

IN THE HIGH COURT OF ZIMBABWE
HELD AT HARARE
In the matter between:
VERITAS
And
ZIMBABWE ELECTORAL COMMISSION

And
MINISTER OF JUSTICE, LEGAL
AND PARLIAMENTARY AFFAIRS

And
ATTORNEY GENERAL OF ZIMBABWE

MTETWA & P
LEGAL PRACTITIONERS

13 JUN 2018

Received: *Amay*
CASE NO. HC.11749/17

Time: 14:07pm

APPLICANT

1ST RESPONDENT

2ND RESPONDENT

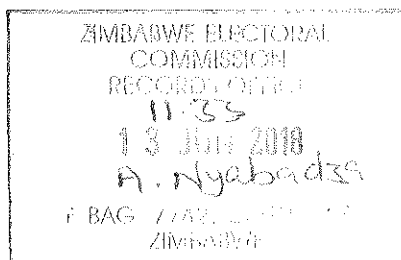
3RD RESPONDENT

2ND and 3RD RESPONDENT'S NOTICE OF OPPOSITION

TAKE NOTICE that the 2nd and 3rd Respondents` intend to oppose this application on the grounds set out in the affidavit annexed hereto and that their address for service is specified below.

The attached affidavits will be used in opposing the application.

DATED at HARARE this *11th* day of June, 2018



**CIVIL DIVISION OF THE
ATTORNEY GENERAL'S OFFICE**

1st and 2nd Respondent's Legal
Practitioners

3rd Floor, Block "A"

New Government Complex

Cnr Samora Machel Ave/Fourth Street

HARARE (4/JUST/1142/KC)

TO: **THE REGISTRAR**
High Court of Zimbabwe
HARARE

And

TO: **MTETWA & NYAMBIRAI**
Applicants` Legal Practitioners
2 Meredith Drive, Eastlea
HARARE [Mrs Mtetwa/DJC/tz]

And

TO: **ZIMBABWE ELECTORAL COMMISSION**
3rd Respondent
Mahachi Quantum Building
1 Nelson Mandela Avenue
HARARE

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CASE NO. HC.11749/17

APPLICANT

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

2ND AND 3RD RESPONDENT`S OPPOSING AFFIDAVIT

I the undersigned, **PRINCE MACHAYA** do hereby make oath and state that: -

1. I am the Attorney General of Zimbabwe and am cited as the 3RD Respondent in this matter. I depose to this affidavit on my own behalf and on behalf of the 2ND Respondent, who has duly authorized me thereto.
2. I have read and understood the Applicants` founding affidavit and wish to respond thereto as I do in the paragraphs that follow below;

Ad Paragraph 1 - 4

3. I admit the contents of these paragraphs.

Ad Paragraph 5-6

4. I deny that the impugned provisions of the **Electoral Act (Chapter 2:13)** are unconstitutional and infringe the right to freedom of expression, political rights to free and fair elections and freedom to make choices.

Ad Paragraph 7 - 8

5. To the extent that these paragraphs establish Applicants' *locus standi* to approach this honourable court in terms of **Section 85 (1) (a)**, I admit their contents. I, however, wish to highlight that Applicants cannot seek to approach this honourable court in two separate capacities under **Section 85 (1) of the Constitution**. My heads of argument will elaborate this point further.

Ad Paragraph 9 – 27

6. I admit the contents of these paragraphs.

Ad Paragraph 28

7. This is denied. Applicant is mixing issues. What **Section 40 C (1) (g) of the Electoral Act** seeks to regulate is voter education and not civic or constitutional education or information. The said section is couched with sufficient clarity so as to enable individuals to regulate their conduct.

Ad Paragraph 29

8. This paragraph has been overtaken by events as the two provisions restricting foreign funding have been repealed by the Electoral Amendment Act, 2018.

Ad Paragraph 30-49

9. It is my humble submission that the impugned provisions of the Electoral Act do not violate Applicants' and the public's right to freedom of expression in any way. **Section 40C (1) (g) of the Electoral Act** only regulates how voter education is to be conducted. The mischief behind Section 40C is the protection of the electorate from being misled. An election is an integral part of a democratic process such that it is essential

that correct and accurate information be disseminated to the electorate, hence the need to have a body or an authority that approves the content and materials to be used in voter education. If voter education is not regulated there surely will be anarchy with voters being subjected to all sorts of information which may be prejudicial to their rights as voters.

10. Every Zimbabwean citizen who is of age has the right to vote and for citizens to properly exercise that right, they have the associated right to accurate information, hence the need to regulate voter education. The Constitution itself does not permit the infringement of other people's rights in the exercise of one's rights. Allowing the dissemination of voter education without the approval by the relevant authority which is mandated to conduct and supervise voter issues would result in the infringement of the general public's right to correct and accurate information which makes it possible for them to exercise their right to vote.
11. **Section 40 C (1) (g) of the Electoral Act** does not breach the right to freedom of expression in terms of **Section 61 of the Constitution of Zimbabwe**. It simply sets out a procedure to be followed for one to conduct voter education. It is my submission that an infringement of Applicants' rights would only occur if they had been denied approval to conduct voter education without justification after having sought the relevant approval. In the present case, there is no allegation of such a denial having occurred.
12. I submit that Applicants' allegation that section 40 C violates the right of the public to access information in terms of section 62 is misplaced. Section 40 C does not in any way seek to restrict the rights envisaged under Section 62 of the Constitution. Instead Section 40 C protects the

electorate from being misled in an area that is very crucial to the exercise of their democratic right to vote.

13. Although Applicants allege that section 40 C of the Electoral Act infringes upon the political rights enshrined in section 67, they do not substantiate how these rights are infringed by the regulation of voter education. The offence created in Section 40 C of the Electoral Act is not that of providing public awareness of the Constitution or civic education but that of conducting voter education without approval of the Commission, hence **section 7 of the Constitution** which is on the promotion of public awareness of the Constitution is not relevant here.

14. **Ad Paragraph 50-53**

Section 40 C does not limit the rights enshrined in Sections 61, 62 and 56 of the Constitution, but provides an administrative process that has to be followed for one to disseminate voter education. Even if this were to be taken as a limitation, I respectfully submit that the limitation is reasonably justifiable in a democratic society based on openness, justice, human dignity and equality.

15. It is on the basis of the above that I respectfully submit that the Applicants' application is without merit and should therefore be dismissed, with costs.

THUS DONE AND SWORN TO AT HARARE THIS ^{11th} DAY OF **JUNE** 2018.

Signed:



PRINCE MACHAYA

Before me:

