

**IN THE CONSTITUTIONAL COURT OF ZIMBABWE  
HELD AT HARARE**

**CASE NO CCZ**

In the matter between:

**MORGAN RICHARD TSVANGIRAYI**

**APPLICANT**

And

**ROBERT GABRIEL MUGABE**

**1<sup>ST</sup> RESPONDENT**

And

**THE ZIMBABWE ELECTORAL COMMISSION (ZEC)**

**2<sup>ND</sup> RESPONDENT**

And

**THE CHAIRPERSON OF THE ZIMBABWE ELECTORAL  
COMMISSION**

**3<sup>RD</sup> RESPONDENT**

And

**THE CHIEF ELECTIONS OFFICER**

**4<sup>TH</sup> RESPONDENT**

**AFFIDAVIT OF MORGAN RICHARD TSVANGIRAI**

I, the undersigned **Morgan Richard Tsvangirai** do hereby make oath and swear that;

1. I am the Applicant in this matter and I am the President of the Political party called the Movement for Democratic Change (MDC-T) at the Presidential election held on the 31<sup>st</sup> of July 2013, I stood as a candidate for the office of President of Zimbabwe as it is now established in terms of Section 89 of the Constitution of Zimbabwe on behalf of the Movement for Democratic Change.
2. The First Respondent is Robert Gabriel Mugabe who was declared the winner of the Presidential election held on the 31<sup>st</sup> of July 2013 by the Second Respondent

on the 3<sup>rd</sup> of August 2013. The First Respondent is also the President of the Political party call the Zimbabwe African Union (Patriotic Front) (ZANU (PF).

3. The Second Respondent is the Zimbabwe Electoral Commission established in terms of Section 238 of the Constitution of Zimbabwe as read with Section 4A of the Electoral Act Chapter 2.13.
4. The Zimbabwe Electoral Commission is charged with the responsibilities in terms of the Constitution and the Electoral Act **inter alia** to prepare for, conduct and supervise elections for President, Parliament, Chiefs, Provincial and Metropolitan Councils and other bodies. The Zimbabwe Electoral Commission is tasked to ensure the credibility of the elections and that those elections are conducted efficiently, freely and transparently in accordance with the Law.
5. The Third Respondent is the Chief Elections Officer appointed in terms of the Electoral Act. The Chief Elections Officer is cited because in the event that this application is granted, he is obliged in terms of Section 111(2) (b) to publish a notice in the Gazette stating the effect of the order of this Honourable Court.

### **ELECTION PETITION**

6. This Election Petition is brought in terms of Section 93 of the Constitution of Zimbabwe. On the basis of the evidence and submission presented before this Honourable Court through this petition, and evidence which will be led at the trial of the petition, I challenge the validity of this election it is my respectful

contention that the election held on the 31<sup>st</sup> of July 2013 is void and or liable to be set aside.

7. Through this election petition and evidence which will be led at the trial, I respectfully submit that the First Respondent was not duly elected owing to the numerous corrupt and illegal practices and other electoral malpractices and irregularities attributable to First Respondent and/or First Respondent's campaign teams. Separately, I seek also to have the election set aside on the basis that the Second Respondent failed to discharge its constitutional obligation to manage and supervise the conduct of a credible, efficient, transparent, free and fair elections as it is obliged to under Chapter 7 of the Constitution of Zimbabwe and the Electoral Act (Cap 2:13). Third, I also seek to have the election set aside on the basis that it was held in breach of the Constitution.

1. Despite the fact that the election had not been conducted in accordance with the Constitution and the Electoral Law, Fourth Respondent announced on 3 August 2013 that the First Respondent had been duly elected as President of Zimbabwe. On account of the irregularities referred to above, the Presidential election result announced by the Second Respondent on the 3<sup>rd</sup> of August 2013 does not represent the will of the Zimbabwean voting public. I believe that in hearing this matter and determining whether or not the election was valid this Honourable Court must have regard to fundamental rights which every Zimbabwean is entitled to, including the following

## **67 Political rights**

(1) Every Zimbabwean citizen has the right—

(a) to free, fair and regular elections for any elective public office established in terms of this Constitution or any other law; and

(b) to make political choices freely.

