

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

**CASE NO.  
IN RE: CASE NO. CCZ 27/22  
IN RE: CASE NO. CCZ 34/21**

IN THE APPLICATION OF:

MUTUMWA MAWERE

APPLICANT

AND

PRESIDENT OF ZIMBABWE

RESPONDENT

IN RE:

MUTUMWA MAWERE  
SMM HOLDINGS LIMITED  
THZ HOLDINGS LIMITED  
AFRICA RESOURCES LIMITED  
TAP BUILDING PRODUCTS LIMITED  
TICHAONA MUPASIRI

1<sup>ST</sup> APPLICANT  
2<sup>ND</sup> APPLICANT  
3<sup>RD</sup> APPLICANT  
4<sup>TH</sup> APPLICANT  
5<sup>TH</sup> APPLICANT  
6<sup>TH</sup> APPLICANT

AND

PRESIDENT OF ZIMBABWE

RESPONDENT

---

**APPLICATION IN TERMS OF RULE 27(1) AS READ WITH RULE 15 OF THIS  
COURT AND s. 167(2)(d) AS READ WITH s. 167(3) OF THE 2013  
CONSTITUTION OF ZIMBABWE**

---

DATED AT JOHANNESBURG this 20<sup>th</sup> DAY OF JULY 2023.



**APPLICANT**  
46 LAWLEY AVENUE  
BELVEDERE,  
HARARE

AND TO: THE REGISTRAR  
CONSTITUTIONAL COURT OF ZIMBABWE  
HARARE

AND TO: THE RESPONDENT  
CIVIL DIVISION OF  
THE ATTORNEY GENERAL'S OFFICE  
2<sup>ND</sup> FLOOR, BLOCK A  
NEW GOVERNMENT COMPLEX  
CNR. SAMORA MACHEL AVENUE/FOURTH ST.  
HARARE

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**6<sup>TH</sup> APPLICANT**

**AND**

**PRESIDENT OF ZIMBABWE**

**RESPONDENT**

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**NOTICE OF MOTION**

**APPLICATION IN TERMS OF S15 IN TERMS OF URGENCY AND IN TERMS OF S167(2)(D) AS READ WITH S167(3) OF THE CONSTITUTION OF ZIMBABWE, 2013 IN TERMS OF SUBSTANTIVE RELIEF**

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**PLEASE TAKE NOTICE** that the Applicant applies to this Constitutional Court in terms of Rule 15 of this Court for an order in the following terms:-

1. That the Chief Justice dispensing with normal rules pertaining the set down of this application and directing that this matter be dealt with as one of urgency in terms of Rule 15 of the Rules of this Court.
2. That the Chief Justice condones non-compliance with the provisions pertaining to form and service of this application.



3. That the Chief Justice gives directions on filing of opposing papers and further direction on the hearing of this application.

## **INTERIM INTERDICT AND RESTRAINING ORDER**

### **PART A**

1. The Applicant prays that the Respondent be interdicted and restrained from participating in the 2023 elections pending the resolution of part B of this application.

### **PART B**

2. Court to declare that Mnangagwa's conduct in relation to the affairs of Air Zimbabwe Private Limited and Hwange Colliery Company (Hwange) through his direct and personal actions including appointing Chinamasa as Chairman of Air Zimbabwe under reconstruction which conduct was ultra vires the Reconstruction of State-Indebted Insolvent Companies Act (Recon Act) which act precluded the concurrent application of the provisions of the Companies Act, a law of general application) in relation to the affairs of a company whose control and management was divested and deprived pursuant to the Recon Act.
3. Determining and Declaring as follows:
  - (a) The Reconstruction Act offended Zimbabwean public policy and international law;
  - (b) That the Constitutional Court lacked title to hear and assert any rights acquired pursuant to the Reconstruction Act;
  - (c) Any law, practice, custom and conduct that offends s. 2(1) of the Constitution is void ab initio;
  - (d) That the Reconstruction law being the basis on which the Respondent was constructively and intentionally involved in its conception and prosecution as stated on paragraphs 71 and 72 of the Respondent's affidavit in opposition to Tichaona Mupasiri's application in terms of s. 167(2)(d) as read with s. 167(3)

of the Constitution of Zimbabwe under Case Number CCZ 34/21 in which he stated without providing facts and circumstances of his personal involvement and interest in the affairs of SMM and myself in the matter, was constitutionally invalid and unlawful and as such his conduct fell within the ambit of conduct falling within the ambit of s. 2(1) of the Constitution.

- (e) That the conduct of the Respondent in intentionally and constructively refusing and failing to give this court his version of events as to how he knew of an application that was not served on him yet he opposed it would explaining to the Court what authority was relied upon to appoint the firm, DMH Attorneys, without the knowledge and involvement of the Attorney General who in terms of s. 114 of the Constitution is the Chief Legal Advisor of the government and would in terms of his duties had the title and jurisdiction to appoint DMH Attorneys and pay for the services; and the conduct fell within the ambit of s. 2(1) of the Constitution.
- (f) That the prosecution under his watch and his direct and personal involvement in the reconstruction of Air Zimbabwe Private Limited and Hwange Colliery Company Limited (Hwange) constitutes conduct that is inconsistent with s. 2(1) of the Constitution.
- (g) That the Respondent's conduct to appoint Chinamasa as Chairman of an entity that in terms of the Reconstruction Act, had been subjected to an order issued by Minister of Justice with his knowledge and involvement whose effect was to deprive its shareholders and directors of its control and management constitutes conduct that is inconsistent with the Constitution of Zimbabwe, the Reconstruction Act and the Companies Act to the extent that it can be accepted that the Reconstruction and Companies could operate concurrently in relation to the affairs of a creature whose legal status can only be determined by the court prior to determining the constitutionality of the Respondent.



- (h) That the conduct pursuant to the purported validity and legality of Reconstruction Act that the Respondent authored for ulterior political as boldly asserted by his close advisor and attorney in the matters in which they are both implicated, was a penal and expropriatory law that poses so grave a risk to the rule of law for this Court to allow a person who boasted contemptuously in relation to the Mupasiri proceedings that he was not accountable to this Court in terms of s. 167(2)(d) as read with s. 167(3) of the Constitution, constitutes conduct that falls within the ambit of s. 2(1) as read with s. 167(2)(d) and s. 167(3) of the Constitution to give no discretion to this Court to exempt as happened in the Mupasiri case from holding the Respondent accountable to the Court for his state of knowledge and involvement in the affairs of SMM and myself.
- (i) That the conduct that was not preceded by any due process of the law, audi, respect of the doctrine of separation of powers as foundational principles of the rule of law was inconsistent conduct by the Respondent and he must be held to the constitutional limitations which he escaped in relation to both Mupasiri and my application under Case Number CCZ 27/22.
- (j) That any conduct that results in freedoms and rights being divested and deprived without any recourse to constitutional protection is illegal and invalid.
- (k) That the purported defence of the illegal and invalid appointment of Chairman of Air Zimbabwe constitutes conduct that confirms the Respondent that he was the driving mind of the reconstruction enterprise as weapon to silence his perceived enemies using state power.
4. **TAKE NOTICE FURTHER** that the founding affidavit of **MUTUMWA DZIVA MAWERE** hereto will used in support of this application.
5. **TAKE NOTICE FURTHER** that the Applicant's address at which he will accept notice and service of all procees in these proceedings is 46 Lawley Avenue, Belvedere, Harare.

