

**IN THE HIGH COURT OF ZIMBABWE  
HELD AT HARARE**

**CASE NO. HC 5687/21**

In the matter between: -

**SYBETH MUSENGEZI**

**AND**

**ZIMBABWE AFRICAN NATIONAL UNION  
PATRIOTIC FRONT  
EMMERSON DAMBUDZO MNANGAGWA  
OBERT MOSES MPOFU  
PATRICK CHINAMASA  
PHELEKEZELA MPHOKO  
IGNATIUS CHOMBO**

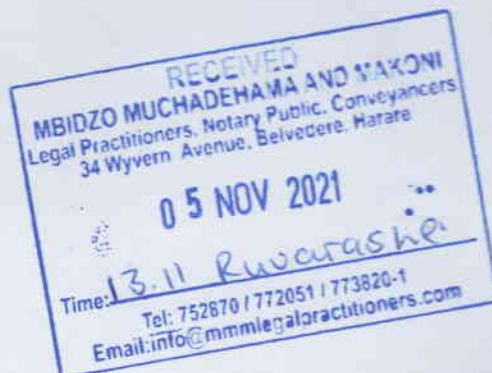
**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT**



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## **NOTICE OF OPPOSITION**

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**- The Law Firm**

**DUBE MANIKAI & HWACHA  
COMMERCIAL LAW CHAMBERS  
HARARE, ZIMBABWE**

**IN THE HIGH COURT OF ZIMBABWE CASE NO. HC 5687/21  
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REGISTRAR OF THE HIGH COURT  
OF ZIMBABWE  
CIVIL DIVISION

**APPLICANT**

05 NOV 2021

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT**

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DATED AT HARARE THIS 5<sup>TH</sup> DAY OF NOVEMBER 2021.



**DUBE, MANIKAI & HWACHA**  
1<sup>st</sup> to 4<sup>th</sup> Respondents' Legal Practitioners  
DMH House, No. 4 Fleetwood  
Alexandra Park  
**HARARE (EIM/OK/IM/KM/pn)**

TO: **THE REGISTRAR**  
High Court of Zimbabwe  
**HARARE**

**IN THE HIGH COURT OF ZIMBABWE    CASE NO. HC 5687/21  
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PATRICK CHINAMASA  
PHELEKEZELA MPHOKO  
IGNATIUS CHOMBO**

**APPLICANT**



**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT**

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**1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup> AND 4<sup>TH</sup> RESPONDENTS' NOTICE OF OPPOSITION**

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**TAKE NOTICE** that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents intend to oppose the Court Application for Declarator on the grounds set out in the Affidavit(s) annexed to this notice, and that their respective address for service is specified below.

The application was served on the 1<sup>st</sup> to 3<sup>rd</sup> Respondents on the **22<sup>nd</sup> day of October 2021** and the 4<sup>th</sup> Respondent was served on the **1<sup>st</sup> November 2021**.

**FURTHER TAKE NOTICE** that the 1<sup>st</sup> to 4<sup>th</sup> Respondents' address of service is care of their legal practitioners, Messrs Dube, Manikai & Hwacha of DMH House, No. 4 Fleetwood, Alexandra Park, Harare.

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DATED AT HARARE THIS 5<sup>TH</sup> DAY OF NOVEMBER 2021.

  
DUBE, MANIKAI & HWACHA  
1<sup>st</sup> to 4<sup>th</sup> Respondents' Legal Practitioners  
DMH House, No. 4 Fleetwood  
Alexandra Park  
HARARE (EIM/OK/IM/KM/pn)

TO: **THE REGISTRAR**  
High Court of Zimbabwe  
HARARE

AND

TO: **NCUBE ATTORNEY NCUBE**  
Applicant's Legal Practitioners  
c/o MBIDZO, MUCHADEHAMA & MAKONI  
34 Wyvern Avenue  
Belvedere West  
HARARE (N. SITHOLE/LM)

AND

TO: **PHELEKEZELA MPHOKO**  
5<sup>th</sup> Respondent  
19A Douglasdale Road  
BULAWAYO

AND

TO: **IGNATIUS CHOMBO**  
6<sup>th</sup> Respondent  
Poland Road  
Chishawasha Hills  
HARARE

**IN THE HIGH COURT OF ZIMBABWE  
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**APPLICANT**

**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT**

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**RESPONDENTS' OPPOSING AFFIDAVIT**

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I, the undersigned,

**OBERT MOSES MPOFU**

do hereby make oath and state that;

1. I am the 3<sup>rd</sup> Respondent in this matter and the Secretary for Administration for the 1<sup>st</sup> Respondent. I am deposing of this affidavit on my own behalf and I am also duly authorised to make this Affidavit on behalf of the 1<sup>st</sup> Respondent.



