BERNARD GABRIEL MANYENYENI
versus
THE MINISTER OF LOCAL GOVERNMENT,
PUBLIC WORKS AND NATIONAL HOUSING
and
ATTORNEY GENERAL OF ZIMBABWE

HIGH COURT OF ZIMBABWE
DUBE J
HARARE, 26 April 2016 & 11 May 2016

Urgent Application

L Uriri with *D Hofisi & D Chimbwa*, for the applicant
L T Muradzikwa, for the respondent

DUBE J: This case concerns the first respondent's power to suspend the applicant. The applicant launched this urgent application challenging the first respondent's act in suspending the applicant. The applicant seeks interim relief directing that the suspension by the first respondent of the applicant shall be of no force or effect and enabling that the applicant continues to carry out his duties as Mayor of the City of Harare and that the first respondent be barred from dismissing, suspending or engaging in any other activity with a view to removing the applicant from office pending resolution of the matter.

The applicant is the Councillor for Ward 17. He is also the Mayor of Harare. The first respondent is the Minister of Local Government, Public Works and National Housing, [hereinafter referred to as the Minister]. He is cited in his official capacity as the Minister responsible for the administration of the Urban Councils Act [*Chapter 29:15*]. The second respondent is the Attorney General of Zimbabwe and is cited in his official capacity as the principal legal advisor to the Government of Zimbabwe.

The state of affairs leading to this legal wrangle is put by the applicant as follows. On 24 March 2016 Council for the City of Harare resolved to appoint a Mr James Mushore as Town Clerk for the City of Harare. Discontented with the appointment, the Minister wrote a letter rescinding the appointment. The letter is now subject of litigation in a matter involving the *Combined Residents Association and Another* and *The Minister of Local Government and Two Others,* under HC 3231/16.The Minister raised concerns regarding the appointment of

the Town Clerk by Council with him. The Minister's view was that it was the responsibility of the Local Government Board to decide who gets appointed to the post of town clerk. The Minister wanted the newly appointed town clerk to stop reporting for work. The applicant was directed to ensure that by close of business on 19 April 2016 Mr Mushore ceased to report for work. That directive was not followed. On 20 March 2016 the Minister suspended the applicant in terms of s 114 (1) (d) (ii) of the Urban Councils Act .The allegations levelled against the applicant are summarised in the letter of suspension. The letter of suspension reads in part as follows,

> "The grounds of your suspension are that you have, without legal basis, made an employment offer to a person for the position of Town Clerk without the necessary approval of the Local Government Board as required by the Urban Councils Act, as read with section 265(1) (b) of the Constitution of Zimbabwe. You went further and defied a lawfully given instruction by implementing a resolution that had been rescinded in terms of the Urban Councils Act, section 314.
>
> You will be brought before a competent authority to answer the allegations above, in due course.
>
> During the period of suspension, you shall not receive any allowance and you shall not carry out any Council business within or outside council"

The applicant challenges the Minister's suspension on the basis that the Minister has purported to exercise powers that are non-existent and not in accordance with the Constitution. The applicant submitted as follows. The removal of mayors is done by an independent tribunal in terms of an Act of Parliament in terms of s 278 of the Constitution. There is neither the Act of Parliament nor an independent Tribunal in place. The applicant maintained that the suspension is *null and void* for the reason that the Minister's power to suspend and or dismiss a councillor or Mayor was taken away by the provisions of s 278 of the new Constitution. The applicant suggested that the Minister should seek legislative intervention to get a lawful basis to set up the independent tribunal as contemplated by s278 of the Constitution. The applicant seeks interim relief on the following terms,

> "Interim Relief Sought
> 1. It is ordered that pending the final resolution of this matter either in the court of first instance or on appeal.
> a) The letter of suspension of the applicant from the first respondent dated 20 April 2016 be and is hereby suspended.
> b) The applicant be and is hereby be allowed to continue to carry out Council business and receive allowances in line with his post of Mayor.
> c) The first respondent be and is hereby ordered to refrain from suspending, dismissing or engaging in any other activity with a view to removing applicant from the office of Mayor."