(2) Subject to this Constitution, every Zimbabwean citizen has the right—

(a) to form, to join and to participate in the activities of a political party or organisation of their choice;

(b) to campaign freely and peacefully for a political party or cause;

(c) to participate in peaceful political activity; and

(d) to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.

(3) Subject to this Constitution, every Zimbabwean citizen who is of or over eighteen years of age has the right—

(a) to vote in all elections and referendums to which this Constitution or any other law applies, and to do so in secret; and

(b) to stand for election for public office and, if elected, to hold such office

9. I also believe that while this Court does not yet have its own specific rules for petitions, because of the many fundamental rights involved, its procedure in hearing this case should not only be fair but should ensure that formalities relating to the proceedings are kept to a minimum; and that the court, while observing the rules of natural justice, is not unreasonably restricted by procedural technicalities in accordance with section 69 and section 85(3) of the Constitution.

## **BACKGROUND**

10. In order to give context to this application, I respectfully consider it necessary to provide a brief background. The background is that since 2000, our country has been unable to produce a Presidential (and other) result which is not contestable on account of irregularities. In particular, and in the context of Presidential elections it is important fact that the harmonised elections in 2008 and the subsequent “run off” in June 2008 did not produce an electoral result which was credible. It is common cause that and public knowledge that having won the first in March 2008, I, and the Movement for Democratic Change (MDC-T) then withdrew from the ostensible presidential election runoff in June 2008 because of what the State sponsored and other violence, intimidation, media bias and hate speech and numerous other electoral malpractices. It is common cause that the election in June 2008 was not free, fair, transparent and credible. Having withdrawn from the June 2008 runoff the First Respondent Robert Gabriel Mugabe contested the supposed runoff event as a sole candidate. The results of the 2008 election were rejected not only by my party the Movement for Democratic Change and I, but also by the generality of Zimbabweans and the African and international community.
  
11. The First Respondent accepted that the election in 2008 was not free, fair and credible. He did not and could not form an acceptable Government under those circumstances. As a result, and within two weeks of being sworn in, the Respondent, I and other parties entered into a Memorandum of Understanding through the intervention/mediation of the Southern African Development

Community (SADC). The Memorandum of Understanding was consummated under an agreement mediated by the Southern African Development Community which was signed on the 15<sup>th</sup> of September 2008. The September agreement commonly referred to as inter party Global Political Agreement or power sharing agreement (both “the GPA”) and is part of the Constitution of Zimbabwe. I respectfully incorporate the two agreements as a part of this petition.

12. I presented the background above because it is directly important and relevant to this matter. I respectfully testify that the purpose of the Global Political Agreement was to ensure and guarantee a process towards elections which would ensure free, fair and credible elections. Its purpose was to remove all causes of the failed election of 2008 and to provide conditions to achieve a lasting solution to the political challenges in this country. For this reason, the agreement specifically deliberately addressed processes for the elimination of violence and intimidation whether State sponsored, direct or indirect, media bias and hate speech and other circumstances militating against free, fair, transparent and credible elections. Article 6 of the Global Political Agreement made provision for processes towards a new constitution to guarantee all rights including the right to vote in a free, fair and credible election and other political rights. Accordingly the new constitution encompasses a superior set of democratic values and standards not only in relation to election laws but also laws which have a direct bearing on free, fair and credible elections.
13. Although the inclusive government born out of the Global Political Agreement made much progress, regrettably there was also disagreement on important

issues. I have been involved in or have myself instituted proceedings during the life of the inclusive Government before these Honourable Courts which confirm the fact of such disagreements. There are number of cases in which First Respondent and I have differed in important issues during the life of the inclusive Government. I incorporate herein those cases and the affidavits therein in order to demonstrate that the 2<sup>nd</sup> Respondent has not been faithful to the latter, spirit and purpose of the Global Political Agreement.