2. I also depose on behalf of the 2<sup>nd</sup> and 4<sup>th</sup> Respondents who have authorized me to do so as shown in their supporting affidavits attached and marked "**OM1 and OM2**" respectively.
3. The facts herein are within my personal knowledge by virtue of my position and responsibilities in the 1<sup>st</sup> Respondent, which facts, to the best of my information, knowledge and belief are true and correct. My duties in the 1<sup>st</sup> Respondent include acting as secretary to the National People's congress, the National people's party, Central committee, the National Consultative Assembly and the Politburo of the 1<sup>st</sup> Respondent. I also supervise and coordinate the efficient administration of the 1<sup>st</sup> Respondent.
4. Where I relate to legal averments, I do so on the advice of the Respondents' legal practitioners of record, which advice I accept to be true and correct.
5. I have read and understood the Applicant's Application for a *Declaratur* and Founding Affidavit and I wish to respond thereto as detailed below. I believe with respect that the application is without merit and that it ought to be dismissed with the attendant costs on a higher scale. Before delving into the merits, I wish to raise the following preliminary issues;

## POINTS IN LIMINE

### a. *Presidential immunity*

6. The applicant seeks relief against the President of Zimbabwe who is the 2<sup>nd</sup> Respondent in the matter. The President of Zimbabwe is described as follows in the applicant's pleadings, "*He currently occupies the position of President and First Secretary of 1<sup>st</sup> Respondent and is sued in that capacity*". Although the Applicant purports to sue the 2<sup>nd</sup> Respondent in his capacity as the President and First Secretary of the 1<sup>st</sup> Respondent, in essence he is being sued in his personal capacity. The President's capacity in the party must not be confused with his official capacity as the President of the Republic of Zimbabwe.
7. I am advised that **section 98 of the Constitution of Zimbabwe, 2013** provides for Presidential immunity. It reads as follows;  
**"98 Presidential immunity"**
  - (1) *While in office, the President is not liable to civil or criminal proceedings in any court for things done or omitted to be done in his or her personal capacity.*
  - (2) *Civil or criminal proceedings may be instituted against a former President for things done and omitted to be done before he or she became President or while he or she was President.*



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***(3) The running of prescription in relation to any debt or liability of the President arising before or during his or her term of office is suspended while he or she remains in office.***

***(4) In any proceedings brought against a former President for anything done or omitted to be done in his or her official capacity while he or she was President, it is a defence for him or her to prove that the thing was done or omitted in good faith."***

8. It follows that section 98 (1) creates Presidential immunity. The literal import of the section is very clear. There is no need for any aids to interpretation of this section. The import of section 98(1) is that whilst in office, the President of Zimbabwe is not liable to any civil or criminal proceedings in any court for things done or omitted to be done in his personal capacity whilst in office. The section confers immunity to prosecution to a sitting President.
9. It is important to note that the theory of presidential immunity is not found in Zimbabwe alone. It is one that is common in most democracies. Section 98 entitles the President of Zimbabwe to absolute immunity for civil and criminal infractions whilst he is still in office. The immunity insulates him from any civil or criminal prosecution.

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10. The High Court therefore has no jurisdiction to try the President for any cause against him in his personal capacity whilst he is still in office. The provision is part of our Constitution which is the supreme law of the country and hence the Constitution is authoritative on that point. The inescapable conclusion is that s 98(1) of the Constitution creates presidential immunity. This Court has no jurisdiction to try the President of Zimbabwe. The Court must therefore decline to exercise jurisdiction over the President of Zimbabwe.
  11. Furthermore, the Applicant did not seek the leave of the court to sue the President, as is required by **rule 12 (21) of the High Court Rules 2021** which provides as follows:

***"No summons or other civil process of the court may be sued out against the President or against any of the judges of the High Court without the leave of the court granted on court application being made for that purpose."***

12. It follows that the purpose of rule 12 (21) is to protect the President from frivolous and vexatious litigation such as this one. No leave has been sought to sue 2<sup>nd</sup> Respondent in this matter. The 1<sup>st</sup> Respondent is improperly before the court and the relief sought against him cannot be granted.

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13. The matter is defective and cannot go beyond this point. The whole application falls away on this point alone. It must be struck off the roll with costs.

***b. Locus Standi***

14. In the unlikely event that the first preliminary objection is not accepted by this Court, I submit in the alternative that the application is also defective in that the Applicant does not have locus standi to bring these proceedings against the 1<sup>st</sup> – 4<sup>th</sup> Respondents. I am advised by my legal practitioners that a person who approaches the court for relief must have sufficient interest to claim the relief he seeks and must demonstrate competence to bring the proceedings. I am further advised that a person can only attack the conduct or breach regarding a process or conduct where he is able to show that he has a direct and substantial interest in the subject matter of the dispute and that the breach complained of is likely to cause him some prejudice.
15. It is in the regard of the above that i contend that the Applicant in this matter does not have any locus standi to bring this matter against the Respondents. This is because Applicant is not a member of the 1<sup>st</sup> Respondent, in good standing and with capacity to participate and or challenge its affairs as conducted by its organs or officials. He does not

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appear on the cell register of the 1<sup>st</sup> Respondent as a member and there is no record of his membership subscription payments for his accreditation. In fact, Applicant is actually a member of political party known as "FEEZ". It follows that only a member of 1<sup>st</sup> Respondent has the legal capacity to challenge the activities of the association. As such, by not being a member of the 1<sup>st</sup> Respondent but of FEEZ, Applicant has failed to demonstrate that he has a direct and substantial interest in this matter to bring this application as against the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

16. It is quite clear that the principle of *locus standi* is concerned with the relationship between the cause of action and the relief sought. Once a party fails to establish that he has a direct and substantial interest by virtue of being a member of the 1<sup>st</sup> Respondent as in this matter, he fails to establish a cause of action and is not entitled to the relief sought because he does not have *locus standi*. The matter is therefore improperly before the Court for want of locus on the part of the Applicant. The application must be struck off the roll with costs.

