

CASE NO CCZ.....64/17.....

IN THE CONSTITUTIONAL COURT OF ZIMBABWE  
HELD AT HARARE

In the matter between  
GABRIEL SHUMBA

1<sup>ST</sup> APPLICANT

AND

SIBONILE MFUMISI

2<sup>ND</sup> APPLICANT

AND

DARLINGTON NYAMBIYA

3<sup>RD</sup> APPLICANT

AND

MINISTER OF JUSTICE, LEGAL AND  
PARLIAMENTARY AFFAIRS

1<sup>ST</sup> RESPONDENT

AND

THE CHAIRPERSON OF THE ZIMBABWE  
ELECTORAL COMMISSION

2<sup>ND</sup> RESPONDENT

AND

ZIMBABWE ELECTORAL COMMISSION

3<sup>RD</sup> RESPONDENT

AND

THE MINISTER OF FOREIGN AFFAIRS

4<sup>TH</sup> RESPONDENT

AND

THE MINISTER OF FINANCE AND  
ECONOMIC DEVELOPMENT

5<sup>TH</sup> RESPONDENT

AND

THE ATTORNEY GENERAL OF ZIMBABWE

6<sup>TH</sup> RESPONDENT

---

APPLICATION FOR DIRECT ACCESS TO THE CONSTITUTIONAL COURT IN TERMS  
OF RULE 21 OF THE CONSTITUTIONAL COURT RULES, 2016

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Filed by

Zimbabwe Lawyers for Human Rights  
5<sup>th</sup> Floor Kodzero Amalungelo House  
98 Baines Avenue  
Harare (BRC/ACJ)

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THE MINISTER OF FINANCE AND  
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AND

THE ATTORNEY GENERAL OF ZIMBABWE

1<sup>ST</sup> APPLICANT

2<sup>ND</sup> APPLICANT

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1<sup>ST</sup> RESPONDENT

2<sup>ND</sup> RESPONDENT

3<sup>RD</sup> RESPONDENT

4<sup>TH</sup> RESPONDENT

5<sup>TH</sup> RESPONDENT

6<sup>TH</sup> RESPONDENT



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DATED AT HARARE THIS 19<sup>th</sup> DAY OF OCTOBER 2017



Zimbabwe Lawyers for Human Rights  
Applicant's Legal Practitioners  
5th Floor Kodzero Amalungelo House  
98 Baines Avenue  
Harare (BRC/ACJ)

To: THE REGISTRAR  
Constitutional Court of Zimbabwe  
HARARE

And To: MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS  
6<sup>th</sup> Floor New Government Complex  
Cnr Central Avenue/Simon V. Muzenda St  
HARARE

And To: CHAIRPERSON, ZIMBABWE ELECTORAL COMMISSION  
Mahachi Quantum Building  
1 Nelson Mandela Avenue  
HARARE

And To: ZIMBABWE ELECTORAL COMMISSION  
Mahachi Quantum Building  
1 Nelson Mandela Avenue  
HARARE

And To: MINISTER OF FOREIGN AFFAIRS  
Munhumutapa Building,  
Samora Machel Avenue and Sam Nujoma Street  
HARARE

And To: MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT  
New Government Complex,

Corner, Third Street and Samora Machel Avenue  
HARARE

And To: THE ATTORNEY GENERAL OF ZIMBABWE  
3<sup>rd</sup> Floor New Government Complex  
Cnr Central Avenue/Simon V Muzenda St  
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AND

THE MINISTER OF FOREIGN AFFAIRS

REGISTRAR  
CONSTITUTIONAL COURT  
20 OCT 2017

4<sup>TH</sup> RESPONDENT

AND

THE MINISTER OF FINANCE AND  
ECONOMIC DEVELOPMENT

5<sup>TH</sup> RESPONDENT

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THE ATTORNEY GENERAL OF ZIMBABWE

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---

COURT APPLICATION FOR DIRECT ACCESS AS PROVIDED FOR IN SECTION 167 (5)  
OF THE CONSTITUTION OF ZIMBABWE, 2013 AND RULE 21(2) AND (3) OF THE  
CONSTITUTIONAL COURT RULES, 2016

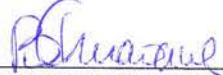
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TAKE NOTICE THAT the Applicant intends to apply to the Constitutional Court for an Order in terms of the Draft Order annexed to this notice and that the accompanying affidavit/s and documents will be used in support of the application.

If you intend to oppose this application you will have to file a Notice of Opposition in Form CCZ 2, together with one or more affidavits, with the Registrar of the Constitutional Court at Harare within ten (10) days after the date on which this Notice was served upon you. You will also have to serve a copy of the Notice of Opposition and affidavit/s on the Applicant at the address for service specified below. Your affidavit/s may have annexed to them the 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 at the Constitutional Court at Harare without further notice to you and will be dealt with as an unopposed application.

DATED AT HARARE THIS 19 DAY OF OCTOBER 2017.