14. Unfortunately, when election dates were fixed following the judgment of this Honourable Court in Jealousy Mawarire vs Robert Gabriel Mugabe and others (in which First Respondent advised the Court that an election could be properly held by the 31<sup>st</sup> July 2013), further differences arose as between the First Respondent and I on various matters.

15. Importantly, when the election was held on the 31<sup>st</sup> of July 2013, steps necessary to conduct a free, fair and credible poll had not been fulfilled. I submit that the country went to elections on the 31<sup>st</sup> of July 2013 before conditions were right for a free, fair and credible election.

16. As a result, cause has arisen for this Election Petition.

## **GROUNDS FOR THE PETITION**

17. I now turn to the specific grounds upon which this petition is based, evidence of which will be fully adduced at the trial of this petition. I should mention that there have been formidable obstacles faced in the preparation of this petition on account of lack of cooperation by the Second Respondent. Basic

information that is held by the Second Respondent and is required by law to be provided to candidates has not been made available even after requests. As a result, I have had to file separate urgent applications to these Honourable Courts in order to obtain this information which will be necessary at the trial of this petition.

18. My grounds for this petition are outlined below but attached hereto as **Annexure "A"** is a full dossier which I incorporate hereto as if specifically traversed.

#### **19. ELECTIONS HELD IN BREACH OF CONSTITUTION**

1. On 13<sup>th</sup> June 2013, the First Respondent wrote a letter to me advising that he was proclaiming dates for elections which he did on the same day without consultation. He also purported to amend the Electoral Act using his powers under the Presidential Powers (Temporary Measures) Act.
2. I am advised by my legal representatives, which advice I believe, that the purported amendment of the Electoral Act using the Presidential Powers (Temporary Measures) Act was *ultra vires* the Constitution. The most important of these reasons is that s. 157 of the Constitution prescribes that electoral amendments can only be done by an Act of Parliament, which is primary legislation and yet under the Presidential Powers Act, the President can only issue regulations, which are secondary legislation. I am advised that an Act of Parliament is clearly defined in the new Constitution as a Bill that has been passed by both Houses of



Parliament and signed by the President. Amendments through the Presidential Powers Act have not gone through Parliament and are not an “Act of Parliament”.

3. I am further advised that in terms of the new Constitution, only Parliament has the power to make primary legislation and this power cannot be delegated to anyone, including the President. Using the Presidential Powers Act, the Second Respondent sought to make primary legislation under the guise of regulations. I am advised and believe that to the extent that the Presidential Powers (Temporary Measures) Act effectively gives the President power to make primary legislation contrary to the provisions of the new Constitution which ensure that primary law-making powers are the exclusive domain of Parliament, it is unconstitutional. In any event, resorting to the use of the Presidential Powers (Temporary Measures) Act when Parliament was still in existence was not justified.
4. The net effect of the conduct of the First Respondent in the use of the presidential powers was that the purported amendment of the Electoral Act using regulations was ultra vires s. 157 of the Constitution and therefore null and void. The Electoral Act was therefore never properly amended as mandatorily required under Schedule 6 of the Constitution.

## **20. DISENFRANCHISEMENT THROUGH RESTRICTIVE VOTER**

### **REGISTRATION**

1. I am concerned that thousands of persons who were eligible to register as voters were unable to do so due to Second Respondent's inefficiencies and the limited

time that was provided for the exercise. The new Constitution made provision in Schedule Six for a mandatory intensive voter registration and voters' roll inspection exercise for at least 30 days. This officially began on 10<sup>th</sup> June 2013 and ended on 9<sup>th</sup> July 2013.

2. However, even on the final day of registration, countless people in queues were unable to register, with the Second Respondent closing the exercise. Evidence on the numbers will be led upon the provision of the electronic voters roll. There was an upsurge in demand for registration by first-time voters and also because persons previously categorised as aliens had recently had their citizenship rights restored by the new Constitution. Second Respondent failed to meet this demand, leaving many people especially in urban areas disenfranchised.
1. I am advised and believe that ZEC's handling of the voter registration exercise, particularly the closure of registration when countless people were in queues to register was in violation of the new Constitution which in s. 155 requires the State to ensure that every citizen who is eligible to vote is registered and that every citizen who is eligible to vote has an opportunity to cast a vote. It is a right that is constitutionally guaranteed under the Constitution (s. 67 and s. 68).

