LILLIAN TIMVEOS
and
THABITHA KHUMALO
versus
DOUGLAS MWONZORA
and
DR THOKOZANI KHUPE
and
MOVEMENT FOR DEMOCRATIC CHANGE – TSVANGIRAI (MDC-T)
and
SPEAKER OF THE NATIONAL ASSEMBLY N.O.
and
PRESIDENT OF THE SENATE N.O.
and
CHAIRPERSON OF THE ZIMBABWE ELECTORAL COMMISSION N.O.

HIGH COURT OF ZIMBABWE
MAFUSIRE J
HARARE, 26 & 28 May 2020; 1 & 8 June 2020

Urgent chamber application

Date of judgment: 8 June 2020

Mr *C. Kwaramba*, with him Mr *A. Muchadehama,* for the applicants
Mr *S. Chatsanga* for the first and third respondents
Prof. *L. Madhuku,* for the second respondent
Mr *A. Demo,* with him Mr *K. Tundu*, for the fourth and fifth respondents
No appearance for the sixth respondent

MAFUSIRE J

i/ **Introduction**

[1] In May 1999 a political party called the Movement for Democratic Change (***"the MDC"***) was formed: see *Muzhuzha v Movement for Democratic Change* HH 472/13. It was a conglomeration of disparate organisations and disparate interests predominated by labour and the academia. Over time, this party would splinter into various other formations. In more recent times, some of the fragments or other political formations from the original MDC, most, if not all, retaining the moniker 'MDC', have included the MDC-T; the MDC-Green; the MDC 99;

the MDC-Alliance, and so on. A glut of cases has blitzed the courts, involving the original party or other formations borne out of it, or a diversity of members from them. This case is one such.

[2] On 30 July 2018 Zimbabwe held a harmonised general election in which every conceivable political seat, from local government, to Parliament, and to the office of President, was contested. Fifty political parties, or formations, sponsored candidates for seats in, among others, the Parliament of Zimbabwe. Twenty-three candidates, some of them sponsored by, or representing political parties or organisations, contested for the office of President. The dispute in this matter and the several other cases that are either pending in the courts, or have already been disposed of, traces its origin to the events before, during and after that election. One such case is *Movement for Democratic Change & Ors v Mashavira & Ors* SC 289/19 that the Supreme Court of Zimbabwe disposed of under judgment no SC 56/2020 (still to be reported) (hereafter referred to as "***the Supreme Court judgment***").

ii/ **This case**

[3] This case is an urgent chamber application. The applicants seek temporary relief pending the determination of their main dispute. At the launch of this application, three applications, featuring the applicants and the respondents, had been filed with this court under the case reference numbers HC 2308/20; HC 2351/20 and HC 2352/20. The main dispute in those applications seems multifaceted. But in my paraphrase, it boils down to whether the first, second and third respondents have the power or authority to terminate, or cause to be terminated, the applicants' tenure or seats in the bicameral Parliament of Zimbabwe, that comprises the Senate and the National Assembly. In political parlance they call this practice a "recall".

[4] The applicants allege that the first to third respondents, or one or other of them, have unlawfully recalled, or caused them to be recalled, from Parliament. They allege that the fourth and fifth respondents have unlawfully acted on these unlawful recalls. They say they fear that the sixth respondent will now act on these unlawful recalls by taking steps to have their seats in the respective houses of Parliament filled up by nominees of the first, second and third respondents. The main cases above are meant to determine the lawfulness or otherwise of the

purported recalls. In the mean time they seek interim relief to stop the process of filling up of their seats.

[5] Verbatim, the interim relief seeks that:

> "1. 1st, 2nd and 3rd Respondents or anyone acting through them or on their behalf be and are hereby interdicted, barred and stopped from replacing Applicants as members of the Senate and National Assembly respectively by members of the MDC-T or any of their appointees.
>
> 2. 6th Respondent be temporarily interdicted from Gazetting the existence of vacancies in Applicant's Constituencies for purposes of taking steps to have them filled by nominees of 1st, 2nd and 3rd Respondents."

In the course of argument, Mr *Kwaramba* abandoned paragraph 2.

iii/ **The parties**

[6] At all relevant times until 3 April 2020, or 5 May 2020, the first applicant ("***Timveos***") was a member of the Senate on the ticket of, or sponsored by, or representing a formation or entity called the Movement for Democratic Change – Alliance ("*MDC-A*"). So was the second applicant ("***Khumalo***"), except that she sat in the National Assembly. Whether the MDC-A is a political party or a mere coalition of political parties, and whether candidates or aspiring legislators could belong to it in their own individual capacities, or only through other political parties or formations, is hotly contested.

[7] The first respondent ("***Mwonzora***") sits in the Senate. It is common cause he went in there on the MDC-A ticket. At this stage, I stay clear, as much as possible, of the raging controversy whether MDC-A is a political party or not, and whether Mwonzora is the Secretary-General of the MDC-A, or of the MDC, or of the MDC-T. For now, I stick to facts or issues that I believe are common cause or uncontroverted or should reasonably be uncontested. One such is the fact that Mwonzora was the author of the letter of recall in respect of Timveos and Khumalo.

[8] The second respondent ("***Khupe***") contested for the office of President in the 2018 election representing a party called the MDC-T. Following the Supreme Court judgment Khupe, Mwonzora, and several other members of the MDC kindred parties or formations, and in accordance with the interpretation that they have given the Supreme Court judgment, have held out and taken steps to show that the original MDC party, as it existed in 2014, has revived

with its governance structures as at that time restored. In these proceedings, and consistent with that position, Khupe holds herself out as the President of the original MDC-T.

[9] The third respondent is one or other of the MDC-T formations. In a previous harmonised general election held in 2013, and because of wrangles bedevilling the MDC formations at that time over, among other things, the name 'Movement for Democratic Change', one of the formations, then led by its then President, the Late Dr Morgan Richard Tsvangirai ("***the Late Tsvangirai***"), participated in that election under the moniker MDC-T. There is confusion or controversy whether the MDC-T party that is cited as the third respondent in the present proceedings is the original MDC-T that was led by the Late Tsvangirai, or the MDC-T that Khupe led in the 2018 election. For this case, I do not have to wade into that wrangle or decide the point.

