REPORTABLE ZLR (30)

Judgment No. S.C. 38/02

Civil Appeal No. 126/01

LOTTIE GERTRUDE BEVIER STEVENSON v

(1) THE MINISTER OF LOCAL GOVERNMENT AND NATIONAL HOUSING
(2) THE REGISTRAR GENERAL OF ELECTIONS
(3) ELIJAH CHANAKIRA (4) JAMES CHITAURO
(5) A S MPALA (6) J T CHIWESHE
(7) F GULA-NDEBELE (8) C S CHIZEMA
(9) A L MUMBENGEGWI (10) E S MAKONI
(11) I A B GALLETLY

SUPREME COURT OF ZIMBABWE
EBRAHIM JA, SANDURA JA & ZIYAMBI JA
HARARE, FEBRUARY 18 & MAY 30, 2002

A P de Bourbon SC, for the appellant

Y Dondo, for the first respondent

No appearance for the second to the eleventh respondents

SANDURA JA: This is an appeal against a judgment of the High Court which dismissed the appellant's application for an order directing the holding of mayoral and council elections for the City of Harare within sixty days. The relevant facts are adequately set out by ZIYAMBI JA in her judgment.

The second respondent did not oppose the appeal, and the third to the eleventh respondents indicated that they would abide by the Court's decision. This appeal therefore concerns only the appellant and the first respondent.

The appellant's application was dismissed on the ground that she did not have the *locus* standi to bring the application. I respectfully disagree. In my view, the appellant had the requisite *locus standi in judicio*, and the learned judge in the court *a quo* should have determined the real issues raised in the application.

Whilst it is well established that a party who initiates legal proceedings, whether by application or summons, should indicate in the commencing papers that he has the *locus standi* to bring such proceedings, what he has to show in order to satisfy that requirement is that he has an interest or special reason which entitles him to bring such proceedings.

Thus, in Herbstein and Van Winsen *The Civil Practice of the Supreme Court of South Africa* 4 ed at p 401, the learned authors have this to say on the issue of *locus standi* to institute legal proceedings by means of a summons:

> "It must appear from the summons that the plaintiff has an interest or special reason entitling him to sue, i.e. that he has *locus standi* in the matter."

Similarly, on the issue of *locus standi* to file an application, the learned authors say the following at p 364:

> "As in the case of a summons, it must appear from the application that the applicant has an interest or special reason entitling him to bring the application – that he has *locus standi* in the matter."

In many cases the requisite interest or special reason entitling a party to bring legal proceedings has been described as "a real and substantial interest" or as "a direct and substantial interest". See, for example, *United Watch & Diamond Co*

(Pty) Ltd and Ors v Disa Hotels Ltd and Anor 1972 (4) SA 409 (C) at 415; *P E Bosman Transport Works Committee & Ors v Piet Bosman Transport (Pty) Ltd* 1980 (4) SA 801 (T) at 804B; *Zimbabwe Teachers Association & Ors v Minister of Education and Culture* 1990 (2) ZLR 48 (HC); and *Jacobs En 'n Ander v Waks En Andere* 1992 (1) SA 521 (A).

In her founding affidavit the appellant specifically dealt with her *locus standi* and averred as follows:

> "*LOCUS STANDI*
>
> 1. I am a resident of the City of Harare and I am a registered voter in the constituency of Harare North, which falls within the boundaries of the Urban Council of the Harare City Council.
>
> 2 – 5 …".

Because the appellant specified other grounds in addition to the one set out above, the learned judge in the court *a quo* declined to hear her application on the ground that she had badly formulated the issue of *locus standi*. I have no doubt in my mind that the learned judge erred in this regard.

I say so because, in reply to a question put to him by the learned judge, counsel for the appellant in the court *a quo* made it quite clear that the appellant had brought the application in her personal capacity. It was, therefore, unnecessary for the learned judge to consider the issue of the appellant appearing in a representative capacity.

The appellant's *locus standi* arose from the admitted facts that she

resided in Harare and was a registered voter within the area falling under the jurisdiction of the Harare City Council. As a resident of Harare and as a registered voter, the appellant had an interest in the issue of whether the affairs of the City of Harare should be run by a commission appointed by the Minister or by an elected mayor and an elected council.

In my view, the fact that the appellant made other allegations as to her interest in making the application, such as being a Member of Parliament, did not affect her basic interest which arose by virtue of her being a registered voter and a Harare resident.