## **21. REFUSAL TO AVAIL THE VOTERS' ROLL TO CANDIDATES**

8. ZEC failed and/or refused to avail an electronic copy of the voters' roll in searchable and analysable form. Despite several pleas for the voters' roll, a hard copy was only delivered late on polling day, just a couple of hours before the polls closed.

I am advised and believe that failure to avail the voters' roll is not only a serious violation of the Electoral Act but it is so fundamental a breach that it undermines the credibility of the entire election. The Electoral Act requires ZEC to make available free of charge to political parties and candidates electronic copies of the voters rolls. Printed copies can be available to any person upon payment of the prescribed fee. ZEC has failed to comply with the law. It does not make any sense that ZEC was able to print copies of the voters' roll and yet alleged that they could not provide the electronic copy because the logical thing is that one can only print from an electronic or soft copy. Hence the averment that not only did ZEC fail to provide the electronic copy of the voters' roll but they have refused to do so, notwithstanding the existence of a court order.

9. I am further advised and believe that failure to make the voters' roll available is also a violation of the Constitution which requires that the State must ensure that all political parties and candidates in an election have reasonable access to all material and information necessary for them to participate effectively. Further, in terms of regional best practice as reflected in the SADC Principles and Guidelines on Democratic Elections, the voters' roll must be accessible to political parties and members of the public.

10. My major concern is that the absence of the voters' roll was a serious handicap because the voters' roll is the most critical document used to determine whether

or not a person is eligible to vote. This is compounded by the fact that with the late delivery of the voters' roll, there was virtually no time to properly inspect and verify its authenticity.

11. The refusal to avail the voters' roll for inspection following the end of the voter registration period on 9<sup>th</sup> July 2013 was also in breach of Schedule 6 of the Constitution which provided for a period of mandatory inspection of the voters' roll. Although the Second Respondent stated that registration and inspection could be done concurrently, it defies logic because one can only properly inspect whether or not his or her name is on the voters' roll after and not during the preparation of the register. In fact, the failure to provide for a period of inspection of the voters' roll is directly connected to the major problems that were faced on polling day when thousands of voters were turned away on account of their names appearing in different wards. It is also directly connected to the rampant abuse of the voter registration slips on polling day purportedly on account of the fact that one's name did not appear on the voters' roll despite having registered. If there had been adequate time for inspection in compliance with the Constitution, these problems affecting the credibility of the election could have been avoided at the very least, reduced.

12. Part of the information that we have requested from ZEC and is the subject of a separate court application is the number of persons who used voter registration

slips on polling day. Once provided, evidence will be adduced at trial to demonstrate the scale of the irregularity.

## **22. DUPLICATION OF NAMES ON THE VOTERS ROLL**

1. I am advised and believe that a review of the voters' roll has shown duplication of names on a large scale. I have studied and believe a report on an assessment of an earlier version of the voters' roll (provided on 19<sup>th</sup> June 2013) by a local research organisation which demonstrated that 870,000 names had been duplicated on the voters' roll. I provide at **Annexure "B"** a sample of the voters' roll as at 19<sup>th</sup> June 2013 a quick perusal of which demonstrates the nature of the irregularity of duplication of names. There are literally thousands of pages depicting this problem and evidence will be adduced at the trial of this petition.
  
14. The implication of the duplication is that the voters' roll was inflated and certainly not a true reflection of the number of persons that are registered to vote. This flaw meant that when ZEC printed an extra 2 million ballot papers, they were basing it on a grossly inflated and flawed voter register. The duplication of names and the extra ballot papers significantly raised the risk of multiple voting and unaccounted for ballots.
  
15. All in all, the huge scale of duplication of names puts into serious doubt the credibility of the voters' roll and the entire electoral process.

