IN THE CONSTITUTIONAL COURT OF ZIMBABWE CASE NO. OF HELD AT HARARE	CCZ/15
In the matter between:	
MEDIA INSTITUTE OF SOUTHERN AFRICA (Zimbabwe Chapter)	1 st APPLICANT
NQABA MATSHAZI	2 nd APPLICANT
SYDNEY SAIZE	3 rd APPLICANT
GODWIN MANGUDYA	4 th APPLICANT
ROGER DEANE STRINGER	5 th APPLICANT
And	
MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS	1 st RESPONDENT
MINISTER OF INFORMATION, MEDIA AND BROADCASTING SERVICES	2 nd RESPONDENT
THE ATTORNEY GENERAL OF ZIMBABWE	3 rd RESPONDENT

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DATED AT HARARE THIS DAY OF FEBRUARY 2015



ATHERSTONE & COOK

Applicants' Legal Practitioners 7th Floor, Mercury House 24 George Silundika Avenue

HARARE (CM/ak/M274)

TO:

THE REGISTRAR

Constitutional Court of Zimbabwe

Corner 3rd Street/ Samora Machel Avenue

HARARE

AND TO:

THE MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS

1st Respondent

New Government Complex

Cnr 4th Street/ Samora Machel Avenue

HARARE

AND TO:

THE MINISTER OF INFORMATION, MEDIA AND BROADCASTING

SERVICES

2nd Respondent

Munhumutapa Building

Cnr. Samora Machel Avenue/ S. Nujoma Street

HARARE

AND TO:

THE ATTORNEY GENERAL OF ZIMBABWE

3rd Respondent

New Government Complex

Cnr 4th Street/ Samora Machel Avenue

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THE ATTORNEY GENERAL OF ZIMBABWE	3 rd RESPONDENT

COURT APPLICATION FOR A CONSTITUTIONAL DETERMINATION IN TERMS OF SECTION 85 (1) (a), (d) and (e) AS READ WITH SECTIONS 167 and 176 OF THE CONSTITUTION OF ZIMBABWE

TAKE NOTICE that the Applicants intend to apply to the Constitutional Court of Zimbabwe, in terms of Section 85 (1) (a), (d) and (e) of the Constitution of Zimbabwe, as read with Sections 167 and 176 of the Constitution of Zimbabwe, for an Order in terms of the Draft that is annexed to this Notice. The grounds for this Application are set out in detail in the Founding Affidavit and documents that are attached and incorporated hereto in support of this Application.

If you intend to oppose this Application you should file a Notice of Opposition together with one or more Opposing Affidavits, with the Registrar of the Constitutional Court within ten (10) days or within such other period as a Judge of this Honourable Court may direct. You will also have to serve a copy of the Opposing Papers with the Applicant at the address for service specified below. Your Affidavit/s may have annexed documents verifying the facts set out in the Affidavits.

If you do not file an Opposing Affidavit within the period specified above, this Application will be set down for hearing in the Constitutional Court at Harare without further notice to you and will be dealt with as an Unopposed Application.

DATED AT HARARE THIS DAY OF FEBRUARY 2015

ATHERSTONE & COOK

Applicants' Legal Practitioners 7th Floor, Mercury House 24 George Silundika Avenue **HARARE** (CM/ak/M274)

TO:

THE REGISTRAR

Constitutional Court of Zimbabwe

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HARARE

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MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY

AFFAIRS

1st RESPONDENT

MINISTER OF INFORMATION, MEDIA AND

BROADCASTING SERVICES

2nd RESPONDENT

THE ATTORNEY GENERAL OF ZIMBABWE

3rd RESPONDENT

ADDRESS FOR SERVICE

TAKE NOTICE that the Applicants' address for service is:

c/o: ATHERSTONE & COOK

Legal Practitioners 7th Floor, Mercury House 24 George Silundika Avenue P.O.Box 2625

HARARE

DATED AT HARARE THIS ...

DAY OF FEBRUARY 2015

ATHERSTONE & COOK

Applicants' Legal Practitioners

7th Floor, Mercury House

24 George Silundika Avenue

HARARE (CM/ak/M274)

TO:

THE REGISTRAR

Constitutional Court of Zimbabwe

Corner 3rd Street/ Samora Machel Avenue

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MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS

1st RESPONDENT

MINISTER OF INFORMATION, MEDIA AND BROADCASTING SERVICES

2nd RESPONDENT

THE ATTORNEY GENERAL OF ZIMBABWE

3rd RESPONDENT

APPLICANT'S FOUNDING AFFIDAVIT

- I, the undersigned **FAITH ZABA**, do hereby make oath and swear that:
- 1. I am a Trustee of the Media Institute of Southern Africa Zimbabwe Chapter (MISA Zimbabwe), and in that capacity I am duly authorised to depose to this Affidavit for and on behalf of 1st Applicant.

A. THE PARTIES

- 2. The facts deposed to herein are, unless otherwise stated, within my personal knowledge and I believe same to be true and correct.
- 3. 1st Applicant is the Media Institute of Southern Africa Zimbabwe Chapter (MISA Zimbabwe), a Trust duly registered in terms of the laws of Zimbabwe operating as a non-governmental organisation primarily to promote free, independent, diverse and

- pluralistic media, as envisaged in the 1991 Windhoek Declaration on Promoting Free and Independent Media.
- 4. The Head Office of 1st Applicant is situated at 84 McChlery Drive, Eastlea, Harare, and its address for service is care of its undersigned Legal Practitioners of record, Atherstone & Cook, 7th Floor Mercury House, 24 George Silundika Avenue, Harare.
- 5. The 2nd Applicant is **NQABA MATSHAZI**, a Zimbabwean journalist working as a News Reporter at Alpha Media Holdings (AMH), but proceeding in this Application in his personal capacity and as a member of 1st Applicant. 2nd Applicant's address for service is care of his undersigned Legal Practitioners of record, **Atherstone & Cook Legal Practitioners**.
- 6. The 3rd Applicant is **SYDNEY SAIZE**, a Zimbabwean freelance journalist based in Mutare and a member of 1st Applicant, whose address for service is care of his undersigned Legal Practitioners of record, **Atherstone & Cook Legal Practitioners**.
- 7. The 4th Applicant is **GODWIN MANGUDYA**, a Zimbabwean freelance journalist based in Harare and a member of 1st Applicant, whose address for service is care of his undersigned Legal Practitioners of record, **Atherstone & Cook Legal Practitioners**.
- 8. The 5th Applicant is **ROGER DEANE STRINGER**, a Zimbabwean independent publishing consultant based in Harare, whose address for service is care of his undersigned Legal Practitioners of record, **Atherstone & Cook Legal Practitioners**.
- 9. The 1st Respondent is the Minister of Justice, Legal and Parliamentary Affairs currently in the person of Honourable Vice-President Emmerson Mnangagwa, cited herein in his official ministerial capacity. The Minister of Justice is cited herein as the government official who is constitutionally responsible for the administration of the Criminal Law (Codification and Reform) Act [Chapter 9:23] which is the subject statute of this Application. His address for service is New Government Complex, Corner 4th Street, Samora Machel Avenue, Harare.
- 10. The **2**nd **Respondent** is the **Minister of Information**, **Media and Broadcasting Services** currently in the person of **Honourable Professor Jonathan N. Moyo**, cited herein in his official ministerial capacity as the government official who

administratively responsible for the welfare and class interests of media workers in Zimbabwe, including journalists, and for ensuring that country's media laws are not inimical to Media Freedom and Access to Information rights. His address for service is Munhumutapa Building, Corner Samora Machel Avenue/ Sam Nujoma Street, Harare.

