EPIPHENIA MUNHUNEPI
WOMEN'S COALITION OF ZIMBABWE
versus
ZIMBABWE ELECTORAL COMMISSION
and
MINISTER OF JUSTICE, LEGAL AND PARLIAMENTARY AFFAIRS
and
THE LAW REVISER

HIGH COURT OF ZIMBABWE
MUNGWARI J
HARARE, 21 July & 24 November 2023

Urgent Court Application

Ms *C Daniso,* for the applicants
Mr *T Kanengoni,* for the 1st respondent
Ms *J T Shumba,* for the 2nd & 3rd respondent

MUNGWARI J: This is an urgent court application in which the applicant seeks the following relief:

a) The Statute Law Compilation and Revision (Correction of Constitution of Zimbabwe Amendment (No. 2) Act, 2021) Notice, 2023 be and is hereby declared to be unconstitutional as it offends the provisions of s 157(5) of the Constitution of Zimbabwe
b) That the Statute Law Compilation and Revision (Correction of Constitution of Zimbabwe Amendment (No. 2) Act, 2021) Notice, 2023 be and is hereby declared unconstitutional as it offends the provisions of s268 of the Constitution.

c)That the Statute Law Compilation and Revision (Correction of Constitution of Zimbabwe Amendment (No. 2) Act, 2021) Notice, 2023 be declared unconstitutional in so far as it changes the text of the Constitutional Amendment No 2 and constitutes an infringement of the Applicant's rights under s 56(2) of the Constitution of Zimbabwe.

d)That the conduct of the first and third respondents of gazetting the Statute Law Compilation and Revision (Correction of Constitution of Zimbabwe Amendment (No. 2) Act, 2021) Notice, 2023 without affording the applicant an opportunity to be heard be declared unconstitutional and an affront to s 68 and s 69 of the Constitution of Zimbabwe.

e) That the Statute Law Compilation and Revision (Correction of Constitution of Zimbabwe Amendment (No. 2) Act, 2021) Notice, 2023 be declared to be ultra vires s10 of the Statute Law Compilation and Revision Act [*Chapter 1:03*].

f) The Electoral Act (Women's Quota in Local Authorities Notice, 2023) be and is hereby declared unconstitutional and a violation of s 277 (4) of the Constitution of Zimbabwe.

g) The conduct of the first and the third Respondents of gazetting the Electoral Act (Women's Quota in Local Authorities Notice, 2023) without affording the applicant an opportunity to be heard be and is hereby declared unconstitutional and an affront of the Applicant's rights as articulated in s 68 and s 69 of the Constitution of Zimbabwe.

h) The Electoral Act (Women's Quota in Local Authorities Notice, 2023) be and is hereby declared to be unconstitutional as if offends the provisions of s 157 (5) of the Constitution of Zimbabwe.

Consequently, is it ordered as follows:

i) the nomination court be and is hereby ordered to conduct a sitting and consider the applicant's nomination in terms of the provisions of the Constitution as at 19 June 2023 within 24 hours of this court order.

j) Respondents shall bear costs of suit on an attorney client scale

<u>The parties</u>

The first applicant is a female Zimbabwean adult who is a member of the Citizens Coalition for Change, a grouping recognized as a political organization in Zimbabwe. She in her own capacity claims to have a real interest in the resolution of the matter.

The second applicant is the Women's Coalition of Zimbabwe, a Trust organization that is registered and operates under the laws of Zimbabwe. Its objectives include promoting and enhancing participation and representation of women in decision making bodies, policy formulation and implementation including in provincial and metropolitan councils.

The first respondent is the Zimbabwe Electoral Commission a Constitutional Commission established in terms of s 238 of the Constitution of Zimbabwe, 2013("the Constitution). Its functions are set out in s 239 of the Constitution. In broad terms, it prepares for, conducts and supervises elections.