The respondents defended the application. They took two points *in limine*. The respondents attacked the urgency of the matter and the nature of the relief sought. The respondents submitted that the applicant has dirty hands and cannot be allowed to create urgency in this matter because he failed to comply with the directive of the Minister to stop the newly appointed town clerk from attending to his duties. Further, that the applicant continues to breach the provisions of s 123 (1) (e) of the Urban Councils Act in the appointment of the town clerk by allowing him to attend to his duties. The respondents urged the court not to be abused by a litigant who chooses which law to follow only to seek the protection of the law when he views that his own rights are being trampled upon. The respondents' view is that the applicant is not an executive mayor and should not waste the court's time pretending that he is a full time employee of a local authority. The respondents refuted the applicant's assertion that the applicant is likely to suffer harm and prejudice should this application be placed on the normal application roll as he has a good alternative remedy which is to follow the provisions of the Urban Councils Act providing for the appointment of a town clerk. The respondents challenged the interim relief sought on the premise that its para (c) is too wide and are of a final nature.

The respondents' case on the merits, is that whilst the City of Harare has the right to select a town clerk, the appointment needs to be approved by the Local Government Board in terms of s 123 (1) (e) of the Urban Councils Act. The respondents submitted that Council failed to adhere to this requirement for approval of the town clerk's appointment leading to the Minister issuing a directive to stop the town clerk from reporting for work. The applicant failed to follow the Minister's directive and hence the suspension. The applicant should not be allowed to break the law without being reigned in. The provisions of s 114 of the Urban Councils Act have not been repealed, the section remains operational. The section allows the Minister to suspend the Mayor. The creation of a tribunal is of the applicant's own creation as it is not provided for in the Urban Councils Act. In a sudden turn, the respondents argued that the provisions of s 278(2) and (3) of the Constitution do not yet come into play as no question of dismissal of the Mayor arises at this stage. The respondents revealed that the amendment and harmonisation of the Urban Councils Act with the Constitution, in particular s 278 of the Constitution is at an advanced stage.

Applications for interlocutory interdicts are seldom brought in any other manner than on an urgent basis. The traditional approach is to test the grounds for urgency as advanced by the applicant. The court is required to determine whether the applicant treated the matter

urgently and whether the applicant will suffer irreparable harm or prejudice if he is made to wait for the application to be dealt with as an ordinary matter. Where a respondent is able to show that he is likely to suffer prejudice if the applicant is given preference, that may be a good enough reason to refuse to deal with a matter on an urgent basis.

Matters involving allegations of infringements of fundamental human rights require to be brought promptly for redress due to their impact on a litigant's rights. This court is enjoined whenever there is an allegation of breach of the provisions of the supreme law to afford redress to litigants straightaway ,especially so when a violation of fundamental human rights and freedoms is alleged and where the conduct complained against is said to have the effect of rendering a Constitutional functional dysfunctional. A litigant alleging a violation of his human rights must *prima facie* establish that his rights are being trampled upon in order to get preference. He is required, as in any other urgent application to show that the matter is urgent and that if the matter is not dealt with urgently he is likely to suffer irreparable harm. He must also show that he treated the matter as urgent and did act when the need to act arose and has approached the court timeously.

The applicant was suspended on 20 April 2016.The need to act arose on 20 April when the applicant was served with a suspension letter. The applicant launched this application the very next day. There is no qualm that the applicant treated the matter with urgency. The applicant acted immediately the need to act arose. The applicant seeks to vindicate his own interests and those of the citizens of Harare which he alleges are adversely affected by an infringement of a right to equal protection of the law. The City of Harare ought to have a mayor to superintend its operations. It currently has no mayor as a consequent of the suspension. Local government must continue to function. The alleged infringement is of a nature that adversely affects the interests of the community at large. Such an alleged infringement and interference with council affairs deserves to be dealt with on an urgent basis. This is a matter that is in the public interest and must be dealt with urgently. It is urgent that the court addresses the appropriateness of the interim relief sought urgently.

The respondents' argument that this matter should not be dealt with on an urgent basis because the applicant has dirty hands does not find favour with this court. The dirty hands principle has the effect of denying litigants access to the courts on the premise of wrongful conduct of a litigant. Section 85 (1) and (2) of the Constitution deals with the concept of dirty hands. It provides as follows.

"85 **Enforcement of fundamental human rights and freedoms**
(1) Any of the following persons, namely—
(a) any person acting in their own interests;
(b) any person acting on behalf of another person who cannot act for themselves;
(c) any person acting as a member, or in the interests, of a group or class of persons;
(d) any person acting in the public interest;
(e) any association acting in the interests of its members;
is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation.
(2) The fact that a person has contravened a law does not debar them from approaching a court for relief under subsection (1)."