[10] The fourth respondent is the Speaker of the National Assembly ("***the Speaker***"). The fifth respondent is the President of the Senate ("***the Senate President***"). They preside over the National Assembly and the Senate respectively. The Zimbabwe Electoral Commission ("***ZEC***") is one of five independent commissions set up in terms of Chapter 12 of the Constitution. Its remit is, among many others, to conduct and supervise elections in Zimbabwe. The sixth respondent herein is its Chairperson. She is not contesting this application. Through legal practitioners, she has sent written communication that she undertakes to abide by the decision of the court.

iv/ ***Facta probanda* and *factum probandum***

[11] On 3 April 2020 Mwonzora sent identical letters, save for the addressees, to the Speaker and the Senate President recalling the applicants from Parliament. The material portions of the letters read:

> **"Re: Notice of Recall of Certain Members of Parliament**
>
> We hereby advise that acting in terms of Section 129(1)(k) of the constitution we hereby declare that the following Members of Parliament have ceased to belong to the Movement for Democratic Change – Tsvangirai which was a member of the Movement for Democratic Change Alliance, which Alliance was formed in terms of the constitutive agreement a copy of which is attached hereto. In terms of the agreement seven political parties concluded a non compete political cooperation agreement for purposes of contesting the 2018 general elections.

In terms of Clause 2.0 of the agreement the member parties retained their individual identities and independence. Further, in terms of Clause 3.0 of the agreement each member party chose its own Members of Parliament given under its quota and retained authority over same. Our party was the political party that these members belonged to at the time of the last election in 2018.

By operation of the Supreme Court of Zimbabwe judgment of the 31st of March, 2020, a copy of which is attached hereto I am the current Secretary General of the Movement for Democratic Change-Tsvangirai and as such I have authority to make this correspondence. The members listed below have by operation of clause 5.10(a) of our party constitution ceased to belong to the Party and are hereby being recalled:

Hon. Charlton Hwende
Hon. Thabitha Khumalo
Hon. Prosper Mutseyami
Hon. Lillian Timveous (*sic*)"

[12] On 5 May 2020 the Speaker and the Senate President informed their respective Houses of the receipt of Mwonzora's letter aforesaid, and the existence of vacancies thereby created. They also went on to inform ZEC of the same, so that, as they say, the electoral process could begin in terms of the Electoral Act, *Cap 2:13*. The applicants have not accepted the recall. They do not accept that Mwonzora, Khupe or the MDC have any powers or authority to recall them. They say they belong to the MDC-A, a political party completely different from the MDC or MDC-T party. They do not agree with the construction or interpretation Mwonzora and Khupe have given to the Supreme Court judgment, such as that the structures of the original MDC party after 2014, or any such other political formations as might have been incepted thereafter, automatically dissolved or stood dismantled.

[13] The Late Tsvangirai died on 14 February 2018. By that time, the MDC was already mired in leadership wrangles. As at that date, Khupe was one of three Deputy Presidents of the party. She had been elected to that position at a previously held congress of the party in 2014. The other two Deputy Presidents were Messrs Elias Mudzuri and Nelson Chamisa ("***Chamisa***"). They had been appointed to those positions by the Late Tsvangirai in 2016. On 15 February 2018, a day after the death of the Late Tsvangirai, Chamisa was appointed the Acting President of the party. He would soon become the substantive President following some congress. Khupe did not recognise Chamisa as the Acting President or substantive President. She did not recognise the processes by which he had assumed those positions. She was to later on form another MDC-T political party under whose ticket she contested the 2018 harmonised election. This narrative is more fully set out in the Supreme Court judgment. That judgment

was the final disposal of a legal challenge by one of the members of the party after the assumption of office of party President by Chamisa. The judgment upheld a decision of this court, per MUSHORE J, which, among other things, had nullified Chamisa's elevation to the office of President of the party. The Supreme Court judgment restored Khupe's leadership and such of the governance structures of the party as had been in place in 2014.

[14] In this matter, except for the sixth respondent, all the other respondents have vigorously contested the interim relief sought. Their grounds are multiple. They comprise numerous points *in limine* and substantive grounds on the merits. At the hearing, all counsel agreed amongst themselves that I would hear argument on both the preliminary objections and the merits together, and then deliver one composite judgment, first on the preliminary points, and only afterwards on the merits, if the preliminary points did not find favour with me. I endorsed the agreement. Here now is my judgment.

v/ **Points *in limine***

a. No *dies induciae* set out in the application

[15] Professor *Madhuku*, for Khupe, and effectively, for the rest of the respondents, argues that the application is defective for want of form. He says the application document does not inform the respondents of the number of days or the period within which they may, if they wish, file opposing papers, and that this is contrary to the provisions of the Rules of this court, the Forms prescribed by those Rules and the direction given in numerous cases such as *Zimbabwe Open University v Mazombwe* 2009 (1) ZLR 101 (H) and *Marick Trading (Pvt) Ltd v Old Mutual Life Assurance Co of Zimbabwe (Pvt) Ltd* 2015 (2) ZLR 343 (H).

[16] I consider this objection a 'sterile dispute about forms': see *Mazombwe*, *supra*, at p 103C – E. It needs not detain me. The application document is compliant. It gives notice of the application to the respondents. It sets out the grounds of the application. It informs the respondents to file opposing papers if they wish. Of course, it does not tell them when they may do that. But it tells them that the matter is urgent. The Rules behove the Registrar, and the judge assigned an urgent matter, to consider it urgently. In this case, the application was filed on 22 May 2020. It was assigned to me. I caused it to be set down for hearing on 26 May 2020.

By the time of the hearing, all the respondents, except the sixth, had managed to file their opposing papers. There could have been no conceivable prejudice occasioned by any failure by the applicants to indicate the period (*dies inducia*) within which the opposing papers could be filed. At any rate, Professor *Madhuku* does not press the point. He says he raises it to ensure uniformity in the practice of the courts. That may be gracious. But I dismiss it.

b. Certificate of urgency fatally defective

[17] A party that moves the court for relief on an urgent basis and is represented by a legal practitioner, is required by the Rules of court to file a certificate by a legal practitioner certifying that the matter is urgent. The legal practitioner must set out the reasons for his or her saying so. What such a certificate must say or contain has been the subject of several judgments of this court and the Supreme Court: see for example, *Dube v Minister of Local Government, Public Works & National Housing N.O.* HMA 34-17 and *Chidawu & Ors v Shah & Ors* 2013 (1) ZLR 260 (S). This certificate is the *sine qua non* for the referral of an urgent matter by the Registrar to a judge for consideration. The legal practitioner certifying the matter as urgent must apply his independent mind to the facts, and not merely regurgitate the founding affidavit. It must be apparent *ex facie* the documents that the legal practitioner has made a genuine assessment of the situation and has reasonably come to the conclusion that the matter is indeed urgent. An urgent chamber application can be dismissed on the basis of a defective certificate of urgency.