  
ZIMBABWE LAWYERS FOR HUMAN  
RIGHTS

Applicant's Legal Practitioners  
Kodzero- Amalungelo House  
98B Baines Avenue  
HARARE

- To: THE REGISTRAR  
Constitutional Court of Zimbabwe  
HARARE
- And To: MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS  
6<sup>th</sup> Floor New Government Complex  
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- And To: MINISTER OF FOREIGN AFFAIRS  
Munhumutapa Building,  
Samora Machel Avenue and Sam Nujoma Street  
HARARE
- And To: MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT  
New Government Complex,  
Corner, Third Street and Samora Machel Avenue  
HARARE
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1<sup>ST</sup> APPLICANT2<sup>ND</sup> APPLICANT3<sup>RD</sup> APPLICANT1<sup>ST</sup> RESPONDENT2<sup>ND</sup> RESPONDENT3<sup>RD</sup> RESPONDENT4<sup>TH</sup> RESPONDENT5<sup>TH</sup> RESPONDENT6<sup>TH</sup> RESPONDENT

ADDRESS FOR SERVICE

TAKE NOTICE that the Applicant's address for service is 5<sup>th</sup> Floor Kodzero Amalungelo House 98 Baines Avenue Harare which is the address of his Legal Practitioners of record.

DATED AT HARARE THIS 19 DAY OF OCTOBER 2017

*B. Chinganda*  
 Zimbabwe Lawyers for Human Rights  
 Applicant's Legal Practitioners  
 5th Floor Kodzero Amalungelo House  
 98 Baines Avenue  
 Harare (BRC/ACJ)

TO: THE REGISTRAR  
 Constitutional Court of Zimbabwe  
HARARE

- And To: MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS  
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ECONOMIC DEVELOPMENT

AND

THE ATTORNEY GENERAL OF ZIMBABWE

6<sup>TH</sup> RESPONDENT



---

FOUNDING AFFIDAVIT OF GABRIEL SHUMBA

---

I, **GABRIEL SHUMBA**, make oath and state as follows,

**PARTIES**

1. I am the 1<sup>st</sup> Applicant in this matter and depose to the facts hereunder in that capacity. The facts to which I depose are to the best of my knowledge true and correct. Where I make any averment in regard to the law, I make such averment under the advice of legal counsel. My address for service is care of Zimbabwe Lawyers for Human Rights, Kodzero-Amalungelo House, 98 Baines Avenue,

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Harare.

2. The 2<sup>nd</sup> Applicant is **Sibonile Mfumisi** a Zimbabwean citizen living and working in South Africa as an Office Administrator. Her address of service is care of Zimbabwe Lawyers for Human Rights, Kodzero-Amalungelo House, 98B Baines Avenue, Harare.
3. The 3<sup>rd</sup> Applicant is **Darlington Nyambiya** a Zimbabwean citizen living and working in the United Kingdom. His address of service is care of Zimbabwe Lawyers for Human Rights, Kodzero-Amalungelo House, 98B Baines Avenue, Harare.
4. The 1<sup>st</sup> **Respondent** is the Minister of Justice Legal and Parliamentary Affairs, Affairs to whom the President has assigned the administration of the Electoral Act [Chapter 2:13]. His address of service is New Government Complex, 6th Floor, Block C, Corner Samora Machel Avenue and Simon Muzenda Street, Harare.
5. The 2<sup>nd</sup> Respondent is the **Chairperson of the Zimbabwe Electoral Commission** ("ZEC") cited herein nomino officio in terms of section 14 of the Electoral Act [Chapter 2:13]. Her address for service is Mahachi Quantum Building, Number 1 Nelson Mandela Avenue, Harare.
6. The 3<sup>rd</sup> Respondent is the **Zimbabwe Electoral Commission**, one of the five independent commissions established by section 232 and 238 of the Constitution and whose legal status as a separate legal persona capable of suing and being

[Chapter 2:13]. Its address for service is at Mahachi Quantum Building, 1 Nelson Mandela Avenue, Harare.

7. The 4<sup>th</sup> Respondent is the **Minister of Foreign Affairs**, cited herein as the executive authority who oversees consular, and other requirements, of Zimbabweans residing outside the country. His address of service is Munhumutapa Building, Samora Machel Avenue and Sam Nujoma Street, Harare.
8. The 5<sup>th</sup> Respondent is the **Minister of Finance and Economic Development**, cited herein as the executive authority who oversees the financial and economic development of Zimbabwe. The 5th Respondent is cited for effectiveness and in recognition of his interest in the financial implications of the remedies sought. 5th Respondent's address of service is New Government Complex, Corner, Third Street and Samora Machel Avenue, Harare.
9. The 6<sup>th</sup> Respondent is the **Attorney General of Zimbabwe** cited herein as the principal legal adviser to the Government mandated to represent the Government in civil and constitutional proceedings. As the application concerns an interpretation of provisions contained in the Declaration of Rights, the 6th Respondent is an interested party. His address of service is 2nd floor, Block 'A' New Government Complex, Corner, Samora Machel Avenue and Simon Muzenda Street, Harare.
10. All Respondents are cited in their official capacities.