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PLEASE PLACE THE MATTER ON THE ROLL ACCORDINGLY.

DATED AT JOHANNESBURG this 20 DAY OF JULY 2023.



**APPLICANT**  
46 LAWLEY AVENUE  
BELVEDERE,  
HARARE

AND TO: THE REGISTRAR  
CONSTITUTIONAL COURT OF ZIMBABWE  
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**RESPONDENT**

---

**FOUNDING AFFIDAVIT**

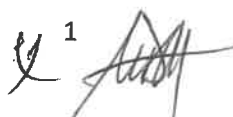
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I, the undersigned,

**MUTUMWA DZIVA MAWERE**

do hereby make oath and say:

4. I am an adult male businessman whose address for service is 46 Lawley Avenue, Belvedere, Harare, Zimbabwe.
5. The fact to which I depose to herein are within my personal knowledge and are, except where the context indicates otherwise or I expressly say so, to the best of my knowledge and belief both true and correct.

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6. Where I make legal submissions, I make them as a self-actor and I believe them to be correct.

### **PARTIES TO THIS APPLICATION**

7. I am the Applicant in this matter.
8. The Respondent is the President of the Republic of Zimbabwe and he is cited in his official capacity as such and having an address of Munhumutapa Building, Corner Second & Samora Machel Ave, Harare, Zimbabwe.
9. He is also cited in terms of s. 2(1) of the Constitution that provides that any law, practice, custom and conduct that is inconsistent with the Constitution of Zimbabwe is invalid to the extent of its inconsistency. Further, he is cited in terms of s. 89 of the Constitution that provides that the President is the Head of State and Government and the Commander-in-Chief of the Defence Forces. He is also cited in terms of s. 90(1) that provides that the President must uphold, defend, obey and respect this Constitution as the supreme law of the nation and must ensure that this Constitution and all the other laws are faithfully observed. He is further cited in terms of s. 90(1)(c) that provides that in his capacity as President he must ensure protection of the fundamental human rights and freedoms and the rule of law,

### **JURISDICTION**

10. The above Honourable Court has jurisdiction to hear and determine this application in terms of s. 167(2)(d) as read with s. 167(3) of the Constitution as read with Rule 15 of this Court.
11. This Court in terms of s. 167(2) has exclusive jurisdiction to determine and dispute arising from s. 167(2)(d) as read with s. 167(3) of the Constitution.

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## **PART A**

12. The Applicant prays that the Respondent be interdicted and restrained from participating in the 2023 elections pending the resolution of part B of this application.

## **PART B**

13. Court to declare that Mnangagwa's conduct in relation to the affairs of Air Zimbabwe Private Limited and Hwange Colliery Company (Hwange) through his direct and personal actions including appointing Chinamasa as Chairman of Air Zimbabwe under reconstruction which conduct was ultra vires the Reconstruction of State-Indebted Insolvent Companies Act (Recon Act) which act precluded the concurrent application of the provisions of the Companies Act, a law of general application) in relation to the affairs of a company whose control and management was divested and deprived pursuant to the Recon Act.
14. Determining and Declaring as follows:
- (a) The Reconstruction Act offended Zimbabwean public policy and international law;
  - (b) That the Constitutional Court lacked title to hear and assert any rights acquired pursuant to the Reconstruction Act;
  - (c) Any law, practice, custom and conduct that offends s. 2(1) of the Constitution is void ab initio;
  - (d) That the Reconstruction law being the basis on which the Respondent was constructively and intentionally involved in its conception and prosecution as stated on paragraphs 71 and 72 of the Respondent's affidavit in opposition to Tichaona Mupasiri's application in terms of s. 167(2)(d) as read with s. 167(3) of the Constitution of Zimbabwe under Case Number CCZ 34/21 in which he stated without providing facts and circumstances of his personal involvement and interest in the affairs of SMM and myself in the matter, was constitutionally

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invalid and unlawful and as such his conduct fell within the ambit of conduct falling within the ambit of s. 2(1) of the Constitution.

- (e) That the conduct of the Respondent in intentionally and constructively refusing and failing to give this court his version of events as to how he knew of an application that was not served on him yet he opposed it would explaining to the Court what authority was relied upon to appoint the firm, DMH Attorneys, without the knowledge and involvement of the Attorney General who in terms of s. 114 of the Constitution is the Chief Legal Advisor of the government and would in terms of his duties had the title and jurisdiction to appoint DMH Attorneys and pay for the services; and the conduct fell within the ambit of s. 2(1) of the Constitution.
- (f) That the prosecution under his watch and his direct and personal involvement in the reconstruction of Air Zimbabwe Private Limited and Hwange Colliery Company Limited (Hwange) constitutes conduct that is inconsistent with s. 2(1) of the Constitution.
- (g) That the Respondent's conduct to appoint Chinamasa as Chairman of an entity that in terms of the Reconstruction Act, had been subjected to an order issued by Minister of Justice with his knowledge and involvement whose effect was to deprive its shareholders and directors of its control and management constitutes conduct that is inconsistent with the Constitution of Zimbabwe, the Reconstruction Act and the Companies Act to the extent that it can be accepted that the Reconstruction and Companies could operate concurrently in relation to the affairs of a creature whose legal status can only be determined by the court prior to determining the constitutionality of the Respondent.
- (h) That the conduct pursuant to the purported validity and legality of Reconstruction Act that the Respondent authored for ulterior political as boldly asserted by his close advisor and attorney in the matters in which they are both implicated, was a penal and expropriatory law that poses so grave a risk to the

rule of law for this Court to allow a person who boasted contemptuously in relation to the Mupasiri proceedings that he was not accountable to this Court in terms of s. 167(2)(d) as read with s. 167(3) of the Constitution, constitutes conduct that falls within the ambit of s. 2(1) as read with s. 167(2)(d) and s. 167(3) of the Constitution to give no discretion to this Court to exempt as happened in the Mupasiri case from holding the Respondent accountable to the Court for his state of knowledge and involvement in the affairs of SMM and myself.

- (i) That the conduct that was not preceded by any due process of the law, audi, respect of the doctrine of separation of powers as foundational principles of the rule of law was inconsistent conduct by the Respondent and he must be held to the constitutional limitations which he escaped in relation to both Mupasiri and my application under Case Number CCZ 27/22.
- (j) That any conduct that results in freedoms and rights being divested and deprived without any recourse to constitutional protection is illegal and invalid.
- (k) That the purported defence of the illegal and invalid appointment of Chairman of Air Zimbabwe constitutes conduct that confirms the Respondent that he was the driving mind of the reconstruction enterprise as weapon to silence his perceived enemies using state power.