[18] In the present case, the certificate of urgency summarises the grounds of the application. It expresses the applicants' fears that the respondents may proceed to replace them as members of Parliament despite their pending cases challenging their expulsion. Professor *Madhuku* charges that the certificate is woefully deficient. Among other things, it lacks crucial information about the dates of important events informing the alleged urgency. Furthermore, it pays no attention to the elaborate steps that must be taken in terms of s 39 of the Electoral Act in filling up vacancies in Parliament.

[19] I refuse to be over fastidious. Courts should not demand mathematical exactitude from litigants when they present their case. Access to justice must be easy. Form should not be elevated above substance. Courts strive to resolve the real dispute between the parties and avoid getting choked by a thicket of technicalities, unless the alleged infraction complained of causes

real prejudice. In this matter, I find no such infraction as may cause prejudice to the respondents. The certificate of urgency may be imprecise. It may be displaying deficiency in legal drafting skills. But it is adequately informative. It is not practical for a court to prescribe with precision the depth to which a legal practitioner must go in defining the grounds of urgency. Every case depends on its own merits. I dismiss the respondents' second point *in limine* for lack of merit.

c. Non-joinder of ZEC is fatal

[20] The sixth respondent herein is the Chairperson of ZEC, not ZEC itself. The respondents argue that the applicants should have cited both ZEC and its Chairperson. It is argued that the failure to do so has non-suited the applicants. The Chairperson is not ZEC. Her decision is not that of ZEC. Nor is the decision by ZEC hers. The two have different functions. In terms of the electoral laws there are certain tasks that are the exclusive responsibility of the Chairperson, for example, the declaration of the result of an election to the office of President, in terms of s 110 of the Electoral Act. Then there are other functions that are reposed in the other officers of ZEC, or in ZEC itself, as a corporate body. That citing the Chairperson is not the same thing as citing ZEC is clear if regard is had to the Supreme Court case of *Zimbabwe Unity Movement v Mudede NO & Anor* 1989 (3) ZLR 62 (HC & SC) where the decision of the Chairman of the predecessor to ZEC, acting alone, was set aside for want of compliance with a statutory provision that required the unanimous decision, failing that, the decision of a majority of the members of the commission.

[21] I acknowledge the force of the respondents' argument. But it cannot succeed. The case of *ZUM v Mudede* above is distinguishable. It dealt with a specific constitutional requirement on a specific item relating to any amendment or promulgation of an electoral law by the President. Before he could incept a Bill or a statutory instrument, the President had to get the unanimous views of the members of the commission, failing that, the views of the majority. What had happened in that case was that, given the urgency of the matter, the President, in wanting to extend by an amendment, the sitting of the nomination court in an impending election, had, through functionaries, only received the view of the Chairman of the commission who had assured him that the other members would go along with him if consulted. The Supreme Court declared the amendment unconstitutional because the view received by the President was not that of the commission.

[22] In contrast, whilst s 4A of the Electoral Act declares ZEC a body corporate capable of suing and being sued, the citation of ZEC in legal proceedings is specifically governed by s 14(1) the Act. Under the heading **"Legal proceedings against Commission"**, the subsection provides that subject to subsection (1) (*sic*), the State Liabilities Act [*Chapter 8:14*] applies, with any necessary changes, to legal proceedings against the Commission as if the Chairperson of the Commission were a Minister. Mr *Kwaramba*, for the applicants, argues that in terms of the State Liabilities Act, in proceedings against the Government, one does not sue the Ministry, but the Minister, and that in the same way, section 14 of the Electoral Act is directing the citation of the Chairperson of ZEC, and not ZEC itself. Professor *Madhuku* disagrees and argues that s 14 of the Electoral Act is referring to proceedings against the Commission in respect of claims for damages for such delictual wrongs or contractual breaches as may have been committed by officers of the Commission.

[23] I disagree with the respondents' contention about the non-joinder of ZEC. In a constitutional application in *Shumba & Anor v ZEC & Anor* 2008 (2) ZLR 65 (S), the Supreme Court, dealing with the old provision of the Electoral Act equivalent to s 14, held that the Chairperson is the one to be sued whenever the Commission is to be sued. Failure to cite the Chairperson, or citing the Commission itself instead of the Chairperson, constitutes a failure to comply with the Electoral Act. In explaining the relationship between the Electoral Act and the State Liabilities Act in regards to legal proceedings, the apex court held that whenever an employee of the Commission is being sued and a plaintiff or applicant wishes to join the Commission, the Chairperson, not the Commission itself, has to be cited. Noting that in that case the applicants had cited ZEC and not the Chairperson, and had therefore failed to comply with the requirements of the Electoral Act, the court, finding no prejudice to the respondents by reason of such failure, condoned the applicants' irregularity in that regard.

[24] In the same way, I hold that the joinder of ZEC is not a requirement, but that even it is, the non-joinder is not a fatal irregularity as no prejudice as might have been suffered by such omission has been shown. Through its Chairperson, ZEC has been sufficiently informed of the present proceedings. If it wished to take a position it would, through its Chairperson. In fact, it has. It has informed it will abide by the decision of the court. Therefore, I dismiss this point *in limine*.

d. Application not urgent

[25] The respondents charge that between the creation or the announcement of the vacancies in Parliament and the filing of the application on 22 May 2020, there has been an inordinate delay of twenty-two days that has not been explained. As such, the applicants must be taken to have refrained from taking action when the need to do so had arisen. Reliance was placed on several cases on the point, including the seminal judgment of CHATIKOB J in *Kuvarega v Registrar-General & Anor* 1989 (1) ZLR 188 (H) which is the *locus classicus* for the view that what constitutes urgency is not the imminent arrival of the day of reckoning. A matter is urgent if the need to act arises and the matter cannot wait. Reliance was also placed on my judgments in *Main Road Motors v Commissioner-General, ZIMRA* HMA 17-17 and *Icon Alloys (Pvt) v Gwaradzimba N.O. & Ors* HMA 30-17 in which I stated that the kind of action that a person must take when the need to act has arisen is not just any type of action, but action that is effectual in protecting one's rights or averting the impending imperil. To press home their point, the respondents submit that the applicants wasted time sending an ultimatum to ZEC (on 14 May 2020) demanding an undertaking that it would not proceed to fill up the vacancies before their challenge had been decided by the court, when everyone knows that no one, not even the court, can stop constitutional or statutory processes that have commenced.

