MORGAN KOMICHI

versus

THE STATE

HIGH COURT OF ZIMBABWE

MUSAKWA & MUZOFA JJ

HARARE,10 February & 8 June 2020

**Criminal Appeal**

*O. Shava,* for the appellant

*A. Muziwi,* for respondent

MUZOFA J: On 2 August 2018 the Harare International Conference Centre, (the HICC) was the location for the announcement of the 30 July 2018 Presidential Election results. The Zimbabwe Electoral Commission (ZEC) has the prerogative to announce the results. The HICC was a hive of activity with all and sundry anxious to hear the results. The specific room designated for the purpose was full of people from different political parties, journalists and other accredited people. The process was that election results would be sent from different provinces to the HICC. After some verifications ZEC officials would make the announcements. It is not in dispute that at around 2245 hours the ZEC officials took leave of their seats and retired to a different room awaiting results from one province. While they were on adjournment, the appellant walked to the podium reserved for the ZEC officials for purposes of announcing the results and announced that the Movement for Democratic Change Alliance (MDC-A) rejected the results for noncompliance with due process. He alleged that the MDC Alliance agents had not verified the results. The appellant was immediately arrested.

For his excursion, the appellant was subsequently charged for contravening s 186 of the Electoral Act [*Chapter 2:13*] (hereinafter referred to as the Act) for unlawfully and wilfully interrupting, disrupting and disturbing the proceedings of the announcement of the Presidential election results. He denied the charge. Despite that, after a trial he was convicted and sentenced to pay a fine of $200 in default of payment 2 months imprisonment, in addition 3 months’ imprisonment was wholly suspended for 5 years on condition he did not commit a similar offence involving a contravention of s 186 of the Electoral Act for which upon conviction a sentence of imprisonment without the option of a fine would be imposed.

Dissatisfied with the conviction the appellant noted an appeal. The grounds of appeal were set out as follows;

1. The learned magistrate *a quo*, having properly made a finding that when the appellant went to the podium, the Zimbabwe Electoral Commission officials had taken an adjournment, erred at law in finding him guilty as charged when he could not, legally and factually have interrupted, disturbed or disrupted any proceedings during such an adjournment period.
2. The learned magistrate *a quo* erred at law in misinterpreting s 186 of the Electoral Act, in particular by reading the term “proceedings” out of context or contrary to the rules of statutory interpretation, thereby convicting the appellant on the basis of a conduct which is not penalized under the said section.

 From the two grounds, the appeal turns on the interpretation of the words used in the section creating the offence. In other words the issue for determination is whether the ZEC proceedings were still in progress such that the appellant’s conduct disrupted, interrupted or disturbed them.

 In coming to its decision, the trial court was very methodical. Having established the facts, it defined the words creating the offence. It set out the meaning of disrupt, obstruct and disturb which words generally imply some hindrance in the flow of something. Thereafter it noted that the Act did not define the term ‘proceedings’ and the trial court opted to find the definition from *Black’s Law Dictionary* which defines proceedings as including ‘all acts and events between the time of commencement and the entry of judgment’. The trial court concluded that since the ZEC officials were still to announce results from one province the proceedings were still in progress. To that extent the appellant’s conduct disturbed or disrupted the proceedings that had not fully terminated.

 *Mr Shava* for the appellant submitted that the words used in the Act, to disturb, interrupt and obstruct envisage an interference with a process that is ongoing. The words cannot and should not be taken to apply to situations where the process is not ongoing. There must be some prevention or hindrance of the process. In this case ZEC had taken an adjournment, no proceedings were taking place therefore factually the appellant could not have interfered with proceedings. Conversely there was no evidence to show that during such adjournment ZEC was hindered in its work. I pause here to comment that the offence is not confined to ZEC but to any proceedings taken in connection with an election. He argued that the trial court erred by defining ZEC proceedings to include the adjournment. Relying on the principles of interpretation enunciated in *Anna Colleta Chihava and Others v The Provincial Magistrate Francis Mapfumo[[1]](#footnote-1)* he urged this court to apply the golden rule in coming to the true intention of the legislature by taking the words used in their context.

The respondent opposed the appeal .It was submitted that the trial court was correct in its approach to use the ordinary meaning of the word ‘proceedings’ in *Blacks’ Law Dictionary.* The meaning of a word should be ascertained from its dictionary meaning taken in its context. For this submission the respondent relied on the authority of *Mavengenge v Minister of Justice, Legal and Parliamentary Affairs and Others[[2]](#footnote-2)*  and *Endevour Foundation and Another v Commissioner of Taxes*.[[3]](#footnote-3) Further to that it was submitted that since the ZEC officials were still to announce some results, the proceedings had not been terminated. The appellant did not have authority to make any announcement on the day.