The second respondent is the Minister of Justice Legal and Parliamentary Affairs. He is the Minister who supervises the implementation of the Statute Law Compilation and Revision Act [*Chapter 1:03*] (hereinafter referred to as 'the Act'). He appoints the third respondent and is in charge of making regulations in terms of the Act among other responsibilities.

The third respondent is only cited as the Law Reviser whose further details are unknown.

<u>Factual Background</u>

Sometime in April 2021, Parliament debated an amendment to s 268 of the Constitution which resulted in the passing of Amendment No. 2 which remodeled s 268 to read:

(1) "There is a provincial council for each province and a metropolitan council for each metropolitan province, consisting of –
   (a) A chairperson of the council elected in terms of s 272; and
   (b) The mayors and chairpersons, by whatever title they are called, of all urban and rural local authorities in the province concerned; and
   (c) Ten **women** elected by a system of proportional representation referred to in subsection (3)

(2) A woman is qualified to be elected to a provincial or metropolitan council in terms of subsection (1)(c) if she is qualified for election as a member of the National Assembly

(3) Elections to provincial and metropolitan councils must be conducted in accordance with the Electoral Law, which must ensure that the women referred to in subsection (1)(c) are elected under a party list system of proportional representation-
   (a) which is based on the votes cast for candidates representing political parties in the province concerned in the general election for Members of the National Assembly; and
   (b) in which women with disabilities are included

(4) the seat of a member of a provincial or metropolitan council referred to in-
   (a) paragraph (b) of subsection (1) becomes vacant if the member ceases to be a mayor or chairperson of a local authority in the province concerned;
   (b) paragraph (c) of subsection (1) becomes vacant in the circumstances set out in s 129, as if the member were a Member of Parliament."

On 31 May 2023, the President issued a proclamation calling for an election. On 20 of June 2023, the respondents caused the issuance of Statute Law Compilation and Revision (Correction of Constitution of Zimbabwe Amendment (No. 2) Act, 2021) Notice, 2023 (hereinafter referred to as SI 114/2023 and the Electoral Act (Womens Quota in Local Authorities) Notice, 2023 (hereinafter referred to as SI 115/2023). Section 2 of SI 114/23 effected changes to s268 of the Constitution as stated above. It now provides as follows:

"The provisions of the Constitution of Zimbabwe Amendment (No. 2) Act, 2021 specified in the first column of the schedule are corrected to the extent set out opposite thereto in the second column.

Provision	**Extent of correction**
Section 268 ("Provincial and metropolitan councils")	
	In subsection (1)(c) by the deletion of "ten women" and the substitution of "ten persons"
Section 268	in subsection (2) by the deletion of "a woman" and the Substitution of "a person"
Section 268	in subsection 3 by the deletion of "the women" and the substitution of "the persons"
Section 268	in subsection (3)(b) by the deletion of "in which women disabilities are included" and the substitution of "in which male and female candidates are listed alternatively, every list being headed by a female

candidate."

The explanatory note at the foot of SI 114/23 provides thus,

> "(This note does not form part of the notice, but merely explains its contents) The Constitution of Zimbabwe (No. 2) Act, 2021 as gazetted on 7 May, 2021, contained errors in provisions amending section 268 on Provincial and Metropolitan councils. The Hansard and Zoom audio recordings of the day do not reflect the gazetted amendments. The amendments appeared by error, on the Votes and Proceedings of 15th April 2021 which are titled "Advance Copy Uncorrected"and are subject to correction Ref: *National Assembly Hansard* Vol. 47 No 41 of 15th April, 2021, pgs.5161-5164. The object of this notice is to the identified errors"

On the other hand SI 115/23 relates to the thirty percent women's quota in provincial councils which was introduced by the insertion of subsections 4 and 5 into s 277 of the Constitution through Amendment No. 2 of 2021. In terms of s 277(5) elections to local authority councils must be conducted in accordance with the Electoral Law, which must ensure that the persons referred to in subsection (4) are elected under a party list system of proportional representation which is based on the votes cast for candidates representing political parties in the local authority concerned in the general election for members of the local authority.

