

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

**CASE NO: HC
X – REF HC 1940/21, HC 1941/21, HC 08/22**

In the matter between:

THOKOZANI KHUPE

1st APPLICANT

**THE MOVEMENT FOR DEMOCRATIC
CHANGE (T)**

2nd APPLICANT

And

DOUGLAS TOGARASEYI MWONZORA, NO

1st RESPONDENT

**MINISTER OF JUSTICE LEGAL AND
PARLIAMENTARY AFFAIRS (NO)**

2nd RESPONDENT

**MINISTER OF FINANCE AND
ECONOMIC DEVELOPMENT (NO)**

3rd RESPONDENT

URGENT CHAMBER APPLICATION

NCUBE ATTORNEYS
Applicants' Legal Practitioners
12a Park Road
Suburbs
BULAWAYO

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3rd RESPONDENT

URGENT CHAMBER APPLICATION

TAKE NOTICE that the Applicants intend to make an urgent chamber application to this Honourable Court on the grounds that: -

1. Despite the fact that 1st Respondent automatically expelled himself from the Presidency of 2nd Applicant by joining or sympathizing with another party, the Movement for Democratic Change Alliance.
2. 1st respondent cannot lawfully receive, the ZWL 149 850 00, it being the money due to the 2nd Applicant in terms section 3 (2) of the Political Parties Finances Act (Chapter 2:11) .This act is unlawful.
3. That the 1st respondent being the leader and President of the Movement for Democratic Change Alliance, the latter political party is not entitled to Political Parties Financial funding.

FURTHER TAKE NOTICE that the founding affidavit of **THOKOZANI KHUPE** and attached documents shall be used in support of the application.

DATED AT BULAWAYO THIS DAY OF JANUARY 2022.

NCUBE ATTORNEYS
Applicants' Legal Practitioners
12a Park Road
Suburbs
BULAWAYO (Mr. N. Sithole/lm)

TO: THE ASSISTANT REGISTRAR
High Court of Zimbabwe
BULAWAYO

AND TO: DOUGLAS TOGARASEYI MWONZORA, N.O
1st Respondent herein
Harvest House
44 Nelson Mandela Avenue
HARARE

TO: MINISTER OF JUSTICE AND PARLIAMENTARY AFFAIRS, NO.
2nd Respondent herein
Mukwati Building
Cnr 4th Street/Selous
HARARE

AND TO: MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT, NO.
3rd Respondent therein
Mukwati Building
Cnr 4th Street/ Selous
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**MINISTER OF JUSTICE LEGAL AND
PARLIAMENTARY AFFAIRS (NO)**

2nd RESPONDENT

**MINISTER OF FINANCE AND
ECONOMIC DEVELOPMENT (NO)**

3rd RESPONDENT

CERTIFICATE OF URGENCY

I, **KHOLWANI NGWENYA**, a registered legal practitioner duly sworn and admitted and practising as such at Bulawayo with the firm of T J Mabhikwa and Partners .Legal Practitioners, having read and understood the founding affidavit of **THOKOZANI KHUPE**, am satisfied and do hereby certify that this matter is urgent for the following reason:-

1. The 2nd Applicant is a Political Party by the name of Movement for Democratic Change (T) and that 1st Applicant is its leader in the Acting capacity as 1st respondent, who was hitherto its leader, is now the leader of a different political outfit by the name Movement for Democratic Change Alliance.
2. The 1st Respondent is contesting in the forthcoming by election under the banner of the Movement for Democratic Change Alliance.
3. In terms of the Political Parties Finances Act, the Movement for Democratic Change (T) is entitled to ZWL 149 850 000 which has been Gazetted on the 25th January 2022, through the Government Gazette General Notice 125 A of 2022, dated 25th January 2022.

4. The 2nd and 3rd Respondents are responsible for the disbursement of the ZWL 149 850.00 into the Movement of Democratic Change (T)'s bank account.
5. 1st respondent is the former leader and President of the 2nd Applicant and now is the self-proclaimed leader and president of the Movement for Democratic Change Alliance, the latter being a totally different political party.
6. Thus, the 2nd Applicant who automatically fell under 1st Applicant's stewardship following the desertion of the 1st respondent, is entitled to receive the amount of ZWL 149 850.00, it being funding released to it in terms of the Political Parties Finance Act.
7. 1st Applicant became aware of the Gazette on the 27th January 2022. She immediately thereafter engaged her present legal practitioners on the 28th January 2022.
8. It would be a travesty of justice if 1st respondent who is the leader and President of a different political party would receive and superintend over finances of the Movement for Democratic Change (T), after opting out of it.
9. It would be in the interest of justice that the disbursement of funds due to the 2nd Applicant be channeled to the 2nd Applicant, and that 1st respondent be interdicted from receiving the same on behalf of the 2nd Applicant, and 2nd and 3rd respondent be interdicted from disbursing the said funds to or through the 1st respondent.
10. The Applicants have treated this matter as urgent and as such have demonstrated that they have a prima facie right, that the balance of convenience favours the granting of an order as the Movement of Democratic Change Alliance is not entitled to receive the ZWL \$149 850 000.00. as per the Political Parties Finances Act.
11. It would be unlawful for the Movement of Democratic Change Alliance to benefit from such funding as it did not garner 29% of the total votes casted in 2018 general elections.
12. Such unlawfulness needs to be urgently interdicted.
13. This matter is clearly urgent and cannot stand or wait in the queue.

DONE AND SIGNED AT BULAWAYO THIS JANUARY 2022

BY ME _____

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2nd RESPONDENT

**MINISTER OF FINANCE AND
ECONOMIC DEVELOPMENT (NO)**

3rd RESPONDENT

FOUNDING AFFIDAVIT OF THOKOZANI KHUPHE

I, **THOKOZANI KHUPHE** do hereby make oath and state as follows: -

THE PARTIES

1. I am the 1st applicant in this matter being a Female adult person of Zimbabwe with a capacity to sue and to be sued. My address of service is c/o my undersigned legal practitioners of record.
2. All the facts that I depose hereto are to my knowledge and belief correct and true, I also depose to this affidavit on behalf of the 2nd Applicant, to which I am the Acting President.
3. I have a direct and substantial interest in the matter under consideration herein and as such have standing to approach the Honorable Court for the relief set out herein as I shall demonstrate hereunder.

4. 2nd applicant is **MOVEMENT FOR DEMOCRATIC CHANGE (T)**, a common law universitas governed by its own Constitution with power to sue and be sued in its own name. Its address of service for purposes of this matter is that of its undersigned legal
5. 1st respondent is **DOUGLAS TOGARASEYI MWONZORA (N.O)**, being a male adult person with a capacity to sue and to be sued, cited herein in his official capacity as the former President of the 2nd Applicant. His address of address of service is c/o Harvest House, number 44 Nelson Mandela Avenue, Harare.
6. 2nd respondent is **THE MINISTER OF JUSTICE LEGAL AND PARLIAMENTARY AFFAIRS (N.O)**, cited herein in his official capacity as the Minister responsible for, among other things, oversight and administration of the Political Parties Finance Act (Chapter 2:11) as well as the Electoral Act. Its address of service is 6th floor New Government Complex, Samora Machel/ 3rd Street, Harare
7. 3rd respondent is **MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT (N.O)**, cited herein in his official capacity as the Minister responsible for the oversight and administration of the Consolidated Revenue Fund. Its address of service is Mukwati Building, Corner 4th street and Selous, Harare.

LEGAL BASIS FOR AN INTERDICT

1. In this matter I set out hereunder briefly, the legal basis of the interdict sought per the provisional order annexed herein.
2. In this matter, the 2nd Applicant, a political party which participated in the General election of 2017 and received 29.97% of the total votes cast and is entitled to ZWL \$149 850 000.00 as per Government Gazette, General Notice number 125 A of 2022 dated 25th January 2022, seeks to interdict on an urgent basis the 2nd and 3rd respondents from disbursing the sum afore said to the Movement for Democratic Change Alliance led by 1st respondent, for the reason the 2nd Applicant is the political party entitled to the ZWL \$ 149 850 000.00 for the following reasons
 - a. The second respondent is the Political Party that participated in the General Elections of 2018 and garnered 29.97%.of the total votes casted
 - b. That in terms of section 3 (2) of the Political Parties (Finances) Act (Chapter 2:11), 2nd Applicant is entitled to ZWL \$149 850 000.00.
 - c. That the 1st Respondent automatically expelled himself from the membership of the 2nd Applicant when he declared himself the president of a political outfit under the name and style of Movement of Democratic Change Alliance in a letter to Zimbabwe Electoral Commission dated 03rd January 2022.