11. The 3rd Respondent is the Attorney General of Zimbabwe cited herein in his official capacity as the principal legal advisor to government, who also participates in the drafting of legislation for and on behalf of the Government of Zimbabwe. 3rd Respondent's address for service is New Government Complex, Corner 4th Street/ Samora Machel Avenue, Harare.

B. LEGAL STANDING

- 12. MISA Zimbabwe is an organisation that represents the interests of the media in this country, through a number of programmes that include lobby and advocacy interventions. It was formed on 27 August 1995, and is run by a five (5) member National Government Council (NGC) which is elected by members every three (3) years at an elective Annual General Meeting (AGM).
- 13. Currently, the organisation has a membership of about 300 (three hundred) journalists, media rights advocates and institutions working around and on the issue of media rights.
- 14. As a Trust that is part of a regional media advocacy organisation; that is, an entity with national chapters in eleven of the Southern African Development Community (SADC) countries, MISA Zimbabwe (1st Applicant in this matter) has a significant interest in engaging Courts of Law and the legislature for the clarification and improvement of laws that affect the media, and compliance of those laws with the Constitution of Zimbabwe.
- 15. In that capacity as a juristic person representing a sizable number of journalists, other categories of media workers, and media rights advocates; and as a key player in the development and improvement of Zimbabwe's media law and policy, 1st Applicant has a constitutional right to present to this Honourable Court the subject constitutional

issues relating to the impact of the law on the constitutional rights of the media in Zimbabwe.

- 16. A number of Zimbabwean laws, particularly Section 96 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] that creates the crime of Criminal Defamation, still negatively impact on the citizens' right to Freedom of Expression and Freedom of the Media, in ways that I will expand on in later paragraphs of this Founding Affidavit.
- 17. That situation is in violation of Section 61 of the Constitution of Zimbabwe, and it is detrimental to the interests of 1^{st} Applicant and its members, the interests of $2^{nd} 5^{th}$ Applicants, and the interests of the generality of the Zimbabwean population as far as their right to Freedom of Expression and Freedom of the Media are concerned.
- 18. In this Application, Applicants focus just on Section 96 of the Criminal Law (Codification and Reform) Act, hereinafter referred to either by its full name, or as "the Criminal Code."
- 19. In terms of Section 85 (1) (a), (d) and (e) of the Constitution of Zimbabwe, 1st Applicant is therefore entitled to approach this Honourable Court because the Trust carries personal/ organisational interests in the impact of laws on operations of the media, on the exercise of Freedom of Expression by members and by other non-member citizens, and on media freedom in Zimbabwe.
- 20. 1st Applicant's interest in the compliance of the relevant section of the Criminal Code with the Constitution of Zimbabwe therefore includes personal, representative and public interest dimensions regarding the Zimbabwean population in general, and the MISA Zimbabwe membership in particular.
- 21. It is 1st Applicant's contention that the media-related and self-expression rights and freedoms of the Trust, of members of the Trust, and of non-member citizens of Zimbabwe are highly likely to be infringed should Criminal Defamation continue to be part of the law of Zimbabwe.
- 22. Applicant therefore presents this Application to this Honourable Court in its own interest, in the public interest, and in the interest of its members, for a declarator

relating to the incompatibility of Section 96 of the Criminal Code with Section 61 of the Constitution of Zimbabwe.

23. Second (2nd), 3rd, 4th and 5th Applicants are Zimbabwean citizens, and in terms of Section 85 (1) (a) and (d) any person acting in their own interests or in the public interest is entitled to approach this honourable court, or any other court for relevant legal remedies. The constitutional nature of the questions raised by the Applicants, makes the Constitutional Court, the most relevant court for the determination of the subject questions. These Applicants to proceed in this case, in their own interests and in the public interest because the relief sought would benefit not only the Applicants, but the generality of the Zimbabwean population.

C. BACKGROUND

- 24. On 20 December 2011, 2nd Applicant was arraigned before Harare Magistrates' Court together with his editor Nevanji Madanhire (in the case C.R.B 8020-1/11 Rotten Row Magistrates' Court) facing, under "Count Two" of the proceedings at that time, charges of contravening Section 96 of the Criminal Law (Codification and Reform) Act [Chapter 9:23], that is to say Criminal Defamation.
- 25. At the material time, both of them worked for *The Standard* newspaper, a publication published by a media house that is duly registered by the Zimbabwe Media Commission (ZMC) under the laws of Zimbabwe. The fact that the two journalists were authorized to work as journalists by a body created by the State, or that they were carrying out the enshrined role of facilitating the exercise of freedom of expression, freedom of the media, and access to information, did not matter. They are all the same arrested and prosecuted with the immediate protection of the law.
- 26. The charge in C.R.B 8020-1/11 arose out of a story written by 2nd Applicant in his capacity as a Reporter for *The Standard* under the headline "Kereke's Medical Aid Firm Collapses?" Copies of the relevant Charge Sheet, Outline of the State Case, and the subject article are attached hereto as Annexures 'A', 'B' and 'C' respectively.

- 27. In a separate case, 5th Applicant had been arrested by the Police and arraigned before the Harare Magistrates' Court in that same year 2011, also facing criminal charges for allegedly committing a crime of Criminal Defamation in terms of Section 96 of the Criminal Code, as more fully appears from **Annexures 'D'** and **'E'**, being the relevant Charge Sheet and Outline of the State Case.
- 28. Curiously, both cases involved Dr. Munyaradzi Kereke a powerful politician who is now a legislator aligned to the ruling Zanu PF party.
- 29. Charges against 5th Applicant were eventually withdrawn by the State, before Plea after his legal representatives entered into negotiations with the Complainant for the release of the Accused (5th Applicant in this case) from remand prison.
- 30. I am made to understand by my legal advisors, which advice I accept, that Withdrawal of Charges Before Plea means that while 5th Applicant is presently a free man, the State could always revive charges against him in respect of the Criminal Defamation allegation, especially under the present constitutional dispensation wherein Criminal Defamation is reported to be still permissible in Zimbabwe.
- 31. The Criminal case against 2nd Applicant and his Editor (C.R.B 8020-1/11 Rotten Row Magistrates' Court) was referred by the Magistrates' Court to the Supreme Court (sitting then as a Constitutional Court) on 7 March 2012 for a determination on the constitutionality of Section 96 of the Criminal Law (Codification and Reform) Act, specifically in respect of Sections 20 and 18 of the Old Constitution of Zimbabwe, that is S.I 1979/1600 of the United Kingdom which is commonly known as the "Lancaster House Constitution."
- 32. Section 20 of the Old Constitution provided only for "Protection of freedom of expression", and Section 18 enshrined "Provisions to ensure Protection of Law."
- 33. After hearing detailed submissions from the Applicants and from the Attorney General in Constitutional Application No. CCZ 78 of 2012, the honourable judge of the Constitutional Court of Zimbabwe Justice Bharat Patel decided in his ruling of 12 June 2014 that:
 - 33.1 "Section 96 of the Criminal Law (Codification and Reform) Act is inconsistent with and in contravention of Section 20 (1) of the former Constitution," and

33.2 "It is ordered that the prosecution of the Applicants in respect of the charge of Criminal Defamation being Count 2 in the proceedings under C.R.B No. 8020-1/11, be permanently stayed.