It was, therefore, understandable that Ms *Dondo*, who appeared for the first respondent, could not support the learned judge's view on the issue of the appellant's *locus standi* in this matter.

In the circumstances, the learned judge in the court *a quo* should have dealt with the issues raised in the appellant's application.

However, it is pertinent to note that after the appeal in this matter had been noted, mayoral and council elections for Harare were held in March 2002. It follows, therefore, that the reason for the appellant's application has now fallen away.

Nevertheless, a determination of the issues raised in the application is essential for the purpose of determining which party should pay the costs of the application in the court *a quo*. However, the issue which arises is whether the matter should be remitted to the High Court.

Mr *de Bourbon*, who appeared for the appellant, submitted that in view of the fact that the issues to be determined are matters of law, and bearing in mind the failure by the High Court to deal with the appellant's application promptly, this Court

should determine the application. On the facts of this case, I agree with counsel's submission in order to avoid any further delay in concluding this matter.

The relief sought by the appellant in her application was an order directing the first and second respondents to hold mayoral and council elections within sixty days from the date of the order, and setting aside the appointments of the commissioners who were running the affairs of the City of Harare. The terms of the order sought have been set out in full by ZIYAMBI JA at the beginning of her judgment. The application was not opposed by the second respondent.

In her founding affidavit, the appellant averred as follows:

"EXECUTIVE MAYOR

18 – 19 …

20 The last time elections for the office of Mayor of Harare were held was in June or July 1996 and Mr Solomon Tawengwa was duly elected as the mayor. In terms of s 51 of the Urban Councils Act [*Chapter 29:15*], his term of office expired after a period of four years from the date he took office. That means it was due to expire in about July 2000.

21 However, in or about May 1999 and certainly before 9 June 1999 Mr Solomon Tawengwa resigned from his office of mayor, and the office of mayor has been vacant since that date.

22 Despite the post being vacant, and contrary to the requirements of s 103J of the Electoral Act, no elections were held within the sixty- day period of the post of Executive Mayor becoming vacant. In fact such elections have still not been held.

23 …

COUNCILLORS

24 Elections for the office of councillor for the then 42 wards (now 45 wards) of the City of Harare were last held in August 1995. In terms of s 103I of the Electoral Act, elections for councillors were accordingly to be held during the month of August 1999. No such elections have been held.

25 – 26 …

27 … Since August 1999 the second respondent has held no elections for the councillors for the City of Harare.

28 …

COMMISSIONERS

29 On 8 March 1999, and in terms of s 80(1) of the Urban Councils Act, the first respondent appointed the third to the eleventh respondents to act as commissioners to run the affairs of the City of Harare.

30 By virtue of s 80(3) of the Act the commissioners should have held office for only six months, and should have in that period arranged elections in the various wards of the City of Harare for the election of councillors. The commissioners, including, and headed by, the third respondent, have made no arrangements whatsoever to hold elections for the positions of councillors. …

31 …

32 The first respondent has purported to extend the term of office of the commissioners, such extensions having taken place on two occasions, the dates of which are unknown to me, but which have now been extended until 31 December 2000. …

33 I contend that such extensions are unlawful …".

In my view, the appellant's argument is unassailable.

In terms of s 51(1) of the Urban Councils Act [*Chapter 29:15*] ("the Urban Councils Act"), the term of office of a mayor is a period of four years, but the mayor is entitled to continue in office until the person elected as mayor at the next election of mayor assumes office.

However, it is common cause that Mr Tawengwa did not complete his term of office. He resigned in May 1999, more than twelve months before the expiry of his term of office.

In terms of s 103J of the Electoral Act [*Chapter 2:01*] ("the Electoral Act"), the election for the executive mayor of Harare should have been held not later than sixty days after the office of mayor became vacant. However, no such election was held, and when the appellant filed her application in the High Court in October 2000, the period for which the first respondent ("the Minister") could have postponed

the election in terms of s 103K of the Electoral Act had long passed. The election was therefore long overdue and no cogent reason was given by the respondents for the failure to comply with the Electoral Act.

With regard to the election of councillors, s 103I of the Electoral Act requires a general election of councillors to be held in every fourth year on any day in the month of August fixed by the second respondent in terms of s 103L of the Electoral Act. Since the councillors, all of whom were suspended by the Minister in February 1999, had been elected in August 1995, a general election of councillors should have been held in August 1999.

