ELIAS MUDZURI
NOREST MARARA
GIFT KONJANA
JOHN NYIKA
DEN MOYO
EDWIN DZAMBARA
EDWIN KAKORA
versus
MOVEMENT FOR DEMOCRATIC CHANGE (TSVANGIRAI)
DOUGLAS MWONZORA N.O.
MORGAN KOMICHI N.O.
PAURINA MUPARIWA GWANYANYA N.O.

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 6 and 14 July 2023

Opposed Matter

Advocate E Mubayiwa, for the applicants
T. Sengwayo with *M Rajabu*, for the respondents

MUNANGATI-MANONGWA J: This is an application for the review of the decision of the second respondent in his capacity as the President of the first respondent to suspend the applicants from their official positions with the first respondent. The applicants seek the setting aside of the decision to suspend them. They also seek that they be reinstated and that the second respondent be ordered to conduct a national congress that is in terms of the first respondent's constitution and electoral practices. The application is opposed.

The respondents raised the following points *in limine* :

i. That the application is irregular as there are no grounds of review as well as the relief sought appearing *ex facie* the application as required by r 62(2) of the High Court Rules S.I.202/21.

ii. That the applicants were expelled from the 1st respondent hence they have no *locus standi* to institute this application in the absence of their reinstatement.

The respondents submitted that r 62(2) is peremptory hence failure to comply with it is fatal and hence the matter must be struck out. The respondents further submitted that the applicants were dismissed or expelled from the party (1st respondent) after the application had been filed. It was contended that, it being so, applicants should have applied for reinstatement before filing the application as they have no legal standing at the present moment. The respondents further contended that in a matter handled by MANGOTA J being Case No 1010/23, MANGOTA J specifically stated that the applicants were expelled from first respondent hence the High Court has already pronounced itself on the issue Mr *Sengwayo* argued that, in the result, the applicants have no *locus standi* to prosecute the application unless reinstated.

Mr *Mubayiwa* for the applicants contended that there are grounds of review appearing *ex facie* the application. He conceded that the relief is absent *ex facie* the application but there is a draft order which informs the respondents of the relief sought. He contended that the absence of the relief does not invalidate the application and he entreated the court to take the approach adopted in *Telone (Pvt) Ltd v Capitol Insurance* SC 60/18 which although dealing with an action matter decided that whilst the concise statement of the cause of action was not appearing on the summons the fact that the summons and the declaration had been filed together, the cause of action could be deciphered from the declaration. He referred to para 29 of the founding affidavit which prayed for relief in terms of the draft. Mr *Mubayiwa* maintained that the non-compliance would not be fatal or would be of the nature that the court can condon. Further that the importance of the matter is such that it should be decided on the merits. He therefore applied for condonation.

Vis the point on *locus standi*, the applicants contended that the purported expulsion which the respondents rely on is an act done in contempt of court. The argument is that on 2 February 2023 MUTEVEDZI J in HC 665/23 involving the same parties gave an order by consent that respondents were to cease all disciplinary proceedings against the applicants which were scheduled to commence on 2 February 2023 until the final determination of this current matter. He submitted that the import of the order was to preserve the life of the current matter so the

respondents could not kill the cause of action. Mr *Mubayiwa* further submitted that there is constructive contempt at play and hence an act done in contempt of court cannot create a valid ground.

As regards MANGOTA J'S judgment the applicants contended that the applicants had gone to MANGOTA J seeking an interdict against the respondents from recalling them from Parliament. That no reference or consideration was made to MUTEVEDZI J'S judgment and how it impacted on the purported expulsion of the applicant. He further referred to my order in HC 987/23. This order invalidated a clause inserted into the respondents' constitution barring members from challenging decisions made internally and that approaching a court results in automatic expulsion. It was thus argued that the respondents acted in contempt of court hence their actions are invalid and the applicants are properly before the court.