[26] Again I acknowledge the force of the respondents' argument. But context matters. I must put this argument in its proper perspective. Mwonzora's letters of recall were on 3 April 2020. They were addressed to the Speaker and the Senate President. The applicants were not copied. They say they did not know about those letters. They only got to know about their fate when the Speaker and the Senate President announced the vacancies on 5 May 2020. But everyone knows that a vacancy is not created by the announcement by the Speaker and the Senate President. In terms of s 129(1)(k) of the Constitution, it is created by the receipt of a communication by the Speaker or Senate President from the political party "recalling" its member from Parliament by reason of such a member having ceased to belong to the political party in question. This is what MALABA DCJ, as he then was, stressed in *Madzimure & Ors v The President of the Senate & Ors CCZ* 8-19 (not yet reported).

[27] The period within which to act when the need to do so arises is not prescribed. It can never be prescribed. It is determined on a case by case basis, taking account of the peculiar circumstances of each case. In matters of extreme urgency, the period can be a matter of hours,

not days. In *Kuvarega* above, for example, it was seven days. In *Econet Wireless (Pvt) v Trustco Mobile (Pty) & Anor* 2013 (2) ZLR 309 (S), it was three weeks. Plainly, it is a futile exercise to look at the issue from the point of view of a fixed number of days. It is not even the respondents' point herein.

[28] In the *Econet Wireless* case above, the court was satisfied that a delay of three weeks was reasonable when account was taken of the fact that the matter involved trans-border interactions and the collation of documents. The case would be determined in the Zimbabwean courts, prosecuted by counsel from South Africa, on behalf of litigants based in Namibia. *In casu*, the applicants make a similar point, albeit in the answering affidavit. They point out that there is in Zimbabwe, as indeed the whole world, wholesale restrictions on the movement of people due to the covid-19 global pandemic. Timveos says she stays in Zvishavane, in the Midlands Province; Khumalo in Bulawayo, and that Parliament and the courts for these matters sat, or are sitting, in Harare. Members of the applicants' party or organisation are scattered all over the country. The pace of gathering information and documents is much slower. This sounds a reasonable explanation to me. I consider that my remarks in the *Main Road Motors* and *Icon Alloys* cases above have been taken out of context. In this matter, I hold that a seventeen-day delay in filing the application was not inordinate. The applicants' lawyers' letter of 14 May 2020 aforesaid, putting ZEC on terms, might have been a futile exercise. But that is not all that the applicants have been doing. They, or their camp, have been busy with numerous court proceedings ever since their recall. Khupe informs the court in her opposing affidavit that this is the fifth application that she has had to attend to in a short space of time. Thus, the applicants were not been sitting back. I dismiss this point *in limine*.

e. <u>Material non-disclosure and deliberate intention to mislead</u>

[29] The respondents accuse the applicants of deliberately withholding material information from the court with the intention to mislead. Professor *Madhuku* says that the Supreme Court judgment went into some detail on the goings-on in the MDC party; that the judgment nullified everything that had happened in the party contrary to the party's constitution, but that in these proceedings, the applicants do not even mention that judgment. They do not tell the court the whole story. Throughout, they refer to Khupe as the leader of the MDC party. They cite the third respondent as the MDC. No mention is made of how all these developments came about. The court gets to know about these details only upon reading the opposing affidavits.

[30] The issue of a litigant moving the court for relief on half-baked information, or on facts deliberately calculated to mislead by reason of material information having been concealed, is a sore point. I have deprecated such conduct in several judgments in the past. I have expressed the view that, like in *ex parte* applications, urgent chamber applications are applications that require the display of utmost good faith. Complete confidence must be reposed in the court. In *Sadiqi v Muteswa* HH 281-20 (unreported) I said, at p 7- 8 of the cyclostyled judgment:

> "Litigation is not a game of wits. It is a serious and scientific process to resolve disputes amongst individuals and to settle problems in the society. The search for truth is paramount. It is a duty thrust upon everyone. A party that conceals material information from the court must be unworthy of its protection or assistance. If you seek relief, you must take the court into your confidence, laying bare all the relevant facts on the matter. In the English case of *Rex* v *Kensington Income Tax Commissioners: Ex Parte Princes Edmond de Polignac* (1917) 1 KB 486, Viscount READING CJ, in relation to *ex parte* applications, said, at p 495 – 496:
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> "Where an *ex parte* application has been made to this Court for a rule *nisi* or other process, if the court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the facts, **the Court ought, for its own protection and to prevent an abuse of its process,** to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived (*my emphasis*).
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> See also *Nehanda Housing Cooperative Society & Ors v Moyo & Ors* HH 987-15 and the cases cited therein."

[31] However, and with all due respect, the issue of non-disclosure of information does not arise in this matter. It is all much ado about nothing. The Supreme Court judgment, among other things, declared what the position in the MDC party was at a particular point in time. That judgment is in the public domain. As a matter of fact, given the wide publicity that it received at the time of its delivery, and continues to receive, thanks in no small measure to the endemic and internecine fights of the MDC political party formations, the judgment must be the most topical discussion at the moment. Of course, every citizen is allowed to construe the judgment in whatever way they feel. They are free to voice their opinion on what they think the judgment means or says. The parties before me are doing just that. But in no way does any such construction or interpretation bind the court. I am satisfied that on their papers, the applicants have disclosed such material information as would, if that were the sole determinant

factor, entitle them to relief. Among other things, they attach Mwonzora's letter of recall which refers to the judgment. I dismiss this point *in limine*.

f. Interim relief same as final relief

[32] In terms of the Rules of this court, where a party approaches a judge in chambers on a certificate of urgency seeking interim relief, if he or she or it makes out a *prima facie* case for such relief, the judge grants a provisional order which is just temporary in nature and is subject to confirmation in the future. In previous cases, I have likened this kind of temporary relief to a pain killer that a doctor prescribes to alleviate pain as the patient awaits surgery or substantive treatment in relation to the main disease or injury afflicting him or her: see *Cawood v Madzingira & Anor* HMA 12-17 and *Main Road Motors*, *supra*.

[33] In this jurisdiction, the rationale for the rule that interim relief should not be the same as the final relief sought has been explained in a number of cases, starting with *Kuvarega, supra*. In that case, the learned judge said, in paraphrase, interim relief that is exactly the same as the substantive relief defeats the whole object of interim protection. A litigant who seeks interim relief in this manner obtains final relief without proving his or her or its case. That is so because interim relief is normally granted on the mere showing of a *prima facie* case, (as opposed to proving the case on a balance of probabilities). Where one obtains a final remedy disguised as interim relief, one loses one's interest in the outcome of the case. This is undesirable. They may never prosecute their case to finality.