### **FACTUAL MATRIX**

- 15. The Respondent through arguments he advanced in his affidavits in relation to not only my application but to Mupasiri's applications has already incriminated himself for the conclusion to be drawn that he is not fit for purpose.
- 16. This Court did help the Respondent to escape accountability yet the framers of the constitutional had vested the exclusive jurisdiction to this court to be an exclusive guardian against mafia-like public office bearers.

17. This application seeks to assert the binding obligations imposed on every person to ensure that the promise inherent in the constitution to uphold defend, obey and respect is not undermined by fear of the judiciary to do what is expected of it against the Respondent who in his aversions has pretty much intimidated the judiciary to manipulate it discretionary to ensure his accountability will never be the order of the day.
18. Having joined the Mupasiri litigation following the granting of Makarau whose conduct in relation to two matters that I was indirectly involved in is and remains unconscionable to the extent that even though she admits that she dismissed the application without looking at the merits which admission conflicted with the Respondent.
19. One would have expected the Respondent in terms of s. 90(1), s. 90(2)(c) and s. 167(2)(d) and s. 167(3) ensure that such a judge would be reported to the JSC but evidently there seems to be a clear intention to protect conduct that is inimical to the rule of law.
20. I applied for the stay of my application after recognizing that Manikai whose involvement in defending a person that he implicated in corruption and abuse of public power i.e. the Respondent would be permitted to undermine this court in the manner he has done in all the Mupasiri and my applications. The link to the application is set herewith:
21. If DMH Attorneys is above the law or as the Respondent described the firm in opposition to my application as the subject matter expert, then even this application is doomed to be dismissed without the conduct of the President ever been subjected to an open, independent and impartial interrogation.
22. I battled to decide whether to continue to prosecute the matters using this court but I was encouraged to pursue the matter and the opportunity that the Respondent has presented to burying his head in the sand and audaciously and contemptuously asserting that he is untouchable must have legal and constitutional consequences lest

the promise of the rule of law is rendered redundant by the promise of checks and balances when the reality is otherwise.

23. To the extent that the Respondent sought opportunistically to find refuge in the fact that he was not President when the impugned reconstruction act was born, the Air Zimbabwe and Hwange case studies suggest otherwise.
24. These two case studies that were used by Mupasiri in the hope that the Respondent would take notice that hypocrisy is conduct that is inimical to the rule of law.
25. He failed to give his own honest account of the content and context of his relationship with SMM that would permit him in judicial proceedings to admit that he was fully briefed in relation to the affairs of SMM, a private company in which he was neither a shareholder nor a director and for which the Companies Act would preclude him as either Minister or President who was and is oath taking to assert a reality that can only exist in relation to unlawful activities or conduct.
26. It cannot be disputed that the Hwange and Air Zimbabwe case studies show that Respondent has a pattern of using his position as a public office bearer to violate the law and the rights of others.
  - This pattern of conduct is clearly invalid and illegal, and it should be challenged.
  - In addition to the validity and legality of Respondent's practice, the focus should also be on the equality doctrine.
  - The equality doctrine states that all people are equal before the law, and that they should be treated equally.
  - However, the Respondent's practice of using his position as President to benefit himself and his supporters violates the equality doctrine.
  - The Respondent's practice also usurps the role of the courts in hearing and determining disputes between creditors and debtors.

- The courts are the only impartial bodies that can hear and determine these disputes, and the Respondent's practice of interfering in these disputes undermines the rule of law.
27. This Court in truth and fact protected the Respondent who had a duty to hold him to account for how he managed to oppose an application characterised by no facts placed before the Court as to the legality and validity of his opposition to both Mupasiri's matter and my matters.
  28. It is not in dispute that when Mupasiri and myself applied to withdraw our matters after I had launched my application under Case Number CCZ 27/22 alleging that no further steps should be taken until the validity and legality of the challenge of authority of DMH Attorneys to act for the Respondent had been determined, this court dismissed the matters with legal costs meaning that it is the court that created a precedent that s. 114 is not limiting in terms of a powerful the Respondent appointing his cronies as attorneys to enable him to escape accountability with the knowledge and involvement of what should be an independent and impartial court.
  29. This Court's precedent-setting decision to dismiss the landmark Mupasiri application in terms of s. 167(2)(d) as read with s. 167(3) as weapons given by the framers of the constitution after the late President will haunt this country in future.
  30. The tragedy is that absent this application, the voters will never know of the complicity of this Court in undermining the exclusive jurisdiction to protect and promote the rule of law.
  31. It is also significant to highlight that this Court not only condoned the question of whether the manner the opposition to Mupasiri's application was handled complied with the tenets of the rule of law was valid and lawful conduct on the part of the Respondent.
  32. In granting a costs order to the Respondent whose relationship with DMH Attorneys formed the subject matter of the disputes that were brought before this Court, the



- inescapable conclusion that the Court predetermined the dispute because if the Respondent was innocent, he would have suffered no prejudice from trusting his appointed AG to handle the matters.
33. The conclusion made by members of JUROL that Manikai has captured the Respondent and by extension that DMH Attorneys is acting as the de facto AG.
  34. This Court rewarded corrupt conduct by DMH Attorneys that has led to losses of jobs and incomes by thousands of people with impunity.
  35. Inevitably, many people who have followed the conduct of the Respondent closely in relation to my affairs see this conduct as a sign that the Respondent was personally involved in the acquisition of SMM and if he was, these matters gave him unique opportunities to bring this Court into his confidence to explain his conduct but using the agency of Manikai, what this Court got was naked refusal and failure to give any coherent narrative that the court could use to determine the conduct dispute in an independent and impartial manner.
  36. The unmistakable conclusion drawn on the conduct of this court is that this Court successfully exposed itself as a protector of the Respondent's unaccountability.
  37. Others on the basis of the same set of facts and circumstances, concluded that the Respondent's protection is not to unexpected as the prescription of s. 167(2)(d) as read with s. 167(3) was never meant to be applied to the Respondent as he is generally regarded to be the law in Zimbabwe and his affidavits are instructive as they were written to forewarn the judges of what would follow if they played their parts as expect by the Constitution.
  38. It is not in dispute that the Mupasiri application was withdrawn after I had launched my application under Case Number CCZ 27/22 and this must be significant as it suggests that Mupasiri was an interested party in relation to the conduct inside the four corners of the apex court regarding the impotency of the Court to assert its authority in relation to DMH Attorneys' authority to act for the Respondent and he had understand that true import in the Court's clandestine and cavalier approach to the authority challenge.

A handwritten signature in black ink, appearing to be 'A. S. M.', followed by a large, stylized initial 'U'.