First and second applicants' cases

Pursuant to the President's proclamation of the election, the first applicant claims to have registered her desire to be considered for the provincial and metropolitan council under the proportional representation list of her party. In her founding affidavit she narrated that on 20 June 2023, late in the afternoon, she got wind of the fact that the respondents had caused the issuance of SI 114/2023 and SI 115/2023. She states that as a result of these pieces of legislation the nomination landscape in the preface of the upcoming harmonized elections changed significantly in a manner that adversely affected her rights under the proportional representation system provided in the constitution. The applicant contends that with the gazetting of SI 114/23 the law promoting gender balance has been blatantly disregarded, in particular S17 of the Constitution which advocates for the promotion of full participation by women in all spheres of Zimbabwean society on the basis of equality. She argued that s 268 introduced a party list system which specifically referred to women. According to her, the Hansard of 15 April 2021 reflects that there was a debate on the issue of seats for women and a suggestion that there be a thirty percent quota for local government seats.

The first applicant stated that the Hansard and zoom audio recordings do not reflect the gazetted amendments. She avers that, the claim by the respondents that SI 114/2023 steps

in to correct what it terms to be errors in provisions amending s 268 on Provincial and Metropolitan councils cannot be true as it changes the word women wherever it appeared to indicate "person." The first applicant challenges the same as unconstitutional because the 'correction' goes beyond the powers granted to the third respondent by the Act and amounts to a constitutional amendment which was done without hearing the affected parties and which in effect changes the rules of the election process in a manner that is adverse to the rights of women. She argued that_the duties of the third respondent do not extend to alteration of substantive portions of the law as it changes the tenor of the provision to the extent that it alters the nomination process and negates her rights to equality and non-discrimination. The first applicant further contended that the response of the first respondent to the implementation of SI 114/2023 was to issue SI 115/23 which in itself is unlawful as the first respondent does not have the power to make law and change goal posts mid-stream. Because of these changes her party indicated that her candidature was no longer available and she was supposed to be considered for nomination under other names as the law upon which she had been considered had lapsed.

The second applicant through Charity Mandishona its vice-chairperson, deposed to a supporting affidavit and together with the first applicant concluded that the pieces of legislation are both draconian and unconstitutional and have no place in an all-inclusive democratic society. The applicants therefore approached this court challenging the constitutionality of SI 114/23 and SI 115/23. They further contended that SI 114/23 is *ultra vires* the enabling legislation. In the result, the applicants prayed for an order stated in the terms already outlined above.

First respondent's case

The first respondent, through its chief elections officer Utloile Silaigwana deposed to an opposing affidavit in which it argued that following case management in the matter the issue of urgency was no longer live. In addition, Silaigwana was adamant that SI 115/23 neither changed the political landscape nor violated s157 (5) of the Constitution. As to the allegation that SI 115/23 is in breach of s 157(5) of the Constitution, he averred that the applicants erroneously assumed that both SI 114/23 and SI 115/23 arise from the same provision of the Constitution and relate to the same party-list election. That assumption is not correct. He insisted that the applicant's attack on SI 115/23 as being founded out of a response to SI 114/23 is a wrong position which arises from a misunderstanding of the different constitutional provisions to which SI 114/23 and SI 115/23 relate. SI 115/23 relates

to the provisions of s 277 of the constitution as opposed to those of s 268. According to Silaigwana, unpacking that misunderstanding was crucial because it formed the bedrock of the challenge mounted by the applicants against SI 115/23.

