbabwe. That section states as follows:

“3. General principles of democratic elections

Subject to the Constitution and this Act, every election shall be conducted in way that is consistent with the following principles

–

- (a) the authority to govern derives from the will of the people demonstrated through elections that are conducted efficiently, freely, fairly, transparently and properly on the basis of universal and equal suffrage exercised through a secret ballot; and
- (b) every citizen has the right –
 - (i) to participate in government directly or through freely chosen representatives, and is entitled, without distinction on the ground of race, ethnicity, gender, language, political or religious belief, education, physical appearance or disability or economic or social condition, to stand for office and cast a vote freely;
 - (ii) to join or participate in the activities of and to recruit members of a political party of his or her choice;
 - (iii) to participate in peaceful political activity intended to influence the composition and policies of Government;
 - (iv) to participate, through civic organisations, in peaceful activities to influence and challenge the policies of Government;

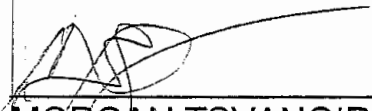
and

- (c) every political party has the right –
- (i) to operate freely within the law;
 - (ii) to put up or sponsor one or more candidates in every election;
 - (iii) to campaign freely within the law;
 - (iv) to have reasonable access to the media.”

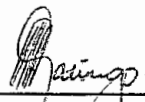
41. I respectfully submit that the legislation which has been passed by the Government of Zimbabwe and the discriminatory and often violent manner in which the opposition is treated by the security forces and the supporters of Zanu (PF) means that the position in Zimbabwe is a long way from adhering to the above general principles of democratic elections.

42. In all the circumstances, I pray for an Order in terms of the Draft Order annexed hereto marked Annexure “E”.

Sworn at Harare this *11th* day of **March** 2005.


MORGAN TSVANGIRAI

Before me:


COMMISSIONER OF OATHS
N. MATINGO
COMMISSIONER OF OATHS
BEVERLEY COURT
100 NELSON MANDELA AVENUE
HARARE
ZIMBABWE

IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE

CASE NO. HC. /05

E
47

In the matter between:

MOVEMENT FOR DEMOCRATIC CHANGE

Applicant

and

**THE PRESIDENT OF THE REPUBLIC
OF ZIMBABWE**

First Respondent

and

THE DELIMITATION COMMISSION

Second Respondent

and

THE ELECTORAL SUPERVISORY COMMISSION

Third Respondent

and

THE ZIMBABWE ELECTORAL COMMISSION

Fourth Respondent

and

**THE MINISTER OF JUSTICE, LEGAL
AND PARLIAMENTARY AFFAIRS**

Fifth Respondent

DRAFT ORDER

1. **IT IS DECLARED** that the provisions of the Electoral Act [*Chapter 2:13*] and the Zimbabwe Electoral Commission Act [*Chapter 2:12*] do not incorporate and make part of the laws of Zimbabwe clauses 2.1.1, 2.1.3, 2.1.5, 2.1.6, 2.1.8, 4.1.3, 4.1.4, 4.1.7, 7.2, 7.3, 7.4, 7.6, 7.7, 7.10, 7.11 and 7.12 of the Principles and Guidelines Governing Democratic Elections agreed to at the meeting of Heads of Government of the Southern African Development Community meeting in Mauritius in August 2004 and signed by His Excellency the President of Zimbabwe on behalf of the Government of Zimbabwe.
2. **IT IS DECLARED** that the **SADC Principles and Guidelines** referred to in paragraph 1 above are incompatible with the following provisions:
 - (a) Part IV of the Public Order and Security Act [*Chapter 11:17*];

- (b) Parts XI and XII of the Access to Information and Protection of Privacy Act [*Chapter 10:27*]; and
- (c) Parts III and IV of the Broadcasting Act [*Chapter 12:06*]; and

and that the said provisions, taken with the manner of their application by the appropriate regulatory authority of those statutory provisions, are contrary to and in breach of the said Section 3 of the Electoral Act [*Chapter 2:13*] for the holding of Democratic Elections in Zimbabwe.

3. It is **Ordered** that the findings of the Delimitation Commission as set out in Proclamation 1 of 2005 (SI 3A/2005) be and are hereby set aside.
4. It is **Ordered** that the Electoral Supervisory Commission is not properly constituted in terms of Section 61 of the Constitution of Zimbabwe and is therefore unlawful and of no force or effect.
5. **IT IS DECLARED** that the Zimbabwe Electoral Commission has failed to undertake the following functions, and thus is in default of its role and obligations in terms of the Zimbabwe Electoral Commission Act [*Chapter 2:12*]:
 - a. it failed to direct and control the registration of voters for the purposes of the general election to be held on 31 March 2005;
 - b. it failed to compile the voters' rolls and registers for the purposes of the general election to be held on 31 March 2005;
 - c. it failed to have copies of the compiled voters' rolls available for purchase by members of the public;
 - d. it failed to conduct voter education;
 - e. it failed to keep the public informed of the matters set out in paragraph (h) of section 4(1) of the Zimbabwe Electoral Commission Act [*Chapter 2:12*].
6. The Respondents shall pay the costs of this suit.

BY THE REGISTRAR

BY THE COURT