

DISTRIBUTABLE (1)

(1) NEVANJI MADANHIRE (2) NQABA MATSHAZI
v
ATTORNEY-GENERAL

CONSTITUTIONAL COURT OF ZIMBABWE
CHIDYAUSIKU CJ, MALABA DCJ, ZIYAMBI JA, GWAUNZA JA, GARWE JA,
GOWORA JA, HLATSHWAYO JA, PATEL JA & GUVAVA JA
HARARE, SEPTEMBER 24, 2014 & FEBRUARY 19, 2015

No appearance for the applicant
E. Makoto, for the respondent
P. Machaya for the Minister of Justice, Legal & Parliamentary Affairs

PATEL JA: On 12 June 2014, in Judgement No. CCZ 2/14, this Court held that s 96 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] was inconsistent with the freedom of expression guaranteed by s 20(1) of the former Constitution. Furthermore, the Court found that the applicants had discharged the onus of showing that the impugned provision was not reasonably justifiable in a democratic society within the contemplation of s 20(2) of the Constitution.

Consequently, in accordance with s 24(5) of that Constitution, the Court issued a rule *nisi* calling upon the Minister of Justice, Legal and Parliamentary Affairs (the Minister) to show cause why s 96 of the Criminal Law Code should not be declared to be in contravention of s 20(1) of the Constitution.

On 21 July 2014, the Minister duly filed his responding affidavit. He averred that he had no cause to oppose the intended declaration and that the Court should proceed to finalise the matter as it deemed fit. On the return day, Adv. *Machaya*, appearing for the Minister, reiterated the position taken in the responding affidavit and consented to the confirmation of the rule *nisi*.

At the close of submissions by counsel, the Court confirmed the rule *nisi*. We further indicated that an appropriate declaratory order would be issued in due course.

In the result:

- (1) It is declared that s 96 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] is inconsistent with and in contravention of s 20(1) of the former Constitution.
- (2) It is ordered that the prosecution of the applicants in respect of the charge of criminal defamation, being Count 2 in the proceedings under CRB No. 8020-21/11, be permanently stayed.
- (3) There shall be no order as to costs.

CHIDYAUSIKU CJ: I agree.

MALABA DCJ: I agree.

ZIYAMBI JA: I agree.

GWAUNZA JA: I agree.

GARWE JA: I agree.

GOWORA JA: I agree.

HLATSHWAYO JA: I agree.

GUVAVA JA: I agree.

Atherstone & Cook, applicant's legal practitioners

Civil Division of the Attorney-General's Office, respondent's legal practitioners