This provision is a fresh introduction in the new Constitution. Its import is that even though a litigant seeking relief may have contravened a law, that fact does not bar him from approaching the courts for relief where such a litigant seeks to enforce fundamental rights and freedoms enshrined in the Constitution. The applicant alleges a breach of s 278 of the Constitution and seeks a right to protection of the law as provided for in s 56 (1) of the Constitution. He also claims that his right to fair and just administration provided for under s 68 of the Constitution is being breached by the Ministers' conduct in acting under s114 in breach of his power. In summation, he alleges a breach of fundamental human rights and freedoms. The fact that the applicant may have failed to comply with a directive of the Minister or contravened any law, does not bar him from approaching this court for the relief he seeks. To accede to the respondents' request would amount to denying the applicant the right to access to a court for the resolution of this dispute as provided for in s 69 of the Constitution. The dirty hands principle no longer has any place in constitutional cases involving breach of fundamental human rights and freedoms and where constitutional relief is sought.

The relief sought is for suspension of what was done by the Minister pending the determination of the legality of the suspension of the applicant in the court of first instance or on appeal. The relief sought is not final in nature. The only snag with the relief is that it is sought pending resolution of the matter in this court or on appeal. The relief sought lacks certainty. It is incompetent to seek an interim order which is not premised on an appeal; pending resolution of the matter on appeal as such an order has the effect of binding an appeal court. It is undesirable for a court of first instance and an inferior court for that matter, to pre-empt an appeal court. This court cannot make an order that has the effect of binding an appeal court. I do not view that it is essential for the court to adopt a strict and technical approach to this matter thereby depriving the applicant an opportunity to be heard contrary to

the spirit of the Constitution. The order sought being interlocutory in nature is open to revision by the court should the court decide to grant the order.

The court is being asked to test the constitutional validity of the applicant's conduct in suspending the Mayor. The law employed by the Minister in suspending the applicant is found in s114 of the Act. The section reads as follows,

> **"Section 114 Suspension and dismissal of councillors**
> (1) Subject to this section, if the Minister has reasonable grounds for suspecting that a councillor—
> (a) has contravened any provision of the Prevention of Corruption Act [*Chapter 9:16*]; or
> (b) has contravened section one hundred and seven section one hundred and eight or section one hundred and nine; or
> (c) has committed any offence involving dishonesty in connection with the funds or other property of the council; or
> (d) has been responsible—
> (i) through serious negligence, for the loss of any funds or property of the council; or
> (ii) for gross mismanagement of the funds, property or affairs of the council;
> whether or not the councillor's responsibility is shared with other councillors or with any employees of the council; or
> (e) has not relinquished office after his seat became vacant in terms of this Act;
> the Minister may, by written notice to the councillor and the council concerned, suspend the councillor from exercising all or any of his functions as a councillor in terms of this Act or any other enactment.
> (2) Any allowance that is payable to councillors in terms of this Act shall continue to be paid to a councillor who has been suspended in terms of subsection (1) for so long as he remains a councillor, unless the Minister, by notice in writing to the council concerned, directs otherwise.
> (3) As soon as is practicable after he has suspended a councillor in terms of subsection (1), and in any event within forty-five days, the Minister shall cause a thorough investigation to be conducted with all reasonable dispatch to determine whether or not the councillor has been guilty of any act, omission or conduct referred to in that subsection.
> (4) If, following investigation, the Minister is satisfied that the grounds of suspicion on the basis of which he suspended a councillor in terms of subsection (1) have been established as fact, he may, by written notice to the council and the councillor concerned, dismiss the councillor, and the councillor's seat shall thereupon become vacant."

Section 114 provides for procedures governing suspension, investigation and subsequent dismissal of mayors and other councillors (councillors) by the Minister. This section is still extant and has not been amended, repealed or substituted. The new Constitution on the other hand introduced in s 278 (2) the requirement for an Act of Parliament to provide for the establishment of an independent tribunal to exercise the function of the removal from office of councillors. The court is being called upon to decide

the effect of the constitutional provision on s114 of the Urban Councils Act. Section 278 is framed in the following terms,

> **"278 Tenure of seats of members of local authorities**
> (1) .....
> (2) An Act of Parliament must provide for the establishment of an independent tribunal to exercise the function of removing from office, mayors, chairpersons and councillors, but any such removal must only be on the grounds of—
> (a) inability to perform the functions of their office due to mental or physical incapacity;
> (b) gross incompetence;
> (c) gross misconduct;
> (d) conviction of an offence involving dishonesty, corruption or abuse of office; or
> (e) wilful violation of the law, including a local authority by-law.
> (3) A mayor, chairperson or councillor of a local authority does not vacate his or her seat except in accordance with this section