D. THE CASE

- 34. This Application is an unavoidable challenge to the unconstitutionality of Criminal Defamation in the context of the provisions of the current Constitution of Zimbabwe, as promulgated through the Constitution of Zimbabwe Amendment (No. 20) Act of 2013.
- 35. First Applicant's approach to this Honourable Court is motivated by:
 - The obligation vested on the Applicants by Section 44 of the Constitution of Zimbabwe wherein every person, the Applicants included, to respect, protect, promote and fulfil the rights and freedoms set out in the Constitution.
 - 35.2 Applicants' commitment to participating in processes that will enhance freedom of expression and media freedom protection mechanisms, and to ensure the alignment of media laws with Sections 61 and 62 of the Constitution of Zimbabwe. 1st Applicant is also determined to see to it that the media-related interests, and constitutional rights and freedoms of MISA Zimbabwe, of its members, and of all Zimbabweans who wish to freely express themselves, are protected and advanced.
 - 35.3 The previous painful experiences of 1st Applicant's members as the direct result of the inclusion of Criminal Defamation in Zimbabwe's Statute Book, and a determination therefore to ensure that there will be no recurrence of those negative experiences for members or for any member of the Zimbabwean public.
- 36. First Applicant is in no doubt about the harsh effects of Criminal Defamation to the practice of journalism in Zimbabwe, and the debilitating impact of that crime to Freedom of Expression and Freedom of the media in the country, hence this prayer for

Section 96 of the Criminal Code (Criminal Defamation) to be declared unconstitutional for the reason that it is *ultra vires* Section 61 of the current/ 2013 Constitution of Zimbabwe (Freedom of Expression and Freedom of the Media.)

- 37. It has become very clear now that the declaration on the unconstitutionality of Section 96 of the Criminal Code under Judgment No. CCZ 2/14 was made by this Honourable Court in 2014 in the case CCZ 78/12, specifically in respect of the protection given to freedom of expression; and protection of the law under the Old Constitution, or the Lancaster House Constitution with the effect that Criminal Defamation continues today to be a valid and effective law in Zimbabwe under the new or current Constitution of Zimbabwe (of 2013.)
- 38. The continued validity of Criminal Defamation is confirmed by **Annexure 'F'**, being a media report from *The Herald* Newspaper of 20 February 2015, wherein 1st Respondent in this matter is reported to have had no objections to the striking down of Criminal Defamation only in terms of the Old Constitution.
- 39. It is 1st Applicant's belief that 1st Respondent took that position simply because proceedings regarding the challenge to Criminal Defamation had been instituted at the Magistrates' Court in terms of the Old Constitution, but that as a matter of principle, the government of Zimbabwe is not in favour of the criminalisation of expression through the offence of Criminal Defamation.
- 40. Section 20 (1) of the Lancaster House Constitution protected Freedom of Expression by declaring that:

"Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence."

- 41. Then Section 61 of the current Constitution provides for Freedom of Expression and Freedom of the Media by stating that:
 - "(1) Every person has the right to freedom of expression, which includes -
 - (a) Freedom to seek, receive and communicate ideas and other information;

- (b) Freedom of artistic expression and scientific research and creativity; and
- (c) Academic freedom.
- (2) Every person is entitled to freedom of the media, which freedom includes protection of the confidentiality of journalists' sources of information.
- (3) Broadcasting and other electronic media of communication have freedom of establishment, ..."
- 42. When measured against the comparable provision under Section 20 of the Lancaster House Constitution, the constitutional protection to Freedom of Expression and Freedom of the Media under Section 61 of the new Constitution is even stronger under the current constitutional order, as illustrated by way of example by the following:
 - Whereas Section 20 of the Old Constitution provided only for "Protection of freedom of expression", Section 61 of the current Constitution goes further by protecting not only free expression, but also Freedom of the Media.
 - Whereas Section 20 of the old Constitution confined Freedom of Expression only to "the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence;" Section 61 of the current Constitution protects those rights captured in the old Constitution and goes further to also include:
 - 42.2.1 Freedom of artistic expression and scientific research and creativity, and
 - 42.2.2 Academic Freedom, and
 - 42.2.3 Protection of confidentiality of journalists sources of information, and
 - 42.2.4 Freedom of establishment for broadcasting and other electronic media of communication, and
 - 42.2.5 Protection of editorial independence at State-owned media institutions.

- 43. Further, the constitutional provision for Freedom of Expression and Freedom of the Media is strengthened under the current constitution by the specific protection of Access to Information under Section 62 of the new basic law.
- 44. In 1st Applicant's considered view, if Criminal Defamation was unconstitutional under an old constitution whose provisions for Freedom of Expression and Freedom of the Media were weaker or narrower than those of the current constitution, then all the more reason for that "crime" to be declared null and void for its unconstitutionality under the new or current constitutional dispensation, whose protection for Freedom of Expression and Freedom of the Media is stronger.
- 45. It is now internationally and domestically recognised that Freedom of Expression and Freedom of the Media, as read with the right of Access of Information are extremely important to the proper functioning of any credible democracy. Resultantly, any law, practice or administrative arrangement that curtails these rights must be impugned, if not outlawed.
- 46. Criminal Defamation certainly infringes the rights of Freedom of Expression, Freedom of the Media, and Access to Information. Under any democratic system of government, the infringement on these rights through Criminal Defamation proceedings cannot be sustainable, legitimate, or reasonable.
- 47. Criminal Defamation as defined in the Criminal Code, criminalises expression or the publication of statements:
 - 47.1 That are actually false or potentially false, and
 - 47.2 That actually harm or are intended to harm the reputation of others, and
 - 47.3 That actually cause or potentially cause serious harm to the reputation of ${}_{\scriptscriptstyle \parallel}$ others.
- 48. The criminalisation of falsities in the context of Freedom of Expression and Freedom of the Media has for long, been widely been condemned worldwide. In communication processes, errors are bound to be made from time to time, and that is no reason to limit Freedom of Expression and Freedom of the Media through Criminal Defamation.