## NATURE OF THIS APPLICATION

11. This is an application for direct access to the Constitutional Court of Zimbabwe to address the constitutionality of the provisions of the Electoral Act [Chapter 2:13] which prevent Zimbabwean citizens living and working abroad from participating in electoral processes unless they are able to physically come to Zimbabwe to exercise their political rights.
12. The application is made in terms of Rule 21 of the Rules of this Honourable Court. Specifically, I would want to court to adjudicate upon:
  - 12.1 Whether section 23 of the Electoral Act [Chapter 2:13] is constitutionally invalid as far as it excludes citizens not physically resident in Zimbabwe from registering as voters in contravention of sections 67(3) of the Constitution of Zimbabwe.
  - 12.2 Whether section 72 of the Electoral Act Chapter 2:13 is constitutionally invalid as far as it excludes citizens of Zimbabwe who are not in Government service from exercising their right to vote in contravention of sections 56(1), 56(3) and 56(4) and 67(3) of the Constitution of Zimbabwe.
  - 12.3 Whether the Respondents cited above should be ordered to put in place all appropriate measures to enable the Applicants' registration and participation in the 2018 Presidential, Parliamentary and Local Authority elections as voters.

## BACKGROUND FACTS

13. I was born in Chivi, Masvingo, Zimbabwe on 10<sup>th</sup> November 1973. I attach hereto a copy of my national identity document as proof of citizenship marked as '**Annexure A.**' Due to my representation of an opposition party political activist in 2003, I was tortured, abducted and charged with charged with attempting to overthrow the government through unconstitutional means.
14. While the charges were dropped, due to this harrowing experience I was forced to flee the country for my own safety and that of my family. I draw the attention of the court to the 2013 decision of the African Commission on Human and Peoples' Rights, under Case Number 288/2004, which confirms that I was indeed tortured and treated in an inhumane and degrading fashion.
15. In 2008, I was confirmed as a refugee in South Africa. As a refugee I am unable to resume residence in Zimbabwe. Nevertheless, I remain a citizen of Zimbabwe and have significant interests in the political developments in the country. As testimony to that effect, in 2013, I and four others brought another case before the African Commission on Human and Peoples' Rights in which we sought an order compelling the Government of Zimbabwe to enable our participation in the constitutional referendum.
16. We obtained provisional measures for the diaspora to do so, based on the African Charter on Human and People's Rights. However, the Government of Zimbabwe failed or refused to comply with the ruling.

17. I regularly send remittances to relatives who remain in Zimbabwe. I was heartened to note that in terms of the Zimbabwe Diaspora Policy, the Government acknowledges that the Zimbabwe Diaspora wishes to be engaged as active citizens in national dialogue and affairs as they bring international exposure and lessons to the table. I attach hereto the foreword to the Diaspora Policy written by the Minister of Macro-Economic Planning and Investment Promotion in July 2016 marked '**Annexure B**'.
18. I also continue to have a vested interest in the electoral processes of my country, and keenly monitor events back home. As such, I am aware that the General, Presidential and Local Authority Elections will be held in 2018 by operation of section 158 of the Constitution of Zimbabwe.
19. However, under the current legislative framework, I am unable to participate in the 2018 elections due to the restrictive provisions of the Electoral Act and the regulations made thereunder which place a residence qualification on Zimbabweans who can be included on the electoral voters roll and can thus participate in electoral processes as will be illustrated below.

#### OUTLINE OF THE OFFENDING LEGISLATIVE PROVISIONS

20. In terms of section 23(1) of the Electoral Act, in order to have the requisite residence qualifications to be registered as a voter in a particular constituency, a claimant must be resident in that constituency at the date of his or her claim.



21. Section 23(3) goes further to state that 'a voter who is registered on the voters roll for a constituency, ... shall not be entitled to have his or her name retained on such roll if, for a continuous period of twelve months, he or she has ceased to reside in that constituency.'
22. Thus, as a result of these provisions, my co-applicants, myself and millions of other Zimbabweans based abroad do not qualify for registration on the voters roll.
23. At this juncture, I should point out that that there are a limited category of Zimbabweans based abroad who can cast their ballots from outside the country by operation of sections 72 and 73 of the Electoral Act which provide for the instances in which postal votes are permissible.
24. These sections restrict voting from abroad to persons on duty as a member of a disciplined force or as an electoral officer; or persons on duty in the service of the Government outside Zimbabwe; persons outside Zimbabwe as the spouse of a person referred to above and so unable to vote at a polling station in the constituency.
25. Thus there are mechanisms for registration and voting outside of Zimbabwe already in existence and in regular use which are not available to me as I do not fall within any of the categories listed in section 72.

#### NATURE OF RELIEF SOUGHT

26. I therefore seek the intervention of this honourable court to make a finding that sections 23, 72 and 73 of the Electoral Act are unconstitutional in so far as they

27. Section 67 of the Constitution sets out the political rights of citizens. Section 67(3) particularly provides that 'every Zimbabwean citizen who is of or over eighteen years of age has the right to vote in all elections and referendums ... and to do so in secret.'
28. I also call the attention of the court to paragraph 2 of the 4th schedule to the Constitution concerning qualifications for voter registration for Presidential and National Assembly elections, which provides that :
- (2) The Electoral Law may prescribe additional residential requirements to ensure that voters are registered on the most appropriate voters roll, but any such requirements must be consistent with this Constitution, in particular with section 67.*
29. Thus, it is my contention that the implication of subparagraph 2 above is that any residential requirements that may be imposed by the Legislature may not prohibit any person from exercising their right to vote as enshrined in section 67 of the Constitution.
30. Thus, any residential requirements imposed in terms of the Electoral Act cannot negate the right to vote for any Zimbabweans above the age of 18.
31. Thus, to the extent that the Electoral Act does not facilitate the registration and voting of Zimbabweans based abroad it is a negation of section 67(3) of the Constitution as read with paragraph 2 of the 4th schedule to the Constitution.
32. Further, by creating a special class of citizens who can vote from abroad, the Electoral Act is discriminatory. By restricting the classes of absent voters, those voters who do not fall within the prescribed classes are deprived of the right,