In *Hamutendi Kombayi and Ors* v *The Minister of Local Government, Public Works and National Housing and Ors* HB 57/16, the court had occasion to interpret the above provision and give effect to its meaning. The applicants in that case were suspended from office by the Minster in terms of s 114 ((1) (c) (d) (1) (11) of the Urban Councils Act on allegations of failing to discharge their functions as servants of the City of Gweru. Subsequent to this, a tribunal was set up to enquire into the charges preferred. The applicants obtained a provisional order suspending the disciplinary hearing pending confirmation of the order. Following this, the provisional order was confirmed and the court held that section 114 of the Urban Councils Act is in direct conflict with section 278 of the Constitution and inconsistent with it. Further, that s278 sets out a completely different regime in the removal of councillors from office and that the Minister's act in suspending and attempting to set up a tribunal to deal with the charges involved in terms of s 114 was both unconstitutional and illegal. The court held further that s 278 of the Constitution speaks to a law establishing an independent tribunal to look into the misconduct allegations and that the legislature must comply with that requirement.

The applicant seeks to rely on the *Kombayi case* and contends that a suspension is a preliminary step in the removal of a mayor from office and that it can only be effected within the context of a law that allows for the removal of a mayor from office. The applicant submitted that when the Constitution speaks to removal of a councillor it will be speaking to the entire process from suspension to the hearing and ultimate dismissal. Further that the suspension is incidental to the removal. Mr *Uriri* argued that the tribunal is *sui generis* and that the process of investigation, removal and suspension of the councillor can only be commenced and finalised by the independent tribunal. He maintained that as no such tribunal

exists and Parliament has not put in place a law to establish the tribunal, the Minister has no legal authority to suspend any mayor or councillor from office. Further that the Minister violated the provisions of s278 of the Constitution when he suspended the applicant.

The Constitution is the supreme law of this country and supersedes all laws. It is the yardstick by which all laws are measured. All legislation is expected to comply with the requirements of the Constitution. Section 2 of the Constitution is the supremacy clause and provides that the Constitution is the supreme law of the country. Any law, practice, custom or conduct that is inconsistent with the Constitution, is inconsistent with the Constitution to the extent of its inconsistency. The doctrine of constitutionalism requires that all laws be consistent with the supreme law. Every obligation imposed by the Constitution is mandatory and must be strictly complied with. Those who exercise administrative power are expected to exercise their power within the parameters of the Constitution. Where the conduct complained against is found to be in conflict with the Constitution, such conduct is to be declared to be invalid.

Section 278 of the Constitution makes it obligatory for an Act of Parliament to be put in place to provide for the establishment of an independent tribunal to exercise the function of removing from office Mayors and other councillors on stated grounds. The provisions of s 278 of the Constitution are clear on this point. The intention of the legislature in introducing this requirement must have been a concern over the lack of observance of the rules of natural justice conspicuous under s 114 (4) of the Urban Councils. A councillor under suspension is simply advised after an investigation that he has been dismissed without his side of the story having been heard. He is dismissed without a hearing. The *audi altrem partem rule* of natural justice is not observed and the decision to dismiss is made by one person. To bridge this shortcoming, the Constitution introduces an independent tribunal to guarantee a transparent process.

I find myself in agreement with the findings of Bere J in the *Kombayi case* that the provisions of s278 superseded those of s 114 in so far as they require that an independent tribunal be set up to look into the issue of removal of a councillor. I agree further that in order for a tribunal to be set up, a law has to be put in place first to enable the setting up of such tribunal in cases involving discipline of councillors. The Minister's attempt in the *Kombayi* case to convene a tribunal to enquire into the allegations was futile as there is currently no Act of Parliament that provides for a tribunal as envisaged by the provisions of s 278 of the Constitution. Our point of divergence with Bere J is over the subject regarding the

Minster's power to suspend councillors. The two cases can be distinguished on the premise that the case before Bere J was one of dismissal and removal of a councillor whilst this case involves the Minister's power to suspend only.

This court is being asked to determine whether s 114 of the Urban Councils Act being a law pre-existing the Constitution, remained valid upon the coming into effect of s 278 of the Constitution. Section 10 of Part 4 of the sixth schedule to the Constitution deals with pre-existing laws and provides as follows,

> "10. Continuation of existing laws
> Subject to this Schedule, all existing laws continue in force but must be construed in conformity with this Constitution.''

