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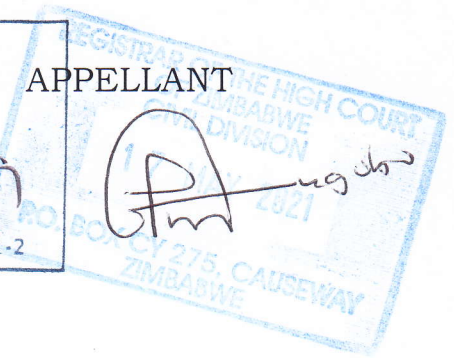
IN THE SUPREME COURT OF ZIMBABWE CASE NO.SC..../21  
HELD AT HARARE REF CASE HC 2166/21

In the matter between:

ATTORNEY GENERAL N.O



APPELLANT



AND

YOUNG LAWYERS ASSOCIATION

1<sup>ST</sup> RESPONDENT

OF ZIMBABWE

AND

FREDERICK CHARLES MOSES MUTANDA

2<sup>ND</sup> RESPONDENT

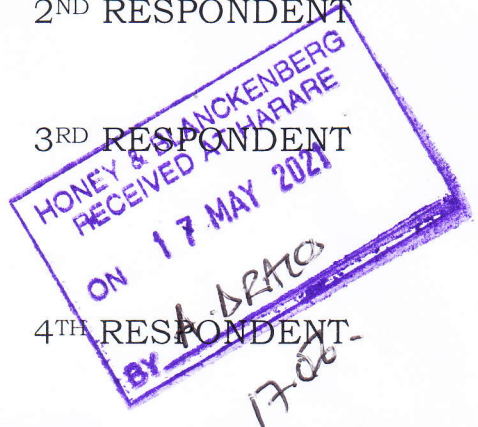
AND

JUDICAL SERVICE COMMISSION

3<sup>RD</sup> RESPONDENT

AND

THE CHIEF JUSTICE OF ZIMBABWE



HONOURABLE LUKE MALABA N.O

4<sup>TH</sup> RESPONDENT

**NOTICE OF APPEAL**

**BE PLEASED TO TAKE NOTICE THAT**, the Appellant hereby appeals against the whole judgment of the High Court of Zimbabwe sitting at Harare handed down by Zhou J, Charewa J, and Mushore J in case number HC 2166/21 on 16 May 2021. A

copy of the judgment is attached hereto. No leave to appeal is necessary.

**FURTHER TAKE NOTICE THAT** the Appellant's address for service for the purposes of this appeal is that of its legal practitioners of record, Attorney General's Office, 3<sup>rd</sup> Floor, Block A, New Government Complex, Cnr Samora Machel Avenue and Fourth Street, Harare.

**FURTHER TAKE NOTICE THAT: -**

- a) The Appellant tenders security for the Respondents' costs of the appeal as may be agreed upon between the parties or failing such agreement as may be determined by the Registrar of this Honourable Court.
- b) The Appellant undertakes to pay the costs for the preparation of the record of appeal as soon as it has been advised of such costs by the Registrar of the Honourable Court.

**FURTHER TAKE NOTICE THAT** the grounds upon which the appeal is made are the following:-

1. The High Court erred in finding that the 1<sup>st</sup> Applicant before it (the 1<sup>st</sup> Respondent herein) had *locus standi* to obtain the relief that it granted in the absence of evidence of the violation or potential violation of its members' right to equal

protection and benefit of the law in terms of section 56 (1) or the right not to be treated unfairly in terms of section 56 (3) or the right to access courts established in terms of the law enshrined in section 69 (3) of the Constitution of Zimbabwe.

2. The High Court erred in finding that the 2<sup>nd</sup> Applicant before it (the 2<sup>nd</sup> Respondent herein) had *locus standi* to obtain the relief that it granted in the absence of evidence of the violation or potential violation of his right to equal protection and benefit of the law in terms of section 56 (1) or the right not to be treated unfairly in terms of section 56 (3) or the right to access courts established in terms of the law enshrined in section 69 (3) of the Constitution of Zimbabwe.
3. The High Court further erred in granting the application before it without having made a declaration that in fact the rights of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in terms of sections 56 (1) and 56 (3) of the Constitution of Zimbabwe had been violated.
4. The constitutionality of Constitutional Amendment No. 2 not having been in question and the High Court having recognised it as a valid law, the High Court further erred in finding that section 186 (4) as amended could not derogate from the provisions of section 328 (7) of the Constitution of Zimbabwe and therefore that the 4<sup>th</sup> Respondent had ceased to be the Chief Justice for Zimbabwe upon attaining the age of 70.

5. The High Court further erred in finding that the 4th Respondent attained the age of 70 at 00.00hrs on the 15<sup>th</sup> of May 2021 when by virtue of section 336 of the Constitution of Zimbabwe the 4<sup>th</sup> Respondent attained the age of 70 at the end of day on the 15<sup>th</sup> of May 2021, that is at 00.00hrs on the 16<sup>th</sup> of May 2021.
6. The High Court consequently erred in failing to find that the appointment of the 4<sup>th</sup> Respondent as the Chief Justice of Zimbabwe to continue in office made by the President of Republic of Zimbabwe on 11 May 2021 was with legal effect from 16 May 2021.
7. The High Court erred in finding that the current Judges of the Supreme Court, and the Constitutional Court were not entitled to benefit under section 186 of the Constitution of Zimbabwe (as amended) while at the same time finding that the extension of tenure of judicial service was not a benefit denied to High Court Judges.
8. The High Court erred in holding that section 186(4) of the Constitution could only apply in the future, and not to the current Judges of the Supreme and Constitutional Court when there was nothing in the constitution suspending the operation of section 186(4) of the Constitution.
9. The High Court erred in holding that section 186 of the Constitution as amended increased a term limit provision,

and was therefore subject to section 328(7) of the Constitution of Zimbabwe. The Court ought to have found that section 186 did not extend any term limit for the 4<sup>th</sup> Respondent, and the Judges of the Supreme and Constitutional Courts.


**WHEREFORE**, the Appellant prays that: -

1. The appeal be allowed and the judgment of the High Court be set aside and substituted with the following:

***“The application filed by the applicant in case number HC 2128/21 is hereby dismissed with costs.”***

2. The 1<sup>st</sup> Respondent shall bear the costs of this appeal.

DATED AT HARARE THIS 17<sup>th</sup> DAY OF MAY 2021.

  
**CIVIL DIVISION OF THE  
ATTORNEYGENERAL'S OFFICE**  
Appellant's Legal Practitioners  
3<sup>rd</sup> Floor, Block A  
Mgandane Dlodlo Building  
Samora Machel/Simon Muzenda  
**HARARE(4/just/1338 FC**

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

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

**AND**

**TO: HONEY AND BLANCKENBERG**  
1<sup>st</sup> Respondent's Legal Practitioners  
200 Herbert Chitepo Avenue  
**HARARE(DD/AD/RTM/za)**

**AND**

**TO: KANTOR AND IMMERMANN**  
2<sup>nd</sup> – 4<sup>th</sup> Respondents' Legal Practitioners  
10 Selous Avenue  
**HARARE (ABC)**