***b. Failure to exhaust domestic remedies***

17. In the further alternative, I submit that the Applicant has not exhausted domestic remedies which are provided for in the Applicant's constitution before bringing this application. I

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submit that this alternative preliminary point can only be determined if it is found that the 2<sup>nd</sup> Respondent is properly before the Court and further that the Applicant has legal standing. The 1<sup>st</sup> Respondent operates through a cell structure at district, provincial and national levels. If a member is aggrieved with a decision taken by the 1<sup>st</sup> Respondent, he must first of all seek redress by following the channel structure that is set in terms of the constitution. If there is no recourse at the national level, he may seek further redress at the Central committee. **Article 29 Section 270 of the ZANU PF constitution** stipulates that,

***“Any issue or matter arising in connection with the interpretation or application of this constitution which cannot be resolved otherwise under this Constitution shall be referred for determination to the Central Committee whose decision shall be final.”***

18. The Applicant has not demonstrated that he has sought audience with the Central Committee before approaching this Honourable Court for relief. This court should not be prepared to entertain the Applicant's claim merely because he has decided to apply to court rather than proceed by way of the domestic remedies provided in the 1<sup>st</sup> Respondent's constitution. 1<sup>st</sup> Respondent is a voluntary association regulated by its Constitution and the laws of Zimbabwe and



therefore the Applicant, if he is a member must first resort to the internal remedies provided for in the Constitution before resorting to the courts.

19. It is clear that Applicant should have exhausted his domestic remedies before approaching the courts especially where there is no reason at all for not approaching the court earlier. It is also a trite principle of our law that the Courts do not usurp the administrative roles and functions of private voluntary associations who are empowered to regulate their process in terms of their constitutions which bind them. Applicant has jumped the gun with this application and as such, the application is improper. It must be struck off with costs.

**c. Prescription**

20. I also take an objection of prescription in the further alternative. The Applicant's cause of action has prescribed by reason of lapse of time. Section 15 of the Prescription Act provides that,

*"The period of prescription of a debt shall be (d) except where any enactment provides otherwise, three years, in the case of any other debt."*



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21. The Act defines a debt to include **“anything which may be sued for or claimed by reason of an obligation arising from statute, contract, delict or otherwise.”**
  22. It has taken the Applicant exactly four years to bring this application since the events of November 2017 which forms the basis of his complaint. To make matters worse, there is not even an explanation as to what the Applicant was doing since the central committee made the decision which he wants to impugn.
  23. To the extent that his contentions relate to matters backdating to the period in 2017, it has prescribed. A Court order which will based upon a prescribed claim is contrary to law and public policy and cannot be recognized neither can it be enforced. Accordingly, it should be struck off the roll

***d. The matter is now moot***

24. I am advised further that this application is now clearly an academic exercise of the mind as it has not only prescribed but has also since been clearly overtaken by events. The 2<sup>nd</sup> Respondent was elected as a substantive leader of the 1<sup>st</sup> Respondent at a Congress which was held after the meeting of 19 November 2017. The invalidation of the resolutions of 19 November 2017 does not amount to impugning the

subsequent meeting of a separate organ which elected the 2<sup>nd</sup> Respondent into substantive leadership of the party which itself is not being challenged.

25. Firstly, in November 2017, the 2<sup>nd</sup> Respondent was only appointed by the Central committee as an interim President and first secretary of the 1<sup>st</sup> Respondent pending the 1<sup>st</sup> Respondent's congress held on the 15<sup>th</sup> of December 2017 where he was then appointed as the President and first secretary of the 1<sup>st</sup> Respondent.
26. Further to that, he was nominated as the 1<sup>st</sup> Respondent's presidential candidate in the National elections that followed in 2018 where he was then appointed the President of Zimbabwe. Additionally, the Constitutional Court delivered a judgment to the effect that his appointment as the President of Zimbabwe was legitimate and constitutional following an election petition that was filed.
27. All the above events make the order being sought by the Applicant moot and unenforceable. To nullify the meeting held on the 19<sup>th</sup> of November 2017 and declare the party leadership which followed illegitimate will result in nullifying all the subsequent actions which followed thereafter. This is an undesirable and unnecessary interruption of the 2<sup>nd</sup> Respondent's Constitutional functions as the President of the

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country. He must be protected from frivolous and vexatious litigation which otherwise is now moot.