BACKGROUND IN BRIEF

3. I am a member and Acting President of the 2nd Applicant, being one of the founders of the 2nd Applicant with the late Gibson Sibanda, Doctor Morgan Richard Tsvangirai, Mr. Lovemore Matongo, Professor Welshman Ncube and Mr. Tendai Biti to name a few back in 1999.
4. 2nd Applicant is a constitutional common law *universitas*, whose Constitution reigns supreme. No one is above 2nd Applicant's constitution. I beg leave to attach 2nd Applicant's Constitution and mark it **annexure "A"**.
5. I have stood against all odds to defend 2nd Applicant's constitution. As late as 2020, I participated as one of the protagonists in a matter where the administrative positions in the organization were being contested. The celebrated and leading Mashavire **Case** was introduced into our legal jurisprudence, and I must quickly point out that 1st respondent is the beneficiary of the watershed judgement in the said case.
6. As events unfolded I and 1st Respondent expelled members of the 2nd Applicant who violated its constitution. Article 5.10 (a) of 2nd Applicants constitution clearly states that

"Membership of the Party shall be terminated if, a member of the Party joins or supports a political party other than MDC (termination of membership in these circumstances shall be automatic)
7. Based on the above, one **Mr. Prince Dubeko Sibanda**, a former member of Parliament in Binga North was expelled from his membership in the 2nd Applicant political party and subsequently recalled from Parliament. The foregoing is a notorious fact.
8. I must say that it has always been our position that it is a taboo for anyone of the 2nd Applicant's members to align themselves with any political outfit other than 2nd Applicant, let alone Movement for Democratic Change Alliance. Some of the reasons for the impending by elections are that, there were members of the 2nd Applicant who were expelled from the 2nd Applicant's organization and then recalled from their respective deployments. Most of the recalls were occasioned by the fact that some members of the 2nd Applicant had joined or were sympathetic to the Movement for Democratic Change Alliance.
9. It would be inadequate if I should not deal with the political acrimony between the 2nd Applicant and the Movement for Democratic Change Alliance, in that the 2nd Applicant has always viewed the Movement for Democratic Change Alliance as an undemocratic outfit designed to thwart the noble ideology of the 2nd Applicant and is therefore an existential threat to the 2nd Applicant. It follows therefore, that, any member of the 2nd Applicant who exhibits traits of undermining the spirit and the purport of the 2nd Applicant Constitution should find himself or herself without a political home,
10. I must admit that my relationship with the 1st respondent has not been healthy at all. I have always felt that regardless of the effort that I put in my quest to develop the 2nd applicant into a formidable political outfit, such efforts, were being undermined by 1st

Respondent's desire to violate 2nd Applicant's Constitution every step of the way and for many times without a number. This status quo has been so frustrating to say the least.