39. It is also important for this court to be reminded that Mupasiri's application was not dismissed on merits and to date the reasons for the judgment and order have not been given.
40. It is significant that this Court refused and failed to inform me and Mr. Mupasiri on rule on whether or not DMH Attorneys had the authority to act for the Respondent suffice to state that DMH Attorneys was rewarded with a costs order on a matter that was supposed to be handled by the AG.
41. The decision to dismiss the Mupasiri application with legal costs is troubling and chilling suffice to state that the decision is not subject to any challenge. To the extent that the rule of law makes or should make every person subject to the rule of law, it is self-evident based on empirical evidence that the Respondent is above the law.
42. Members of JUROL have speculated as to why this Court would unashamedly abdicate from its duty to protect the constitution as follows:
- The court is trying to protect the Respondent from accountability.
  - The court is simply trying to uphold the rule of law.
  - The court is trying to avoid a political and constitutional crisis.
  - The court is trying to send a message to other powerful people in Zimbabwe.
43. This Court in determining this matter should take into account the following important salient features that would compel it to take the unprecedented step of interdicting and restraining the Respondent whose conduct is clearly inimical to this apex court hearing and determining disputes without fear, favour or prejudice.
- Mupasiri's application in terms of s. 167(2)(d) as read with s. 167(3) was dismissed by this Court without the Respondent being tempted to give the court his own version of facts regarding his state of knowledge and involvement in the affairs of SMM and me personally

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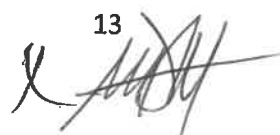
- My application for leave to intervene was granted, and I joined the proceedings only to find myself in a stage managed lacuna in which I was bound into a Mupasiri corner and I had my own reservations to the effect that the application in terms of s. 167(2)(d) as read with s. 167(3) was limited to the conduct of the Respondent yet Mupasiri had cited Manikai as a Second Respondent notwithstanding the fact that he was not seeking any relief against Manikai except for him to assist the Court on the facts that he already had alleged as true that the Respondent was provoked to attack me personally by my alleged support to former Vice President Mujuru's political aspirations.
  - I challenged the DMH Attorneys' involvement in the matter, but the court refused to deal with the authority challenge dispute.
  - Following this Court's refusal to compel the President to hear and determine the validity and legality of the Respondent's knowledge and involvement in the appointment of DMH Attorneys without the knowledge and involvement of the AG, I then applied to withdraw my intervention in the Mupasiri cause.
  - I was then left with no choice by this Court but to launch my own authority challenge under Case Number CCZ 27/22.
  - Mawere's authority challenge was postponed sine die in October 2022.
  - Manikai's allegation remains that at the core of the SMM reconstruction was an alleged political fallout between Mnangagwa and Mawere involving Mnangagwa's political aspirations to rise in the ruling party.
44. Before dealing with the merits and urgency of this application, it is important for this Court to take notice of the following facts:
- (a) Whether the conduct of the Respondent in relation to the opposition of the Mupasiri's application under case number CCZ 34/21 was invalid and illegal.

- (b) Whether the allegation by Manikai that at the core of the SMM reconstruction was an alleged political fallout between Respondent and Mawere involving Mnangagwa's political aspirations to rise in the ruling party was true.
- (c) Whether the Respondent's conduct in relation to the opposition of the Mupasiri's application in relation to the cloud of corruption by the Respondent who allegedly used public power to expropriate Mawere's assets and companies, was inconsistent with his oath.
- (d) Whether Manikai's allegations needed to be determined on facts pleaded in court papers placed before the court.
45. The Respondent's opposition of the application without giving his version as to how he knew of the application suggests that he may have been involved in a corrupt or improper attempt to influence the outcome of the application.
- The averments about the validity and legality of the reconstruction act suggest that the President may have been acting in a way that is inconsistent with the Constitution of Zimbabwe.
  - The fact that DMH Attorneys was appointed to act for the President without the knowledge and involvement of the AG suggests that the President may have been trying to circumvent the proper legal process.
46. This Court is aware that according to Manikai whose proximity to the Respondent is beyond doubt, the Respondent in his alleged revenge strategy against me, he was constructively involved in a fraudulent and corrupt scheme related to the purported reconstruction of my companies, as well as accusations of improper conduct in the acquisition of SMM Holdings Limited.
47. It is further alleged by Manikai that the Respondent was the law of Zimbabwe and had control of the entire governance system to mess up with him.
48. If these allegations are true or not, it is for this court to independent and impartially determine based on facts placed before it.

49. To assess whether the Respondent is fit for the purpose of seeking a new term based on his conduct before this Court in relation to above facts, it would be necessary to consider the following key questions raised:
- (a) Whether based on the facts of this matter, a candidate whose conduct in judicial proceedings seeking to hold him accountable for his alleged personal involvement in the project that led to the control and management of my companies being divested out of the boundaries of validity and lawfulness with the complicity of the Courts.
  - (b) Whether this Court's documented conduct in relation to the Mupasiri challenge is void ab initio.
  - (c) Whether the Respondent audaciously and contemptuously conducted himself in relation to a cause that is permissible in terms of the Constitution.
  - (d) Whether Respondent through his documented conduct intimidated the judges who presided over the matter.
  - (e) Whether Mupasiri was through the conduct of this court in relation to his application and the costs order was intimidated and overwhelmed as a litigant in the matter.
50. This court is being called upon to provide leadership which has hitherto been missing in hearing and determining whether a beneficiary of the 2017 coup and an alleged author of the draconian reconstruction enterprise can be allowed to continue and seek another terms without being held to account for his conduct that poses so grave a risk to the rule of law in Zimbabwe to permit this Court to be complicit in thwarting its jurisdiction in protecting the constitution irrespective of position of the Respondent.

### **THE SA SEQUESTRATION PROCEEDINGS**

51. Ms. Rumbidzai Matambo, a partner working for DMH Attorneys, filed an affidavit dated 30 June, 2023, opposing my application to rescind and set aside the sequestration judgment granted on 8 May 2023 by Strydom J in the High Court of South Africa and her affidavit can be found on this link: <https://heyzine.com/flip-book/a9a5ac2312.html>.



52. President Ramaphosa has filed Heads of Argument in relation to the applications dealing with the same facts and circumstances that inform the subject matter of the legal validity of the Reconstruction Act and it will be noted that an impression was created that this court has heard and determined the validity and legality of the Reconstruction Act and the reconstruction order as alleged in these papers: <https://heyzine.com/flip-book/d86a0dcc2a.html>.
53. It is common cause that the Supreme Court of Zimbabwe issued its judgment in the case of Hwange Colliery Company Limited v. Ziyambi Ziyambi and Others on August 10, 2022.
54. As background, the Hwange impugned reconstruction order, was issued by the Minister of Justice, Ziyambi Ziyambi, in an Extraordinary Gazette on October 31 2018 whose effect was to divest and deprive the shareholders and directors of the company of its control and management as was the case in relation to the issuance of an extrajudicial order regarding SMM affairs on 6 September 2004 by Chinamasa, in his capacity as the Minister of Justice at the time.
55. With respect to Hwange, it was the Minister of Justice who appointed Bekithemba Moyo, as Administrator of the successor to Hwange, as a company, and in terms of the Reconstruction Act, a law that has no equivalent in the world.
56. Messrs Shava and Remba, a colleague of Ms. Matambo, at DMH Attorneys, were appointed by the Minister of Justice and not by a court of law, as Moyo's assistants.
57. In both the High Court and the Supreme Court of Zimbabwe, the courts found that the Minister of Justice, Ziyambi Ziyambi, did not have the authority to appoint an administrator to take control of Hwange Colliery Company Limited. The court also found that the reconstruction order issued by the Minister was a nullity.
58. It is not in dispute that in relation to Ms. Matambo's affidavit filed of record in relation to the rescission application, she failed, refused and neglected to disclose these two judgments in Zimbabwe that speak to the validity and legality of a similar reconstruction order.