## **23. ABUSE OF THE SPECIAL VOTING SYSTEM**

16. I am concerned that the special voting system was exposed to abuse in that it allowed room for service personnel to vote more than once during the election, thereby inflating voting figures. There was no credible way of ensuring that persons who had voted on the special voting days did not vote again on the main polling day.
17. There was no accountability on the number of persons eligible for special voting as the number of approved voters did not tally with number of personnel in the service of the police, at least according to Government payments records. The deliberate inflation of numbers gave room for inflated voting figures. In addition, the number of special voting envelopes containing special votes sent to the different wards did not match with the number of persons registered to vote in those wards. Further evidence on this will be adduced at the trial of this petition.
18. Further, ZEC has so far failed to account for the number of ballots used on the special voting days – how many were printed and distributed and how many were unused and what happened to them.
19. There are specific legal concerns over violations of the law on special voting which are:
- i. The number of Special Voting ballot papers printed and distributed to the individual special voting polling stations were never made public, which the ZEC is required by law to do.
  - ii. The list of names approved for Special Voting should have been made available for public scrutiny by the ZEC, but was never done.

- iii. The Chief Elections Officer must send the successful special voting applicant a written authorization allowing the person to vote during special voting. I am advised that only in a very few instances were such an authorization issued;
- iv. According to Electoral Amendment Act 2013, special voters must show ZEC's special voter certificate. ZEC violated this legal requirement in its official special voting procedures, by allowing individuals to cast a ballot without this certificate, as long as their name was on the special voters lists;
- v. ZEC has still not publically released the number of ballot papers printed and distributed to the special voting polling stations which the ZEC is required by law to do.
- vi. In order to avoid double-voting by Special Voters, the Chief Elections Officer must ensure that the names of special voters have been stricken off the voters' lists before being sent to the Wards. As the voters lists were printed and distributed by the Registrar-General of Voters the CEO could not ensure that names were stricken of the lists.
- vii. Both Special Voting and Postal Voting ballots were opened and counted at the polling station level, which is clear violation of the law which stipulates it should be done ZEC's ward centres.
- viii. Special votes got mixed with ordinary votes BEFORE COUNTING in violation of Electoral Law; thus the impact of special votes on each result and nationwide could not be seen easily as required by the Electoral law - sections 65(4)(b), 78, 81F(14), and 81G of the Act, section 10 (1) and Form V23A in the First Schedule of the Electoral Regulations, SI 21 of 2005 as amended by SI 87 of 2013. This breach of the law was deliberately ordered by ZEC nationwide. ZEC issued

20. I make reference to the affidavit by Tongai Matutu attached at **Annexure "C"**. I

incorporate herein the Court Application that I made challenging the validity of the Special Vote.

21. Also see the prescribed Form and the actual ward collation returns Annexure D which rendered every ward return invalid.

#### **24. IRREGULARITIES OVER POSTAL BALLOTS**

22. I am advised that the Chief Elections Officer released the postal ballots to the Ministry of Foreign Affairs for distribution to its embassy personnel and other voters eligible for postal ballot on the July 17<sup>th</sup> 2013, even though the deadline for receiving marked postal ballots were only a few hours away. It is therefore not plausible any postal vote were returned in accordance with the legal deadline. Still, however, postal ballots were accepted and used in this election.

#### **25. INTIMIDATION/VIOLENCE**

1. It is my testimony that the election on the 31st of July 2013 is rendered now void and or liable to be set aside on the basis that these purported outcomes were heavily influenced by intimidation and fear.
2. I am aware of the reports that the election was "peaceful" but wish to clarify with respect that violence is not just the fact of physical harm but also the fear of it. I have already given background which is not disputable that in 2008 the voting population of Zimbabwe was brutalised and traumatised. It is not disputable that a significant part of such contact was orchestrated by elements of the uniformed forces and that it is for this specific reason that provision were agreed and included in the Global Political Agreement and subsequently in the Constitution



to address the problem. It is also not disputable that by the time Zimbabwe went to the polls this issue had not been resolved.