Although s 103K of the Electoral Act allows the Minister to postpone the election of councillors for a period not exceeding one year, when the appellant filed her application in the High Court in October 2000 that year had already passed. The election of councillors was, therefore, long overdue and, again, no cogent reason was given by the respondents for their failure to comply with the law.

That conclusion leads to the next issue, which is whether the Minister could avoid having a general election of councillors by continually re-appointing the commissioners. It was common cause that the commissioners were first appointed in March 1999 and that they were subsequently re-appointed on two or three occasions.

Before determining that issue, I wish to set out the relevant provisions of s 80 of the Urban Councils Act. They are as follows:

> "(1) If any time –
>
> (a) there are no councillors for a council area; or
>
> (b) all the councillors for a council area have been suspended or imprisoned or are otherwise unable to exercise all or some of their functions as councillors;
>
> the Minister may appoint one or more persons as commissioners … to act as the council … .
>
> (2) …
>
> (3) A commissioner appointed in terms of subsection (1) shall hold office during the pleasure of the Minister, but his office shall terminate –
>
> (a) as soon as there are any councillors for the council area who are able to exercise all their functions as councillors; or
>
> (b) six months after the date of his appointment;

whichever occurs sooner.

Provided that, if the period of six months expires within three months before the date of the next succeeding general election, the commissioner shall continue to hold office until such general election.

(4) Before the termination of office of a commissioner appointed in terms of subsection (1), otherwise than at a general election or in the circumstances referred to in paragraph (a) of subsection (3), the commissioner shall cause an election to be held on such date as may be fixed by the commissioner to fill the vacancies on the council as if they were special vacancies.

(5) If the Minister is satisfied that, after the termination of the office of a commissioner appointed in terms of subsection (1), there will be no councillors for the council area who will be able to exercise all their functions, the Minister may re-appoint the commissioner in terms of subsection (1)."

As already stated, s 103I of the Electoral Act provides that a general election of councillors shall be held in every fourth year on any day in the month of August fixed by the second respondent. When the Minister appointed the commissioners in March 1999 he must have been aware that the next general election of councillors was due in August 1999. Since the appointment of the commissioners did not mean that the election was postponed, it should have been held in August 1999, on a date fixed by the second respondent in terms of s 103L of the Electoral Act.

In any event, in terms of s 80(4) of the Urban Councils Act, before the termination of office of a commissioner the commissioner is obliged to cause an election to be held on such date as he may fix to fill the vacancies on the council as if they were special vacancies. As the commissioners were appointed in March 1999, their term of office was due to expire in September 1999. Before the expiration of their term of office, they should have caused an election to be held to fill the vacancies on the council as if they were special vacancies. However, they did not do so.

In my view, the first respondent, being the Minister to whom the President assigned the administration of the Urban Councils Act, should have ensured that the commissioners whom he had appointed carried out their obligation to cause an election to be held before their term of office expired in September 1999.

Having said that, it is clear beyond doubt that s 80(5) of the Urban Councils Act, in terms of which the commissioners were re-appointed, on two or three occasions, was not meant to be a vehicle for the postponement of a general election of councillors. In fact, the re-appointment of the commissioners did not in any way whatsoever affect the legal obligation to hold a general election of councillors every fourth year.

I say so because there is no provision in the Electoral Act or the Urban Councils Act which states that once commissioners are appointed or re—appointed any general election of councillors which is due is postponed indefinitely.

Consequently, the Minister could not avoid having a general election of councillors by continually re-appointing the commissioners. In my view, s 80(5) of the Urban Councils Act was not enacted for that purpose. The power given to the Minister by that section was intended for use, as a temporary measure, during the period preceding the holding of elections as required by the Electoral Act. The re-appointments of the commissioners were, therefore, unlawful.

The appeal must, therefore, succeed with costs. Those costs will be borne by the first respondent because he was the only respondent who opposed the appeal.

However, the costs in the court *a quo* will be borne by the first respondent for a different reason. Although the appellant's draft order indicated that the costs were to be borne by the first and second respondents, the second respondent did not oppose the application and there is, therefore, no basis for ordering him to pay the costs of the application.

In the circumstances, the following order is made -

1. The appeal is allowed with costs, which costs shall be borne by the first respondent.

2. The order of the court *a quo* is set aside and the following is substituted –

> "The application is granted in terms of the draft order, with the costs being borne by the first respondent."

EBRAHIM JA: I have read the judgment prepared by SANDURA JA and the dissenting opinion of ZIYAMBI JA. I agree with the views expressed by SANDURA JA.

