

HABAKUK TRUST

Versus

CLERK OF PARLIAMENT

And

PARLIAMENT OF ZIMBABWE

And

**MINISTER OF JUSTICE, LEGAL &
PARLIAMENTARY AFFAIRS**

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 15 AND 18 JUNE 2020

Urgent Chamber Application

J. Sibanda for the applicant

S. J. Chihambakwe for the 1st and 2nd respondents

MOYO J: In this matter the applicant seeks the following interim relief:

“Pending the confirmation or discharge of the order it shall operate as a temporary order having the effect of interdicting the respondents from holding public gatherings or meetings in Bulawayo, or anywhere in Zimbabwe, to consider or debate Constitutional Amendment Bill No. 2”.

In the certificate of urgency, the applicant stated that on 8 June 2020, 2nd respondent placed an invitation in the social media inviting members of the public to attend public hearings at various venues around the country in accordance with section 328 of the Constitution of the country. Applicant further avers therein that Zimbabwe is under lockdown since 30 March 2020 due to the Covid 19 pandemic, that is, to try and contain the spread thereof. That, the law that put the country on lockdown is still in force. That, not more than 50 people are allowed at public gatherings. In paragraph 9, applicant avers that:

“The 2nd respondent has invited the public to attend public meetings without making known any arrangements for the protection of those that would attend such meetings”. (emphasis made)

Applicant further avers that due to the importance of such meetings it is thus unreasonable to hold them during a pandemic and a national lockdown. In paragraph 16 of the founding affidavit applicant says it is the meeting to be held in Bulawayo on 17 June 2020 that concerns it the most. In paragraph 17 of the founding affidavit applicant avers that this application is filed on an urgent basis due to the fact that Zimbabwe is currently facing a health pandemic. That, this pandemic has caused a lockdown and also caused public gatherings to be banned. Applicant further avers that regulations were promulgated in the form of a Statutory Instrument to restrict gatherings to a maximum number of 50 people. Applicant further avers that it would be unreasonable for respondent to hold such meetings during a pandemic and in so doing risk the lives of the members of the public. Applicant avers that the country must first of all return to normalcy before such process of amending the Constitution is undertaken. It further submits that there is no prejudice in putting such process in abeyance until the situation has normalized. Applicant further avers that alternatively, the respondents must be put on terms to conform with the Covid 19 safety measures. From the facts alluded to herein, it appears applicant has issues with holding public hearings or continuing with the constitutional amendment process whilst there is a pandemic that risks the lives of the public and whilst the country is on lockdown. Other than this, applicant has no other grievance against the respondents. In his oral submissions counsel for the applicant also submitted that movement is restricted and that people will not be adequately catered for by the number of the venues proposed as well as the time period within which such meetings will be held.

Respondents on the other hand argued that what they are embarking on is a process dictated upon them by the Constitution, section 328 thereof, and that they have no option but to oblige with constitutional directives. Respondents, also argued that SI 136/2020 has amended the initial regulations to allow for public hearings conducted by Parliament. Section 4 (k) of SI 136/2020 amends section 5 of the previous lockdown regulations by stipulating that; not more than 50 adult individuals gathered for the purpose of a public hearing conducted by a portfolio or other committee of Parliament for as long as masks are worn and social distancing rules are followed as

well as the disinfection of the area within which such a gathering is conducted are exempted. In other words, section 4 (k) of SI 136/2020 permits no more than 50 adults to gather for purposes of public hearings conducted by Parliament.

From the facts before me, it seems applicant has an issue with conducting the public gatherings during a pandemic and therefore putting people's lives at risks. It further argues that the respondents should wait for a normal situation before proceeding with the constitutional process. Applicant says such meetings put the lives of the members of the public at risk. It further says in the alternative, respondent should only proceed upon satisfactory compliance with the Covid 19 precautions and safety guidelines. Respondents' counsel has already alluded to the advert purportedly flighted in the Sunday Mail which shows that such gatherings will be conducted in line with the Covid 19 safety measures as it specifically states that;

“The public hearings will at all times comply with the Ministry of Health and Child Care Covid 19 Regulations as outlined in SI 99 and 110 regulations regarding social distancing, sanitization, temperature screening and wearing a facial masks. It further stipulates the following;

- (a) Only 50 participants will be allowed at any one time;
- (b) Where more than 50 participants want to attend, they will only be allowed in groups that comply with the requirements;
- (c) Hand sanitization and temperature screening will be done at all venues;
- (d) All participants must be wearing face masks;
- (e) Appropriate social distancing will be observed.