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effectively discriminating against them. Section 56(1) of the Constitution clearly states that all people are equal before the law and have the right to equal protection under the law. Section 56(3) of the Constitution provides that every person has the right not to be treated in an unfairly discriminatory manner on any grounds including their class. I attach hereto a draft of the Application as Annexure C.

#### GROUNDS FOR DIRECT ACCESS

33. Given the above, I humbly aver that it is in the interests of justice for an order for direct access to be granted in this matter as:

33.1 The matter I bring before this Court concerns a constitutional question relating to the legality of legislative provisions namely sections 23, 72 and 73 the Electoral Act.

33.2 Secondly, it is in the interests of justice that I be granted direct access to this Court because the matter that I bring is one that needs to be resolved with finality given the imminence of the harmonised election.

33.3 A hearing before a lower court will cause delay and prejudice as the matter may not be resolved with finality before the 2018 elections. This is not a matter which requires the adjudication of a lower court on questions of fact as it is wholly grounded on an assertion of constitutionality of law and not conduct.

33.4 The matter does not require the hearing of oral evidence and can be adjudicated upon on the basis of papers filed before the court.



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## COSTS

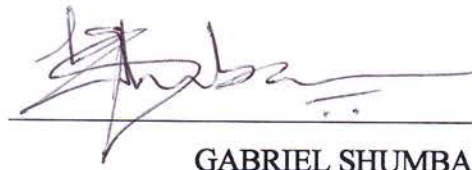
34. I submit that each party must bear its own costs.

## CONCLUSION

35. I humbly submit that this is a matter which high prospects of success given the clear and incontrovertible provisions of the Constitution and the absence of disputes of fact. There is no other remedy which is open to me and I thus submit that it would be in the interests of justice for an order of direct access to be granted.

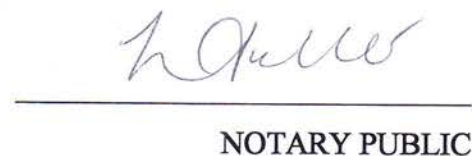
WHEREFORE I pray for an order in terms of the draft.

Johannesburg,  
SIGNED AND SWORN TO AT ~~HEERENGRACHT~~ ON THIS 27<sup>th</sup> DAY OF SEPTEMBER 2017  
S.A. Africa



GABRIEL SHUMBA

BEFORE ME:



NOTARY PUBLIC

Liesl Heila Muller  
LLB (UP)  
Ex-officio Commissioner Of Oaths  
Lawyers for Human Rights  
4th Floor Heerengracht Building  
87 De Korte Street, Braamfontein  
Johannesburg 2001  
Tel: 011 339 1960 Fax: 011 339 2665

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AND	
DARLINGTON NYAMBIYA	3 <sup>RD</sup> APPLICANT
AND	
MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS	1 <sup>ST</sup> RESPONDENT
AND	
THE CHAIRPERSON OF THE ZIMBABWE ELECTORAL COMMISSION	2 <sup>ND</sup> RESPONDENT
AND	
ZIMBABWE ELECTORAL COMMISSION	3 <sup>RD</sup> RESPONDENT
AND	
THE MINISTER OF FOREIGN AFFAIRS	4 <sup>TH</sup> RESPONDENT
AND	
THE MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT	5 <sup>TH</sup> RESPONDENT
AND	
THE ATTORNEY GENERAL OF ZIMBABWE	6 <sup>TH</sup> RESPONDENT

---

2<sup>ND</sup> APPLICANT'S SUPPORTING AFFIDAVIT

---

I, the undersigned, **SIBONILE MFUMISI**, do hereby make oath and say:

1. I am the 2<sup>nd</sup> applicant in this matter. I am a Zimbabwean citizen living and working in South Africa. My address of service is care of Zimbabwe Lawyers for Human Rights, Kodzero-Amalungelo House, 98B Baines Avenue, Harare.
2. I am employed as an office administrator in a South African business. I reside in South Africa for economic reasons. I have attached here my Zimbabwean Identity Card marked **Annexure GS5**.

3. I have read the Founding Affidavit of Gabriel Shumba and to the extent that it applies to me as a Zimbabwean citizen, I associate myself with its contents.
4. I submit that it is in the interests of justice for direct access to this court to be granted in this matter. Only this Court can decide on the constitutional questions raised in the main application and truly grant me the relief that I seek.
5. The hearing of oral evidence is not necessary for this Court to determine this application as it is purely a question of law arising from a conflict between the provisions of the Electoral Act and the provisions of sections 67(3) and 56 (1), 56(3) and 56(4) of the Constitution of Zimbabwe.
6. Should any disputes of fact arise, I am advised by my legal practitioners which advice I accept, that the Respondents are entitled to file opposing papers in order for this Honourable Court to resolve any such dispute.
7. I pray for an order in terms of the draft.