3. The harmonized elections in 2013 went on without any of the assassinations and public beatings that we have generally endured since we first contested elections in 2000; and for that we are deeply grateful to all involved.
4. The fact that the 2013 elections appeared more peaceful than previous elections does not mean these were without fear. On the contrary, First Respondent had recognized the persistence of fear and pledged to take certain steps to dispel it before the elections; steps needing no time or money to perform; yet he never took them.
5. One pledge he made, to us, the Facilitator under the Global Political Agreement, SADC, and the African Union was that he and service chiefs would publicly acknowledge that the security services must be impartial and not take any political side.
6. I expect him to admit this pledge, as his Minister lodged a record of it with this Court in CC 35/13.
7. Now members of this Honourable Court must ask themselves:
  - i. Why would he make this pledge to SADC if it was not needed?
  - ii. Why did the Facilitator and other regional leaders all agree such public assurances were needed - if they were not? and
  - iii. Why, when no time or money was needed to honour his pledge, did First Respondent renege?
1. The pledge was needed as past conduct of the armed forces – in statements and sins of omission and commission which I can detail to the Court if need be – had

caused fear. The pledge was broken so the fear continued. Thus the election may have appeared peaceful; but certainly it was not without fear.

31. It is a fact ZANU PF, the 1st Respondent's party, is implicated in this scandal as Vice President Joyce Mujuru was shown on national television before the elections openly calling for traditional leaders to assist persons under their jurisdiction to vote for ZANU PF. This is despite the clear provisions under Chapter 15 of the Constitution that prohibit traditional leaders from interfering in political affairs. Therefore, behind the façade of peacefulness, there was serious intimidation of voters, particularly in the rural areas.

## **26. VOTING UNDER DURESS – THE PROBLEM OF ASSISTED VOTERS**

32. The essence of any democratic voting process is that every voter must exercise his free will by secret ballot. Any interference in the exercise of the right to vote in secret violates the fundamentals of the democratic process. There is evidence showing that thousands of voters were forced to plead illiteracy and therefore to have someone assist them to cast their ballots. This problem was particularly rife in the rural areas.

33. Reports from parliamentary candidates and election agents representing my party demonstrate that traditional leaders commandeered rural voters under their jurisdiction to vote at specific times and to declare illiteracy so that they would be "assisted" to vote. Further evidence on this will be adduced at the trial of this petition.

34. The extent of the problem involuntary “assisted voters” across the country would be easily evident from the number of persons who supposedly opted for assistance. I am advised that in one constituency alone, at least 10,500 voters out of 17,000 who cast their ballots were assisted a figure that is incredible considering this is a country applauded for having some of the highest literacy rates in Africa.

35. In fact according to the 2nd Respondent reports 206 901 voters were “assisted” and we have since collected credible evidence that this phenomenon was due to massive intimidation by the 1st Respondents party supporters, agents and associates. Evidence will be led at the trial of this petition on the irregularities surrounding assisted voting.

36. From the affidavits it is clear that there was a sophisticated and well-orchestrated system of intimidation that led to perfectly literate individuals professing that they could not read and write. This system was designed to ensure that the voters would vote for the 1st Respondent. I contend that over 200 000 votes were attributed to the 1st Respondent in his final vote tally are a direct result of electoral fraud. On this basis alone the election should be nullified.

37. Information which my party is gathering, which will be adduced at the trial of this petition shows that the problem of forced assisted voters happened on an industrial scale in rural areas, particularly in the Mashonaland provinces, Manicaland and Masvingo. The purpose was to stop voters from exercising their free will and instead to outsource their choices to those who were specifically

designated to “assist”. ZANU PF is implicated in this scandal as Vice President Joyce Mujuru was shown on national television before the elections openly calling for traditional leaders to assist persons under their jurisdiction to vote for ZANU PF. Therefore, behind the façade of peacefulness, there was serious intimidation of voters, particularly in the rural areas.

38. The forced assistance of voters who are otherwise literate and able to vote by themselves was deliberately designed to emasculate voters’ rights to vote by secret ballot, clearly a violation of the new Constitution and the SADC Guidelines. Evidence will be adduced at trial from witnesses who are otherwise literate but were directed and forced to declare illiteracy so that they could be assisted.