Silaigwana further asserted that the applicants' founding papers are grounded on the submission that the two statutory instruments led to an unfair reduction in the representation of women in government, which reduction in turn caused first applicant's political party to drop her from its party-list. In his view the challenge cannot be sustained as SI 115/23 relates to an election that has never been taken prior to 2023 i.e. the thirty percent women's quota party-list for local authorities. This was introduced by the insertion of subsections (4) and (5) of s 277 of the Constitution through Amendment 2 of 2021. Because this is the first time this poll is to be taken, there has never been an electoral landscape different to that created by s 277(4) and (5) of the Constitution as read with the Electoral Act [*Chapter 2:13*]. The electoral landscape relating to the thirty percent women' s quota that existed as of 30 May 2023 when the proclamation was made remains the same electoral landscape under which nomination was carried out and under which the general election will be held.

The allegation of removal of women from government cannot be made in reference to SI 115/23 as it in effect, introduces women rights and recognition. He concluded that no proper basis had been established for the relief sought against SI 115/23 and prayed for the dismissal of the application.

Second and third respondents' case

The second and third respondents filed a notice of opposition in which Ziyambi Ziyambi the Minister of Justice, Legal and Parliamentary Affairs (the Minister), deposed to an affidavit on behalf of the second respondent. He argued that the cause of action for a declaration of constitutional invalidity was misplaced as the matter does not constitute a constitutional matter as defined in s 332 of the Constitution of Zimbabwe. Furthermore, that the Law Reviser acted within his prescribed mandate in initiating the promulgation of SI 114/23 because it was Parliament through the Clerk of Parliament which on 15 June 2023 formally wrote to the Law Reviser requesting that he exercises his statutory powers to effect the necessary corrections of errors which had been discovered as reflected in the Constitution of Zimbabwe Amendment (No. 2) Act 2021 as gazetted on 7 May 2021. In particular in s 268(1)(c), (2) and (3) where the word "persons" was deleted and substituted with the word "women" and in s 268(3)(b) where the section was purportedly amended "to include women

with disabilities.” The respondents attached a letter with accompanying documents as Annexure A1-A4. The attachments include the National Assembly Hansard Volume 47 no 41 of 15 April 2021, the Constitution Amendment (No. 2) Bill, 2019 and the votes and proceedings of 15 April 2021. The Minister explained that the law reviser satisfied himself that there was a glaring contradiction between what transpired during the parliamentary deliberation on the then clause 20 of the Amendment (No 2) Bill as recorded in the National Assembly Hansard Volume 47 no 41 of 15 April 2021 at pp 5161-5164 and what was reflected in the votes and proceedings document of the same date. In particular the Hansard at p 5164 recorded that the proposed clause 20 was put and agreed to without change whereas the votes and proceedings purported that the Minister of Justice, Legal and Parliamentary Affairs moved that the word “persons” in clause 20 of the amendment (No 2) Bill 2019 be deleted and substituted with “women.”

The Minister further claimed that after the Clerk of Parliament brought this to his attention and to the attention of the Law Reviser he caused a meeting to be convened on 20 June 2023 between himself and the Clerk of Parliament, the Law Reviser and two legal officers from parliament. At the meeting the clerk of parliament explained that what is termed votes and proceedings are manually written notes by parliamentary clerical staff during deliberations and do not form part of the parliamentary records of proceedings. They simply reflect the makers’ understanding of the essence of the deliberations. To demonstrate that what was gazetted is not correct the clerk of parliament brought with him a zoom audio recording of the deliberations which were congruent to what was recorded in the Hansard. Based on the above the Law Reviser satisfied himself that the Amendment No 2 contained a latent error, the nature of which was not made by parliament as the lawmakers, but by staff from the parliamentary secretariat. In short the nature of the error was a drafting error which could not be attributed to Parliament and is therefore the type of error that the Law Reviser is empowered to correct.

The Minister concluded that the correction of errors made through SI 114/23 does not violate the provisions of s 10(3) of the Act in the sense that the Law Reviser neither made any alteration nor any amendment which went against that which was passed by parliament. SI 114/23 reflects that which parliament actually passed as the amendment to s 268 of the Constitution. As such the revision is not a new law but a mere correction. The third respondent, Rex Tapfuma, the Law Reviser deposed to a supporting affidavit associating himself with and confirming the opposing affidavit of the second respondent. The two

respondents therefore concluded that the relief being sought is incompetent as the correction was *intra-vires* the enabling statute.