11. One of the glaring violations of the 2nd Applicant's constitution was when the 1st respondent purported to appoint a 2nd deputy president in 2nd Applicant's organization contrary to what 2nd Applicant's Constitution provides. This issue was dealt with conclusively in the *Nelson Chamisa and others v Elias Mashavira and others SC 56/2020*, wherein, the court declared that the appointment of the 2nd deputy president in 2nd Applicant's structures was unlawful in so far as the 2nd Applicant's constitution did not provide for such.
12. 1st respondent then started a covert operation where he went about expelling members of the 2nd applicant without following due process. The mayor of Gweru, "his worship Makombe" became his latest victim. The 1st respondent went on to attempt my recall from Parliament, I challenged that move and filed an urgent matter in High Court Bulawayo under cover of case number **HC1941/2021** on the 13th December 2021.
13. My Legal Practitioners of record attended to argue the matter before **Hon Justice B. Ndlovu** and judgement was reserved.
14. While I was waiting for the judgement, it came to my attention that 1st respondent had lied under oath, I then withdrew the case under cover of case number **HC 1941/21** on 04 January 2022. I immediately filed another urgent chamber application on the same date under cover of case number **HC08 /22**.
15. Case number **HC08/22** was struck off the roll of urgent matters for the reasons clearly spelt out on the minute from the Registrar of the High Court. The reasons are self-explained and I attach the minute hereto and mark it **annexure "B"**.
16. **1st respondent's penchant for violating the constitution did not stop there, I note that he has written a letter to the Zimbabwe Electoral Commission declaring that he is now the President of another political outfit by the name and style of Movement of Democratic Change Alliance, I attach the copy of the letter dated 03rd January 2022 as annexure "C"**.
17. As if that the above was not an assault enough, on the 2nd Applicant's constitution, the 1st respondent then purported to suspend me through a press statement made on 20th January 2022, and in that press statement it was stated that my letter of suspension had already been sent and had been received by my legal practitioners of record. I must state that I had not seen my legal practitioners of record as at the time when the press statement afore alluded to was made
 - 17.1 I must say that my legal practitioners of record had indicated that the attempt to suspend me was a legal nullity, it was their advice that, 1st respondent had declared himself the President of a new party, the Movement for Democratic Change Alliance, hence, he could not be a leader of two political formations.
 - 17.2 It was stated that in terms of 2nd Applicant's constitution, 1st respondent violated Article 5.10. (a) of 2nd Applicant's constitution.

18. Frustrated by these events I then organized a meeting which was well attended to and declared a split on the 21st of January 2022. I attach a copy of my speech dated on herein marked **annexure “D”**.
19. I have been advised, which advise I accept to be true and correct that my meeting of the 21st January 2022, is problematic in two ways. One of such is that, as the Deputy President in the 2nd Applicant’s party I assumed automatic leadership as an acting President by operation of the provisions of the 2nd Applicant’s constitution.
20. While I am on record as having declared a split on the 21st January 2022 in Bulawayo, I am advised that the true legal position is that the 1st respondent had been automatically expelled from membership of the 2nd Applicant on account of his political association with or support of the Movement for Democratic Change Alliance, leaving myself, as the Acting President of the 2nd Applicant, the person in charge of 2nd Applicant’s affairs in that capacity. The foregoing is so, because the 2nd Applicant’s constitution does not recognize the appointment of a 2nd vice president of the 2nd Applicant.
23. I am aware that 1st respondent’s letter addressed to the Zimbabwe Electoral Commission was suggestive of the fact that the Movement for Democratic Change Alliance, is a result of an alliance pact signed on the 5th August 2017, which pact still subsists. This position is not legally correct.
24. The Movement for Democratic Change Alliance, was a composite political co-operation agreement signed by the late Morgan Tsvangirai (MDC T), Tendai Biti (PDP), Prof Welshman Ncube (MDC), Jacob Ngarivhume (Transform Zimbabwe), Mathias Guchutu (MCD) and Denford Musiyarira (Zanu Ndonga) which seized to exist the 2018 general elections. After all it was a 2018 general election pact
25. I am further advised that, when the 1st respondent declared himself President of the Movement for Democratic Change Alliance, a position that is not being disputed, and when the Movement for democratic Change Alliance is participating in this by election under such flagship, its membership cannot be bound by the detects of 2nd Applicant’s constitution. This effectively means there are new distinct and unrelated political formations from the 2nd Applicant.

THE ISSUES

26. It is common cause that 2nd and 3rd respondents are due to make payments of ZWL \$ 149 500 000 being state meant to finance political parties represented in the National Assembly. In this situation, 2nd Applicant is due to receive such funds based on the total number of votes garnered by it in the 2018 general elections. The Movement for Democratic Change Alliance, being a political outfit now led by 1st respondent, did not by law, participate in such election neither did it garner 29.97% of total votes that were cast in 2018, therefore it is not entitled to such funding. The Gazette afore referred to is attached herein as **Annexure “F”**.
27. As already explained above that the 1st respondent automatically expelled himself from the 2nd Applicant’s organization and automatically relinquished his role of the

Presidency of the 2nd Applicant, he must be recognized as the President and leader of the Movement for Democratic Change Alliance.