[34] The rule against interim relief being exactly, or substantially, the same as the final remedy sought is not cast in stone. It is not a rule of thumb. Every case depends on its own facts. Furthermore, an infraction like this, if it be one, does not necessarily non-suit a litigant. In the *Econet Wireless* case above, the Supreme Court said no hard and fast rules can be laid down. There may well be cases where a court could treat the application as not urgent, with the result that the matter is referred to the ordinary roll. In other cases, the court may simply proceed in terms of r 240 of the Rules of this court and amend the relief sought.

[35] The final order sought is couched as follows in the draft order:

> "1. It be and is hereby declared that 1st, 2nd and 3rd Respondents or anyone acting through them or on their behalf have no power or authority to replace 2nd and 3rd Applicants (*sic*) who are members of the MDC-Alliance as members of the Senate and National Assembly respectively

by members of the MDC-T, or any of their appointees and that such replacement of Applicants is unlawful.

2. Pending a resolution of the applications in Case Nos HC 2308/20, HC 2351/20 and HC 2352/20 the replacements of Applicants as Members of Parliament by the Respondents be and is hereby stayed.

3. Respondents to bear the costs, jointly and severally, the one paying the other to be absolved."

[36] The draft order is confusing, especially in paragraph 2. But I do not agree that the substance of the interim relief sought is the same as the final one that the applicants desire on the return day. What the applicants want on the return day is a declaration of unlawfulness of the action by the first, second and third respondents in purporting to recall them from Parliament. What they seek in the interim is an interdict to restrain these respondents from consummating the process that they have unlawfully initiated and put into motion. What the interim relief is intended to achieve is to stop these respondents from filling up the vacancies that they have caused to be created by their unlawful actions. It is not the same thing. Paragraph 2 of the draft final order seems superfluous. But that is for the confirmation court to decide, if the matter goes that far. That does not contaminate the entire application before me and make it unfit for determination. This point *in limine* is therefore dismissed.

g. Court lacks jurisdiction to grant the interim relief sought

[37] It is the gravamen of the objection by the respondents, particularly the Speaker and the Senate President, both *in limine* and on the merits, that the interim relief sought by the applicants is incompetent in that not only is this court, even despite its inherent jurisdiction, not empowered to interfere with a statutory or constitutional process like the filling up of any vacancy in Parliament within the prescribed time frames, but also that, in any event, it has no jurisdiction to determine whether Parliament has failed to fulfil a constitutional obligation, it being the sole and exclusive prerogative of the Constitutional Court in terms of s 167(2)(*d*) of the Constitution.

[38] The respondents' argument is that once a vacancy has been created in Parliament, by operation of the law, the Speaker, the Senate President and ZEC are all obligated to take steps to fill it up within the time frames set out in the Electoral Act and the Constitution. No court can interfere with these processes, let alone stop or delay them. Reference was made to a number of cases on the point, including *Judicial Service Commission v Zibani & Ors* SC 68-

17; *Gonese & Anor v President of Zimbabwe & Ors* CCZ 10-18; *Madzimure, supra*; *Mutasa & Anor v The Speaker of the National Assembly & Ors* CCZ 18-19; *Khupe & Anor v Parliament of Zimbabwe & Anor* CCZ 20-19 (all of them still to be reported) and *Hlalo v Movement for Democratic Change – Tsvangirai & Ors* 2016 (1) ZLR 521 (H).

[39] In *Zibani, supra*, PATEL JA, as he then was, said, at p 11:

> "It cannot be doubted that the courts are bound not only to respect the provisions of the Constitution but also to enforce them insofar as they dictate substantive and procedural requirements to be fulfilled by constitutional bodies. In the absence of any constitutional fiat to do so, it is clearly not within the ambit of the power or authority of a judge of the High Court to override or purport to suspend or limit the operation of an unambiguous provision of the Constitution under the pretext of pending executive action."

[40] Later on in the same judgment, it was said, at p 13:

"Generally speaking, it is not permissible for a court to interdict the lawful exercise of powers conferred by statute. See *Gool* v *Minister of Justice & Anor* 1955 (2) SA 682 (CPD) at 688F-G. This approach applies *a fortiori* where a court is called upon to interdict the lawful and *bona fide* performance of a constitutional duty. In the instant case, the court *a quo* failed to assess whether or not it was "constitutionally appropriate to grant the interdict". See *National Treasury & Ors* v *Opposition to Urban Tolling Alliance & Ors* 2012 (6) SA 223 (CC) at para 66. In so doing, it failed to observe the time honoured doctrine of separation of powers. As was underscored in *Doctors for Life International* v *Speaker of the National Assembly & Ors* 2006 (6) SA 416 (CC) at para 37:

> "Courts must be conscious of the vital limits on judicial authority and the Constitution's design to leave certain matters to other branches of government. They too must observe the constitutional limits of their authority. This means that the judiciary should not interfere in the processes of other branches of government unless to do so is mandated by the Constitution."

This principle was also clearly articulated in *International Trade Administration Commission* v *SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) at para 95:

> "Where the Constitution or valid legislation has entrusted specific powers and functions to a particular branch of government, courts may not usurp that power or function by making a decision of their preference. That would frustrate the balance of power implied in the principle of separation of powers. The primary responsibility of a court is not to make decisions reserved for or within the domain of other branches of government, but rather to ensure that the concerned branches of government exercise their authority within the bounds of the Constitution. This would especially be so where the decision in issue is policy-laden as well as polycentric."

[41] The respondents have a point. The founding affidavit by Timveos is replete with gratuitous complaints and accusations against the Speaker and the Senate President for having taken sides; for having acted on an unlawful recall; for having openly declared an intention to proceed to fill up the vacancies in the face of the impending court cases, and so on. Furthermore, in outlining the nature of their application, Timveos, in paragraph 10 of her affidavit, says the application also seeks to bar the fourth, fifth and sixth respondents from accepting the replacement of the applicants as members of Parliament at the instance of the first, second and third respondents. Finally, paragraph 2 of the draft interim order seeks an interdict squarely against the sixth respondent, the Chairperson of ZEC, to temporarily stop her from gazetting the existence of vacancies in the applicants' constituencies as a step towards the filling up of the vacancies with the nominees of the first, second and third respondents.

[42] But in this case, are the applicants urging me to stop interfering with statutory or constitutional imperatives? What exactly does this process of termination of a member's tenure in Parliament in terms of s129(1)(k) of the Constitution entail? How do vacancies thereby created get filled up? In interrogating these issues, I have to start with the illuminating remarks by MALABA DCJ, as he then was, in the *Madzimure's* case above, at p 6:

> "A political party is a product of a voluntary association of people who share a common ideology on how the affairs of the State should be administered and believe that if some members are elected to Parliament, and the political party gets control of the levers of Government power, they will use them for the benefit of all citizens."