59. Ms. Matambo intentionally and knowing failed to disclose the existence and operation of the judgment and is doing committed fraud on the SA court because she knew that the judgments are relevant to the court's decision in the SMM matter and the sequestration matter.
60. Ms. Matambo knew and ought to have known that concealing the existence of these judgments would influence the SA court's decision in favor of the creature cited SMM, as a company, when the order that was relied upon to change its legal status to SMM under construction was declared a nullity in August 2022 or prior to the granting of the sequestration judgment on 8 May 2023.
61. To the extent that this apex court is ceased with the matter of determining the validity and legality of the conduct of the Respondent in relation to the affairs of SMM's purported reconstruction, this Court is enjoined to determine the validity and legality of the law that established a relationship between the government of Zimbabwe and SMM, the company whose control and management was vested in SMM's bona fide shareholders and directors.
62. It is worth highlighting to this Honourable Court that the right use SMM under reconstruction to litigate in SA was pursuant to the validity and legality of the Reconstruction Act.
63. The relevance of the Supreme Court of Zimbabwe judgment in relation to Hwange to the sequestration matter is self-evident.
64. It is important for this Court to determine whether Ms. Matambo's failure to disclose this Supreme Court judgment in the SA proceedings was intentional and willful.
65. It is not in dispute that a highly implicated law firm, DMH Attorneys, is fixed with the knowledge on the following issues:
  - (a) Whether the Respondent, Matambo and DMH Attorneys had knowledge of the judgment.

- (b) Whether Respondent, Matambo and DMH Attorneys knew that the judgment was relevant to the court's decision in the SMM matter and the sequestration matter.
  - (c) Whether the Respondent, Matambo deliberately withheld the information from the court.
  - (d) Whether Matambo's failure to disclose the information prejudiced the other parties in the case.
66. This Court is competent and well placed to also consider the applicable legal principles in making its decision.
67. In Zimbabwe, the law governing the disclosure of evidence is the Evidence Act. The Evidence Act provides that a party to a civil case is obliged to disclose all relevant evidence to the other parties. This obligation is known as the duty of disclosure.
68. The duty of disclosure is a fundamental principle of fair trial. It ensures that all parties to a case have access to the same information and that they are able to present their case fairly.
69. It is trite that if the court in determining the conduct of the Respondent, finds that Matambo's failure to disclose in the SA sequestration matter, which matter would only be alive if the reconstruction order that was used in relation to the assertion of rights or claims against me is constitutionally valid and legal, the judgment was intentional and wilful, the Respondent who has asserted under oath that he is fully briefed in relation to the SMM matters, played a part in authorizing the sequestration proceedings would necessarily be required to assist the s. 167(2)(d) as read with s. 167(3) proceedings by disclosing his state of knowledge and involvement in the sequestration proceedings in SA.
70. It is not clear who authorized Ms. Matambo to depose in judicial proceedings in SA, to act as a deponent in relation to the affairs of SMM under reconstruction let alone the validity and legality of the judgment granted in favour of SMM as a company when in truth and fact, the operation of the reconstruction and decisive involvement of



Gwaradzimba in the affairs of any company would be contemptuous of the rule of law and also the courts.

71. It would be in the interests of justice in determining the conduct of the Respondent, for this court to hear and determine whether the effect of the reconstruction order, an order that is not provided for in terms of the Companies, on the legal status of SMM is as a company, especially when it is true and fact, that SMM under reconstruction ceases to be regulated in terms of the Companies Act, a law of general application.
72. It is not in dispute that in light of the fact that the Supreme Court of Zimbabwe found that the reconstruction order issued against Hwange under similar facts and circumstances was a nullity and that Hwange, even if it was involvement as alleged, insolvency is a test that can only be determined by an independent and impartial tribunal and not be a representative of a creditor against a debtor, when the doctrine of equality precludes a creditor from assuming the role of a tribunal.
73. The evidence that I am relying on to support my contention that the Respondent, who has admitted that he is constructively involved in the SMM affairs, in terms of his affidavit dated 24 December 2021, must be compelled to disclose the context and content of his legal nexus with SMM, the company, and SMM under reconstruction.
74. It is not in dispute that the Supreme Court of Zimbabwe upheld the High Court judgment and dismissed the Minister's appeal in the case of Hwange Colliery Company Limited v. Ziyambi Ziyambi and Others.
75. In any, constitutional dispensation, the Supreme Court's ruling in relation to Minister Ziyambi Ziyambi out to be a major setback to Chief Protector of the rule of law, the Respondent as an oath-taking role player.
76. This landmark ruling would have the effect of discouraging the Respondent from continuing to undermine the rule of law and the integrity of SA courts by weaponizing a law and the legal consequences arising from the rights acquired pursuant to an order that a superior court has determined as a nullity.

77. It cannot be dispute that the Supreme Court's Hwange ruling represents a major victory for not only the company's shareholders and creditors but ought to mean that even in relation to the prosecution of the sequestration matter pursuant to an order whose validity and legality has been determined to be inconsistent with the rule of law prescripts in Zimbabwe.
78. This Court will be aware that this Supreme Court's Hwange ruling is a complex legal decision with far-reaching implications. The implications of the Supreme Court's decision in the Hwange case on the SMM dispute and the validity and legality of the sequestration judgment are significant.
79. The Supreme Court's decision in the Hwange case found that the Minister of Justice did not have the authority to appoint an administrator to take control of Hwange Colliery Company Limited. The court found that the reconstruction order issued by the Minister was a nullity.
80. This decision is significant because it sets a precedent for other cases involving the Reconstruction of State Indebted Insolvent Companies Act. It means that the Minister of Justice does not have the authority to appoint administrators to take control of companies under the Act.
81. This has implications for the SMM dispute. The sequestration order issued against SMM Holdings was based on the Minister of Justice's reconstruction order. The Supreme Court's decision in the Hwange case means that the sequestration order is likely to be invalid.
82. The Supreme Court's decision is and also ought to be a setback for the government of Zimbabwe. It means that the government will not be able to use the Reconstruction of State Indebted Insolvent Companies Act to take control of companies that are indebted to the government.
83. It is worth highlighting that the Supreme Court judgment since its granting in August 2022 became law in relation to reconstruction order issued by the Minister of Justice in relation to purported state-indebted companies like SMM.

84. This is because the Supreme Court is a higher court in Zimbabwe, and its judgments are binding on all lower courts. This means that any lower court that is considering a case involving the Reconstruction of State Indebted Insolvent Companies Act must follow the precedent set by the Supreme Court's judgment in the Hwange case. Accordingly, this Court is ceased with the task of pronouncing its opinion on whether an order based on a nullity can fall within the ambit of a law that is consistent with the constitution,
85. This decision is significant because it set a precedent for other cases involving the Reconstruction of State Indebted Insolvent Companies Act. It means that the Minister of Justice does not have the authority to appoint administrators to take control of companies under the Act.
86. This has implications for the SMM dispute. The sequestration order issued sought and granted in favour of SMM Holdings, not as fraudulent represented to court as a company but was based on the Minister of Justice's reconstruction order. The Supreme Court's decision in the Hwange case means that the sequestration order cannot be valid and lawful in South Africa when it is nullity in Zimbabwe.
87. Ms. Matambo is a registered and regulated legal practitioner and as such her audaciousness to depose and file an affidavit in SA judicial proceedings exposes a broken Zimbabwean justice system. As an oath taking attorney she knows and ought to know that she has duty to the South African court to have disclosed all relevant information to the court, including the Supreme Court judgment in the Hwange case. This is because the Supreme Court judgment is a binding precedent in relation to any dispute related to the validity and legality of Gwaradzimba acting as a representative of SMM under reconstruction in such proceedings or purporting fraudulently to act as some fiduciary of SMM under reconstruction because his legal nexus with SMM, as a company, is founded on a legal nullity.
88. Ms. Matambo was obliged to bring this material ruling to the SA court's attention.

89. By failing to disclose the Supreme Court judgment, Matambo is intentionally and knowingly or misled the court and prejudiced my case that the sequestration judgment in SA is void ab initio.
90. Ms. Matambo also committed a contempt of court by failing to disclose the Supreme Court judgment.
91. The fact that Matambo failed to disclose the Supreme Court judgment is a serious matter that has far reaching implications on this application in which the continuing conduct of the Respondent who is the driving mind in relation to the SMM reconstruction matter.
92. I believe that it would be in the interests of justice to draw his attention to the possible fraud on the South African court arising from Ms. Matambo's answering affidavit <https://heyzine.com/flip-book/a9a5ac2312.html> to my rescission application that SMM under reconstruction opposed in the name of SMM, the company.
93. It is also worth highlighting that the law was applied extra-territorially in Zambia leading to the prejudice of the applicant and his Zambian Company, TAP Building Products Limited as set out more fully on this link: <https://heyzine.com/flip-book/7b132ce70b.html>.
94. In terms of s. 2(2) of the Constitution of Zimbabwe, that imposes a binding duty on every person, the Respondent and every person without exception is obliged by the Constitution to ensure that the promise of the Constitution is upheld, defended, obeyed and respected. In the premises, I have a duty to disclose all relevant information to this court, including the fact that Matambo may have committed fraud. By failing to disclose this material information to this Court, I may be complicit in the DMH Attorneys and Ms. Matambo's fraud.

## **REQUIREMENT FOR AN INTERDICT**

### ***Prima Facie Right***

95. I respectfully submit that I meet all the requirements for an interim interdict in that:

96. My right and duty to bring this application falls squarely within the ambit of s. 2(1) and s. 2(2) as read with s. 167(2)(d) and s. 167(3) of the constitution that imposes a binding obligation on every person to ensure that I play my part to ensure that no one is above the Constitution even the Respondent whose role in removing the late President using the army as a weapon is legendary.
97. The Constitution provides no authority for him to escape the obligation to assist this Court to hear and determine a dispute in terms of s. 167(2)(d) as read with s. 167(3).
98. His duties as prescribed in terms of s. 90(1) and s. 90(2)(c) provide him with no escape route to avoid being held to account by the constitution that he took an oath to obey, defend, respect and uphold as the supreme law.
99. The Respondent's capricious and unconscionable conduct in continuing to refuse and fail to bring the apex court to his confidence is conduct that offends s. 2(1) of the Constitution in that it is inconsistent with the constitution and thus such conduct ultra vires his oath of office.
100. I am mindful of that the Respondent has already stated that he is the driving mind of the reconstruction affairs in relation to me and all companies that are deemed by him and his surrogates to be under control and management and for such control and management to be systemically divested and deprived from me. This persecution at his instigation has continued since 2004 when he caused a decree to be promulgated using the state of emergency powers and an order to be issued in relation to all companies deemed to be under my control by his surrogate, Hon. Chinamasa, who used his public office to issue an extra-judicial order whose effect was to divest and deprive me of all constitutional rights and freedoms without following the due process of the law or affording me to be informed of the adverse actions that were taken with significant prejudice to me personally and the relevant dependent stakeholders.
101. The administrative decisions made by the Respondent are patently incorrect including the recent decision to use SMM clothed as a company in South Africa to seek and obtain a sequestration order against me. The Respondent is the driving mind behind

this and he through misrepresentations by his surrogates and cronies has misrepresented the true facts behind the role of this Court by openly alleging that the validity and legality of this repugnant law was heard and determined in the favour of the government when he knows and ought to have known that his machination occurred before the birth of the 2013 Constitution and no record exists of this court having determined the constitutionality and legality of this draconian law.

102. It is for this reason, I am making this application to incorporate the circumstances and facts of the significance of a judgment of 8 May 2023 to make a final sequestration order in South Africa based on a purported ruling of this Court to the effect that the application of rights that were acquired by virtue of a law that patently offends Zimbabwean public policy and international law can be asserted in SA, recognized and enforced as law raises key legal, constitutional and public policy issues that will continue to be an albatross in relation to the future of this country which evidently, the Respondent is not interested in restoring by his conduct.
103. It follows, that the administrative decisions that he has personally authored are patently incorrect, unconstitutional, invalid and a violation of my rights and there would be no purpose in challenging such decisions through administrative channels.

### **IRREPARABLE HARM**

104. As stated above, a sequestration order was granted to a creature called SMM Holdings Private Limited (SMM).
105. However, SMM ceased to exist as a company on 6 September 2004 when a binding reconstruction order that was confirmed by Makarau JCC in relation to SMM and other Zimbabwean juristic entities notwithstanding the fact that the effect of reconstruction is to divest and deprive shareholders and directors of the targeted companies of the control and management of such companies.
106. It follows that when the affairs of a company are divested from the operations of the Companies Act, a law of general application, the successor in legal terms cannot be a

company as the Companies Act has exclusive title and jurisdiction to create and regulate the affairs of a company.

107. Accordingly, the sequestration was granted to a purported company called SMM when in truth and fact the Administrator who was appointed by virtue of this order has been in control of SMM in terms of the Reconstruction order founded on the law that offends public policy and international law on the basis, albeit fraudulent, that this Court has determined this law to valid and lawful notwithstanding the landmark judgments by Mangota J and the Supreme Court of Appeal in relation to the affairs of Hwange that the reconstruction order is a legal nullity with no force of effect.
108. I am not personally aware of the alleged judgment granted by this court that deals with the validity and legality of this order and the conduct of the Respondent in prosecuting it to my prejudice.
109. If I am sequestrated, I will be legally and constitutionally disabled from vindicating my stolen rights at the instigation of the Respondent.
110. The continued weaponization of the Reconstruction Act against me cannot be vindicated as the Respondent ensured that the law he authored provided for no such remedies.
111. The President of South Africa's legal advisors believe wrongly that the Reconstruction Act was declared as valid and legal by this Court which is a material misrepresentation and such solely intended by the Respondent to induce the President of South Africa not to take an interest in this travesty of justice in the belief that this Court was involved in granting an order whose effect is fatal.