In the same vein, there is also no good reason for Zimbabwe to be left behind by the rest of the world in the manner in which the law deals with falsities:

- 49. Injury to the reputation of others is a factor that is also specifically included in the Constitution of Zimbabwe under Section 61 (5) which lists conduct that is excluded from the exercise of Freedom of Expression and Freedom of the Media. However, Section 61 (5) of the Constitution does not stipulate that the listed conduct should be categorised as criminal conduct.
- 50. To that extent then, the creation of the crime of Criminal Defamation under the Criminal Code is not derived from the provisions of the Constitution. I submit that even the limitations to rights and freedoms listed in Section 86 of the Constitution do not justify Criminal Defamation. Any laws that may be imposed for the limitation of rights, I submit, must preferably be civil laws, not criminal law. It has been widely shown in Zimbabwe and beyond, that Defamation in particular, can be effectively regulated through civil means.
- 51. Society needs to be protected through criminal law, from serious crimes such as rape, murder, robbery or theft, assault and others; but to include verbal slurs on the character of the complainant in the category of acts or conduct from which society as a whole needs protection, would certainly be taking matters too far.
- 52. Victims of statements that may be deemed to be defamatory have at their disposal, very effective and adequate remedies under civil law; that is to say civil remedies instead of criminal remedies.
- 53. Criminalising communication or expression certainly yields a chilling effect on the media and on broader society, hence the need for this Honourable Court to preserve communication and expression as purely civil matters by declaring Criminal Defamation to be unconstitutional under the current Constitution.
- 54. As made clear from the previous Criminal Court cases of 2nd and 5th Applicants, Criminal Defamation yields harmful and desirable consequences for the media and for ordinary citizens of Zimbabwe who do not necessarily work in the media. The chilling experiences of arrest and lengthy prosecution that were suffered by 2nd and 5th Respondents, and the chilling possibility of the same happening to all the other Applicants in this case, and any other citizen of Zimbabwe or visitor to the country leading to possible detention and two (2) years imprisonment are clearly excessive in their effect.
- 55. In fact, those consequences cannot, in our respective view, be deemed by any stretch of imagination, be deemed to be legitimate, justifiable, reasonable in a democratic society, or constitutional even under Zimbabwe's current Constitution.

- 56. As an institution that stands for and in defence of Freedom of Expression, Freedom of the Media, and Access to Information rights, 1st Applicant fears that criminalising Defamation could easily be used by powerful members of our society for purposes of deviously muzzling the press, and generally suppressing legitimate criticism and the scrutiny of public institutions and public figures.
- 57. By allowing for a situation where citizens may be subjected to criminal proceedings for expressing themselves, under the crime of Criminal Defamation, our legal system would have also failed to satisfy the constitutional principle of Protection of the Law.
- 58. Under the Lancaster House Constitution, "Provisions to ensure Protection of Law" were specifically enshrined under Section 18 of that old law. Under the current Constitution, the supreme law of the land goes even further in protecting citizens by stating in Section 68 that:

"Every person has a right to administrative conduct that is lawful, prompt efficient, reasonable, proportionate, impartial and both substantively and procedurally fair."

59. The consequences of the Application of Criminal Defamation on the Applicants and on any other person in Zimbabwe would certainly not comply with the Section 68 stipulation.

E. CONCLUSION

- 60. In conclusion therefore, it is our humble submission that Criminal Defamation is totally unnecessary and undesirable in a democratic society, where the rights of citizens should be protected by law, in line with relevant constitutional provisions.
- 61. Where civil remedies are available for any perceived wrongs, criminal law should be avoided because, as illustrated by this application, and as established in other independent studies, the disadvantages of retaining criminal defamation in a legal system far outweigh any supposed benefits.
- 62. For these reasons therefore, we humbly conclude with the statement that Criminal Defamation is not reasonably justified in a democratic society within the contemplation of Section 61 (5) of the Constitution. Accordingly, it is inconsistent with the Freedom of Expression and Freedom of the Media guaranteed by Section 61 (1) of the Constitution of Zimbabwe.

WHEREFORE I PRAY that the offence of Criminal Defamation as defined in Section 96 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] be declared unconstitutional and that it be struck down as being null and void, in terms of the Draft that is **annexed** to this Application.

THUS SWORN TO AT HARARE THIS ZAM DAY OF FEBRUARY 2015

Before me

FAITH ZABA

LEGAL PRACTITIONER
LLB HONS (MSU)

PARCER, MOTARY PUBLIC, COMMISSIONER

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SUMMARY JURISDICTION

IN the Court of the Magistrate for the Province of HARARE

Holden at ROTTEN ROW COURT HARARE

before

Esquire,

Magistrate

for the said Province on the

Name of accused 01. Nevanji Madanhira 02. Ngaba Matahazi

Aged 50 years Aged: 29 years

(hereinafter called the accused)

.Charged with the crime of

Count One

THEFT AS DEFINED IN SECTION 113(1) OF THE CRIMINAL LAW [CODIFICATION & REFORM] ACT CHAPTER 09:23

In that on 4 November 2011 and at Green Card Medical Aid Society 161 Harare Street Harare both Nevenji Madanbire and Ngaba Matshazi or one or more of them unlawfully and intentionally stole a file containing documents pertaining to Green Card Medical Aid Society's Claims reports, Financial Statements for August 2011 to October 2011 and Membership reports for March 2011 to November 2011 knowing that Green Card Medical Aid Society was entitled to own, possess or control the property or realising that there was a real risk or possibility that Green Card Medical Aid Society may be so entitled; and intending to deprive the Green Card Medical Aid Society permanently of its ownership, possession or control, or realising that there was a real risk or possibility that they may so deprive Green Card Medicar Aid Society of its ownership, possession or con ach.



COUNT TWO
CRIMINAL DEFAMATION AS DEFINED IN SECTION 96(1) OF
THE CRIMINAL LAW [CODIFICATION & REFORM] ACT
CHAPTER 09:23

In that on the 6th day of November 2011 and at The Standard offices, 1 Kwame Nkrumah Avenue Harare both Nevanji Madanhire and Nqaba Matshazi or one or more of them

intending to harm the reputation of Munyaradzi Kereke and Green Card Medical Aid Society published statements which when they published them, they knew were false in a material particular or realised that there was a real risk or possibility that they might be false in a material particular: and causes serious harm to the reputation of Munyaradzi Kereke and Green Card Medical Aid Society or created a real risk or possibility of causing serious harm to Munyarardzi Kereke's and Green Card Medical Aid Society's reputation that is to say the accused published that Green Card Medical Aid Society is on the brink of collapse and that the company's expenditure outstripped its income, that Green Tard Medical Aid Society was failing to pay salaries on time and that it } owed its creditors more than half a million dollars, that Green Card Medical Aid Society card holders were being turned away by medical institutions. When the accused published the statements they well knew that they were false and that they could cause serious harm to Munyaradzi Kereke's and Green Card Medical Aid Society's reputation.

IN THE MATTER OF THE

STATE

VERSUS

01. Nevanji Madanhire Age: 50 years02. Nqaba Matshazi Age : 29 years[hereinafter called the accused]

Count One

Their as defined in section 113(1) of the Criminal Law [Codification & Reform] Act Chapter 09: 23

- The two accused are employed by The Standard newspaper as Editor and Reporter respectively.
- 2. On 4 November 2011 Simon **Tapfumaneyi**, the Acting Chief Executive Officer of the Green card Medical Aid Society prepaid Claims reports, financial statements and membership reports for the Green Card medical Aid Society in preparation for a meeting with the Chairman of the Green Card Medical Aid Society, Munyaradzı **Kereke**, later that day.
- 3. Simon **Tapfumaney**i placed the documents in a file and put the file on his desk in his office.
- 4. The accused later stole the file that contained the documents referred above from Simon **Tapfumaneyi** and went away.
- 5. On 5 November 2011 Accused [2] delivered some questions to Munyaradzi Kereke and he indicated that the questions emanated from the documents he was in possession of.
- 6. The questions raised by Accused [2] indicated that they were emanating from the documents that were stolen from Simon Tapfumaneyi's office.
- 7. The accused had no lawful right to behave in the manner they did.

Count Two

CRIMINAL DEFAMATION AS DEFINED IN SECTION 96 (1) OF THE CRIMINAL LAW [CODIFICATION & REFORM] ACT CHAPTER 09:23

- 1. The accused are the same as in Count One above.
- 2. The complainant is Munyaradzi **Kereke** who is the Founder and Chairman of Green Card Medical Aid Society.
- 3 On 5 November 2011 Accused [2] approached the complainant with a set of written questions which he alleged that were emanating from some documents which he was in possession of.
- 4. The questions are marked "A". The accused left the questions with the complainant and was advised to come back after an hour for the responses.
- 5. After an hour, Accused [2] went back to the complainant and he was given the answers to his questions. The responses are marked "B".
- 6. On the same date the two accused went on to write a story which they later published in the issue of The Standard newspaper for 6 to 12 November 2011 on page 3 headlined "KEREKE'S MEDICAL AID FIRM COLLAPSES?"
- 7. In the story the accused published false statements which they well knew were false. The accused published that Green Card medical Aid Society members had made claims of about USD121 000-00 yet the company had collected USD87 600-00 when the accused well knew that Members had made claims of USD87 600-00 and the company had collected USD121 000-00
- 8. The accused also went on to allege that Green Card Medical Aid Society Card Holders were being turned away by Medical Institutions as the company was failing to pay its creditors on time well knowing that the statement was false.
- 9. The accused published that the Green Card medical Aid Society was on the brink of collapse as its expenditure outstripped its income but this statement is also false.
- 10. The accused published the false statements well knowing that they were false intending to cause serious damage to both Munyaradzi Kereke's and the Green Card Medical Aid Society's reputation.

- 11. The false story published on page 3 of The Standard newspaper for 6 to 12 November 2011 may be produced before this court as exhibits.
- 12. The accused had no lawful right to behave in the manner they did.

Kereke's medical aid firm collapses?

November 6, 2011

BY NQABA MATSHAZI

A new health insurance firm, Green Card Medical Society, is reportedly on the brink of collapse with claims that the company's expenditure outstripped its income. But Munyaradzi Kereke, the company's founder said these claims were untrue and "malcontents" had stolen documents from his offices so they could cast the company in bad light. Kereke has since filed a report for stolen documents at the Harare Central Police Station, CR Number 1611/11.

The leaked documents revealed that Green Card members had made claims of about US\$121 000, yet the company had only collected US\$87 600, meaning the company was spending up to a quarter more than it was receiving. These figures are from April 2011 to September 2011.

The insiders said that what had compounded Green Card's position was that its membership drive had not been successful, with the company only managing 2 000 subscribers since its launch in March. Some medical institutions were reportedly turning away patients who held Green Card membership, citing the delay in recouping their money.

An income and expenditure account for six months ending on August 31, shows that the company was straduled with very high staff costs and other overheads.

Green Card's financial position, the sources said, was so precarious that the company had sought a merger with GrainMed, a medical aid society for the Grain Marketing Board.

In a written response, Kereke dismissed reports that his company was in the red and instead said he was owed close to a million dollars by various medical aid societies. "The brand, together with Rockfoundation Medical Centre, is collectively owed US\$732 714 by various medical aid societies, a result of the current laws which give debtors up to 60 to 90 days for accounts to be settled," he said.

Kereke said he had written to the Ministry of Health to have this anomaly addressed. He further said reports indicating that claims were higher than premiums were false and the reverse was true. He also dismissed as false insinuations that Green Card was looking for a merger with GrainMed, saying neither the board nor management had considered this position.

Were being turned away from medical institutions, saying it was illegal to turn away patients and such medical centres should be reported to authorities.

On workers demanding their exit packages, Kereke said they had part paid those and the full package would be paid once the company's debtors had paid-up.

"Your source is exuding a great deal of sour grapes," he charged. "The package was given on a voluntary basis to allow those that found the high-performance standards expectations at Green Card too high for them."

льс новен всиюв <u>0.3 197/01/11</u> б.в.в. 60/ в.в. 3 лет 75()

SURELLY JUNISDICTION

In the Court of the Magistrate for the Province of : MasHON LAND

Holden at : H. R. RE

before

Esquire,

Magistrate

for the said province on the

H me of accused: ROGER DEANE STRINGER

ge: 60 years.

16. ---

(hergianter called the accused) Charged with the Crime of CRIMINAL DER MATION IS DEFINED IN SECTION 96 OF THE CRIMINAL LAW (CODIFICATION AND REPORM) ACT CHAPTER 9:23.

In the ton the dates unknown to the Public Prosecutor but in the period from the year 2010 up to the 13th day of January 2011 and at number 90 Norfolk Road Mount Pleasant Harare ROJER DE NE STINGER causes serious harm to the reputation of MUNY RADZI KEKEKE or creates a real risk or possibility of causing serious to MUNY RADZI KEREE's reputation by \$1/4 causing false information about MUNY RADZI KEREE's project published.

OUTLINE OF THE STATE CASE

0. 1. 157/11/11

- I. The complement in this case is MUNY REDZI REALIKE, male dult aged 39 years. He resides at number 92 Norfolk Road Hount Fleggent Marer and amployed by the Reserve Bank of Zimbabwe.
- 2. The coused person is ROGER DI MB STRINGER, a make whit aged 60 years. He resides at number 90 Norfolk Rosd Mount Place at and cell employed.
- The The completent and the accused person are neighbours along Norfoll Road fount Flessent Harare.
- 4. On the 12th day of January 2011, accused person ROGER DE WE STAING who was at Mount Pleasant City Council's offices and at a residence accting published a Talse story that the complainant Munyaradzi Kereke was constructing at number 94 Norfolk Road without approved plans.
- 5. Further to that the accused person on \$3th day of January 2011 proceeded to the Standard Newspaper at number 01 Kwame Nkrtmah Avenue Harare where he falselyt told a journalist by the Mark name CAIPHLS CHIMHETE that Munyaradzi Kereke was building an illegal structure with no approved plans thereby causing a defamatory story to be published in the Standard Newspaper on 16 January 2011.
- 6. a copy of the Standard Newspaper is attarched to the docket.
- 7. Further to that on the 13th day of January 2011, the accused person Roger Deane Stringer told his gardener that he had finished with the complainant Munyaradzi Kereke as he had caused a story in the Standard Newspaper that Munaradzi Kereke was building an illegal structure at number 94 Norfolk Road Mpont Pleasant Marare and that the story would be soon published in the newspaper.
- 8. The course person had seriously caused harm to the reputation of the complainant.



Daniel Mamukuyu Senior Caurt Reporter

CRIMINAL defamation will remain a valid law in Zirababwe after the Constitution of Court yesterday clurified that its allebrated judgment of 2014 only ruled the law to be in violation of the Old constitution and not the new supremodaw.

The hapest court in the land, brough furtice I haratt latel, issued a declatory order that agreed with Justice, I had and Parliamentary Affairs Minister an uncerson Malaggeba's submission; that the judgment in the case of Standard journalists alease. Madanhite are I Maeba Matshazi was made only in relation to

the old Constitution.