28. For all intents and purposes it should be recognised that I am the Acting President of the 2nd Applicant and therefore entitled to demand that the ZWL \$149 850 000.00 be deposited in the following bank account **AFC, Movement for Democratic Change (T), Branch Bulawayo, Account Type: Corporate Account, Account Number: 100001481945.**
29. In the unlikely event that the court arrives at the conclusion that they has been a split in the 2nd Applicant, it would be in the interest of justice that the total amount of ZWL \$ 149 850 000.00 be divided into two and a total amount of ZWL \$74 925 000 be deposited into the following bank account **AFC, Movement for Democratic Change (T), Branch Bulawayo, Account Type: Corporate Account, Account Number: 100001481945.**
30. I have in my capacity as Acting President of 2nd Applicant written correspondences to the Parliament of Zimbabwe, Ministry of Justice Legal and Parliamentary Affairs, the Minister of Local Government Public Works and National Housing, the Permanent Secretary Ministry of Justice Legal and Parliamentary Affairs and the Honorable Speaker of Parliament to put on record the automatic expulsion of the 1st Respondent from membership of the 2nd Applicant. See Annexures “**G1, G2, G3, G4 and G5**” hereto attached.

Urgency

- 30 On 25th January 2022, through a Government Gazette dated 25th January 2022, General Notice: 125 A of 2022, the Government of Zimbabwe declared the availability of ZWL \$ 149 850 000 to the 2nd Applicant, being its share of state funding in terms of the Political Parties Finance Act. See
- 31 I became aware of the Government Gazette mentioned above on the 27th January 2022 and instructed my attorneys to file an urgent application to interdict the 1st respondent who is angling himself back into the 2nd Applicant’s structures.
32. I have treated this matter with the urgency that it deserves. When information was brought to my attention that, 2nd and 3rd respondents have received and are paying out the said funds, I acted by swiftly proceeding to court

The prima facie right

32. The 2nd Applicant participated in 2018 general and garnered 29.97% of the total number of votes casted. It is trite, I am advised that it follows that no other entity or party apart from Zimbabwe African National Union Patriotic Front and the 2nd Applicant are entitled to the funding.

Well-grounded apprehension of irreparable harm

33. It is a notorious fact that the 1st respondent through his spokesperson has made a

statement purporting to suspend me from the activities of the 2nd Applicant. This is against the backdrop of the fact that 1st respondent voluntarily moved out and aligned himself with the activities of the MDC A.

34. It is the duty of the court to guard against the kind of conduct complained of and that the 1st respondent should be stopped from receiving the said funds on behalf of the 2nd applicant, because the 1st respondent is no longer a member of the 2nd Applicant. Indeed, if the 2nd and 3rd respondents are going to disburse the funds to any other entity, the 2nd Applicant will suffer irreparable harm.

Balance of convenience

35. Balance of convenience favor's the granting of the interim order. I re iterate for the umpteenth time that the 2nd Applicant is the one entitled to the gazette funding and therefore, the transfer of funds into the 2nd Applicant's bank account should be declared.

36. In the unlikely event that the court believes otherwise, it would be in the interest of justice that the funds in question be divided into two halves and the 2nd Applicant led by 1st Applicant receives ZWL \$74 925 000.00 into its bank account

37. Wherefore, I seek an order interdicting the 2nd and 3rd respondents from disbursing the funds to any other bank account apart from the following bank account, **AFC, Movement for Democratic Change (T), Branch Bulawayo, Account Type: Corporate Account, Account Number: 100001481945**. If the funds have been disbursed already, that a moratorium be issued stopping any person from using the said moneys pending the finalization of this matter.

WHEREFORE I pray for an order in terms of the draft annexed herein.