THUS SWORN TO AND SIGNED AT HARARE..... ON THIS 27 DAY OF SEPTEMBER 2017.

Sibonile MFUMISI  
SIBONILE MFUMISI

Tinomuda Shoko  
LLB(UZ),LLM Child Law N.W.U.(S.A.)  
LEGAL PRACTITIONER

Tinomuda Shoko  
Commissioner of Oaths

Signed before me:

\_\_\_\_\_  
COMMISSIONER OF OATHS/  
NOTARY PUBLIC



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6<sup>TH</sup> RESPONDENT

---

3<sup>rd</sup> APPLICANT'S SUPPORTING AFFIDAVIT

---

I, the undersigned, DARLINGTON NYAMBIYA, do hereby make oath and say:

1. I am the 3<sup>rd</sup> Applicant in this matter. I am a Zimbabwean citizen living and working in the United Kingdom. My address for service is care of Zimbabwe Lawyers for Human Rights, Kodzero-Amalungelo House, 98B Baines Avenue, Harare.
2. I am the President of the Local Solutions Council and Chairperson of the Zimbabwe Exiles Forum United Kingdom. I reside in the United Kingdom for mainly political, but also economic reasons. I have attached hereto a copy of my Zimbabwean Identity Card and passport marked as Annexures GS6 and GS7.



3. I have read the Founding Affidavit of Gabriel Shumba and to the extent that it applies to me as a Zimbabwean citizen, I associate myself with its contents.
4. I submit that it is in the interests of justice for direct access to this Court to be granted in this matter. Only this Court can decide on the constitutional questions raised in the main application and truly grant me the relief that I seek.
5. The hearing of oral evidence is not necessary for this Court to determine this application as it is purely a question of law arising from a conflict between the provisions of the Electoral Act and the provisions of sections 67(3), 56(1), 56(3) and 56(4) of the Constitution of Zimbabwe.
6. Should any disputes of fact arise, I am advised by my legal practitioners which advice I accept, that the Respondents are entitled to file opposing papers in order for this Honourable Court to resolve any such dispute.
7. I pray for an order in terms of the draft.

THUS SWORN TO AND SIGNED AT CARDIFF ON THIS 9th DAY OF OCTOBER 2017.

DARLINGTON NYAMBIYA

Signed before me:

[Signature]  
NOTARY PUBLIC

Full names:

CHRISTOPHER JOHN COATES

Business address:

Capacity: NOTARY PUBLIC

Area

CARDIFF UNITED KINGDOM



COATES & COMPANY LTD  
12 Cathedral Road  
Cardiff  
CF11 9LJ  
Tel: 02920098756  
Email: chris@coatescompany.co.uk

2017/175



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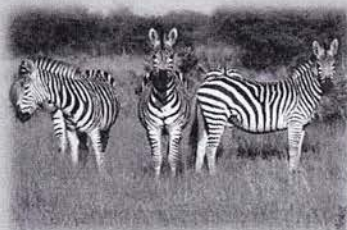
# Annexure B



# ZIMBABWE DIASPORA POLICY



ZIMBABWE



MINISTRY OF MACRO-ECONOMIC PLANNING AND INVESTMENT  
PROMOTION



## Foreword

The Zimbabwe Government recognizes that international migration has become an established feature of contemporary social and economic life, with both positive and negative manifestations and opportunities. Governments across the world are increasingly becoming aware of the growing importance of international migration on the international development agenda. Effective migration management is an essential element of overall good governance, which is increasingly recognized as an essential foundation for sustainable development.

Migration has been identified as possessing potential investment and development opportunities. The key benefits of migration for countries of origin if properly managed, include the investments by the diaspora communities into their homeland and the positive impact of remittances on foreign currency inflows, knowledge and skills-transfer when migrants return home on a temporary or permanent basis, increased levels of indigenous entrepreneurship through new opportunities in the private sector by those in the diaspora, improvement in human development through philanthropic work and ultimately poverty reduction as the diaspora communities invest into their motherland.

Government further acknowledges that the Zimbabwe Diaspora wishes to be engaged as active citizens in national dialogue and affairs as they bring international exposure and lessons to the table. To this end a Directorate was established in my Ministry with a mandate to:

- attract Diaspora investment into our economy through the recently approved Diaspora policy and engage Zimbabweans living and working in the Diaspora and emphasizing that Zimbabwe is ready for such investments;

- engage Zimbabwe's Diaspora to take an active role in the national economic development process and invite them to participate in national skills development in national institutions of Higher learning.
- develop mechanisms for dialogue and partnership with Zimbabweans abroad and encourage them to develop joint venture investments and partnerships;
- create formal channels for investing in Zimbabwe by the Diaspora in order to harness and maximise the potential of their contribution to Zimbabwe's development;
- encourage the Diaspora to use formal channels of remitting funds to Zimbabwe for development purposes;
- establish the necessary institutional mechanism for co-ordination and administration of issues affecting Zimbabweans abroad;
- meet the Diaspora's needs and expectations in order for them to play an effective role in Zimbabwe's economic and social development;
- enable the Diaspora to play an effective role in the financial and economic development of the country; and
- work with relevant Ministries to establish mechanism for the transfer and repatriation of terminal, pension and social security benefit for retired returnees through conclusion of bilateral labour agreements with host countries.