[43] Of a Member of Parliament elected on a political party ticket, the learned Deputy Chief Justice, as he then was, and drawing from JENNINGS *Cabinet Government*, 3rd ed., at p 472, said, at p 17 – 18:

> "He or she has an obligation to the political party. He or she has an obligation to the electors. **The obligation to the political party is to support it for the normal duration of Parliament**. The obligation to the electors stems from the fact that, in modern times, the elector, speaking broadly, casts his or her vote for a particular individual, not because of his or her individual merits, but because he or she is put forward by the party for which the elector desires to vote. **The successful party is returned to Parliament, not because of his or her judgment and capacity, but because of his or her political party label**. His or her personality and his or her capacity are alike unknown to the great mass of his or her constituency. His or her own electioneering is far less important than the impression which his or her political party creates in the minds of the electors. **They vote for or against the party to which he or she belongs**." (*my emphasis*)

[44] An election is a communal process involving, among other stakeholders, the electorate, the political parties and the contesting candidates. Members of Parliament represent the people that voted for them and the party on whose ticket they are elected or appointed. When an election is successfully challenged, or when a sitting Member of Parliament is evicted, such developments untangle a multiplicity of interests. They necessarily upset the political equilibrium. They arouse a great deal of public interest. The goings-on in a political party affect the general public. Wrangles, squabbles, protracted internecine fights, and the like, at some point cease to be the private or internal concern of a political party that has membership in Parliament. So-called recalls cannot be made capriciously by a political party, much less, whimsically by an individual or a faction within the party. Members of the public are greater stakeholders in the internal affairs of a political party occupying space in local and national government institutions like Parliament.

[45] The process of the termination of a seat of a member of Parliament by "recall", and the filling up of the vacancy thereby created is a series of interlocking events. It is governed by s 129(2)(k) and s 159 of the Constitution, as read with s 39 of the Electoral Act ("the Act"). I summarise this process as follows:

- the member ceases to be a member of the political party on whose ticket he or she was elected or appointed to Parliament (s 129(1)(k) of the Constitution);
- the political party, in writing, communicates the cessation of membership to the Speaker or the Senate President (s 129(1)(k) of the Constitution);
- as soon as possible, the Speaker or the Senate President, as the case may be, notifies ZEC in writing (s 39(3) of the Act);
- without delay, ZEC notifies the public of the vacancy through a notice in the *Gazette* (s 39(4)(*a*) of the Act);
- ZEC invites the political party in writing to submit the name of a qualified person to fill up the vacancy (s 39(4)(*b*) of the Act);
- the political party lodges with ZEC a nomination paper in the prescribed form which, among other things, contains the name of the replacement party candidate (s 39(4)(*b*) of the Act, as read with s 45E);
- through the designated official, ZEC scrutinizes the nomination form (s 39(5) of the Act);

- through the designated official, ZEC notifies the public by notice in the *Gazette* of the new party candidate (s 39(6)(*a*) of the Act);
- ZEC allows a period of objection by members of the public to the proposed replacement candidate (s 39(6)(*a*) of the Act);
- if no valid objections are received, ZEC informs the public, via the *Gazette*, of the filling up of the vacancy with the party-list candidate (s 39(7)(*a*) of the Act);
- in case of valid objections received, ZEC allows the political party to make representations (s 39(7)(b) of the Act);
- if objections are received and if despite representations by the political party, ZEC still considers the objections valid, the process starts all over again until a suitable replacement candidate is found (s 39(8)(*a*) of the Act).

[46] Professor *Madhuku* argues that the process is quite involved. Yes, it is. He says Mr *Kwaramba* cannot just abandon paragraph 2 of his draft order and think that the applicants can still persist with the interdict as against the first, second and third respondents. It will not work. An interdict against respondents 1 to 3 is an interdict against all the respondents.

[47] Mr *Demo*, for the Speaker and the Senate President, weighs in with the argument that for the court to condemn, by granting the interdict as urged by the applicants, the steps taken by the Speaker and the Senate President after they had received the recall letters, is to exercise powers outside its jurisdiction because what these two did is something governed by s 167(1)(d) of the Constitution. Only the Constitutional Court can determine whether Parliament has failed to fulfil a constitutional obligation.

[48] I disagree with the respondents. The substance of the matter is that no relief is being sought against the Speaker and the Senate President. Check the draft order. Averments in the founding affidavit as to the reach of the intended interdict are misleading. At the hearing, Mr *Kwaramba* abandoned paragraph 2 of the draft order. Professor *Madhuku* argues that this is an exercise in futility. It makes no difference because firstly, the court cannot interdict the first, second and third respondents without practically interdicting the Speaker, the Senate President and ZEC as well, especially considering the provisions of s 39 of the Electoral Act. Secondly, he says, the abandonment of paragraph 2 of the draft order, effectively does away with any such case as the applicants might have had. Paragraph 1 cannot stand alone in the absence of paragraph 2.

[49] I reject the argument that if I grant the interdict against Mwonzora, Khupe and the MDC the court will be straying outside its lane. I am quite alive to the position that in a constitutional democracy, the three arms of government, namely the executive, the legislature and the judiciary must, theoretically, confine their operations to their own realms: see *Zimbabwe Lawyers for Human Rights v Minister of Transport, Communication & Infrastructural Development N.O. & Ors* 2014 (2) ZLR 44 (H) and the cases cited therein. That is what the doctrine of separation of powers entails. I appreciate that an interdict against an administrative functionary reposed with statutory or constitutional powers to perform statutory duties is a sensitive issue. Among other things, the interdict will tend to obfuscate the constitutional boundaries of the three arms of state. But in a constitutional democracy are in-built mechanisms of checks and balances to, among other things, rein in the unbridled abuse of State power and or resources.

[50] My synthesis of the respondents' argument is that this process of recall and replacement of party-list Members of Parliament, is so intertwined that the action of one player inevitably becomes embedded in those of the others, such that when Mwonzora wrote the recall letters, the Speaker and the Senate President became obliged to act on them. ZEC became obliged to carry out its obligations in terms of s 39 of the Electoral Act. There can be no place for the court to come in and draw a line. All that the applicants may do is to bring review proceedings and seek an urgent set down, but not to go the route of an interdict, as they have done.

