

CYRIL MURADZI
versus
MAKACHIVEI MAROMO

ELECTORAL COURT OF ZIMBABWE
OMERJEE J:
HARARE 7th and 8th July 2008

Election Petition

Mr *T. Chiurayi*, for the petitioner
Mr *F. Gijima*, for the respondent

OMERJEE J: On 29 March 2008, the harmonised presidential, parliamentary and council elections were held in Zimbabwe. The petitioner stood as the candidate for the Movement for Democratic Change “MDC” for the Local Council seat in respect Ward 21 in the constituency of Mount Darwin West. The respondent represented the Zimbabwe African National Union [Patriotic Front}”ZANU PF” in that Ward. On 30 March, 2008 the respondent was declared the winner of that seat.

Dissatisfied with the prevailing environment at the time as well as with the manner the election was conducted, the petitioner lodged the present petition with the Registrar on 14 April 2008. The petitioner seeks an order nullifying the results of the election for Councillor for Ward 21 in the constituency of Mount Darwin West together with ancillary relief and an order as to costs. The relief sought is opposed by the respondent. The respondent submits in *limine*, that this court determine this issue as to compliance by respondent with the electoral law in the following respects namely:-

- (1) Whether service of the petition outside the 10 day period stipulated in s 169 of the Electoral Act [*Chapter 2:13*] “the Act” is such non-compliance as to render the petition a nullity
- (2) Whether service of the petition at the headquarters of the respondent’s political party is such non compliance with the provision of the Act as to render the petition invalid.

Both issues arise from the wording of s 169 of the Act. The issues in simple terms concern firstly whether service outside the 10 day period, and secondly, at the political party headquarters of the respondent constitutes compliance with the provisions of the Act. Such

finding will in turn determine, whether or not the petitioner is non suited. It is proposed to adopt this approach in dealing with this petition.

Section 169 of the Act reads as follows:

“Notice in writing of the presentation and of a petition and of the names and addresses of the proposed sureties, accompanied by a copy of the petition, shall, within ten days after the presentation of the petition, be served by the petitioner on the respondent personally or by leaving the same at his or her usual or last known dwelling or place of business”.

Mr *Gijima* on behalf of the respondent submitted that the petition is in violation of the terms of the said provision requiring that service be done within ten days. The petition was filed on 14 April 2008. The 10 day period expired at the close of the business on 24 April, 2008. Service of the petition it is not in dispute was effected on 9 May, 2008 some 15 days outside the 10 day limit prescribed in s 169 of the Act. The petitioner failed to adhere to the 10 day limit. The petitioner did not achieve equivalent or substantial compliance with the prescribed limit of 10 days. On the basis of *Pio v Smith* 1986(3) SA 145 (ZH) in the absence of either exact or equivalent compliance, the petition becomes a nullity.

In relation to the second issue, written notice of the petition was served at the respondent’s political party headquarters. The electoral law sets out in specific and clear language the proper manner of serving election petitions. Service has to be personal or at the residence or place of business of the respondent. In the view of this court, service of the petition at the party headquarters of the respondent, does not constitute service at any of the places contemplated by s 169 of the Act. This court sitting as an Electoral Court has no powers to condone any breach of the requirements as to time frames or as to manner of service that are stipulated in the Act. See *Chitungo v Munyoro* 1990(1) ZLR 52 (H) at 58 (H) *Hove v Gumbo* S.C. 143/2004

In the result this court finds that service of the petition on 9 May, 2008 was invalid for two reasons. Firstly, the petition was served outside the 10 day period, and, secondly at the wrong place in contravention of s 169 of the Act.

The final determination of this matter is as follows:-

1. This petition is a nullity by reason of non compliance with the provisions of s 169 of the Act.
2. The petitioner is to pay the respondents costs.

Coghan, Welsh & Guests, petitioner's legal practitioners
Gijima & Associates, respondent's legal practitioners