The judgment issued last year was wrongly interpreted by many journalists who celebrated the outcome believing that it was the end of the most feared media law.

fustice Patel's declaratory order reads: "In the result, it is declared that Section 96 of the Criminal Law (Codification and Reform) Act is inconsistent with and in contravention of Section 96(1) of the former Constitution.

"It is ordered that the prosecution of the applicants in respect of the charge of criminal defamation, being count 2 in the proceedings under CRB Number 80 to 276, be permanently stayed.

"There shall "the means is used last year was This means is a second to the means is a second to

from criminal defamation until someone challenges the constitutionality of the law in terms of the new Constitution.

The judgment in question was issued in a case in which former Standard newspaper editor Nevanji Madanhire and reporter Nqaba Matshazi, who were charged with criminally defaming Green Card chairperson Dr Munyaradzi Kereke decided to confest the law's constitutionality.

In July last year the Constitutional Court unanimously ruled that Section 96 of the Criminal Law (Codification

"There shall be no order as to costs." and Reform) Act must be struck off the This means journalists are not yet free statutes because it was not a justifiable om criminal defamation until some-law in a democratic society like Zim-

babwe.
The court invited Minister Mnangagwa to defend the law if he so wished before a final declaration was passed.

The minister, in his affidavit, said the judgment declaring criminal defamation undemocratic only related to the old Constitution and that the law should remain until it has been condemned in terms of the new supreme law.

Minister Mnangagwa said he had no objections to the striking down of criminal defamation in terms of the old Constitution.

IN THE CONSTITUTIONAL COURT OF ZIMBABWE HELD AT HARARE

CASE NO. CCZ...../15

In the matter between:

MEDIA INSTITUTE OF SOUTHERN AFRICA

(Zimbabwe Chapter)

NQABA MATSHAZI SYDNEY SAIZE GODWIN MANGUDYA ROGER DEANE STRINGER

And

P.O. BOX CY 870, CAUSEWAY ZIMBABWE TEL; 04-79863415 1st APPLICANT

2nd APPLICANT

3rd APPLICANT

4th APPLICANT

5th APPLICANT

MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY
AFFAIRS
MINISTER OF INFORMATION, MEDIA AND
BROADCASTING SERVICES
THE ATTORNEY GENERAL OF ZIMBABWE

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

SECOND APPLICANT'S FOUNDING AFFIDAVIT

- I, the undersigned NQABA MATSHAZI do hereby make oath and state that:
 - I am the 2nd Applicant in this matter, being a Zimbabwean journalist based in Bulawayo, and working as a News Reporter at Alpha Media Holdings (AMH). My address for service is care of my undersigned Legal Practitioners of record.
 - 2. I confirm that I have read the Founding Affidavit of the 1st Applicant, and hereby confirm the contents therein that relate to me to be true and correct.
 - 3. Further, I completely associate myself with the submissions made therein relating to the undesirability and harmful effects of Criminal Defamation.
 - 4. I hereby confirm that the personal experience I suffered at the hands of the State as the direct result of the application of the Criminal Defamation law on me has had an adverse effect on my ability to freely carry out my duties as a journalist, and to fully express myself as a citizen, without the fear of State-sanctioned reprisals, or punishment from powerful and well-connected citizens.
 - 5. Although I am registered to practice as a journalist, by the Zimbabwe Media Commission (ZMC), as more fully appears from my <u>attached</u> accreditation card that is **Annexure 'G'**, I

have no confidence that I can safely practice my profession since the Police may at any time arrest me as they did in December 2011, for carrying out my journalistic duties should I write a story that is disliked by any powerful citizen or institution.

- 6. There are numerous others of my friends and colleagues, journalists and non-journalists alike who have personally shared with me their permanent fear of getting arrested at any time, under Zimbabwe's harsh media laws that specifically include Criminal Defamation.
- 7. I was relieved when the Constitutional Court decided last year (2014) in CCZ 78/12 that Criminal Defamation was unconstitutional, but my fears as a practicing journalist were rekindled when it was reported that the offence was still valid after all, and that the Police could continue arresting journalists and citizens for Criminal Defamation.
- 8. Indeed, Daily News editor Stanley Gama and reporter Fungi Kwaramba of the same media house, both of them registered by the Zimbabwe Media Commission were arrested in April 2014 on allegations of criminally defaming business mogul Kamal Khalfan, and with the declaration that Criminal Defamation is still acceptable under Zimbabwean Constitution it remains very risky business to practice journalism in Zimbabwe, or for citizens and non-citizens to freely express themselves in this country.
- 9. I associate myself entirely with the views expressed in the editorial that is <u>attached</u> to this Application as **Annexure 'H'**, which condemns Criminal Defamation.
- 10. With Criminal Defamation in the Statute book, the apprehension of journalists on the possibility of arrest and detention while in the course and scope of one's journalistic duties. I personally do not feel entirely safe in my practice as a journalist, with a law like Criminal Defamation being reported to be still valid and effective in Zimbabwe.
- 11. My understanding of the recent Constitutional Court Judgment (No. CCZ 2/14) is that while the execution of my duties as a journalist by writing a story about Dr. Munyaradzi Kereke's medical aid society in 2011 (Annexure 'C') was legal and in conformity with my constitutional rights of freedom of expression, writing the same story today under the current constitutional regime, could land me into trouble with the authorities under the law of criminal defamation. I cannot understand why our courts of law, that should protect me and other citizens, would allow that kind of reality to prevail.
- 12. For these reasons therefore I hope that the Constitutional Court of Zimbabwe will extend its declaration on the unconstitutionality of Criminal Defamation, as made in CCZ 78/12 to be also applicable to the new or current Constitution of Zimbabwe.

I therefore pray for an Order in terms of the Draft.

THUS SWORN TO AT HARARE THIS DAY OF FEBRUARY 2015

NQABA MATSHAZI

Before me

COMMISSIONER OF OATHS

DZIKAMAI A. MACHINGURA

LLB (Hons) (UZ)

LEGAL PRACTITIONER

CONVEYANCER, NOTARY PUBLIC

ADMINISTRATOR OF DECEASED ESTATES

COMMISSIONER OF OATHS



Editorial

o room for crimina

riminalisation of journalism cannot be tolerated in nascent democracy like ours, and we agree absolutely with Information minister Jonathan Moyo that criminal defamation should be abrogated from our statutes

The arrest of Daily News staffers, Stanley Gama and Fungi Kwaramba, on allegations of criminally defaming business mogul Kamal Khalfan on Monday was unacceptable and we condemn it. There are several ways of seeking recourse once one is defamed and criminal defamation is certainly not one of them. Its use is meant to intimidate and silence journalists and newspapers and it's not necessary in a democracy.

We fully support Moyo's stance that, "We are persuaded and, therefore, convinced that the days of having criminal defamation in our statutes now lie in the past"

It is a fact that the constitutionality of criminal defamation is questionable and that such a law is fascist. Khalfan has already instituted a defamation lawsuit against the newspaper and we wonder why he now seeks to have journalists jailed.

We salute Moyo for his principled stance against this retrogressive law and urge him to go further to ensure other such laws are abrogated.