In response Mr SENGWAYO argued that the *Telone case* is distinguishable from the case herein as it dealt with the summons case. As regards the application for condonation he argued that this is no ordinary act of failure to comply. The apex court has already pronounced itself on the issue hence this court cannot ignore same. Mr *Sengwayo* further argued that the respondents' act to expel the applicants did not vitiate the order by MUNANGATI-MANONGWA J and that the basis of the applicants' expulsion was not covered by that order. Equally, he argued that the judgment by MANGOTA J confirmed the expulsion and hence without reinstatement the applicants have no authority to challenge the respondent's acts. He maintained that the argument that the matter is of national importance is no reason why it should be heard when there was failure to comply with the rules.

Despite the fact that the initial point to be raised pertain to compliance with the rules, the issue of *locus standi* takes precedence. I find that the argument that the applicants have no legal standing in instituting this case, that the matter is moot, it having been overtaken by events is baseless. The applicants were office bearers in first respondent and they challenged their suspension in this case. The order of MANZUNZU J sought to preserve this case by ordering that the respondents cease all disciplinary proceedings against applicants which proceedings were scheduled to commence on 2 February 2023. To then say the applicants have no *locus standi* simply because the respondents went ahead and expelled the respondents in an act which clearly

is designed to pre-empt the court's decision on a live matter cannot be correct. Of note is the fact that the application before MANGOTA J was to interdict the respondents from recalling applicants from Parliament. The decision of MANGOTA J was to strick the matter from the roll. The matter was not decided on merits but upon the upholding of points *in limine* which were specifically that:

i. The application had not been treated with urgency and
ii. What the applicants sought to interdict had already taken place.

It is therefore incorrect that the court made a finding that the applicants had been expelled as that issue was never argued by the parties, conversely, the court did not make a finding on the merits hence what may have been said by MANGOTA J is orbiter. My reading of the record shows that the whole proceedings relate or pertains to the suspension of the applicants. No facts were presented on the point raised about the applicants' expulsion and how they no longer have standing. The submissions are coming from the bar yet the application before me remains a challenge on suspension. It is due to the foregoing that I find that the applicants are properly before me.

On compliance with the rules, the respondents have raised issue with the applicant's failure to comply with r 62(2) on review applications. The Rule states as follows:

> "(2) The court application shall state shortly and clearly the ground upon which the applicant seeks to have the proceedings set aside or corrected and the exact relief prayed for all of which shall appear on the face of the court application."

I find that there are grounds of review on the face of the application. The applicants on p 2 of the application raise complaints about the second respondent's decision being characterized by procedural irregularity, illegality and bias. All the four grounds raised qualify as proper grounds of review though the decision is still to be tested against the stated grounds. It is the absence of the relief sought which points towards failure to comply.

There is no relief sought *ex facie* the application. This is an important application as submitted by Mr *Mubayiwa*. Being important it therefore called upon the legal practitioner drafting the papers to be diligent and comply with the rules. The attempt by Mr *Mubayiwa* to adopt the approach in the case of *Telone and Capitol Insurance* cited *supra* does not find favour

with the court. This rule is the equivalent of r 257 of the High Court Rules 1971. The courts have stated time and again that shoddiness and failure to comply with the rules will not be tolerated. Condonation cannot always be granted lest the legal profession fails to heed the calls by the judiciary that litigation has to be orderly with proper form and compliance being adhered to. In *Chataira* v *Zimbabwe Electricity Supply Authority* 2001(1) ZLR 30 SMITH J had this to say at p 34G - H:

> "..it seems to me that such non-compliance would constitute good grounds for dismissing this application. Rule 257 requires that an application to bring proceedings under review shall state shortly and clearly the grounds upon which applicant seeks to have the proceedings set aside or corrected and the exact relief prayed for. In the *PEN Transport, Mushaishe and Marumahoko* cases referred to earlier, the courts clearly stated that the failure to comply with r 257 constituted a fatal flaw. Despite these warnings legal practitioners still fail to comply. The time has surely come to say enough is enough and dismiss the defective applications without considering the merits."

If courts do not stamp their authority by emphasizing the importance of complying with the rules, legal practitioners will continue with the lackadaisical approach to drafting and compliance with rules which cannot be tolerated. Due to non-compliance with the r 62(2), there is no proper application before the court.

Accordingly the matter is struck of the roll with costs.

Lawman Law Chambers, for the applicants
Trust Law Chambers, for the respondents