This section recognises that there were pre-existing laws before the new Constitution came into place. These remain in place. Where the Constitution introduces changes to any law, these laws must be construed in conformity with the Constitution. The underlining thread in this provision is constitutional supremacy.

In *Chotabhai v Union Government and Anor 1911AD 13 at p 23*, the court dealing with conflicting provisions in statutes ,held that if the continuance in force of a provision is irreconcilable with a latter statute, it must be held to have been repealed. See also *Fischer v Liquidation of the Union Bank (8 Juta,46*) for the same proposition. This is a recognised rule of interpretation. It is the function of the court in such a scenario, to reconcile the provisions and give meaning to the provisions. It is permissible for a court, where an earlier and later provision can reasonably be construed to give effect to both, for the court to adopt that course.

The provisions of s 114(1) to (3) of the Urban Councils Act are unaffected by the amendment sought to be introduced by s 278 of the Constitution. An important observation to make is that s 114 is in essence divided into three main parts which comprise suspension, investigation and dismissal. Subsection 114(1) empowers the Minister, where he has reasonable grounds for suspecting that a councillor has committed an act of misconduct, to suspend him from carrying out his duties and advise him of the adverse action against him. Section 114 (3) empowers the Minister to cause a thorough investigation to be conducted after which the Minister may in terms of subsection 4, if satisfied that the grounds of suspicion have been established, to dismiss the councillor.

The Constitution in s 278(2) only speaks to an independent tribunal to deal with removal and does not directly deal with aspects of investigation or suspension. The assumption is that the Minister will continue his role in terms of ss 114 (1) to (3) of the Act. The legislature saw

no necessity for making fresh provisions in relation to these aspects. If the legislature had intended to change the law with respect to suspension or investigation of the offender it would have expressly stated so. This is a case where the legal maxim, *expression unis est exclusion alterius* which translates to mean that the direct or express mention of one thing excludes all others comes into play.

Section 278 provides that the function of the tribunal shall be to exercise the function of removal from office of the mayor and councillors. In its ordinary meaning, 'removal' is the fact of being removed. The Free Dictionary defines a removal from office as a discharge from office. It is defined as

> "the act of a competent officer or the legislature which deprives an officer of his office. It may be express, that is by notification that the officer has been removed or impliedly by appointment of another person to the same office''.

A public officer may only be removed from office once he has been found guilty of misconduct. It is that act of removal that s 278 seeks to deal with. We must not import the word 'suspend' into the provisions of s 278 because it is simply not provided for. Vacation of office is simply a dismissal or removal from office. You cannot say that an office has been vacated when the office has not been vacated. Suspension does not make the office vacant or position available. A person who is on suspension has not been removed. It does not follow that if an employee is suspended, that he is going to be removed and that the suspension will lead to his dismissal. The applicant has been suspended for 45 days. If he has a case to answer, a tribunal may be set up to look into the allegations when the relevant law is in place. The mere fact of giving time limits for the suspension shows that the legislature wanted to distinguish between suspension and dismissal. The one process is different from the other.

It is trite that a tribunal is a trier of fact. It is clear that the purpose and function of the tribunal is going to be the determination of the charges preferred and to decide whether to dismiss or simply make a recommendation to another authority. If the legislature had intended that it assume the function of suspending, investigation as well as dismissing the offender, it would have expressly said so. I am not persuaded by Mr *Uriri*'s suggestion that the tribunal is a *sui generis* creature and that it was intended that it performs all these functions. Firstly, the Constitution does not state so, and secondly it would be a strange phenomenon to have a tribunal that performs all three functions. The legislature would have created a monster. It is not anticipated that this will happen in a democratic society such as the one sought to be advanced by the Constitution. The roles of an investigator, person who

prefers charges and one who suspends the employee and the disciplinary tribunal are ordinarily performed by different individuals and entities. The purpose of the tribunal is clear from s278 of the Constitution.

The provisions of s114 (1) to (3) are reconcilable with s 278 of the Constitution. The provisions of s114 of the Urban Councils Act and those of s 278 of the Constitution require to be read together. This is a classic case where it is permissible for a court dealing with pre-existing provisions that are in conflict or appear to be in conflict with a later provision, where it is reasonable to do so, to reconcile the provisions and give effect the provisions of both. The changes that require to be introduced as envisaged by s 278 of the Constitution will naturally be made to s114 of the Urban Councils Act and these should be limited to the actual dismissal. It is likely that s 114 (4) will ultimately be repealed and a new section establishing the tribunal inserted. Section 278(3) which provides that a Mayor or councillor does not vacate his office except in accordance with s 278 is not independent of subsections 278 (1) and (2) which provides for removal from office of a councillor. It does not also speak to suspension.