SWORN TO AT BULAWAYO THIS DAY OF JANUARY 2022

BY ME:

THOKOZANI KHUPE

BEFORE ME:

COMMISSIONER OF OATHS

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

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1st RESPONDENT

**MINISTER OF JUSTICE LEGAL AND
PARLIAMENTARY AFFAIRS (NO)**

2nd RESPONDENT

**MINISTER OF FINANCE AND
ECONOMIC DEVELOPMENT (NO)**

3rd RESPONDENT

PROVISIONAL ORDER

TO THE RESPONDENTS NAMED HEREIN

TO: DOUGLAS TOGARASEYI MWONZORA, N.O
1st Respondent herein
Harvest House
44 Nelson Mandela Avenue
HARARE

AND TO: MINISTER OF JUSTICE AND PARLIAMENTARY AFFAIRS, NO.
2nd Respondent herein
Mukwati Building
Cnr 4th Street/Selous
HARARE

AND TO: MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT, NO.
3rd Respondent therein
Mukwati Building
Cnr 4th Street/ Selous

TAKE NOTICE that on the **day of** **2022** the court sitting at **BULAWAYO** before the **Honourable Mr./Mrs. Justice** issued a provisional order as shown overleaf. The annexed chamber application, affidavits and documents were used in support of the application for this Provisional order.

If you intend to oppose the confirmation of this Provisional Order, you will have to file a Notice of Opposition in Form 29B, together with one or more opposing affidavits with the Registrar of the High Court at Bulawayo within ten (10) days after the date on which the Provisional Order and Annexures were served upon you. You also have to serve a copy of the notice of opposition and affidavits on the Applicant(s) on the address of service in the application.

If you do not file an opposing affidavit in the period specified above, this matter will be set down for hearing in the High Court at Bulawayo without further notice to you and will be dealt with as an unopposed matter for the confirmation of the Provisional Order. If you wish to have the Provisional Order changed or set aside sooner than the rules of court normally allow and can show good cause for this, you should approach the Applicant's Legal Practitioner to agree in consultation with the Registrar for a suitable date. If this cannot be agreed, or there is great urgency, you may make a chamber application, on notice to the applicant, for directions from a Judge as to when the matter can be argued.

TERMS OF THE FINAL ORDER SOUGHT

That you show cause to this Honorable Court why a final order should not be made in the following terms:

1. It be and is hereby declared that the monies due under the Political Parties Finances Act belong to the Movement for Democratic Change (T) led by Acting President Doctor Thokozani Khupe.
2. 2nd and 3rd Respondents be and are hereby ordered to pay ZWL \$ 149 850 000, it being moneys due to the Movement of Democratic Change (T) led by Acting President Doctor Thokozani Khupe in terms of the Political Parties Finances Act through its bank Account **AFC, Movement for Democratic Change (T), Branch Bulawayo, Account Type: Corporate Account, Account Number: 100001481945**
3. If the ZWL 149 850 000 has been disbursed to any person, the ZWL 149 850 000 be reversed and redirected to Movement of Democratic Change (T) led by Acting President Thokozani Khupe. Account number **AFC, Movement for Democratic Change (T), Branch Bulawayo, Account Type: Corporate Account, Account Number: 100001481945**

Alternatively

- 4 2nd and 3rd Respondents be and are hereby ordered to pay ZWL \$74 925 000 due to the Movement for Democratic Change (T) led by its Acting President Doctor Thokozani Khupe in terms of the Political Parties Finances Act through its bank account, **AFC, Movement for Democratic Change (T), Branch Bulawayo, Account Type: Corporate Account, Account Number: 100001481945.**

INTERIM RELIEF GRANTED

Pending the finalization of this matter, Applicant be and is hereby granted the following relief:

1. The 2nd and 3rd respondents are hereby interdicted and prohibited from disbursing the sum of ZWL \$.149 850 000.00 due to the Movement for Democratic Change (T) in terms of the Political Parties Finances Act (Chapter 2:11) to any political party or person.

2. That, should such funding have been disbursed as on the date of this order, the recipient of such funds be interdicted and prohibited from spending or using any of such funds for any purpose what so ever, such that the recipient be and is hereby ordered to keep such funds safe and intact.

3. That this provisional order shall remain operative notwithstanding the noting of an appeal by any of the Respondents.

SERVICE OF THE PROVISIONAL ORDER

1. The Deputy Sheriff be and is hereby authorized to effect service of provisional order on the respondents.

BY THE JUDGE

BY THE ASSISTANT REGISTRAR