Arguments

On 18 July 2023, the parties appeared before me for argument of the matter. The applicants' legal representative Ms *Damiso* informed the court that she was under instructions to withdraw the application against the first respondent which related to SI 115/23. In her own words she said:

> "I am under instructions to apply for an amendment of the draft order that is before you, to exorcise the portions of the draft order that relate to SI 115/23 from the founding affidavit right through to the order but the submissions that we have made in relation to SI 114/23 remain intact".

Mr *Kanengoni* for the first respondent indicated that they were not opposed to the application to withdraw the challenge against SI 115/23 as there had been prior discussions with counsel to that effect. I subsequently directed the deletion of all issues relating to it and the expunging from the draft order of para 6 in its entirety. It stated the following:

6. Applicant also prays that:

a) The Electoral Act (Women's Quota in Local Authorities Notice, 2023) be declared unconstitutional and a violation of s 277(4) of the Constitution of Zimbabwe.
b) That the conduct of the first and third respondents of gazetting the Electoral Act (Womens Quota in Local Authorities Notice,2023) without affording the applicant an opportunity to be heard to be declared unconstitutional and an affront to s 68 and s 69 of the Constitution of Zimbabwe.
c) That the Electoral Act (Womens Quota in Local Authorities Notice, 2023) be declared to be unconstitutional as if offends the provisions of s 15 (5) of the Constitution of Zimbabwe.
d) Consequently, the applicant's prays that the court grants the following relief
e) The nomination court be and is hereby ordered to conduct a sitting and consider the Applicants nomination in terms of the provisions of the constitution as at 19 June 2023 within 24 hours of this court order

The withdrawal of the challenge against SI 115/23 came with significant implications which the applicants had no gripe with. It meant that the urgency with which the applicants desired the application to be heard had been doused. The court was only left to deliberate on

the alleged constitutional invalidity of SI 114/23. The climb-down equally meant that the first respondent, the Electoral Commission's interest in the application was extinguished. The applicants and the second and third respondents remained as the warring parties.

Preliminary Issues and Objections

I was not spared the ritual of commencing the application with the raising of objections *in limine.* The second and third respondents argued that the applicants have no *locus standi in judicio* and further that they had omitted to join their political party to the proceedings. I will deal with each of the issues as raised.

***Locus standi* in judicio.**

The respondents argued that the applicant has no *locus standi* to institute these proceedings because she failed to show that she had authority from her political party (CCC) to institute proceedings in this matter. The application, so the respondents alleged, arises from the proportional representation clauses contained in s 268 of the Constitution which resulted in the first applicant's political party dropping her name from the party list. It is her party and not the cited respondents therefore that dropped her from the party list. In response the first applicant insisted that she is representing her own interests as a woman in politics and has approached the court in her own right. She therefore has a direct and substantial interest. The second applicant also claimed to have approached the court as a representative of a class of women and also in the interests of the public, challenging a law and conduct it deems unconstitutional.

I am of the view that the objection is ill taken in light of the provisions of s 85 of the Constitution which state that:

> "any person acting in their own interests is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation."

My understanding of S 85(1) of the Constitution is that it allows not only persons acting in their own interests but also any person acting on behalf of another person who cannot act for themselves, any person acting as a member, or in the interests, of a group or class of persons and any person acting in the public interest. In addition, the case *Denhere* v *Denhere CCZ 9-19* advocates for the broad approach to *locus standi* in constitutional matters. Recently, in *Mupungu* v *Minister of Justice, Legal and Parliamentary Affairs and 6 Others* CCZ-7/21, the position was reiterated in the following words:

> "Under the common law, legal standing in civil suits is ordinarily confined to persons who can demonstrate a direct or substantial interest in the matter. See *Zimbabwe Teachers Association & Ors* v *Minister of Education* 1990 (2) ZLR 48 (HC), at 52F-53B. However, it is now well established that the test for *locus standi* in constitutional cases is not as restrictive but significantly wider. This approach was aptly articulated in *Ferreira* v *Levin N.O. & Others* 1996 (1) SA 984 (CC), at 1082 G-H:
> "... I can see no good reason for adopting a narrow approach to the issue of standing in constitutional cases. On the contrary, it is my view that we should rather adopt a broad approach to standing. This would be consistent with the mandate given to this court to uphold the Constitution and would serve to ensure that constitutional rights enjoy the full measure of the protection to which they are entitled."
>
> The broad approach to *locus standi* in constitutional cases was also affirmed by this Court in *Mawarire* v *Mugabe N.O. & Ors* 2013 (1) ZLR 469 (CC), where the applicant's standing was endorsed on the basis that he had invoked the jurisdiction of the Court on a matter of public importance. The position advanced on behalf of the fourth and fifth respondents is that the applicant lacks the requisite sufficient interest in casu because he was not a litigant in or party to the proceedings a quo. This position is palpably unsustainable for several very compelling reasons."

The principle which runs through these cases is that the test for *locus standi* in constitutional cases is not and must not be restricted. Rather it must be widened. *In casu*, the first applicant has approached this court in her own right, alleging an infringement of her own rights. The second applicant has approached the court as a representative of a class of persons' and in the interests of the public, challenging a law and conduct that it deems unconstitutional. The parties who must answer to the issues are before the court and they have answered to the issues raised in the application. The question of locus does not arise and this court will therefore proceed to hear the parties. The point *in limine* is without merit and must accordingly fail.

(b)**Non joinder**

The respondents contend that the applicants ought to have cited their political party because the number of candidates which are forwarded for proportional representation are drawn from political party lists. They further stated that if the applicant failed to be listed by her political party, then she must have sought redress from the political party (CCC) and not any of the cited respondents as alleged. According to the respondents, this is a dispute between the applicant and her political party. The applicant's fate was not caused by the correction of the law but by internal party politics. In response, the applicant reiterated that she has not approached this court as a representative of her political party and neither does she allege infringement of the rights by her political party but of herself. Citing the Minister of the relevant ministry and the law reviser is sufficient because they are the ones that

misapplied the law and overstepped their mandate. The applicant insisted that this suit has nothing to do with their political party.

The law provides that non-joinder does not impede a court from determining a matter. Rule 32(11) of the High Court Rules state the following:

> "no cause or matter shall be defeated by reason of the misjoinder or non-joinder of any party and the court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter"

Cognisant of this rule I decided that it was not necessary for the matter to be stalled on the issue of whether or not the political party by the moniker CCC ought to have been joined to the proceedings. As with the first objection the challenge regarding non-joinder equally ought to fail. I dismiss it.

The merits

Turning to the merits of the application Ms *Daniso* for the applicants argued that the powers of the law reviser are specific and are limited to correcting errors of a grammatical or typographical nature. He is also empowered to arrange the statutes in sequence. She gave an analogy of the error in the citation of the Marriage Act which was rectified and corrected according to the numbering sequence of that Act. She stated that that is the nature of errors which is contemplated in section 10 The Act. However SI 114/23 goes beyond the ambit of the powers delegated by legislation to the law reviser especially when one has regard to s 10(3) which states that the powers conferred upon the law reviser by that section shall not be taken to imply any power to make major alterations or amendments in the matter or substance of any statute. The errors which the third respondent purported to correct resulted in major alterations which seek to change the gender or sex of the persons upon whom the right has been conferred as well as to alter what the President did in the exercise of his executive functions. When called upon to comment on s 10(3) of the Act which provides that the law reviser's powers shall include powers to make such amendments as are necessary to bring out more clearly what the law reviser considers to have been the intention of parliament, Ms Daniso stated that the procedure that was adopted by the Law Reviser in doing so was wrong. The correct procedure would have been to bring the matter to parliament for correction rather than leave it to a delegated authority to correct the provisions of a constitutional bill. The procedure adopted is contrary to the doctrine of separation of powers. It is also contrary to the principle of sovereignty of parliament and most importantly is *ultra vires* the enabling legislation.