### **BALANCE OF CONVENIENCE**

112. The balance of convenience palpably favour me.
113. In the event that this Court did determine that the Reconstruction Act passed the constitutional muster set by s. 2(1), this Court as a matter of urgency must state so.

114. This Court may be aware of the facts and circumstances leading to this judgment by the Supreme Court of Zambia which judgment may assist in understanding the modus operandi of the Respondent.
115. At least in the case of Zambia, the SCZ was able to stop the Respondent's surrogates and this judgment exposed the fraud perpetrated using the agency of Gwaradzimba not only in Zambia but in the UK <https://heyzine.com/flip-book/6d229c8bfd.html>.
116. It is important for this Court to step forward to the plate where justice is allowed to breathe based on the truth and not manipulation of the rule of law.
117. All that I am seeking is for this court to assume its constitutional watchdog role to help expose that so far this Court has been used and implicated in conduct that undermines the reputation, integrity and public confidence in its impartiality and independence.
118. Please be pleased to take notice of the Advocate Ntombela acting on behalf of President whose belief that this Court has made a ruling validating the Reconstruction Act as applied in relation to SMM and myself is chilling: <https://heyzine.com/flip-book/d86a0dcc2a.html>.
119. This conduct of unaccountability must come to an end otherwise the future of Zimbabwe is doomed if the Respondent is allowed to continue to do as he wishes using the agency of corrupt and untouchable law firms like DMH Attorneys and its actors.

#### **NO ALTERNATIVE REMEDY AVAILABLE**

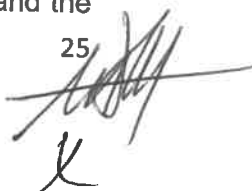
120. I have exhausted all my remedies especially after the continued persecution and prosecution on the basis of fraud.
121. The Administrator who has been in this capacity for 19 years has not only stolen my house whose affairs is controlled invalidly and illegally for 18 years enjoying the benefit of income from rentals for a property that fell outside the ambit of the Reconstruction Act. The matter was lodged as a complaint with the Zimbabwe Anti-Corruption Commission in 2021 and through intimidation orchestrated by the Respondent's surrogates the investigations was stopped for fear of the Respondent's revenge.



122. The only hope is getting justice in South Africa where companies controlled by me were liquidated and this straw is the sequestration project that is being driven by the Respondent on the false allegation that this Court has determined the constitutional validity and legality of this diabolical act.

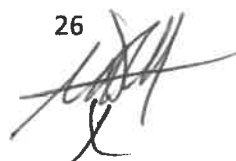
### **URGENCY**

123. I submit that this matter is extremely urgent and the urgency is not self-created as it exposes a broken system of justice and its administration.
124. It raises serious legal, constitutional, corruption, lack of accountability, and broader governance matters that speak to the problems of lack of checks and balances in the system that would permit the audacious conduct by the Respondent whose conduct in judicial proceedings confirm that he operates on his constitution in which he occupies a superior and unaccountable status.
125. The following facts are common cause:
- (a) The fact that judges who presided on the Mupasiri application under Case Number CCZ 34-21 <https://heyzine.com/flip-book/fd1d5551b2.html> and my application under Case Number CCZ 27-22 <https://heyzine.com/flip-book/12e6e27f92.html> had previously presided over cases involving the validity and legality of the Reconstruction Act since its birth creates a constitution crisis because the Constitution gives this court exclusive and final jurisdiction to hear and determine s. 167(2)(d) as read with s. 167(3) applications.
  - (b) Notwithstanding this reality, a judge like Makarau JCC dismissed my application for her recusal based on my apprehension that if she confirmed the legality and validity of a law that offends public policy and international law, then the merits of the consequential conduct of the Respondent's impugned validity and legality in relation to the allegations made against him by Manikai could not be determined in an independent and impartial manner.
  - (c) The fact that Makarau JCC made findings that offend the doctrines of equality and separation of powers should have provoked action by this Court and the



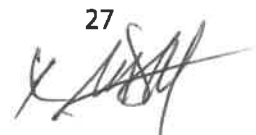
Respondent that is consistent with the binding obligations imposed in terms of s. 2(2) of the Constitution.

- (d) The fact that Makarau JCC displayed a limited or defective understanding of the law of insolvency in itself means the illiteracy around the true meaning of reconstruction based on untested allegations of the existence of a debtor to creditor relationship between SMM and the so-called state, albeit the state was not defined in the decree relied upon to divest and deprive me of rights and freedoms entrenched in any constitutional dispensation, and the purported existence of indebtedness of SMM to an undefined creditor, a sense of why the state if it was a bona fide creditor would not have used existing laws as weapons to assert its purported rights and claims against SMM as a creditor instead of engaging in a self-help scheme, whether the purported indebtedness was due and payable at the material time, and finally whether the Minister of Justice had title and jurisdiction to issue a limiting reconstruction order without the involvement of parliament and the courts.
  - (e) The fact that the Reconstruction Act is founded on the false premise that a creditor who is the state enjoys superior rights.
  - (f) The fact that Makarau JCC knew and ought to have known that reconstruction and liquidation are not the same.
126. The above facts expose the urgency of dealing with the inherent serious allegations that informed the Mupasiri application under Case Number CCZ 34/21 that was duly issued and served on Manikai but not on the Respondent, who occupies a key role as one of the three heads of the three branches of government and as such owes a special duty to the Constitution and the rule of law compelling this Court and the actors therein to comply as individuals with the prescription in s. 2(2) of the Constitution and failure to do so automatically means any conduct that is not consistent with the constitution is void ab initio including the conduct of this Court in relation to the Mupasiri and my application that has been known to this Court since 17 December 2021 that



has resulted in punitive costs order when the applications themselves are sanctioned by the constitution and as such this Court had to choose but to hear and determine the disputes without favour or prejudice.

127. I was compelled to apply for a postponement of my application under Case Number CCZ 27/22 when the continued agency of DMH Attorneys in a matter in which Manikai was implicated and in which his allegations against the conduct of the Respondent formed the subject matter of the dispute this Court was enjoined to hear and determined was so chilling and disturbing to allow me to continue litigating a matter whose end game was already written on the wall.
128. I would have expected any independent and impartial court to hold the Respondent to account for his conduct in relation to the handling of Mupasiri's bona fide application including the accounting for his knowledge and involvement in the appointment of DMH Attorneys to act for him without the knowledge and involvement of the Attorney General.
129. Against this backdrop, the impartiality of the Court remains a valid issue as well as the potent dispute created by the Respondent on the validity and legality of the Reconstruction Act.
130. It would in the interests of justice for this court to still pronounce its position on the decision by Makarau JCC to dismiss my application for her recusal so that a standard that is consistent with s. 2(2) and s. 2(2) that no one is above the law can be entrenched and protect especially by this Court. This, I believe, is a matter that is urgent and could have far-reaching implications for the rule of law in Zimbabwe.
131. It is not in dispute that the Reconstruction Act is founded on the false premise that a creditor who is the state enjoys superior rights.
132. The Act is inconsistent with the Constitution, which guarantees the right to a fair and impartial hearing.
133. The Act is a form of state capture, as it allows the state to interfere in the affairs of private companies.