We cannot wait for the day when the draconian Access to Information and Protection of Privacy Act will be outlawed. We do not need a law that continues to retain the Zimbabwe Media Commission, the Media Council and the establishment of a Media Complaints Committee to police and punish journalists. These provisions are not in the interest of an unfettered press. They do not measure up to international best practice and democracy.

We are worried that nothing significant has been done to repeal Aippa and replace it with the proposed Freedom of Information Act to regulate access to information and privacy and the Media Practitioners Act to outline procedures for registration of journalists which should be as simple and informal as possible and provide for issues of discipline that must be handled by self-regulating

bodies.

Quick prospects of a free media in the country remains a mirage because of laws like Aippa, and the draconian Criminal Law (Codification Reform) Act,

There is need for all progressive forces to call on our government to embark on media reforms to enhance democracy. Without a free press, there will be no democracy.

CASE NO. CCZ...../15

IN THE CONSTITUTIONAL COURT OF ZIMBABWE HELD AT HARARE

In the matter between:

MEDIA INSTITUTE OF SOUTHERN AFRICA

(Zimbabwe Chapter)

NQABA MATSHAZI SYDNEY SAIZE

GODWIN MANGUDYA

ROGER DEANE STRINGER

And

ZIMBABUTETLE

1st APPLICANT

2nd APPLICANT 3rd APPLICANT

4th APPLICANT

5th APPLICANT

MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS

1st RESPONDENT

MINISTER OF INFORMATION, MEDIA AND BROADCASTING SERVICES

2nd RESPONDENT

THE ATTORNEY GENERAL OF ZIMBABWE

3rd RESPONDENT

3RD APPLICANT'S FOUNDING AFFIDAVIT

- I, the undersigned **SYDNEY SAIZE** do hereby make oath and state that:
 - 1. I am the 3rd Applicant in this matter, being a Zimbabwean freelance journalist based in Mutare, and my address for service is care of my undersigned Legal Practitioners of record, Atherstone & Cook.
 - 2. I confirm that I have read the Founding Affidavits of the 1st Applicant, and hereby confirm the contents therein that relate to me to be true and correct.
 - 3. Further, I completely associate myself with the submissions made therein relating to the undesirability and harmful effects of Criminal Defamation.

- 4. I also associate myself completely with the submissions made by 2nd, 4th, and 5th Applicants as far as those Applicants condemn the nature and effect of Criminal Defamation.
- 5. I am registered to practice as a journalist, by the Zimbabwe Media Commission (ZMC), as more fully appears from my **attached** accreditation card that is **Annexure 'I'**. However, despite that legal status, I live in constant fear that one day, I might be arrested at any time for writing a story that may be deemed by any well connected person or powerful politician, to be defamatory.
- 6. There are numerous others of my friends and colleagues, journalists and non-journalists alike who have personally shared with me their permanent fear of getting arrested at any time, under Zimbabwe's harsh media laws that specifically include Criminal Defamation.
- 7. I was also relieved when the Constitutional Court decided last year (2014) in CCZ 78/12 that Criminal Defamation was unconstitutional, and like 2nd Applicant, that relief have now been wiped away by recent reports to the effect that the offence is still valid and constitutional. With these kind of reports awash in the media, I fear that Police could arrest me while I carry out my duties as a journalist, or arrest fellow journalists and citizens under the laws of Criminal Defamation.
- 8. My apprehension is real and informed by the previous arrests of fellow journalists like 2nd Applicant and his editor Nevanji Madanhire in 2011; the arrest in 2014 of Stanley Gama and Fungi Kwaramba, editor and reporter respectively, of the *Daily News*.
- 9. I understand that those two (2) journalists are both registered by the Zimbabwe Media Commission (ZMC), like I am, but their accreditation in terms of law was still insufficient in protecting them from the harsh effects of Criminal Defamation. For that reason I believe that Criminal Defamation has no place in a modern democratic society, especially in the context of the availability of civil remedies for those who feel they may have been defamed.

I therefore pray for an Order in terms of the Draft.

THUS SWORN TO AT HARARE THIS DAY OF FEBRUARY 2015

SIDNEY SAIZE

Before me

COMMISSIONER OF OATHS

DZIKAMAI A. MACHINGURA

LLB (Hons) (UZ)

LEGAL PRACTITIONER

CONVEYANCER, NOTARY PUBLIC

ADMINISTRATOR OF DECEASED ESTATES

COMMISSIONER OF OATHS

ZIMBABWE MEDIA COMMISSION



PRESS CARD

2015



3006JF49910

Name:

Sydney Saize

Org:

Freelance

Category: JF

Valid From:20 Feb. 2015

1.D:07-088786 B 07

To: 31 Dec. 2015

CASE NO. CCZ...../15 IN THE CONSTITUTIONAL COURT OF ZIMBABWE **HELD AT HARARE** In the matter between: 1st APPLICANT MEDIA INSTITUTE OF SOUTHERN AFRICA (Zimbabwe Chapter) 2nd APPLICANT **NQABA MATSHAZI** 3rd APPLICANT SYDNEY SAIZE 4th APPLICANT **GODWIN MANGUDYA** 5th APPLICANT ROGER DEANE STRINGER And MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY 1st RESPONDENT **AFFAIRS** MINISTER OF INFORMATION, MEDIA AND 2nd RESPONDENT **BROADCASTING SERVICES** THE ATTORNEY GENERAL OF ZIMBABWE 3rd RESPONDENT

FOURTH APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned **GODWIN MANGUDYA** do hereby make oath and state that:

- 1. I am the 4th Applicant in this matter, being a Zimbabwean freelance journalist based in Harare, and my address for service is care of my undersigned Legal Practitioners of record, Atherstone & Cook.
- 2. I confirm that I have read the Founding Affidavits of the 1st Applicant, and hereby confirm the contents therein that relate to me to be true and correct.
- 3. Further, I completely associate myself with the submissions made therein relating to the undesirability and harmful effects of Criminal Defamation.

- 4. I also associate myself completely with the submissions made by 2nd, 3rd, and 5th Applicants as far as those Applicants condemn the nature and effect of Criminal Defamation.
- 5. I am registered to practice as a journalist, by the Zimbabwe Media Commission (ZMC), as more fully appears from my **attached** accreditation card that is **Annexure 'J'**. However, despite that legal status, I also am not confident that as a citizen I can freely express myself without adverse consequences following, or that as a journalist, I can write freely about certain influential citizens without punishment ensuing thereafter.
- 6. There are also many of my friends and colleagues, journalists and non-journalists alike who share with me, the permanent fear of arrest and detention at any time, under Zimbabwe's Criminal Defamation law, and other harsh media laws.
- 7. I personally know 2nd Applicant, Nevanji Madanhire, Stanley Gama, Fungi Kwaramba, and other journalists who were in recent years arrested under the Criminal Defamation laws and other statutes that are not favourable to Freedom of Expression and Freedom of the Media.
- 8. Those reports, and others from colleagues outside Zimbabwe whose countries still retain Criminal Defamation, induce in me considerable apprehension on the possibility of arrest while I carry out my duties as a journalist. That arrest could also be effected on fellow journalists and citizens under the laws of Criminal Defamation.
- I understand that the four (4) journalists that I mentioned above are all registered by the Zimbabwe Media Commission (ZMC), as I am, but their accreditation in terms of law was still insufficient in protecting them from the harsh effects of Criminal Defamation. For that reason I believe that Criminal Defamation has no place in a modern society like Zimbabwe, especially in the context of the availability of civil remedies for those who feel they may have been defamed, and in light of the content of the Constitutional provisions that protect Freedom of Expression and Freedom of the Media, as well as Access to Information.

I therefore pray for an Order in terms of the Draft.

THUS SWORN TO AT HARARE THIS DAY OF FEBRUARY 2015

GODWIN MANGUDYA

Before me

COMMISSIONER OF OATHS

DZIKAMAI A. MACHINGURA

LLB (Hons) (UZ)

LEGAL PRACTITIONER

CONVEYANCER, NOTARY PUBLIC

ADMINISTRATOR OF DECEASED ESTATES

COMMISSIONER OF OATHS

ZIMBABWE MEDIA COMMISSION



PRESS CARD
2015



0107JF29705

Name:

Godwin Mangudya

Org:

Freelance

Category: JF

I.D:27-085397Y-27

Valid From:05 Jan. 2015

To: 31 Dec. 2015

IN THE CONSTITUTIONAL COURT OF ZIMBABWE CASE NO. CCZ....../15 HELD AT HARARE

In the matter between:

MEDIA INSTITUTE OF SOUTHERN AFRICA

(Zimbabwe Chapter)

NQABA MATSHAZI

SYDNEY SAIZE

GODWIN MANGUDYA

ROGER DEANE STRINGER

And

MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY

1st RESPONDENT

1st APPLICANT

4th APPLICANT

5th APPLICANT

MINISTER OF INFORMATION, MEDIA AND BROADCASTING SERVICES

2nd RESPONDENT

THE ATTORNEY GENERAL OF ZIMBABWE

3rd RESPONDENT

FIFTH APPLICANT'S FOUNDING AFFIDAVIT

- I, the undersigned ROGER DEANE STRINGER do hereby make oath and state that:
 - The statements that I depose to hereunder are to the best of knowledge and belief, true and correct.
 - 2. I am the 5thApplicant in this matter, being a Zimbabwean independent publishing consultant based in Harare. My address for service is care of my undersigned Legal Practitioners of record.
 - 3. I confirm that I have read the Founding Affidavit of the 1st Applicant, and hereby confirm the contents therein that relate to me, to be true and correct.

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- 4. Further, I completely associate myself with the submissions made therein relating to the undesirability and harmful effects of Criminal Defamation.
- 5. Unfortunately, the matter never went to trial, with the result that the veracity of the State's allegations was never tested by a Court of law.
- 6. For the record. The information in the Outline of the State case is extremely misleading and false in certain respects, that is to say:
 - I never published "a false story" as alleged in paragraph 4 of the Outline of the State Case. All I did was to ask a question at an official council/ Residents Meeting whether or not planning permission had been granted in respect of the complainant's (Munyaradzi Kereke) project.
 - 6.2 I did not go to the Standard Newspaper's offices as alleged in paragraph 5 of the Outline of the State Case.
 - 6.3 The allegation made in paragraph 7 of the Outline of the State Case that I had told my gardener that a story would be published in a newspaper, is completely false. Police had taken away my gardener for 12 hours, reportedly for "investigations", and he came back home, in my opinion, clearly afraid. I believe that he had been intimidated into falsely testifying against me.
 - 6.4 While on remand, I updated my friends *via* facebook on what had happened to me, that is my arrest and prosecution at Courts of law and the reasons therefor. Once the Magistrate learnt about my communications with my friends, having been informed of those communications by the complainant through the prosecutor, my bail was revoked at the State's specific request, leading to my detention at Harare Remand Prison for a night.
 - I was released from prison only through the skilful negotiation of my lawyer who engaged the complainant's lawyers and the State for an amicable resolution to the matter. The negotiation entailed my surrender or compromise of certain personal rights, particularly my ability to freely communicate and express myself, privately and publicly.

- 4,
- 6.6 Earlier on, the Magistrate had officially barred me from making related posts on the Internet, in clear violation of my right of freedom of expression: "It is ordered that the accused desists from posting on the Internet, Facebook or any medium of communication any article in connection with these proceedings"
- 6.7 With Criminal Defamation laws still a part of Zimbabwe's statutes I continue to live with the fear of:
 - 6.7.1 having the Criminal Court in CRB 810/11 revived since it was Withdrawn before Plea, or
 - 6.7.2 getting arrested again as a result of my exercise of the right of Freedom of Expression, or Freedom of Association since my previous arrest arose from my participation at a Residents' Meeting. After my horrific experience at the hands of the State, I have never participated again at a Residents' Meeting, mainly due to the seriousness of the hardship and punishment that I suffered as a result of associating with fellow residents, participating at that meeting, and freely expressing myself at that meeting.
- I should also point out the fact that the hardship that I suffered as a result of the harshness of Criminal Defamation charges that were falsely levelled against me, affected not only me, but also my family, that is my wife, and my friends who were all extremely worried for my welfare and safety while I was under arrest and detained by the State.
- 6.9 My family and some of my friends are in fact very worried about the fact that I am exercising my constitutional right of challenging a law that I believe to be unconstitutional. I can sense that many of them are increasingly forming the view that one cannot express themselves, or associate with certain groups of citizens without subsequently facing harsh consequences for that exercise of rights; and further that the law does not sufficiently protect those citizens who fully exercise their rights against the actions of more powerful citizens.

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THUS SWORN TO AT HARARE THIS DAY OF FEBRUARY 2015

ROGER DEANE STRINGER

Before me



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IN THE CONSTITUTIONAL COURT OF ZIMBABWE HELD AT HARARE	BWE CASE NO. CCZ/15
	and the second
In the matter between:	
MEDIA INSTITUTE OF SOUTHERN AFRICA (Zimbabwe Chapter)	1 st APPLICANT
NQABA MATSHAZI	2 nd APPLICANT
SYDNEY SAIZE	3 rd APPLICANT
GODWIN MANGUDYA	4 th APPLICANT
ROGER DEANE STRINGER	5 th APPLICANT
And	
MINISTER OF JUSTICE, LEGAL AND PARLIAN AFFAIRS	MENTARY 1 st RESPONDENT
MINISTER OF INFORMATION, MEDIA AND BROADCASTING SERVICES	2 nd RESPONDENT
THE ATTORNEY GENERAL OF ZIMBABWE	3 rd RESPONDENT
DRAFT OR	DER
At Harare, thisday of	2015
Before the Honourable Mr/Mrs Justice	
Mr. Mhike	for the Applicant
	for the 1 st and 2 nd Respondents
	for the 3 rd Respondent

WHEREUPON after reading papers filed of record and hearing Counsel:

IT IS DECLARED THAT:

- 1. Criminal Defamation as defined in Section 96 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] is unconstitutional for its non-compliance with Sections 61 and 62 of the Constitution of Zimbabwe.
- 2. Section 96 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] is therefore null and void, and is hereby struck down for its unconstitutionality.
- 3. The Respondents shall pay the costs of suit.

BY THE COURT	

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