

DISTRIBUTABLE (13)

JONATHAN NATHANIEL MOYO

v

(1) SERGEANT CHACHA

(2) THE ZIMBABWE ANTI-CORRUPTION COMMISSION

**(3) THE COMMISSIONER GENERAL OF POLICE,
ZIMBABWE REPUBLIC POLICE**

(4) THE PROSECUTOR GENERAL

**CONSTITUTIONAL COURT OF ZIMBABWE
HARARE, NOVEMBER 4, 2016**

Adv. L Uriri, for the applicant

Ms O Zvedi, for the first, second and third respondents

N Mutsonziwa, with him J Uladi, for the fourth respondent

Before: CHIDYAUSIKU, CJ, In Chambers

This is a Chamber application in which the applicant sought an order in terms of the draft. The applicant and the fourth respondent consent to an order of the Court in terms of the draft order, as amended. The third respondent's position is that he will abide by the decision of the Court.

The first and second respondents persist in their opposition to the granting of the original draft order and the order by consent. When asked by the Court to provide the legal

basis for their attitude, they were not able to advance any legal basis for their continued opposition to the granting of the order consented to by the applicant and the fourth respondent. This quite clearly evinces an attitude of: “Why be difficult when one can be impossible?”.

The papers before the Court clearly reveal that there is a real possibility that due process was not complied with in the handling of this matter. In the light of that, the concession by the Prosecutor General is based on sound legal considerations in this matter.

Quite clearly, a definitive decision on whether or not there was failure of due process in the handling of this matter can only be determined by the Constitutional Court, as opposed to a Judge sitting in Chambers. It is for the Constitutional Court, if it so finds that there were procedural failures of due process in this matter, to decide what remedies are available to the applicant.

The first and second respondents have no *locus standi* to drive this process forward without the fourth respondent, who is the *dominus litis* in all criminal prosecutions. Their continued and persistent opposition to the application is driven by something other than legal considerations.

I accordingly grant an order in terms of the consent draft order between the applicant and the fourth respondent. The consent draft order reads as follows:

- “1. The Registrar is directed to set the matter down for hearing on an urgent basis.
2. Pending the determination of the case action in case no. CCZ 73/2016, the criminal proceedings envisaged against the applicant in terms of the charges levelled against him by the first respondent are stayed.”

The timetable for the set down of the main Court application will be agreed between the applicant and the fourth respondent in consultation with the registrar of this Court.

The applicant and the fourth respondent have now agreed on the timetable and the agreed timetable is hereto attached.

“AGREED TIMETABLE FOR THE SET DOWN OF THE MAIN APPLICATION”

1. The respondents shall file and serve their notices of opposition by 15 November 2016.
2. The applicant is to file an answering affidavit by 18 November 2016.
3. The applicant is to file and serve heads of argument by 25 November 2016.
4. The respondents shall file their heads of argument by 2 December 2016.
5. The Registrar is to set the matter down for hearing on the first available date thereafter.
6. Should any party find the need to file supplementary heads of argument, the same shall be filed not later than four days before the date of set down.”

Costs will be costs in the cause.

Hussein Ranchod & Co, applicant’s legal practitioners

Civil Division of the Attorney-General’s Office, first, second and third respondents’ legal practitioners

Prosecutor-General’s Office, fourth respondent’s legal practitioners