[51] What the respondents are in effect saying is that it is too late for the applicants. The horse has bolted: see *Hlalo, supra*, at p 523G. The process has started. The train has departed. It cannot be stopped. I do not agree. The train may be in motion. But Mwonzora or Khupe and or the party they represent do not have to be in it. They may be ordered to disembark or else get ejected. Not all the horses have bolted. I consider that in this process of recall and the filling up of vacancies, the actions of the various players are quite divisible. They are separate juridical acts. Mwonzora has already written the recall letters. That is not what is intended to be stopped by the interdict. The Speaker and the Senate President have already informed ZEC of the existence of the vacancies. That is not what is intended to be stopped by the interdict. What is intended by the interdict is to stop Mwonzora or Khupe from going back to the party called the MDC or MDC-T to select names for submission to ZEC to replace Timveos and Khumalo before this court has had an opportunity to determine their complaint against Mwonzora's recall

letters. The interdict against ZEC has been abandoned. Mwonzora, Khupe and the MDC are not constitutional or statutory functionaries, even though the Constitution and the Electoral Act grant all persons in like positions certain rights and privileges in the whole recall and vacancy filling process.

[52] Professor *Madhuku* says the court cannot stop the first, second and third respondents from being "invited" (to submit replacement names) in terms of s 39 of the Electoral Act. I was not addressed on what, for instance, the consequences would be if a political party that is "invited" in terms of s 39(4)(*b*) of the Act fails or neglects to oblige, or is barred from doing so. The section does not spell out the consequences. I have not researched the point myself. But I do not believe that the court is precluded from preventing a political party, despite its right to be "invited", from enjoying this privilege, if the court is of the view that the political party is in turmoil, its functionality in disarray and its identity unclear. I have already said above that the goings-on in a political party that has sponsored members to Parliament cease to be the private concern of the party. They affect the national interest. When approached by an aggrieved party the courts have the mandate to interfere.

[53] My view above is fortified by the fact that unlike a situation calling for a by-election within ninety-days in terms of s 158 of the Constitution, in the present situation the time frame within which a party-list vacancy must be filled are not prescribed. But of course, they must be filled without delay. Therefore, after a careful consideration of the situation, I am satisfied that there is nothing precluding the court from determining the claim for an interdict on the merits. Section 167(1)(d) is a decoy designed to throw me off course. I dismiss this point *in limine*. That paves the way for the consideration of the matter on the merits.

vi/ **On the merits**

[54] The requirements for an interim interdict are so well known as to require no citation of authorities beyond the *locus classicus Setlogelo v Setlogelo* 1914 AD 221. The applicant must show:

- a *prima facie* right having been infringed, or about to be infringed even if it be open to some doubt;

- an apprehension of an irreparable harm if the interdict is not granted;
- a balance of convenience favouring the granting of the interdict;
- the prospects of success on the merits, and
- the absence of any other satisfactory remedy.

a. *Prima facie* right

[55] Legal principles are not like mathematics where, for instance, one plus one here or anywhere is two. These factors for an interdict are looked at objectively, cumulatively and in the context of the facts. One or other of them may be more important in some cases than they may be in others. In this case, the respondents' strong argument is that a court cannot interdict a lawful process. No one can establish an infringement of any colour of right even if they may feel harmed for as long as the respondents are following a lawful process. Comparisons have been made with cases that arose from the land reform programme by Government like *Airfield Investment (Pvt) Ltd v Minister of Lands & Ors* 2004 (1) ZLR 511 (S) and *J.C. Conolly & Sons (Pvt) Ltd v Ndhlukula & Anor* SC 22/18 (not yet reported) which dealt with the common friction between a previous owner of land who fails or refuses to vacate after his or her or its land has been acquired, on the one hand, and the beneficiary to whom the Government has allocated the same land and who would want to move in. It has been held that once the periods the previous owner was entitled to remain on the farm, or in the farm house, have lapsed, he or she or it cannot seek an interdict from the courts, even if he or she or it is challenging the compulsory acquisition. The courts do not interdict a lawful process.

[56] I believe I have already dealt with this point when I dealt with the points *in limine*. I find the respondents' case authorities inapposite. They are distinguishable. I have just shown that in the circumstances of this case, there is nothing stopping the applicants from seeking an interdict against Mwonzora, Khupe and the MDC, pending the determination by this court of the applicants' challenge to the purported recall. There can be no question that as at the time of their recall the applicants had the right to sit in Parliament. They had a right to see out their terms. They had a right to enjoy all the rights and privileges attendant on their membership of

Parliament. It is pretentious to feign ignorance of the colour of their rights. These are self-evident. I hold that the applicants have shown a *prima facie* right which requires protection.

b. Apprehension of an irreparable harm

[57] The respondents question what harm the applicants fear will befall them. Is it just losing seats in Parliament? Is it the fear of losing perks? Or of losing the privileges? Is it a harm to themselves or the electorate? What is this harm which is allegedly irreversible? Plainly, it is all that, and demonstrably, many more. All these issues are self-evident. The harm is there for all to see. The applicants had all along been members of Parliament. Suddenly, and without notice to them, they are ejected. Before they have had an opportunity to challenge their ejectment, efforts are already underway to replace them. The tenure of seats in Parliament is limited. The wrangling in the parties that the applicants and the respondents answer to have been going on for a long time. They may continue for some time to come. Each day that passes while they are out of Parliament, the applicants are unable to enjoy their privileges. They are unable to serve the people that sent them to Parliament. Professor *Madhuku* says if they eventually win their cases, they can always be reinstated. That cannot be seriously contented. The time they are losing out is not reversible.

c. Balance of convenience

[58] This matter seems such a text book case to me. Under this factor, the court weighs the balance of convenience, or inconvenience, by considering the prejudice to the applicant, if the interdict is not granted, and the prejudice to the respondent if it is granted. The convenience, or inconvenience, is also in relation to the administration of justice, the courts. There is no doubt that the applicants have already suffered prejudice by being ejected from Parliament. They continue to suffer. If they are replaced by other people it will be difficult to untangle the whole situation easily, if at all. New people will have acquired rights. The courts will likely be inundated with new cases arising from such a development. Demonstrably, it is more logical, much neater and most reasonable to preserve the status *quo* until the situation resolves itself, or has been resolved.

d. Prospects of success on the merits

[59] I was advised on the last day that I heard submissions in this matter, that that day was the end of the *dies induciae* for the respondents to file their opposing papers in the main cases. Professor *Madhuku* says he is confident that the applicants' cases will collapse on the jurisdictional point. Admittedly, I do not have the full argument in the main cases. But I do not need it. There is sufficient material in this matter to enable me to make a decision. The nub of the dispute between the parties is common cause. It is the lawfulness or otherwise, of the process by which the applicants' ejectment from Parliament has been initiated. It is also whether this court has the jurisdiction to entertain the dispute. In interrogating the prospects of success, I do not have to reach conclusions on a balance of probabilities. That is the task awaiting the court in the main matters. All I have to be satisfied with, in the interim, is whether the applicants have proved a *prima facie* case. If I am, they are entitled to relief.