In my view, the appellant's *locus standi* to seek relief from the courts was patently apparent from the fact "that she resided in Harare and was a registered voter within the area falling under the jurisdiction of Harare …". She was dissatisfied as a resident voter that a proper election of a body of persons, elected for the purpose of administering her interests, had not taken place. Clearly against this background commonsense dictates that she was entitled to seek the assistance of the courts to rectify what she considered to be improper treatment of her, as a voter and a resident in the area.

My brother SANDURA has meticulously outlined the legal provisions pertinent in support of the appellant's rights and his reasoning in reaching the conclusion he has arrived at cannot be faulted.

I therefore respectfully associate myself with his judgment and agree with the order he makes.

ZIYAMBI JA: The appellant, in a court application, applied to the High Court for the following order, as set out in the draft order, namely:

"THAT:

1. The first respondent and the second respondent shall make all necessary arrangements to hold an election for the office of Mayor of the City of Harare, so that any polling will take place within sixty days of the date of this order.

2. The first respondent and the second respondent shall make all necessary arrangements to hold elections in each of the wards of the City of Harare for the election of a councillor for each such ward, so that any polling will take place with sixty days of the date of this order.

3. The continuation in office of the third to the eleventh respondents appointed by the first respondent in terms of section 80 of the Urban Council Act [*Chapter 29:15*] to run the affairs of the City of Harare is declared invalid, and their appointments are hereby set aside.

4. The first respondent and the second respondent, jointly and severally, the one paying the other to be absolved, shall pay the costs of this application."

The application was dismissed by the High Court on the grounds that the appellant had no *locus standi in judicio* to bring the application.

Against this judgment the appellant now appeals on the following grounds:

"1. The court *a quo* erred in finding that the appellant did not have the necessary *locus standi* in her personal capacity to bring the present application.

2. The court *a quo* erred in finding that it was necessary for the appellant to show that she had suffered some direct injury as a result of the unlawful continuation in office of the commission running the affairs of the City of Harare."

In addition, it was submitted by Mr *de Bourbon* that the trial judge ought not to have raised the question of *locus standi* when that issue was not raised by either of the parties.

THE REASONS FOR THE APPLICATION

The appellant summarised her averments thus:

> "I bring this application for an order mandating the holding of an election for the office of Executive Mayor of Harare and for the election of councillors for each of the wards within the City of Harare. As will be seen hereunder, it is my contention that those elections should have been held some considerable time ago, and that the first and second respondents are responsible for the failure to comply with the law in that regard."

She went on to aver as follows:

(1) that, after the resignation of the previous Executive Mayor Mr Solomon Tawengwa in May 1999, and, contrary to the requirements of s 103J of the Electoral Act, no elections were held for an Executive Mayor within sixty days of the post becoming vacant;

(2) that the last elections for the office of Councillors for the City of Harare were held in August 1995. In terms of s 103I(1) of the Electoral Act, elections for councillors were to be held during the month of August 1999 but that as at the date of filing the application, no elections had been held;

(3) that on 8 March 1999, and in terms of s 80 of the Urban Councils Act, [*Chapter 29:15*], the first respondent appointed the third to the eleventh respondents to act as Commissioners to run the City of Harare. By virtue of s 80(3) of the Act the Commissioners should have held office for only six months and should have, within that period, arranged for elections for councillors in the various wards of the City of Harare. Yet, notwithstanding their duty in this regard, no

such arrangements were made. Instead, the first respondent had extended, at least twice, the term of office of the respondents – extensions which she contended were illegal - and that, as at the date of filing the application, the third to the eleventh respondents had been running the affairs of the City of Harare for eighteen months.

Accordingly, it was her contention that:

> "... the persons living in Harare are entitled to be governed by elected representatives, and not be governed by appointees of the first respondent. I contend that the electorate and residents of the City of Harare are being severely prejudiced by the failure to hold elections as required by law." (My underlining)

It will be seen that no averments as to any personal interest or damage to the appellant was made.

> "In order to seek judicial redress in respect of unlawful administrative action a litigant must have *locus standi* or 'standing' to sue. In the context of administrative law this entails:
>
> (i) that the litigant have the necessary capacity to sue; and
>
> (ii) that he have a legally recognised interest in the administrative complained of."

See Lawrence Baxter *Administrative Law* at p 644.