Ms Shumba, for the second and third respondents opted to abide by the heads of argument filed and added that the third respondent did not unilaterally initiate the correction of the errors but that it was parliament which did so. Further, she said the use of parliamentary law making material in establishing the intention of the legislature is accepted in this jurisdiction in terms of s 15(b) of the Interpretation of Statutes Act.

Issue for determination

1. Whether the third respondent in effecting the changes which he made acted within the confines of the enabling Act. In other words the issue is whether the law reviser's actions were intra vires the enabling legislation. Put in another way the question is do the second and third respondents' corrections or alterations amount to amendments and resulted in the enactment of new law

I proceed to deal with the issue.

The office of the third respondent is established by s9 of the Act in the following terms:

> "(1) There shall be a Law Reviser appointed for his ability and experience in the drafting and compilation of enactments and for his knowledge of the operation of enactments."

Section 10 of the Act creates the functions of the Law Reviser as follows:

> **"10 Functions of Law Reviser**
> (1) Subject to this Act, it shall be the function of the Law Reviser to compile the statutes in revised form,
> whether loose-leaf or otherwise, and to ensure that each statute is continuously revised in such a manner that an up-to-date text of each statute is available as a single document.
> (2) In the discharge of his function in terms of subsection (1) the Law Reviser may—
> (*a*) in the case of a statute compiled in loose-leaf form, prepare and issue a replacement page or replacement pages for any statute affected by—
> (i) grammatical or typographical errors; or
> (ii) amendment or repeal, whether such amendment or repeal is express or implied;
> (*a*1) arrange statutes in any sequence or groups that may be convenient, irrespective of the dates when they came into operation, and assign identifying numbers to the statutes so arranged;
> [Paragraph as inserted by s 4 of Act No. 1 of 1999.]
> (*b*) consolidate into one statute any two or more statutes *in pari materia,* making the alterations thereby
> rendered necessary;
> (*c*) supply or alter marginal notes or headings in any statute and insert a table showing the arrangement of sections where, in the opinion of the Law Reviser, such a course is desirable;
> (*d*) –(j) not relevant
> (*k*) alter the order of sections, subsections, paragraphs or other subdivisions in any law and in all cases
> where it may be necessary to do so renumber the sections, subsections, paragraphs or other subdivisions;

> (*l*) alter the form or arrangement of any section by transferring words, by combining it in whole or in part with another section or other sections or by dividing it into two or more subsections; and
> (*m*) do all other things pertaining to form and method which may be necessary to achieve the objects stated in subsection (1).
> (3) The powers conferred upon the Law Reviser by this section shall not be taken to imply any power in the Law Reviser to make major alteration or amendment in the matter or substance of any statute, but shall include powers to make such alterations in the language of statutes as are requisite in order to preserve a uniform mode of expression and to make such amendments as are necessary to bring out more clearly what the Law Reviser considers to have been the intention of Parliament."

As can be seen from the above provision, the powers of the law reviser though circumscribed are varied and extensive. What he cannot do is also apparent. It is best to start with what he is not permitted to do. He is not allowed to make major alterations or amendments in the matter or substance of any statute. My reading of the language used in subsection (3) is therefore that firstly the law reviser is not disqualified from making amendments or alterations. What he cannot do is to effect major alterations or amendments. The English Oxford Dictionary, 2020 defines the word major to mean something important, serious or significant. [1] In other words the amendment must not be substantial or extensive. The antonyms of major are unimportant, trivial or minor. The law reviser can therefore only make unimportant, trivial or minor amendments to a statute. Secondly, where such alterations are not major they can be made to the substance or matter of the statute. Needless to say the substance of a statute is its materiality or its fabric. It follows that there is no part of a statute which the law reviser cannot alter as long as his amendments do not amount to significant changes to the statute. What matters is whether or not the alterations are profound. Subsection (2) is equally critical. It permits the law reviser to effect changes where a statute has been affected by an amendment or repeal regardless of whether such amendment or repeal is implied or express.