The opening to s114 provides that what has to be done has to be 'subject to this section'. This command cannot be fully realised because of the state in which the section is. It is apparent that the section has been rendered incomplete by the provisions of s 278 that seek to introduce the concept of an independent tribunal. It is not a full self- contained provision. Section 114 should be read in conjunction with s 278 of the Constitution and be harmonised. The circumstances of this case justify an exception to the rule.

The provisions of s114 that deal with suspension and investigation of misconduct by councillors are still extant, have not been repealed and are in force .They remain consistent with the Constitution. Only the provisions of s 114 (4) are affected by the provisions of s 278 of the Constitution. There is no doubt in my mind that section 278 of the Constitution targets s 114 (4) of the Urban Councils Act only. The provisions of s 114(1) to (3) of the Urban Councils Act have not been impliedly repealed by s 278 of the Constitution. The powers to suspend a councillor, Mayor or Chairperson still vest with the Minister in terms of s 114(1) to (3) of the Urban Councils Act as the law currently stands. Section 114 of the Urban Councils Act as read with section 278 of the Constitution does not allow the Minister to carry out the function of dismissing councillors, that power having been taken away by s 278 of the Constitution. Parliament is mandated to comply with the dictates of the Constitution and put in place an Act of Parliament or a law establishing an independent tribunal to look into the

removal of councillors. Dismissals of councillors can only be carried out once that law is in place. The purpose of the tribunal will be limited to looking into the suitability of a councillors, chairpersons and mayors to remain in office. The Minister retains the power to suspend a councillor or mayor.

The Minister suggests in his letter of suspension that the applicant will be brought before a competent authority which will be set up to deal with the allegations. The Minister cannot pretend that the independent tribunal is already in place in terms of the Constitution. The Minister may not set up any tribunal or other 'competent authority' to enquire into the charges levelled against the applicant before Parliament complies with the requirements of s 278 of the Constitution .That pronouncement is misplaced. To do so would amount to the Minister acting *ultra vires* the provisions of s 278 of the Constitution.

The conduct of the Minister in suspending the applicant was in accordance with the law. The applicant's application has no merit and ought to be dismissed.

In this case, the outcome is that even if the Minister may have powers to suspend and do so, there is no conclusion to the process he has embarked on. There is no mechanism to determine the allegations. He may do nothing more after the suspension. The suspension only runs for 45 days during which period the dismissal is expected to take place in terms of s 278 or the suspension lapses. In my view if an independent tribunal is not in place in terms of the Constitution within 45 days of the suspension that is the end of the matter. The applicant will be entitled to be released from suspension by operation of law. There simply is not going to be a resolution of the dispute in the near future. That sort of scenario is undesirable. The Minister ought to have realised that he was going nowhere slowly.

I am certain that the predicament we are in at present is not what was envisaged by the Constitution makers when they legislated that a legislative Act must deal with the appointment of an independent tribunal. It was anticipated that the process of harmonisation of laws would take place without more ado. The re-alignment of the Constitution with the other laws is taking forever. These amendments have been in abeyance for just too long. Parliament is required to act with speed and give priority to this process. This delay has a negative impact on the administration of justice. Pleasing however, are indications that the legislative department of the Attorney General's Office is already in the process of drafting amendments to the Urban Councils Act.

I am not satisfied that the applicant has established a *prima facie* entitlement to the relief sought.

As regards costs, this court has wide discretionary powers with regard to sentence. *See Nyambirai* v *NSSA* 1995(2) ZLR 1. I have decided in the exercise of my discretion not to make an award of costs against the applicant. This is so primarily because there are divergent views over the correct legal position. This is a matter that merits the intervention of the court to clarify the legal issues raised. Where a matter raises important legal points and the court does not consider that the applicant has been unreasonable in his conduct of bringing his matter to the fore, that on its own is a good enough reason for the court to decline to make an award of costs against the losing party.

In the result it is ordered as follows,

The application is dismissed.

Each party is to bear its own costs

Lawyers for Human Rights, applicant's legal practitioners
Civil Division of The Attorney General's Office, respondent's legal practitioners