***e. Incompetency of relief sought***

28. It is clear that the relief sought in this application is incompetent as there is no declaration sought in terms of section 14 of the High Court Act but a declaration as to facts. There is no disputed legal position averred by the Applicant in the matter. I am advised that a declaration as to facts is not competent.
29. Apart from the many problems common to this application as outlined above, it was not explained why the Applicant sought declaratory orders when clearly all he desired was the substantive relief of reinstating the 5<sup>th</sup> Respondent to his position in 1<sup>st</sup> Respondent. The relief especially in paragraph 3 of the draft order is incompetent as there is no nexus between the relief sought and the cause of action
30. It is for the above preliminary objections that the matter must be struck off the roll with costs on a higher scale.

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## **AD MERITS**

31. **Ad Para 1-7**

No issues arise save to state that the 1<sup>st</sup> - 4<sup>th</sup> Respondents' address of service is care of their undersigned legal practitioners of record, ***Messrs Dube, Manikai and Hwacha Legal Practitioners, DMH House, 4 Fleetwood Road, Alexandra Park, Harare.***

32. **Ad para 8-9**

The contents of this composite paragraph are identical to the draft order sought. I aver that no good cause has been shown for the relief and I stand by the contents of this opposing affidavit and its Annexures in opposition thereof.

33. **Ad para 10-11**

33.1 It is denied that Applicant is a member of the 1<sup>st</sup> Respondent, with capacity to participate and or challenge its affairs as conducted by its organs or officials. The Applicant was never accredited to a cell as he was never a resident of Hatcliff as he alleges. This means that he was never a member of the party to begin with. The Applicant cannot therefore produce a party card as evidence before

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this Honourable Court which was given to him after he fraudulently represented that he belonged to a cell.

33.2 I make reference to the supporting affidavit of Godwills Masimirembwa who is the District Coordinating Committee Chairman for (DCC) 4 Harare and acting Chairman for Harare Province which is the overarching party structure responsible for the administration of the affairs of the 1<sup>st</sup> Respondent within the relevant area to which Applicant alleges being resident and a member in good standing. The affidavit confirms that Applicant does not appear on the cell register of the 1<sup>st</sup> Respondent as a member and that there is no record of his membership subscription payments for his accreditation. The affidavit is attached as "**OM3**".

34. **Ad para 12-13**

34.1 I have already denied that Applicant has any right as a member to seek a remedy to any grievance arising from the actions of the 1<sup>st</sup> Respondent because he himself is not a member of 1<sup>st</sup> Respondent in good standing. The attached supporting affidavit by Mr Masimirembwa confirms this.

34.2 In any event, even assuming and not conceding that Applicant is a member of 1<sup>st</sup> Respondent, I submit still that the Applicant has not followed the 1<sup>st</sup> Respondent's internal grievance handling procedure clearly defined in terms of the

1<sup>st</sup> Respondent's constitution. He has not even averred in his founding papers that he has tried to seek internal redress before launching this application. I refer this honourable Court again to the supporting affidavit of Godwills Masimirembwa **OM3** which clearly outlines the 1<sup>st</sup> Respondent grievance handling procedure.

34.3 Further, the mere fact of launching of proceedings against the party and its senior officials is action contrary to the Party's constitution ,rules and norms on the rights and obligations of a member ,and confirms that he has by his conduct ejected himself from the party.

35. **Ad para 14-35**

35.1 It is denied from the onset, that the Special Session of the Central Committee of the 1<sup>st</sup> Respondent convened on the 19 of November 2017 was ultra-vires the provisions of the Constitution of the 1<sup>st</sup> respondent in any manner.

35.2 I submit that 1<sup>st</sup> Respondent's Central committee has full plenary unfettered powers in terms of **Article 7 of the, section 37 of the 1<sup>st</sup> Respondent's Constitution** inter-alia to;



**35.2.1 Make rules, regulations and procedures to govern the conduct of the 1<sup>st</sup> Respondent and its members;**

**35.2.2 Meet once every three months in ordinary session or at any time in special or extraordinary sessions;**

In terms of the party constitution, Congress is ordinarily convened every 5 years and in between Congress, the Central Committee has full preliminary powers, without hindrance or caveat to govern and manage the affairs of the 1<sup>st</sup> Respondent as it did following the events of November 2017.

35.3 I submit therefore from the above that the Central committee session of 19 November 2017 was duly convened in terms of the 1<sup>st</sup> Respondent's constitution and the subsequent resolutions which were passed thereto were lawful. Furthermore, following the incapacitation of the top leadership of the party to execute their duties as enjoined by the 1<sup>st</sup> Respondent's constitution, in particular section 38 thereof; the Central committee was correctly empowered in terms of the Constitution to elect myself as the most senior member available to preside over the proceedings of the Central committee. It is common cause that;

**35.3.1 All members of the Central Committee including the then President and First Secretary of the First Respondent, Comrade Robert Gabriel Mugabe, were informed about the convening of the Central Committee on the 19<sup>th</sup> of November 2017. A majority attended, and some including the then President and First Secretary, The Late Comrade Robert Gabriel Mugabe were unable to attend;**

**35.3.2 The then Vice president and second secretary of the 1<sup>st</sup> Respondent, Phelekezela Mphoko was also unavailable as had fled the country;**

**35.3.3 The then secretary for Administration who is also the of the 6<sup>th</sup> Respondent, Ignatius Chombo had been arrested and was in police custody;**

35.4 It is admitted by the Applicant that all the persons named by the Constitution who are supposed to preside over the meeting were all not present to

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discharge their duties in terms of the Constitution. Therefore, the allegation made by the Applicant that this session was convened clandestinely without the lawful personnel being present is far from the truth and made to mislead this Honourable Court.