The Zimbabwe Diaspora Policy provides for a comprehensive national framework which is the cornerstone and reference point for the Government of Zimbabwe and all other stakeholders to respond to the challenges and opportunities presented by the Diaspora. The Policy

seeks to maximize mutual benefits to all stakeholders that can be accrued by formally mainstreaming the Diaspora into the national dialogue and development agenda.

I wish to thank the IOM for their technical and financial support in collaborating with the Government of Zimbabwe on the migration and development discourse as well as other stakeholders who participated in the preparation of the Zimbabwe Diaspora Policy.



Honourable. Dr. O.M. Mpofu (MP)

**MINISTER OF MACRO-ECONOMIC PLANNING AND INVESTMENT PROMOTION**

19 July, 2016



CASE NO CCZ.....

IN THE CONSTITUTIONAL COURT OF ZIMBABWE  
HELD AT HARARE

In the matter between

GABRIEL SHUMBA	1 <sup>ST</sup> APPLICANT
AND	
SIBONILE MFUMISI	2 <sup>ND</sup> APPLICANT
AND	
DARLINGTON NYAMBIYA	3 <sup>RD</sup> APPLICANT
AND	
MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS	1 <sup>ST</sup> RESPONDENT
AND	
THE CHAIRPERSON OF THE ZIMBABWE ELECTORAL COMMISSION	2 <sup>ND</sup> RESPONDENT
AND	
ZIMBABWE ELECTORAL COMMISSION	3 <sup>RD</sup> RESPONDENT
AND	
THE MINISTER OF FOREIGN AFFAIRS	4 <sup>TH</sup> RESPONDENT
AND	
THE MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT	5 <sup>TH</sup> RESPONDENT
AND	
THE ATTORNEY GENERAL OF ZIMBABWE	6 <sup>TH</sup> RESPONDENT

---

APPLICATION IN TERMS OF SECTION 85 (1) OF THE CONSTITUTION

---

CASE NO CCZ.....

IN THE CONSTITUTIONAL COURT OF ZIMBABWE  
HELD AT HARARE

In the matter between

GABRIEL SHUMBA	1 <sup>ST</sup> APPLICANT
AND	
SIBONILE MFUMISI	2 <sup>ND</sup> APPLICANT
AND	
DARLINGTON NYAMBIYA	3 <sup>RD</sup> APPLICANT
AND	
MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS	1 <sup>ST</sup> RESPONDENT
AND	
THE CHAIRPERSON OF THE ZIMBABWE ELECTORAL COMMISSION	2 <sup>ND</sup> RESPONDENT
AND	
ZIMBABWE ELECTORAL COMMISSION	3 <sup>RD</sup> RESPONDENT
AND	
THE MINISTER OF FOREIGN AFFAIRS	4 <sup>TH</sup> RESPONDENT
AND	
THE MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT	5 <sup>TH</sup> RESPONDENT
AND	
THE ATTORNEY GENERAL OF ZIMBABWE	6 <sup>TH</sup> RESPONDENT

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APPLICATION IN TERMS OF SECTION 85 (1) OF THE CONSTITUTION

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TAKE NOTICE that the Applicant intends to apply to the Constitutional Court in terms of Section 85(1) of the Constitution for a declaratory order *that the failure to afford voting facilities to the Applicants and similarly placed Zimbabweans based abroad be and is hereby declared unconstitutional in that it violates Applicants' rights as enshrined in sections 67(3) and 56 (1), 56(3) and 56(4) of the Constitution of Zimbabwe.*

TAKE notice that the applicant intends to apply to the Constitutional Court for the Order in terms of the Draft Order annexed to this notice and that the accompanying affidavit/s and documents will be used in support of the application.

If you intend to oppose this application you will have to file a Notice of Opposition in Form CCZ 2, together with one or more opposing affidavits, with the Registrar of the Constitutional Court at Harare within 10 days after the date on which this notice was served upon you.

You will also have to serve a copy of the Notice of Opposition and affidavit/s on the applicant at the address for service specified below. Your affidavit/s may have annexed to the documents verifying the facts set out in the affidavits.

Leave to apply was granted on the .....day of .....20 .....

DATED AT HARARE THIS                      DAY OF                      2017

Zimbabwe Lawyers for Human Rights  
Applicant's Legal Practitioners  
5th Floor Kodzero Amalungelo House  
98 Baines Avenue  
Harare (BRC/ACJ)

- TO:            THE REGISTRAR  
Constitutional Court of Zimbabwe  
HARARE
- And To:      MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS  
6<sup>th</sup> Floor New Government Complex  
Cnr Central Avenue/Simon V. Muzenda St  
HARARE
- And To:      CHAIRPERSON, ZIMBABWE ELECTORAL COMMISSION  
Mahachi Quantum Building  
1 Nelson Mandela Avenue  
HARARE
- And To:      ZIMBABWE ELECTORAL COMMISSION  
Mahachi Quantum Building  
1 Nelson Mandela Avenue  
HARARE
- And To:      MINISTER OF FOREIGN AFFAIRS  
Munhumutapa Building,  
Samora Machel Avenue and Sam Nujoma Street  
HARARE
- And To:      MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT  
New Government Complex,  
Corner, Third Street and Samora Machel Avenue  
HARARE
- And To:      THE ATTORNEY GENERAL OF ZIMBABWE  
3<sup>rd</sup> Floor New Government Complex  
Cnr Central Avenue/Simon V Muzenda St  
HARARE



CASE NO CCZ.....