The advert goes on to provide for monitoring by the Ministry of Health and Child Care teams. Applicant seems to have issues with health risks. Applicant sought to file an urgent chamber application to bar public hearings on account of health risks before finding out from the respondents what health measures would be taken to safeguard the lives of the members of the public who would attend. Applicant, it seems presumed and suspected without any facts that participants would be exposed to health risks. Respondents have rebutted that assumption and suspicion by providing information that shows that they are intent upon following the Covid 19 safety measures in the conduct of these public hearings. Respondents have also stated that people can contribute their views via various print and electronic media as well as social media.

This in essence means that applicant has not presented a well grounded apprehension of harm as all applicant did was to suspect rather than obtain concrete information on how the respondents intended to go about this. Again, the issue of the stoppage of a constitutional process and waiting for normalcy to return is also a difficult claim to sustain by the applicant, for, the mere existence of a pandemic cannot be the sole ground to stop certain processes. Processes can only be stopped upon reasonable grounds that indeed they fly in the face of Covid 19 prevention and safety measures. That is to say applicant's case should have gone further to show how being in the middle of a pandemic is inconsistent with the holding of the public gatherings in a practical sense. Applicant seems to want this court to assume that the mere fact that we are in the middle of a pandemic means that the public gatherings cannot be held. Applicant should have gone further to show the practical difficulties or impediments as well as disadvantages or prejudice to the ordinary citizen occasioned by the presence of the pandemic *vis-a-vis* their attendance at such gatherings. Applicant simply makes a sweeping statement on the facts and applicant bases its case on a conclusion it has made that such processes must wait for normalcy to return without taking us through the prejudice that will result factually. In any event, if such public hearings do commence and applicant observes anomalies therein, applicant could still approach these courts with a factually loaded application on the shortcomings of the hearings than to seek relief on the basis of a suspicion that has no factual basis. I hold the view that applicant should have sought further details from the respondents on how Covid 19 safety measures will be observed. It is my view that applicant in this matter has put the cart before the horse. Even in its founding affidavit applicant at paragraphs 30 – 38 therein seeks that respondents must ensure that precautions to contain the disease are put in place.

Paragraphs 30-38 of the founding affidavit actually, although being claimed as in the alternative, bear testimony to the fact that even applicant itself concedes that such gatherings can indeed be held in so far as appropriate measures are taken to safeguard the health of the public. In other words respondents can proceed per applicant's own affidavit, provided safety measures are adhered to. I accordingly hold that no factual basis has been made at all for the relief sought by the applicant as I have shown herein.

On the law, clearly I do not have the power to stop a constitutional process that is mandated by the supreme law of our country. Applicant itself avers that what the respondents are doing is in accordance with the law, in terms of the country's Constitution. I do not have the power to change what the Constitution provides. All of us, members of the Executive, Parliament and the Judiciary are here to uphold the constitutional provisions of the supreme law of the land. We do not have the power to suspend constitutional processes per personal views, we are not allowed. I have not been favoured by the applicant with any case law authority that is precedent for suspending the Constitution. Applicant has thus not shown me that I do have the power to stop constitutional processes. In fact, to the contrary, there is authority to support the trite position that a court cannot stop or suspend a constitutional process except where the Constitution itself provides for such a scenario with stated guidelines, refer to the case of *Zimbabwe Development Party & Anor vs The President of the Republic of Zimbabwe & Ors* CCZ 3/18. SI 136/2020, although promulgated on Friday 12 June 2020, is law as at the time that I deliberate on this matter and it has provided for the holding of the meetings that applicant seeks to stop. As we speak such meetings are lawful in terms of the Covid 19 lockdown regulations and I cannot therefore find otherwise.

It is for these reasons that I find that applicant has not made a case for the relief sought and I accordingly dismiss the application with costs.

Job Sibanda & Associates, applicant's legal practitioners
Chihambakwe, Mutizwa & Partners, 1st and 2nd respondents' legal practitioners