## **27. TURNING AWAY OF VOTERS AT POLLING STATIONS**

1. I am further concerned that thousands of voters were turned away at polling stations resulting in disenfranchisement on an industrial scale and therefore affecting the credibility of the election. As already averred in regard to the voters’ roll most voters were turned away from polling stations on the basis that their names were appearing in wards and constituencies other than their own. In this election a voter could only cast their ballot in their ward and once the name appeared in another ward, they had to either travel to that ward or not vote at all. As will be shown when evidence is adduced from witnesses at the trial of this petition, in some cases voters who believed they were registered in a Harare ward found their names in a ward in rural Matabeleland, too far for them to travel on polling

day even if they wanted to do so. The migration of voters on the register to wards other than their own was done on an industrial scale, thereby denying thousands of persons their right to vote. Information gathered by ZESN, the largest network of local election observers, demonstrates that at least 750,000 voters were turned away at polling stations mainly in urban areas. This means that overall almost one million voters were denied their right to vote in this election. The disenfranchisement of voters on such a huge scale damages the credibility of the voting process and the credibility of the result.

40. I am advised and believe that this contravenes the SADC Guidelines which require equal access and opportunity to vote for all eligible persons and also section 155 of the new Constitution which requires that the State must take all measures to ensure that all persons who are eligible to vote have an opportunity to cast their votes. The majority of persons who were turned away had no recourse but to return home disenfranchised. Part of the data that ZEC has been asked to disclose, which by law they should provide, is the number of persons who were turned away at the various polling stations.

41. Evidence will be led at trial to demonstrate the irregularity.

## **28. RAMPANT MISUSE OF VOTER REGISTRATION SLIPS**

1. I am advised and believe that the use of voter registration slips is unconstitutional as the Constitution specifies that only persons that are on the voters' roll should be permitted to vote. I am advised of the illegality of a letter that was written by the Second Respondent, indicating that a person with a voter registration slip would be allowed to vote at any polling station in a particular constituency. As averred

in regard to the voters' roll, I am concerned by the rampant misuse of the voter registration slips that were ostensibly meant to allow persons who had registered but whose names did not appear on the voters' roll. I am advised that in one constituency alone, Hatfield, at least 500 people were found to have in their possession fake voter registration slips. Some of these persons, who did not reside in the constituency, were arrested by the police. A similar incident was witnessed in Epworth, Mt Pleasant and Harare South constituencies, where persons had been bussed in to vote from other constituencies, using voter registration slips. Another similar incident in Mt Pleasant constituency is captured on video, evidence of which will be adduced at the trial of this petition.

43. The problem is that the abuse of the facility to use voter registration slips on a large scale permitted otherwise ineligible persons to vote in constituencies other than their own. Another serious irregularity was the use of fake voter registration slips, evidence of which will be led at the trial of this petition. It also allowed room for multiple voting, the effect of which was to inflate the number of voters in specific constituencies and across the country. Further evidence demonstrating the abuse of voter registration slips will be adduced at the trial of this petition.

44. The problem was exacerbated by the fact that there were insufficient mechanisms to prevent multiple-voting. I have grave concerns over the indelibility of the ink that was used on polling day. We are concerned that the chemical composition of the ink that was used did not meet the necessary internationally recognised standards and it is important to ensure that the chemical qualities of the ink are verified to everyone's satisfaction. The absence of ink-detecting machinery at

polling stations coupled with the fact that the ink easily washed away increases concerns that it was not easy to verify whether or not a person had already voted thereby facilitating double and/or multiple voting.

## **29. LACK OF TRANSPARENCY IN REGARD TO BALLOT PAPERS**

45. Notwithstanding the legal requirements (section 52A of the Electoral Act), ZEC has not been transparent in regard to the ballot papers used for the election.
46. The electoral body failed to provide details on the identity of the printers of the ballot papers, where the printing took place and the distribution of and accountability for ballot papers. ZEC printed 2 million ballot papers more than the number of voters on the register, this extra representing 35% of the registered voters compared to the world standard of 5%.
47. In addition, no information was given on the number of ballot papers printed for special voting. There has been no accountability for the ballot papers, which raises significant risk over the abuse of extra ballots.
48. The primary legal concern is that the number of ballot papers printed and distributed to the individual polling stations was never made public, which the ZEC is required by law to do (Electoral Amendment Act 2013, Art 52A).
49. To cast away concerns over the ballot paper, a forensic audit conducted by an independent body would be of great assistance.