The learned judge, at pp 1-5 of the cyclostyled judgment, reasoned as follows:

> "The manner in which the applicant sought to establish her *locus standi* in the founding affidavit bears quoting in full:
>
> '1. I am a resident of the City of Harare and I am a registered voter in the constituency of Harare North which falls within the boundaries of the Urban Council of the Harare City Council.

2. I was elected as the Member of Parliament for the Harare North constituency at the general election held in June 2000. I was elected as a candidate for the Movement for Democratic Change party.

3. Candidates for the Movement for Democratic Change won all the parliamentary constituencies within the City of Harare, and, accordingly, it is correct to say that the majority of the electorate in Harare support my party.

4. My party intends to field candidates for Mayor and Councillors in the next local elections in Harare. Because of our recent success in the general election it is likely that we will win most, if not all, of the seats.

5. Thus, I feel entitled to bring this application to assert the rights of the majority of persons in Harare who are registered voters in any local government elections affecting the City of Harare.' (emphasis added)

In his notice of opposition on his own and other commissioners' behalf, the fourth respondent and deputy chairman of the Commission, James Chitauro, challenged the applicant's *locus standi* thus:

> 'The feeling of entitlement by the applicant that she has the mandate of the majority of persons in Harare who are registered voters is misplaced. As I said earlier, people who vote in national elections are spurred by considerations which do not always coincide with those in local government elections although the electorate is the same. It is not uncommon for a ruling party to win in central government elections and lose in local government elections. I, therefore, put the applicant's *locus standi* in issue.'

However, in his heads of argument on behalf of the commissioners, Advocate Matinenga abandoned the issue of standing and appeared only to place on record that it had been agreed as between the applicant and the commissioners that each party would bear its own costs.

At the hearing of the matter on 14 February 2001, the court questioned, as it is entitled to, the exact capacity in which the applicant wished to be heard, *viz*, whether in her individual capacity as a resident and voter, as a Member of Parliament, as a representative of her political party, or as a representative of the Harare residents? Advocate Girach, who appeared in the place of Advocate de Bourbon, maintained that the applicant was suing in her personal capacity.

Counsel for the first and second respondents, at the hearing, agreed

that the applicant's standing should indeed be put to issue. The matter was then postponed *sine die* to allow the court to make a determination on this preliminary issue of *locus standi*.

The way in which the applicant pleaded *locus standi* raises a unique problem different from the usual ones of outright lack of standing. The problem raised here is one of contradictory or incomplete assertions, so that although the applicant could have had standing on the basis of any of the grounds she avers, she, for some strange reasons not apparent on the papers, fails to make the necessary averments that would entitle her to be heard in any of the capacities.

Thus, she fails in her founding affidavit to allege any personal injury to herself entitling her to the relief sought. (And, as has been said repeatedly, an applicant must stand or fall by his founding affidavit and the facts alleged in it. See Herbstein and Van Winsen *The Civil Practice of the Supreme Court of South Africa* 4 ed 1997 p 366). Instead, she seeks to be heard in capacities for which she does not have the necessary authorisation; *viz*, to bring the application on behalf of the residents and voters of Harare municipality and/or supporters of her political party resident in Harare. But in neither case does she prove that she has been so mandated by her political party or is legally entitled to bring a representative action on behalf of Harare residents and/or has otherwise complied with the requirements of the Class Actions Act [*Chapter 8:17*].

In *Basset v Platt* 1954 (1) SA 264 (N) summons were held to be irregular and set aside where the plaintiff had not made it clear to the defendant whether he was being sued in a representative or personal capacity.

If the court agrees with Advocate Girach that the applicant is suing in her personal capacity, then she was required to allege the violation of a direct, personal and recognised interest in order to establish her right to institute the proceedings. The learned author Lawrence Baxter *Administrative Law* Juta & Co Ltd 1984 p 655 observes as follows in this regard:

> 'The complainant's interest must be personal to him. In other words, the interest must be capable of individuation. The complainant must be able to claim that it is his interest that is at stake.' …

As has already been noted above, the applicant makes no attempt at all to allege that she herself is entitled to choose who represents her in the municipal government. Her whole application is premised on vindicating 'the rights of the majority of persons in Harare who are registered voters'.

Her other concern is the interest her political party has in fielding candidates for Mayor and councillors in Harare as soon as possible to take advantage of the mood that ensured its success in the June 2000 national general election. But not only does she lack a mandate from her own party to pursue such an action, the interest in question more directly concerns the party itself than her.

