ZIMBABWE AFRICAN PEOPLE'S UNION FEDERAL PARTY

Versus

ZIMBABWE ELECTORAL COMMISSION

And

THE MINISTER OF JUSTICE, LEGAL & PARLIAMENTARY AFFAIRS

And

THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 17, 18 FEBRUARY AND 10 MARCH 2005

J Sibanda for the applicant
Nzarayapenga for the respondent's

NDOU J: The applicant, according to its president, is a serious political party with serious political ambitions. It intends to contest the 31 March 2005 parliamentary elections by fielding candidates in all the one hundred and twenty (120) constituencies. Although it exhibited the same ambitions in previous elections it is still to win a seat in the august house. Although the founding affidavit expressed bitterness about the allocation of $3,2 billion and $3,1 billion to the ZANU(PF) and MDC political parties respectively it advisedly did not base its application on this issue. It would have been futile to do so in any event as such allocations from the fiscus were properly done in terms of the Political Parties (Finance) Act [Chapter 2:11]. This Act provides formulae for the annual disbursement of moneys from the fiscus to political parties with substantial representation in parliament. Only ZANU (PF) and MDC qualify for such disbursement. By proclamation published in

Statutory Instrument 2 of 2005 the President of the Republic of Zimbabwe set the date for parliamentary elections for 31 March 2005. By the same proclamation the sitting of the Nomination Court for the acceptance of nominees to contest the parliamentary elections was set down for 18 February 2005. The registration fees payable by each prospective candidate were raised from $100 000,00 to $2 000 000,00 by another statutory instrument issued on the same day. To fulfil its ambitions the applicant has to raise $240 million for the 120 candidates. Applicant states that it has no money and has failed to raise it from sympathetic donors. It seems that its poverty has resulted in this application. It seeks a postponement to allow it time to raise funds to achieve its federalist objectives. It seeks an order in the following terms:-

"**Final order sought**

1. That the sitting of the Nomination Court on 18 February 2005 in terms of Proclamation No. 2/2005 for the purpose of nominating candidates who shall take part in the proposed parliamentary elections to be held in Zimbabwe on 31 March 2005 be and is hereby postponed.
2. That Proclamation No. 2/2005 be and is hereby declared null and void on account of the unreasonably short notice given therein to prospective parliamentary elections.
3. That the respondents shall pay the costs of this applicant.

Interim order sought

Pending confirmation or the discharge of the order that this order shall operate as a temporary order:

(a) directing that the Nomination Court set for the 18th February 2005, to accept candidates for election in the parliamentary elections set for the 31st March 2005 in Zimbabwe be and is hereby postponed to a later date."

The first issue to be determined is whether the 3rd respondent could be cited without the leave of this court as required by Rule 18. The Supreme Court in *Zimbabwe Lawyers for Human Rights and Anor* vs *The President of the Republic of*

Zimbabwe SC-10-00 settled this issue. It held that in essence the purpose of the rule was to prevent the President from being harassed by frivolous or vexatious claims. The rule was, however, not created in order to preclude persons with substantial causes of action from instituting legal proceedings. In any event Rule 18 could not override the provisions of section 31K or section 4 of the State Liabilities Act [Chapter 8:14] which both permit proceedings to be instituted against the President in his official capacity. The issue of justiciability of the President in his official capacity is therefore resolved.

On the question of urgency, the applicant's founding affidavit states:

> "The urgency of this matter arises from the fact that although the dates and the registration fee were announced on 28th January 2005, as a party we have been engaged since that time with our donors in an effort to raise the funds. Such attempts have not fully bore the desired fruit. Furthermore, the time given to raise the funds was in any event unreasonably short."

The certificate of urgency by a legal practitioner did not take the matter much further. The relevant part of the certificate states:

> "The applicant is a political party that intends to sponsor 120 candidates for the forthcoming parliamentary elections. Applicant does not receive any financial assistance from the State. Applicant therefore needs to raise a sum of $240 million for each of its proposed candidates. Applicant submits that as it is self-funding, it is impossible to raise that amount of money in fourteen days. Applicant therefore requires that the sitting of the Nomination Court be postponed from the 18th February 2005 to a later date in order to give applicant time to raise the required funds."

In a nutshell the urgency is "<u>the time given to raise funds was in any event unreasonably short</u>" *(supra)* I think the applicant clearly misunderstands the objective of the above mentioned presidential proclamation and statutory instruments referred to above. They do not purport to give political parties and prospective candidates time frames for fund raising. Fundraising does not have to wait for the President to

set down the election date and date of the sitting of the Nomination Court. Any prospective candidate who waits such proclamation in order to kick-start his or her fundraising creates a problem for himself/herself but certainly not urgency. As rightly pointed out by CHATIKOBO J in *Kuvarega* v *Registrar-General & Anor* 1998(1) ZLR 188(H) at 193F-G:

> "What constitutes urgency is not only the imminent arrival of the day of reckoning: a matter is urgent if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there had been any delay."

The invariable use of urgent applications is unacceptable. There would have to be a marked degree of urgency or circumstances that justify directions from forms and service provided for in the rules – *Gallagher* v *Narman's Transport Lines (Pvt) Ltd* 1992(3) SA 500 (W); *Dilwin (Pvt) Ltd t/a Formscaff* v *Jopa Eng Co (Pvt) Ltd* HH-116-98; *General Transport & Engineering P/L & Ors* v *Zimbabwe Corp P/L* 1998(2) ZLR 301 (H); *Gulmit Investments (Pvt) Ltd* vs *Ranchiville Enterprises (Pvt) Ltd & Ors* HH-94-04; *Mshonga & Ors* v *Min of Local Government & Ors* HH-129-04 and *Laval Investments (Pvt) Ltd* v *B A Ncube Holdings (Pvt) Ltd t/a Airport Road Filing Station* HB-158-04.

The applicant, in *casu*, has not exhibited any vigilance. The "urgency" here is caused by non-timeous fundraising by the applicant. Ambition to field 120 candidates should not only be stated but also shown by action. This is self created "urgency" and is not what is contemplated by the rules of this court. In the circumstances I find that the application is not urgent. If I am mistaken on this finding still I doubt if the applicant has set out any cause of action or clear right for interdict. Applicant has to

set out cause of action – *Pietpotgietersrust White Lime Co* v *Sand & Co* 1916 TPD 687 and *B W Kuttle & Association Inc* v *O'Connell Manthe & Partners Inc* 1984(2) SA 665(C). The application does not intimate to the respondents the nature of the claim or demand they are required to meet. All that the applicant is saying is that they are a poverty stricken political party and as a result thereof the respondents should postpone the nomination of candidates until such time that they raise the requisite registration fees for 120 candidates that they wish to register. The applicant has not stated when they will be able to do so. This is certainly not a cause of action against the respondents. Existence of a clear right has not been established – *Mabhodho Irrigation Group* v *Kadye & Ors* HB-8-03 and *Knox D Ardry Ltd* v *Jamieson & Ors* 1995(2) SA 579(W). Whichever way one looks at this application it must fail.

It is for the above reasons that I dismissed the application with costs on 18 February 2005.

Job Sibanda & Associates, applicant's legal practitioners
Dube & Partners, instructed by Civil Division of the Attorney-General's Office, for all the respondents