## **1. . BRIBERY**

1. The 1<sup>st</sup> Respondent and his campaign team actively participated in electoral bribery which is otherwise known as “vote buying” The 1<sup>st</sup> Respondent and candidates from his party were actively involved in doling out food hand-outs

and other goodies at campaign rallies, a breach of the Electoral Act and a Code of Conduct signed by all political parties.

2. The 1<sup>st</sup> Respondent's wife Grace Mugabe throughout the campaign period dished out truckloads of foodstuffs — including maize meal, sugar beans, cooking oil and salt — at all rallies addressed by 1<sup>st</sup> Respondent. This was designed to buy the voter and influence voting parents.
3. This practice by the 1<sup>st</sup> Respondent was widespread and in Mashonaland Central, the said Grace Mugabe gave 22 tonnes of foodstuffs before proceeding to Rudhaka Stadium in Marondera where she again dished out 10 tonnes of mealie meal, 10 tonnes of sugar beans, 560 cases of cooking oil and salt. This was similarly done in Chitungwiza.
4. The 1<sup>st</sup> Respondent did not stop at using food to bribe the electorate. The 1<sup>st</sup> Respondent distributed thousands of blankets, torches, flasks and clothing apparel.
5. Part XIX of the Electoral Act and specifically section 136 (1)(c) criminalises making “any gift, loan, offer, promise, procurement or agreement to or for any person in order to induce such person to procure or endeavour to procure the return of a candidate at an election or the vote of a voter at an election”. Clearly the 1<sup>st</sup> Respondent through his wife, agents and his own conduct perpetrated a countrywide bribery scheme aimed at skewing voting patterns in his favour.

## **1. GROSS STATE MEDIA BIAS**



1. It is also a requirement under the Constitution and our Electoral Act that the state media is obliged to act in a fair and balanced manner during election time. Regrettably, both ZTV and State broadcasting stations acted in a completely partisan manner both before and during the election period.
2. As a contestant in this election I believe the electoral playing field was uneven, particularly in respect of the State media coverage. The new Constitution provides that the State must ensure that political parties and candidates contesting an election must be provided with fair and equal access to electronic and print media, both public and private (section 155). Section 61 of the new Constitution also requires the State media to be impartial and to afford fair opportunity for the presentation of divergent views and dissenting opinions. Regional best practice, as reflected in the SADC Guidelines require fair access to the media by political parties and candidates, particularly to publicly-funded media. Contestants must have reasonable access to the public media in order to disseminate information. The public media must not favour one political party over others.
3. The provisions of the law and regional best practice notwithstanding, the state media as represented by the national broadcaster ZBC and national newspapers mainly The Herald and The Sunday Mail, were so blatantly and so obviously biased in favour of First Respondent and his party and against myself and my party. I have studied and believe reports generated by media monitors showing that in the week beginning July 15 2013, ZANU PF got 90 minutes positive coverage during the main news coverage by the ZBC compared to a mere 10 minutes of mostly negative coverage of the MDC-T. In addition, ZANU PF got 24 hours of live coverage of ZANU PF rallies by ZBC compared to virtually no live coverage of any other political party.

4. I am advised and believe that this is completely at odds with section 160J (a) of the Electoral Act which provides for equitable treatment of all political parties and candidates “in regard to the extent, timing and prominence of the coverage accorded to them”. The report of the MMPZ will be adduced at trial..

WHEREFORE I PRAY for an Order in terms of the Draft

**THUS SWORN TO AND DONE AT HARARE ON THIS        DAY OF AUGUST  
2013**

**MORGAN TSVANGIRAI**

**BEFORE ME**

**COMMISSIONER OF OATHS**