35.5 I submit therefore that the meeting was duly constituted in terms of the Constitution with over two hundred members of the three hundred Central committee members present and with all unanimously voting in favour of the resolutions passed.

35.6 With over two hundred other members in attendance, there is nothing that prevented the then President and Vice President, Mugabe and Mphoko from attending the meetings if they were not incapacitated as alleged by the Applicant. Again, If indeed this was an unsanctioned session as further alleged by the Applicant, any one of the members of the Central Committee present would have had the right to challenge the session and in the absence of this having occurred, and the meeting being properly constituted, the resolutions of the meeting are valid and its decisions legitimate and binding.

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35.7 It follows therefore that there was nothing amiss about the Central committee session of 19 November 2017. The allegations made by the Applicant in this regard are not factually or legally supported.

35.8 In any event, I further submit that even though section 38 of the constitution of the 1<sup>st</sup> Respondent seem only to empower the President, Vice President and the National chairman to preside over a session of the Central committee, the Constitution does not preclude the Central committee to appoint any other person in the event of absence of those listed in section 38. A purposive reading of the Constitution therefore in such an event leads to an inescapable conclusion that the Central committee is empowered to elect anyone and, in this case, the most senior member to preside over a session.

35.9 It follows that a strict reading of section 38 as suggested by the Applicant that there is no valid constitutional session without the persons listed in section 38 leads to an absurdity that was never contemplated by the drafters of the Constitution as the Central committee will not be able to carry out its functions in the absence of the President, Vice and the National Chairperson. It is imperative to note that the

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1<sup>st</sup> Respondent is a self-governing voluntary organisation with the power to manage its affairs in accordance to the letter and spirit of its constitution and is able, in plenary, as at the meeting of its Central Committee held on 19 November 2017 to regulate its procedures and to deal with the exigencies of the situation ,as it did under the situation.

36. **Ad para 36-41**

36.1 I have already pointed out that the Central Committee has unfettered powers to conduct its business and pass resolutions by a majority vote. The objection taken by the Applicant that the resolutions passed by the Central committee in the session of 19 November 2017 are unconstitutional lacks substance and merit.

36.2 In any event, assuming and not conceding that the session of 19 November 2017 was improperly convened which is denied, it must be noted that 1<sup>st</sup> Respondent eventually convened a Congress on the 15<sup>th</sup> of December 2017 where all the resolutions of the Central committee were confirmed and the 2<sup>nd</sup> Respondent was unanimously nominated by all the provinces in the 1<sup>st</sup> Respondent and appointed to be the President and First Secretary of 1<sup>st</sup> Respondent. This

therefore resolves the matter on the merits. The process of Congress, though in congruence with the resolutions of the special session of the Central Committee of 19 November 2017, was a separate and distinct expression of the will of the Congress of the people to nominate and elect 2<sup>nd</sup> Respondent to the position of President and First Secretary of ZANUPF.

36.3 In terms of section 24 of the 1<sup>st</sup> Respondent's Constitution, the powers of the congress include inter-alia;

**36.3.1 to be the supreme policy-making organ of the party;**

**36.3.2 elect the President and first secretary;**

**36.3.3 to be the supreme and ultimate authority for the implementation and supervision of the policies, directives, rules and regulations;**

36.4 It follows from the above that the application for a declarator is now moot as it has been overtaken by events. 1<sup>st</sup> Respondent held a congress which validated the resolutions of the Central committee and elected 2<sup>nd</sup> Respondent as the substantive President and first secretary of 1<sup>st</sup> Respondent. There is therefore now renders this application of no moment.



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36.5 In any event, I reiterate that this matter is now moot. The Applicant seeks to unwind through this application all the events that took place which lawfully elected the 2<sup>nd</sup> Respondent into substantive leadership of the party and the country. This application seeks to achieve nothing except being an academic exercise of the mind. It must be treated as such and with the contempt it deserves.

37. **Ad para 42-53**

37.1 I contend that the Applicant has failed to meet a proper case for a declarator in terms of section 14 of the High Court Act. It is clear that the condition precedent to the grant of a declaratory order under section 14 of the High Court of Zimbabwe Act is that the applicant must be an "interested person", in the sense of having a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the court. The interest must concern an existing, future or contingent right. The court will not decide abstract, academic or hypothetical accessions unrelated thereto.

37.2 It is already disputed that the applicant is an interested person as he is not a member of the 1<sup>st</sup> Respondent. He has no existing, future or contingent right upon which he can base this action against the Respondent by virtue of lacking a direct and substantial interest in the subject matter of the

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suit which could be prejudicially affected by the judgment of the court. He is inviting this Court to decide abstract, academic or hypothetical questions unrelated to such an interest, as the interest does not relate to an existing, future or contingent right.