Now, at common law, her failure to allege personal injury is fatal not only to her personal standing but also to her attempt to vindicate a public right.

In *Wood & Ors v Ondangwa Tribal Authority & Anor* 1975 (2) SA 294 it was held that under Roman-Dutch Law, no private person may proceed by a popular action (action *popularis*), that the *actiones populares* had become obsolete in the sense that a person is not entitled to protect the right of the public or to 'champion the cause of the people'. Similarly, in *National Party, SWA v Konstitutionale Raad* 1987 (3) SA 544 it was held that a person asserting the rights of the general public has to show a personal interest, that is, personal prejudice to satisfy the requirements of standing.

The law pertaining to *locus standi* is summarised by another learned author, L A Rose Innes, *Judicial Review of Administrative Tribunals in South Africa*, 1963 Juta & Co Ltd at p 23 as follows:

> 'An applicant has *locus standi* to bring on review the breach by an administrative tribunal or official of a statutory prohibition or duty enacted in the public interest only if he shows damage. If the breach is of a common law duty, the applicant must show a sufficient interest. If the breach is of a statutory duty enacted in the interest of the applicant or of a class of persons of whom he is one, he has *locus standi* to bring a review without proof of damage.'

Another exception to the prohibition of the vindication of a general right is where the applicant is a ratepayer. Ratepayers are presumed to have a legitimate interest in the legality of actions taken by their local authorities. As a resident and a registered voter in the City of Harare qualified in terms of section 24 of the Act, it will be assumed that the applicant is a ratepayer or enjoys a standing equivalent to it. Consequently, she would have automatic standing to bring any action, without proof of injury, against the local authority.

The right of a ratepayer to challenge the validity of decisions taken by a local authority has been recognised in our law. DEVITTIE J in *Binza v Acting Director of Works & Anor* 1998 (2) ZLR 364 at 368 said:

> 'I have not found any reported cases in this country, but our law recognises the right of a ratepayer to challenge the validity of decisions taken by a local authority. The rationale is that local authorities are accountable to the ratepayer, for the proper and efficient use of public funds.'

However, the present application is not directed to the local authority but, rather, it seeks to challenge the policy decisions of the Ministries responsible for local government and elections, i.e., the policy decisions of central government. Therefore, the special rules governing the standing of ratepayers *viz-a-viz* their local authorities do not apply in this case." (my underlining)

See *L G B Stevenson v Minister of Local Government and National Housing and Ten Ors* HH-75-2001.

I can find no fault with the reasoning of the learned judge. It is quite apparent that the (appellant's) *locus standi* was "so badly formulated" that the court was left with no choice but to decline to hear the rest of the application.

We were not referred to any authority in support of the submission by Mr *de Bourbon* that the Court was not entitled to look into the question of *locus standi* unless it was raised by the parties. The submission is a curious one since:

> "… the rules of standing constitute one of the major ways in which the law restricts the number and controls the nature of cases going to court. Since the rules are largely 'judge- made', they enable the courts themselves to decide which applicants are deserving of judicial review and which are not; which interests are worthy of protection and which are not."

See Boulle, Harris & Hoexter *Constitutional and Administrative Law* at p 268.

The entire purpose for the rules concerning standing would be defeated if the courts were to take the view that they could not inquire into *locus standi* unless it was raised by one of the litigants. It seems to me that where an applicant clearly has no *locus standi* to bring an application or suit and no party to the proceedings has challenged the standing of the applicant, a court would be failing in its duty if it did not raise the issue *mero motu*.

In any event, the issue of *locus standi* was raised by the third to the eleventh respondents and it was agreed by counsel to be an issue for determination.

COSTS

By the time this matter was argued before us dates had already been set for the elections for Mayor and Councillors for the city of Harare. Mr *de Bourbon* persisted in the appeal, indicating that the appellant was entitled to an order of costs in her favour if the appeal was successful. The learned judge in the court *a quo* made no order as to costs as "sight should not be lost of the fact that it was a genuine, though ill-advised, attempt to vindicate a public interest in legality". The approach by the learned judge commends itself to me and I would make no order as to costs.

Accordingly, I would dismiss the appeal and make no order as to costs.

Kantor & Immerman, appellant's legal practitioners

Civil Division of the Attorney-General's Office, first respondent's legal practitioners
Chihambakwe, Mutizwa & Partners, third to the eleventh respondents' legal practitioners