

**MUSA MANDAZA**

**Versus**

**THE ZIFA ELECTORAL COMMITTEE**

**And**

**THE ZIMBABWE FOOTBALL ASSOCIATION**

**And**

**ANDREW THABANI TAPELA**

**And**

**FISO SIZIBA**

**And**

**BRIGHTON MALANDULE**

**And**

**TIZIRA LUPAHLA**

**And**

**MEHLULI THEBE**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 2 & 26 MARCH 2020

**Opposed Application**

*H. Shenje* for the applicant  
*B. Sengweni* for the respondents

**MAKONESE J:** On the 14<sup>th</sup> October 2018 the Zimbabwe Football Association (ZIFA) Southern Region Soccer League elections were held at Bulawayo. The applicant stood against 3<sup>rd</sup> respondent for the position of chairman of the Southern Soccer Region. In a tightly contested election, the applicant lost the contest. 3<sup>rd</sup> respondent was duly elected and took over

the position. Aggrieved by the outcome, the applicant noted an appeal with the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Before noting the appeal and on 29<sup>th</sup> October 2018 the applicant addressed a letter to the ZIFA Electoral Committee in the following terms:

“”...

On the 17<sup>th</sup> of October 2018, I noted an appeal to the Zimbabwe Football ASSOCIATION Electoral Committee wherein ZIFA, ZIFA Electoral Committee and Andrew Tapela were cited as the respondents. In terms of the Electoral Code, Article 12 thereof, the Zimbabwe Football Association Electoral Appeals Committee had four (4) days within which to adjudicate and consider the appeal but in clear contradiction of the said Article, my appeal have not been considered till to date despite that fourth day within which to consider the appeal was the 24<sup>th</sup> October 2018.

I kindly appeal to you to attend to the consideration of my appeal, failure which I will be left with no choice but to approach the courts of Zimbabwe in a bid to compel consideration of the appeal.

Yours faithfully

Musa Mandaza”

The appeal was noted on 17<sup>th</sup> October 2018, purportedly in terms of the ZIFA Constitution. In his grounds of appeal the applicant complained of certain irregularities, in particular that delegates who were not allowed to take part in the voting process took part in that process. The appeal was not heard and determined. This is an application wherein the applicant seeks the following relief:

- “1. That the entire election conducted by the 2<sup>nd</sup> respondent in respect of the Board Members for the Zimbabwe Football Association Southern Region be and is hereby declared null and void and accordingly set aside.
2. That the 2<sup>nd</sup> respondent shall cause a fresh election to be conducted within 30 days of the granting of this order.
3. In the alternative to paragraph above the 1<sup>st</sup> respondent be and is hereby ordered to consider the applicant’s appeal within 4 days of service of this order upon it.
4. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are to bear costs of suit on a legal practitioner and client scale.”

This application is opposed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. The application is opposed principally on the grounds that it lacks particularity and that the application is fatally defective as a non-existent juristic person has been sued. It is beyond dispute that the 1<sup>st</sup> respondent is a committee of the 2<sup>nd</sup> respondent. In terms of article 54 of the ZIFA Constitution, the status of the 1<sup>st</sup> respondent is clearly laid out. It is a body or committee of the 2<sup>nd</sup> respondent charged with the responsibility of hearing and determining appeals from aggrieved parties. The 1<sup>st</sup> respondent is not a juristic person with powers to sue or to be sued. Members of the 1<sup>st</sup> respondent exercise their functions on behalf of the 2<sup>nd</sup> respondent. There is therefore no legal basis upon which the 1<sup>st</sup> respondent could be cited and sued in the proceedings. They do not have legal capacity to be sued.

The further complication with the application is that 4<sup>th</sup> to 7<sup>th</sup> respondents were not contestants against the applicant in the elections. Applicant contested the elections for the position of chairman against 3<sup>rd</sup> respondent only. 4<sup>th</sup> to 7<sup>th</sup> respondents were vying for other positions which applicant had no interest in. Applicant may not therefore seek to set aside the election of the rest of the respondents against whom he did not contest. In any event, the election results in respect of 4<sup>th</sup> to 7<sup>th</sup> respondents have not been challenged. The applicant clearly has no *locus standi in judicio* to contest the election results in respect of 4<sup>th</sup> to 7<sup>th</sup> respondents. In *Simbarashe v ZEC & Another* 2008 (1) ZLR 342 (H) KUDYA J held that an election petition is limited to the winning candidate in a contested election. In this matter, 4<sup>th</sup> to 7<sup>th</sup> respondents were neither winning candidates nor candidates for the position of chairperson of the ZIFA Southern Region. The citation of the respondents was improper.

### **Disposition**

I am satisfied that this application is fatally defective in that the applicant sued a non-existent juristic entity. In effect there is no application before the court. The 4<sup>th</sup> to 7<sup>th</sup> respondents were wrongly cited. There were not contestants in the election for the position of chairperson. They have no interest in the matter. The order seeking to nullify the entire elections for the Southern Region is ill-conceived. It is therefore not necessary to proceed to deal with the merits.

In the result, and for the foregoing reasons, the application is dismissed with costs.

*Shewnje & Company*, applicant's legal practitioners  
*Sengweni Legal Practice*, respondents' legal practitioners