37.3 Furthermore, I contend that this is also not a proper case for the Court to exercise its discretion as provided for in section 14. The court's discretion must only be exercised where the justice or convenience demands that a declaration be made as to the existence of or the nature of a legal right claimed by the applicant or the existence of a legal obligation due by the respondents.

37.4 In this regard, it is common cause that the Government led by His Excellency The President ED Mnangagwa has undertaken reforms to the economy through the Transitional Stabilisation Programme ( 2018-2020 ) and now the National Development Strategy 1, which have stabilised the economy, brought inflation down from 837% in June 2020 to 55% presently; it has brought economic growth estimated by the Government to be approximately 7,8% for 2020-2021, the highest level of growth in Africa and supported by figures from the International Monetary Fund and the World Bank, growth in employment and exports by September 2021 Zimbabwe had already exceeded

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the 2020 Forex earnings of \$6billion and currently has figures in excess of \$7billion largely due to mining exports and demand.

37.5 It cannot be sensible or convenient for this Honourable Court to be invited to upset these national programmes, at the whim of some unknown figure, whose background and credentials are suspect and boarder on factional political interests as alluded to in the supporting affidavits from the DCC 4 attached.

37.6 Nothing has been placed before this Court to show that the declaratory orders sought herein is in respect of existing contingent or future right. What the Court is being asked by this application to do is not to declare any rights but to declare certain conduct of the Respondents as being incorrect. That is not the purpose of a declaratory order under section 14 of the High Court. The Applicant has failed to meet the requirements and his application must fail on that basis.

37.7 The legislature's intention was surely not to create an absurdity where anyone in the abstract would seek a declaratur. The applicant is an illegal member who happens to masquerade by virtue of an old and unregularized party membership card which he has produced. The applicant has no rights arising which ought to be protected by a declarator. Verification of cell records have confirmed that

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the Applicant is not a member of the party. It is settled that a legal right, and not the factual basis upon which a right may be founded, ought to be shown.

37.8 It is further contended for the avoidance of doubt that if the Applicant obtained membership of the party at some point, it was not properly done and no rights as to membership ever vested in him by reason of impropriety on his behalf on the standard processes and procedures applicable to members of ZANU-PF. At any rate, the Applicant posing as an imposter soon ejected himself from the Party by his conduct referenced in the supporting affidavits from the DCC operating levels attached hereto.

37.9 It appears the applicant in a lawless manner seems to feel justified to challenge the activities of the 1<sup>st</sup> Respondent despite that he is not a member in good standing. That alone is not enough and does not meet the requirements of an application of this nature. The court must express its displeasure on abuse of court process by awarding costs on a higher scale.

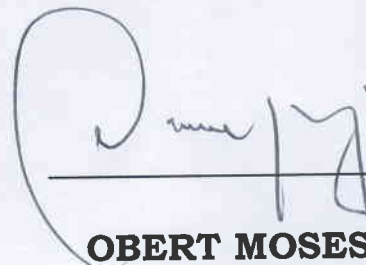
37.10 Furthermore, It is clear that the relief sought in this application especially in paragraph 3 of the draft order amounts to a mandatory interdict, a *mandamus*. It follows that one has to plead and satisfy the requirements of an interdict. The applicant seeks a final interdict especially in

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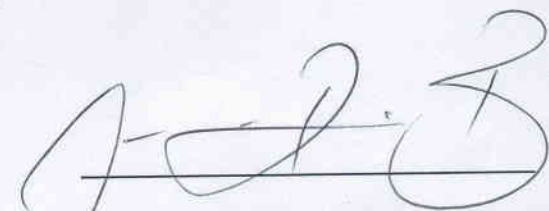
paragraph 3 of his draft order. The requirements are a clear right; a well-grounded apprehension of an irreparable harm; the balance of convenience; the absence of an alternative remedy. It follows that the relief as it is, incompetent, cannot be granted.

37.11 In the premises, the application lacking merit, and justification or ground must be dismissed with costs on a legal practitioner and client's scale.

**THUS SWORN AND SIGNED AT HARARE ON THIS 4<sup>th</sup> DAY OF NOVEMBER 2021**

  
**OBERT MOSES MPOFU**

**Before me,**

  
**COMMISSIONER OF OATHS**





"OMI" 29

**IN THE HIGH COURT OF ZIMBABWE  
HELD AT HARARE**

**CASE NO. HC 5687/21**

In the matter between:-

**SYBETH MUSENGEZI**

And

**ZIMBABWE AFRICAN NATIONAL UNION**

**PATRIOTIC FRONT**

**EMMERSON DAMBUDZO MNANGAGWA**

**OBERT MOSES MPOFU**

**PATRICK CHINAMASA**

**PHELEKEZELA MPHOKO**

**IGNATIUS CHOMBO**



**APPLICANT**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

**3<sup>RD</sup> RESPONDENT**

**4<sup>TH</sup> RESPONDENT**

**5<sup>TH</sup> RESPONDENT**

**6<sup>TH</sup> RESPONDENT**

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**SUPPORTING AFFIDAVIT OF EMMERSON DAMBUDZO MNANGAGWA**

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I, **EMMERSON DAMBUDZO MNANGAGWA** do hereby make oath and swear that:

1. I am the 2<sup>nd</sup> Respondent in this matter. I am the President of the Republic of Zimbabwe and the President and First Secretary of the 1<sup>st</sup> Respondent. The facts to which I depose to are within my personal knowledge and are, to the best of my knowledge and belief true and correct. Where I do not have personal knowledge, I have through diligent enquiry, confirmed the veracity of such facts.
2. I have read the Opposing Affidavit of Obert Moses Mpofo and confirm having authorized him to depose on my behalf in opposition to this spurious application. I also confirm the facts therein, to the extent that they relate to me.
3. Prior to my appointment as interim President and First Secretary of the 1<sup>st</sup> Respondent, I was at all material times the Vice President and Second Secretary of ZANU PF. The letter dated 6 November 2017 was in respect of my dismissal as then Vice President of Zimbabwe but had no bearing on my position at the Party where I remained its Vice President and Second Secretary.
4. I submit that the application for a *declarator* is without merit and is contrived and grossly unreasonable and pray that it be dismissed with costs on a higher scale.



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THUS DONE AND SWORN TO AT HARARE ON THIS 5<sup>TH</sup> day of NOVEMBER 2021.



EMMERSON DAMBUDZO MNANGAGWA

Before me,

  
COMMISSIONER OF OATHS

"Om2"

**IN THE HIGH COURT OF ZIMBABWE  
HELD AT HARARE**

**CASE NO. HC 5687/21**

In the matter between:-

**SYBETH MUSENGEZI**

And

**ZIMBABWE AFRICAN NATIONAL UNION  
PATRIOTIC FRONT**

**EMMERSON DAMBUDZO MNANGAGWA**

**OBERT MOSES MPOFU**

**PATRICK CHINAMASA**

**PHELEKEZELA MPHOKO**

**IGNATIUS CHOMBO**



**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT**

---

**SUPPORTING AFFIDAVIT OF PATRICK CHINAMASA**

---

I, **PATRICK CHINAMASA**, do hereby make oath and swear that:

1. I am the 4<sup>th</sup> Respondent in this matter and the former Secretary for Legal Affairs for the 1<sup>st</sup> Respondent. Currently, I occupy the position of Secretary of Finance of ZANU PF. The facts to which I depose to are within my personal knowledge and are, to the best of my knowledge and belief true and correct. Where I do not have personal knowledge, I have through diligent enquiry, confirmed the veracity of such facts.
2. I have read the Opposing Affidavit of Obert Moses Mpfu and confirm having authorized him to depose on my behalf in opposition to this spurious application. I also confirm the facts therein, to the extent that they relate to me.
3. I submit that the application for a *declarator* is without merit and that accordingly it is baseless and without foundation and that it be dismissed with costs on a higher scale.

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THUS DONE AND SWORN TO AT HARARE ON THIS 5<sup>th</sup> day of NOVEMBER 2021.

Minamasa  
PATRICK CHINAMASA

Before me,

R. B. B.  
COMMISSIONER OF OATHS



IN THE HIGH COURT OF ZIMBABWE  
HELD AT HARARE

CASE NO. HC 5687/21

In the matter between:-

**SYBETH MUSENGEZI**

**APPLICANT**

And

**ZIMBABWE AFRICAN NATIONAL UNION  
PATRIOTIC FRONT**

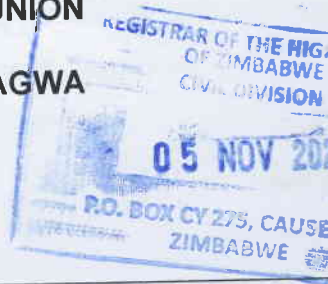
**EMMERSON DAMBUDZO MNANGAGWA**

**OBERT MOSES MPOFU**

**PATRICK CHINAMASA**

**PHELEKEZELA MPHOKO**

**IGNATIUS CHOMBO**



**1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT  
3<sup>RD</sup> RESPONDENT  
4<sup>TH</sup> RESPONDENT  
5<sup>TH</sup> RESPONDENT  
6<sup>TH</sup> RESPONDENT**

**SUPPORTING AFFIDAVIT OF GODWILLS MASIMIREMBWA**

I, **GODWILLS MASIMIREMBWA** do hereby make oath and swear that:

1. I am the District Coordinating Committee Chairman for (DCC) 4 Harare and acting Harare Province Chairman of the 1<sup>st</sup> Respondent for Harare Province of ZANU PF. I confirm that I am responsible for managing and supervising all the cells in all the branches in DCC 4 Harare and that I am familiar with the party's process, procedures, norms and rules that apply to the party and its members and I am responsible for the implementation and observance of the party's ethos from cell, branch, district and provincial level.
2. The facts to which I depose to are within my personal knowledge and are, to the best of my knowledge and belief true and correct. Where I do not have personal knowledge, I have through diligent enquiry, confirmed the veracity of such facts.
3. I confirm that Applicant is not a member of the 1<sup>st</sup> Respondent in good standing. Firstly, he applied to be a member of the 1<sup>st</sup> Respondent in 2014 in Hatcliffe yet he did not reside there and was using a local address belonging to one Comrade Mutimbanyoka's mother. It must be noted that for one to qualify as a member,

they must belong to a cell within their area of residence. The party contends that Applicant has "dirty hands" in respect of his claims to membership.