In this case, the applicants argued that the third respondent exceeded his mandate as a law reviser and made significant changes to the Constitution. In other words they alleged that he effected amendments to the Constitution. They however omitted to address the issues raised by the second and third respondents that what was corrected were patent errors which appeared in the amendment. The respondents tendered evidence of what was passed by Parliament. They also substantiated their allegation that some clerical staffers had misheard what parliament had passed. Instead of the word persons they typed in the word women. The substance of what parliament intended then got lost in those typographical mistakes. The

[1] https://www.google.com/search?q=major+meaning&oq=major+mea&gs

rationale for the rectification of formal errors which occur in legislation is to ensure expeditious correction of such mistakes. It would be cumbersome and almost meaningless that wherever such a mistake occurred the statute ought to be referred back to parliament for it to effect the corrections. The applicants did not therefore dispute the assertion by the respondents that the words women appeared in the concerned sections by reason of error and when in effect the law which parliament had passed made reference to persons. It is not practical that at every such turn parliament must reconvene to correct the clearly unintended error.[2] In other jurisdictions such as the USA, the courts have themselves gone ahead and corrected the errors. I do not propose that this court takes that approach but to simply illustrate that there is nothing wrong with an institution or an officer specifically tasked with such responsibility to correct patent mistakes appearing in a statute. In reality the language used by parliament in passing legislation is the authoritative text. Where parliament itself raises alarm that what appears in a statute is not what parliament passed, there can be very little debate if any that the words or text complained of amount to the type of error which the law reviser is allowed to correct. It is insignificant because it does not change the authoritative text as enacted by parliament. That scenario is what obtained in this case. I find therefore that the law reiser's actions conformed to the powers given to him under s 10 of the Act.

The doctrine of *ulta vires* generally refers to situations where a party exceeds the limits of discretionary power conferred on them or where subordinate legislation falls outside the purview of the powers conferred. If the consequences of the subsidiary legislation adversely affect the fundamental rights of the citizenry, it must follow that such subordinate legislation is unconstitutional. Conversely where the secondary legislation conforms to the enabling legislation that law or the actions of an official acting in terms of that law are said to be *intra vires.* In this case, the court has made the finding that the law reviser exercised his discretion by correcting the patent errors which appeared in the amendment within the framework provided by the Act. He then recommended the enactment of The Statute Law Compilation and Revision (Correction of Constitution of Zimbabwe Amendment (No. 2) Act, 2021) Notice, 2023. The question of his actions being unconstitutional cannot arise without a challenge to the constitutionality of s 10 of the Act which confers those powers on him. It is for that reason that I found it unnecessary to deal with the question

[2] http://www.ussc.gov/2004guid/7b1_3.htm

whether the corrections done by the third respondent were unconstitutional in the respects mentioned by the applications.

Disposition

Clearly, the applicants have not made out a case for the grant of the relief which they seek. The third respondent was entitled to correct the errors as he did. The correction culminated in the second respondent promulgating the Statute Law Compilation and Revision (Correction of Constitution of Zimbabwe Amendment (No. 2) Act, 2021) Notice, 2023. That conduct was impeachable. In the circumstances the application cannot succeed.

Costs

The accepted standard is that costs must follow the cause. In this case, I have no reason to depart from that rule.

I accordingly direct that the application be and is hereby dismissed with costs.

Zimbabwe Women Lawyers Association, applicant's legal practitioners
Nyika Kanengoni & Partners, first respondent's legal practitioners
Civil Division of the Attorney General's Office, second and third respondent is legal practitioners