IN THE CONSTITUTIONAL COURT OF ZIMBABWE  
HELD AT HARARE

In the matter between

GABRIEL SHUMBA

1<sup>ST</sup> APPLICANT

AND

SIBONTLE MFUMISI

2<sup>ND</sup> APPLICANT

AND

DARLINGTON NYAMBIYA

3<sup>RD</sup> APPLICANT

AND

MINISTER OF JUSTICE, LEGAL AND

### 1<sup>ST</sup> RESPONDENT

PARLIAMENTARY AFFAIRS

AND

THE CHAIRPERSON OF THE ZIMBABWE

## 2<sup>ND</sup> RESPONDENT

ELECTORAL COMMISSION

AND

ZIMBABWE ELECTORAL COMMISSION

### 3<sup>RD</sup> RESPONDENT

AND

THE MINISTER OF FOREIGN AFFAIRS

#### 4<sup>TH</sup> RESPONDENT

AND

THE MINISTER OF FINANCE AND

### 5<sup>TH</sup> RESPONDENT

ECONOMIC DEVELOPMENT

AND

THE ATTORNEY GENERAL OF ZIMBABWE

6<sup>TH</sup> RESPONDENT

## ADDRESS FOR SERVICE

TAKE NOTICE that the Applicant's address for service is 5<sup>th</sup> Floor Kodzero Amalungelo House 98 Baines Avenue Harare which is the address of his Legal Practitioners of record.

DATED AT HARARE THIS

DAY OF

2017

Zimbabwe Lawyers for Human Rights  
Applicant's Legal Practitioners  
5th Floor Kodzero Amalungelo House  
98 Baines Avenue  
Harare (BRC/ACJ)

TO: THE REGISTRAR  
Constitutional Court of Zimbabwe

- And To: MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS  
6<sup>th</sup> Floor New Government Complex  
Cnr Central Avenue/Simon V. Muzenda St  
HARARE
- And To: CHAIRPERSON, ZIMBABWE ELECTORAL COMMISSION  
Mahachi Quantum Building  
1 Nelson Mandela Avenue  
HARARE
- And To: ZIMBABWE ELECTORAL COMMISSION  
Mahachi Quantum Building  
1 Nelson Mandela Avenue  
HARARE
- And To: MINISTER OF FOREIGN AFFAIRS  
Munhumutapa Building,  
Samora Machel Avenue and Sam Nujoma Street  
HARARE
- And To: MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT  
New Government Complex,  
Corner, Third Street and Samora Machel Avenue  
HARARE
- And To: THE ATTORNEY GENERAL OF ZIMBABWE  
3<sup>rd</sup> Floor New Government Complex  
Cnr Central Avenue/Simon V Muzenda St  
HARARE

CASE NO CCZ.....

IN THE CONSTITUTIONAL COURT OF ZIMBABWE  
HELD AT HARARE

In the matter between

GABRIEL SHUMBA	1 <sup>ST</sup> APPLICANT
AND	
SIBONILE MFUMISI	2 <sup>ND</sup> APPLICANT
AND	
DARLINGTON NYAMBIYA	3 <sup>RD</sup> APPLICANT
AND	
MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS	1 <sup>ST</sup> RESPONDENT
AND	
THE CHAIRPERSON OF THE ZIMBABWE ELECTORAL COMMISSION	2 <sup>ND</sup> RESPONDENT
AND	
ZIMBABWE ELECTORAL COMMISSION	3 <sup>RD</sup> RESPONDENT
AND	
THE MINISTER OF FOREIGN AFFAIRS	4 <sup>TH</sup> RESPONDENT
AND	
THE MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT	5 <sup>TH</sup> RESPONDENT
AND	
THE ATTORNEY GENERAL OF ZIMBABWE	6 <sup>TH</sup> RESPONDENT

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FOUNDING AFFIDAVIT

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I, GABRIEL SHUMBA, do hereby take oath and state as follows,

A: THE PARTIES

- I am the Applicant in this matter and depose to the facts hereunder in that capacity. The facts to which I depose are to the best of my knowledge true and correct. Where I make any averment in regard to the law, I make such averment under the advice of legal counsel, which advice I do accept. My address for service is care of Zimbabwe Lawyers for Human Rights, Kodzero- Amalungelo House, 98B Baines Avenue, Harare.