4. It has currently been discovered that the Applicant is the branch deputy secretary to which no elections were held for branch officials other than the Chairman. This means that anything else has not been verified and it's origins and authenticity questionable. It is believed, on investigation by the DCC security that reports to me as Chairman of DCC 4 Harare and also Acting Chairman of the Harare Province, that Applicant was "planted " into the relevant district ,without the relevant credentials for political and other reasons by the former Secretary for the Commissariat Saviour Kasukuwere ,to whom he is allegedly related .
5. In 2018, Applicant contested in the 1<sup>st</sup> Respondent's primary elections to become member of parliament and he lost. In 2019, he applied to participate in the Harare DCC elections as youth affairs which was denied by the National Political Commissariat.
6. In 2020, DCCs in Harare carried out a restructuring exercise to re-register members into cells. Applicant was found not registered in any cell as it came out that he did not reside in Hatcliffe. In June of the same year, he was seen to be a member of another political front known as Front for Economic Emancipation in Zimbabwe ("FEEZ") by participating in their first press conference. He uploaded a video on his Facebook page wearing FEEZ regalia and denounced and disrespected 1<sup>st</sup> Respondent and its First Secretary, the 2<sup>nd</sup> Respondent in the matter. The video footages are attached as **Annexure "GM1" and "GM2"**.
7. Godfrey Tsenengamu was suspended from the party in the 336<sup>th</sup> session of the Politburo on 5 February 2020. By virtue of his association with this party, the Applicant expelled himself from the 1<sup>st</sup> Respondent and as such, is no longer a member. Godfrey Tsenengamu subsequently formed his own party named above and conducted a public address announcing the formation of his party where he

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denounced the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The Applicant sat in cohorts with Tsenengamu at this platform thereby associating himself by conduct with another political party. Ipso facto he therefore jettisoned himself from ZANUPF whose rules, norms and constitution frown upon such.

8. Currently, Applicant is not in any 1<sup>st</sup> Respondent's party cells and this is further supported by the fact that there are no official records of membership fee payments from him. He therefore has no right to bring these proceedings against the Respondents.

9. However, I wish to further elaborate that even if it is to be found that the Applicant is a member of the 1<sup>st</sup> Respondent which is denied, he has not complied with the 1<sup>st</sup> Respondent's grievance procedure which is clearly defined in terms of the Constitution and custom. **Section 20** provides for rights of members which include inter-alia;

***(3) to have audience with any officer of the Party;***

***(4) to make representations to any officer or organ of the Party in respect of any matter which affects his or her rights as a member;***

***(7) to seek a remedy in respect of any grievance as a result of the action of any person in authority over him.***

10. It follows in terms of the above that the Constitution contemplated those domestic remedies should be the initial resort for any aggrieved member. As such, in terms of the above, one has to follow due internal processes before rushing to Court.

11. It must be noted in terms of the Party hierarchy, structures start at the Cell level and move to Branch, District, District Coordinating Committee, the Province and then the National Structures. Therefore, at each level except the DCC there is a disciplinary committee in charge of enforcement of rights of the members.

JB



Therefore, one can approach, any of those organs depending on the magnitude of the issue requiring intervention.

12. In terms of section 70 of the Party Constitution, the National Disciplinary Committee ("NDC") also acts as an appeal and review body of the decisions from lower structures. When one is aggrieved with a decision of the lower Disciplinary Organs, one may approach the NDC on appeal or review. The NDC itself may *mero motu* direct that a case be transferred to it, if in its view there is likelihood of miscarriage of justice.
13. The Central Committee, duly convened is an appellate or review body. It does not have jurisdiction of first instance [section 74]. Thus, if a member is not satisfied with the decision of the NDC, that member may approach the Central Committee for redress.
14. Above the Central Committee there is the Ad hoc appeals Committee of Congress, which reviews and hears appeals against decisions of the Central Committee and NDC. This body is chaired by the Vice President of the Party and its decision is final on any matter
15. It follows that 1<sup>st</sup> Respondent has an elaborate dispute resolution or grievance procedure which accommodates everyone. As can be seen above, there is a clear hierarchy, with sufficient checks and balances for which the Applicant ought to have referred his issue than to make this application.
16. It is in this regard that I contend that the application must be dismissed for want of merit.

AB

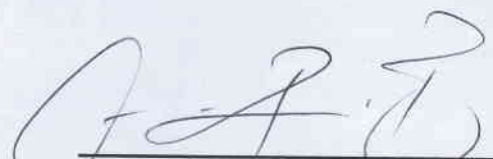
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THUS DONE AND SWORN TO AT HARARE ON THIS <sup>th</sup> 3 day of NOVEMBER 2021.



GODWILLS MASIMIREMBWA

Before me,



COMMISSIONER OF OATHS