 Where the interpretation of a statute is in issue, the starting point is that words should be given their ordinary grammatical meaning unless this would result in some absurdity, repugnancy or inconsistency with the statute. Both parties properly set out the law in this aspect, they diverge in its application to the facts of this case. The *Chihava* case *supra* relied on by the appellant succinctly sets out the approach at 35F -36 E as follows;

“The starting point in relation to the interpretation of statutes generally would be what is termed ‘the golden rule’ of statutory interpretation. This rule is authoritatively stated thus in the case of Coopers and Lybrand & Others v Bryant 1995 (3) SA 761 (A) at 7;

‘According to the ‘golden rule’ of interpretation, the language in the document is to be given its grammatical and ordinary meaning, **unless this would result in some absurdity, or some repugnancy or inconsistency with the rest of the instrument**. In his book ‘Principles of Legal Interpretation - Statutes, Contracts and Wills’ 1st Ed. At page 57, E A Kellaway echoes this statement as follows:

‘The dominating Roman-Dutch law principle is that an interpretation which creates an absurdity is not acceptable (that is *‘interpretatio quae parit absurdum, non est admittenda)”* (See among other authorities, Exparte Fourie 1962 (3) SA 614 (O); *S v Nyathi* 1978 (2) SA 20 (B) and *Canca v Mount Free Municipality* 1984 (2) SA 870 (TK) 833)’

The learned author, at page 62, further states:

“Even if a (South African) court comes to the conclusion that the language is clear and unambiguous, it is entitled to reject the purely literal meaning if it is apparent from the **anomalies which flow therefrom that the literal meaning could not have been intended by the legislature”** (*my emphasis*)

The Court at page 37A-D summed up the approach and said-

It is a sound principle of the law that when interpreting a statutory provision, the court must bear in mind that the legislature does not intend irrational or unreasonable results. In discussing the import of absurdity Devenish[[4]](#footnote-4) opines that the absurdity must be obvious, it must lie in the words of the statute. This approach has been partially codified[[5]](#footnote-5).

In coming to the true meaning of the words forming the basis of this appeal the court should consider the purpose of the Act. One of its purposes is ‘to provide for offences and penalties and for the prevention of electoral malpractices ’.The offences created by the Act are therefore connected and incidental to elections. It is trite that an election is not an event but a process. The offences therefore relate to the processes associated with elections and the announcement of electoral results is part of this process.

If the restrictive interpretation advanced for the appellant were to be accepted, it would certainly result in an absurdity that the legislature did not intend. Simply put the appellant’s interpretation is that the proceedings should be confined to the time when the ZEC officials were sitting and making the announcements. When they adjourned the proceedings had terminated, the proceedings could not be disrupted. This approach narrows the announcement proceedings to an event and not a process. It is a process because it involved a lot more than the sitting of the ZEC officials. To our mind it involved the transmission of the results, the setting up of the room (s) associated with the announcements. The intention of the legislature in enacting the provision was to make sure that whatever proceedings conducted in connection with elections be carried out seamlessly devoid of any hindrances.

 The term proceedings therefore should be taken to include all the processes culminating in the sitting of the ZEC officials making the announcements. This will include even the processes taking place on the day at the provincial centres associated with the transmission of the electoral results. To our mind even an interference of the transmission of the provincial results to the HICC would constitute a disturbance in the proceedings of the announcement of results. An adjournment by the ZEC officials on the day, was a break only in respect of the sitting which is but a part of the announcement proceedings. The legislature intended to preserve the integrity of the electoral process by ensuring that they proceed smoothly to their logical conclusion. There was evidence that the appellant’s conduct resulted in some commotion as representatives from other political parties responded to his announcement. His conduct was captured on video by journalists. The appellant’s conduct should not be condoned especially in view of the fact that the same Act[[6]](#footnote-6) provides for recourse that any disgruntled member could pursue to remedy any perceived irregularities. It was open for the appellant to pursue the proper legal channels to challenge the process.

 It is our considered view that the court *a quo* did not misdirect itself. The appeal lacks merit and it is accordingly dismissed.

MUSAKWA J agrees ………………

*Mbidzo, Muchadehama & Makoni* ; appellant’s legal practitioners

*National Prosecuting Authority*, respondent’s legal practitioners

1. 2015 (2) ZLR (3) CC [↑](#footnote-ref-1)
2. CC Z ZLR 339 (S) [↑](#footnote-ref-2)
3. 1995 (1) 339 (S) [↑](#footnote-ref-3)
4. Interpretation of Statutes ,Juta & Co 1992 [↑](#footnote-ref-4)
5. Section 15 B of the Interpretation Act [Chapter 1:01] [↑](#footnote-ref-5)
6. Section 167 of the Electoral Act [↑](#footnote-ref-6)