2. The 2<sup>nd</sup> Applicant is **SIBONILE MFUMISI** a Zimbabwean citizen living and working in South Africa as an Office Administrator. Her address of service is also care of advice of legal counsel, which advice I do accept. My address for service is care of Zimbabwe Lawyers for Human Rights, Kodzero- Amalungelo House, 98B Baines Avenue, Harare.
3. The 3<sup>rd</sup> Applicant is **DARLINGTON NYAMBIYA** a Zimbabwean citizen living and working in the United Kingdom. His address of service is also care of advice of legal counsel, which advice I do accept. My address for service is care of Zimbabwe Lawyers for Human Rights, Kodzero- Amalungelo House, 98B Baines Avenue, Harare.
4. The 1<sup>st</sup> Respondent is the **Minister of Justice Legal and Parliamentary Affairs**, Affairs to whom the President has assigned the administration of the Electoral Act [Chapter 2:13]. His address of service is New Government Complex, 6<sup>th</sup> Floor, Block C, Corner Samora Machel Avenue and Simon Muzenda Street Harare.
5. The 2<sup>nd</sup> Respondent is the **Chairperson of the Zimbabwe Electoral Commission** ("ZEC") cited herein *nomino officio* in terms of section 14 of the Electoral Act [Chapter 2:13]. Her address for service is Mahachi Quantum Building, Number 1 Nelson Mandela Avenue, Harare.
6. The 3<sup>rd</sup> Respondent is the **Zimbabwe Electoral Commission**, one of the five independent commissions established by section 232 and 238 of the Constitution and whose legal status as a separate legal persona capable of suing and being sued in its own corporate name is set out in section 4A of the Electoral Act [Chapter 2:13]. Its address for service is at Mahachi Quantum Building, 1 Nelson Mandela Avenue, Harare.
7. The 4<sup>th</sup> Respondent is the Minister of Foreign Affairs, cited herein as the executive authority who oversees consular, and other requirements, of Zimbabweans residing

outside the country. He is therefore cited for the effectiveness of the order sought. His address of service is Munhumutapa Building, Samora Machel Avenue and Sam Nujoma Street, Harare.

8. The 5<sup>th</sup> Respondent is the Minister of Finance and Economic Development. Cited herein as the executive authority who oversees the financial and economic development of Zimbabwe. The 5<sup>th</sup> Respondent is cited for effectiveness and in recognition of his interest in the financial implications of the remedies sought. 5<sup>th</sup> Respondent's address of service is New Government Complex, Corner, Third Street and Samora Machel Avenue Harare.
9. The 6<sup>th</sup> Respondent is the Attorney General of Zimbabwe cited herein as the principal legal adviser to the Government mandated to represent the Government in civil and constitutional proceedings. As the application concerns an interpretation of provisions contained in the Declaration of Rights, the 6<sup>th</sup> Respondent is an interested party. His address of service is 2<sup>nd</sup> floor, Block 'A' New Government Complex, Corner, Samora Machel Avenue and Simon Muzenda Street Harare.
10. All Respondents are cited in their official capacities.

#### B: THE APPLICATION BEFORE THE COURT

11. I seek an order compelling Respondents to facilitate the amendment of the Electoral Act [Chapter 2:13] and put in place appropriate measures so as to enable Zimbabweans living and working abroad to participate in electoral processes.
12. I was born in Chivi, Masvingo, Zimbabwe on 10<sup>th</sup> November 1973. I attach hereto a copy of my national identity document as proof of citizenship marked **Annexure A**. In February 2003, I was called upon to represent a Member of Parliament for the opposition Movement for Democratic Change (MDC), Job Sikhala, who was then the MP for St Marys. Mr Sikhala alleged political persecution, among other issues that he



raised with me as a human rights lawyer. It was while I was in consultation with him that state security agents from the CID Law and Order Harare and others who might have been from the military intelligence as well as the Central Intelligence Agency abducted me.

13. Before I was charged with attempting to overthrow the government through unconstitutional means, I was blindfolded and taken to a torture chamber where I spent days enduring horrendous torture. Just to give an example, I was electrocuted on my genitalia, in my mouth, fingers, and toes. I was severely beaten all over the body and under the feet. I was urinated upon, vomited blood and forced to drink it. I was interrogated about my human rights work and coerced to write a self-incriminating confession. During my detention, I was denied food, water and legal representation. The charges were subsequently dropped but even then, I was followed and threatened with death by people I suspect to have been from the Central Intelligence Organisation. I was thus forced to flee the country for my own safety and that of my family. Ever since, I have been based in South Africa and for fear for my life, have been unable to go back to Zimbabwe. In 2013 in Case Number 288/2004, the African Commission on Human and Peoples' Rights, a regional human rights body, confirmed that I was indeed tortured and treated in an inhumane and degrading fashion.
14. In 2008, I was confirmed as a refugee in South Africa. As a refugee I am unable to resume residence in Zimbabwe, and in 2012, I was granted Permanent Residence. Nevertheless, I remain a citizen of Zimbabwe and have significant interests in the political developments in the country. As testimony to that effect, in 2013, I and four others brought another case before the African Commission on Human and Peoples' Rights to participate in the constitutional referendum.
15. We obtained an order in which the Government of Zimbabwe was urged to conform to the African Charter and facilitate voting by Zimbabweans based abroad, but the Government of Zimbabwe failed or refused to comply with the ruling. I attach the order of the African Commission on Human and People's Rights hereto as '**Annexure B**'