134. These are all serious allegations, and if they are true, they raise serious questions about the legality of the Reconstruction Act. This Court is called upon to make its own finding regarding the question of whether this Act that was applied to SMM and other companies including the sequestration matter that is serious and pending in terms of next steps cannot wait for the elections to be held and for the Respondent to be given an extra second in office if this Court finds that the Act is unconstitutional which is a sine qua non for determining his conduct's legality validity. This, I believe, will and should far-reaching implications for the rule of law in Zimbabwe and will inevitably send a strong message to all future Presidents that any conduct that is inimical to the rule of law will not be tolerated and that the framers of the Constitution were correct in giving this apex court exclusive and final jurisdiction to hold the Respondent accountable for his conduct which has yet to happen since this Court was established.
135. My application under Case Number 27/22 and the Respondent's opposition to it as was the case in the Mupasiri applications raise a number of important issues that this Court cannot escape considering in this application in order to restore public confidence in its integrity as an independent and impartial tribunal.

## **CONCLUSION**

136. I believe that I have presented a good and strong case.
137. I make the above solemn declaration sincerely believing same to be true and correct.

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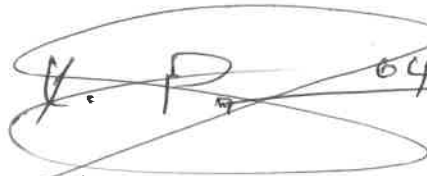
.....



  
MUTUMWA MAWERE  
DEPONENT

THUS SIGNED AND SWORN TO before me at SANDTON on this the 20 day of 54th 2023 by the deponent who acknowledges that he/she knows and understands the contents of this affidavit; that it is the truth to the best of his/her knowledge and belief and that he/she has no objection to taking the prescribed oath and regards the same as binding on his/her conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended.

COMMISSIONER OF OATHS

 6455169 -)

EX OFFICIO:

CAPTAIN

FULL NAMES:

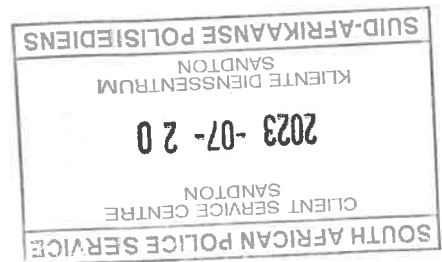
Kolile. PALISA

PHYSICAL ADDRESS:

2 Summit Rd, Marsdenburg

DESIGNATION:

CAPTAIN



**IN THE CONSTITUTIONAL COURT OF ZIMBABWE CASE NO:**

**HELD AT HARARE**

**CASE NO.**  
**IN RE: CASE NO. CCZ 27/22**  
**IN RE: CASE NO. CCZ 34/21**

IN THE APPLICATION OF:

MUTUMWA MAWERE APPLICANT

AND

PRESIDENT OF ZIMBABWE RESPONDENT

IN RE:

MUTUMWA MAWERE	1 <sup>ST</sup> APPLICANT
SMM HOLDINGS LIMITED	2 <sup>ND</sup> APPLICANT
THZ HOLDINGS LIMITED	3 <sup>RD</sup> APPLICANT
AFRICA RESOURCES LIMITED	4 <sup>TH</sup> APPLICANT
TAP BUILDING PRODUCTS LIMITED	5 <sup>TH</sup> APPLICANT
TICHAONA MUPASIRI	6 <sup>TH</sup> APPLICANT

AND

PRESIDENT OF ZIMBABWE RESPONDENT

---

**DRAFT ORDER**

---

Before the full court

\_\_\_\_\_ For the Applicant

\_\_\_\_\_ For the Respondent

**WHEREUPON** after reading documents filed of record and hearing Counsel;

**IT IS DECLARED THAT:**

- (a) The Reconstruction Act offends Zimbabwean public policy and international law;

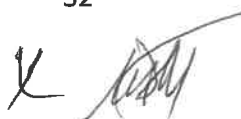


- (b) The Constitutional Court lacks title to hear and assert any rights acquired pursuant to the Reconstruction Act;
- (c) Any practice, custom and conduct that offends s. 2(1) of the Constitution is void ab initio;
- (d) The Reconstruction law being the basis on which the Respondent was constructively and intentionally involved in its conception and prosecution as stated on paragraphs 71 and 72 of his affidavit in opposition to the application in terms of s. 167(2)(d) as read with s. 167(3) of the Constitution of Zimbabwe in which he stated without providing facts and circumstances of his personal involvement and interest in the affairs of SMM and applicant in this matter is constitutionally invalid and unlawful and as such his conduct falls within the ambit of conduct falling within the ambit of s. 2(1) of the Constitution.
- (e) The conduct of the Respondent in intentionally and constructively refusing and failing to give this court his version contradicts his oath of office.
- (f) The prosecution under his watch and his direct and personal involvement in the reconstruction of Air Zimbabwe Private Limited and Hwange Colliery Company Limited (Hwange) constitutes conduct that is inconsistent with s. 2(1) of the Constitution.
- (g) The Respondent's conduct to appoint Chinamasa as Chairman of an entity that in terms of the Reconstruction Act, had been subjected to an order issued by Minister of Justice with his knowledge and involvement whose effect was to deprive its shareholders and directors of its control and management constitutes conduct that is inconsistent with the Constitution of Zimbabwe, the Reconstruction Act and the Companies Act.
- (h) The conduct that is not preceded by any due process of the law, audi, respect of the doctrine of separation of powers as foundational principles of the rule of law is inconsistent conduct by the Respondent and he must be held to the constitutional limitations.

- (i) Any conduct that results in freedoms and rights being divested and deprived without any recourse to constitutional protection is illegal and invalid.
- (j) The purported defence of the illegal and invalid appointment of Chairman of Air Zimbabwe constitutes conduct that confirms the Respondent is the driving mind of the reconstruction enterprise as weapon to silence his perceived enemies using state power.

**BY THE JUDGES**

**BY THE REGISTRAR**

A handwritten signature in black ink, appearing to be a stylized name, located at the bottom right of the page.



PARA 51: <https://heyzine.com/flip-book/a9a5ac2312.html>  
PARA 52: <https://heyzine.com/flip-book/d86a0dcc2a.html>  
PARA 92: <https://heyzine.com/flip-book/a9a5ac2312.html>  
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PARA 115: <https://heyzine.com/flip-book/6d229c8bfd.html>  
PARA 118: <https://heyzine.com/flip-book/d86a0dcc2a.html>  
PARA 125a: <https://heyzine.com/flip-book/fd1d5551b2.html>  
PARA 125b: <https://heyzine.com/flip-book/12e6e27f92.html>