[60] I am satisfied that the applicants have proved a *prima facie* case and that they are entitled to relief. Their membership in Parliament has been abruptly terminated on the basis of a process of dubious legality. It is common cause they were in Parliament on the ticket of a political formation called the MDC-Alliance. For two years they have participated in the business of Parliament as members of the MDC-A. ZEC registered the MDC-A as a political party. Indeed, it is a political party for the purposes of the Constitution and of the Electoral Act. Parliament recognises it as a political party. The applicants have produced documents showing that they were nominated by the MDC-A political party on the proportional representation for the women's quotas for the two Houses of Parliament. The executive arm of Government recognises the MDC-A as a political party. The applicants have produced a copy of a Government *Gazette* of 28 February 2020 showing that the MDC-A qualifies as a political party for Government funding under the Political Parties (Finance) Act, *Cap 2:11*.

[61] The respondents have made an obscure argument that all the structures of the old MDC or MDC-T party stood dissolved or dismantled automatically following the Supreme Court judgment. Evidently it was upon such construction of that judgment that Mwonzora wrote the recall letters. It has been urged upon me that in terms of a Composite Political Cooperative Agreement, the MDC-A was no more than a coalition or an alliance or an association of seven different political parties of which the MDC-T was one of the constituent members. It is said that under that agreement the seven political parties retained their individual identities and that

no party member could claim direct membership of the MDC-A in their own individual right. Professor *Madhuku* gave comparisons with such member-based organisation like Christian Care and the Southern African Development Community (SADC).

[62] But with all the greatest of respect, this whole argument is a self-serving gloss. Mr *Kwaramba* strenuously urges me to find that the cooperative agreement had been, by the time of the 2018 harmonised election, all but abandoned; that it had been discarded and literally thrown into the waste paper basket. The MDC-A had morphed into a full-fledged political party. But with all due respect again, I do not even have to go there. To consider whether the applicants have made out such a *prim facie* case as would entitle them to relief, I do not have to adopt any tortuous aids in construction. I simply have to rely on the official position of Parliament; of ZEC and of the Government, as I have shown above. Whether the MDC-A is a political party is largely a question of fact. *De facto* it is. All the rest of the arguments, including what effect the Supreme Court judgment has had on the MDC-A, is a matter of interpretation. My limited remit in these proceedings does not require me to go that far. The respondents have not shown in what manner the applicants ceased being members of the MDC-A, the party that sent them to Parliament on proportional representation.

[63] I am mindful that HC 2308/20 was one of the cases that were pending at the time this application was launched and that it was pending its determination and that of the other two that the interdict in this matter was sought. HC 2308/20 has since been disposed of. It was an urgent chamber application brought in the name of the MDC-A as a party, for an interim interdict such as the one being sought herein. My brother CHITAPI J, dismissed the application on the basis that the MDC-A had failed to demonstrate such legal standing or capacity (*locus standi*) as would enable it to sue in its own name, it being an unincorporated entity and one without any founding documents such as a constitution. On the face of it, that decision seems to contradict the finding that I have made in this matter, namely that the MADC-A is a political party for the purposes of the electoral laws of this country. However, the issue of *locus standi* has not arisen before me. I do not need to consider it. The MDC-A is not a litigant before me.

[64] I am also mindful that in another matter, my sister MUNANGATI-MANONGWA J, granted an interim interdict under HC 2199/20 restraining the Minister of Justice and the Minister of Finance from paying out the MDC-A's portion of the funds under the Political

Parties (Finance) Act, to any person other than the MDC-A. She prefaced her judgment by stating that the MDC-A is a political party with capacity to sue and being sued.

[65] Obviously, it is undesirable that there should be conflicting decisions by judges from the same court over the same issue. It brings uncertainty in the law, causes confusion and adversely affects the integrity of the courts. But this is always an inherent and ever present danger in the adjudication process. One way to minimise the incidence of conflicting decisions is, where possible, to have all the matters dealing with the same point or similar issues consolidated and heard by one judge. If not, and the conflicting decisions have been made, it is left to the Supreme Court, on appeal, to lay down the law authoritatively: see *Conforce (Private) Limited v City of Harare* 2000 (1) ZLR 445 (H), where CHINHENGO J, in a different set of circumstances, said, at p 458F – G:

> "I appreciate that the law must be certain and that it is most undesirable for judges to differ on fundamental principles of law. There would appear to be a need for the difference of opinion on this point to be placed before the Supreme Court as soon as possible, either by way of an appeal or on a suitable case, as a reference point of law. Consistency in the law is paramount in the administration of justice."

e. Absence of any other satisfactory remedy

[66] An urgent chamber application is generally an unsatisfactory method of resolving disputes. It is disruptive. Matters are often interrogated superficially. Litigants jump the queue to have their matters heard ahead of others. Only a provisional order is given, meaning that the same matter shall come back to court again. For these and other reasons, it is a requirement that where one seeks an interim interdict on an urgent basis, one must, apart from all the other factors above, demonstrate that there is no other satisfactory remedy at one's disposal. If there is, the interim interdict will not be granted. The most obvious and common alternative remedy is a claim for damages for any wrong suffered.

[67] The respondents argue that there is an alternative remedy available to the applicants. It is said instead of seeking an interdict they should simply bring review proceedings and seek an urgent set down. I have already dealt with this argument. It is further argued that if the applicants eventually prove unlawfulness in the manner that they have lost their seats, and can show pecuniary loss, they can always claim damages. With all due respect, I need not be detained by this argument. It is far-fetched. There is simply little that money can do to

compensate the loss of one's seat in Parliament. Membership of Parliament is much more than money and benefits. It is about a whole lot of other issues mentioned above. It is also about the political party the member represents. It is about the electorate. There is simply no other satisfactory remedy in a situation like this.

vii/ **Disposal**

[68] In all the circumstances therefore, the application is hereby granted. An order is hereby issued in terms of the draft, as amended. The order shall read:

"Pending the determination, or disposal by this court, of the proceedings under the reference case nos HC 2351/20 and HC 2352/20, the first, second and third respondents, or anyone acting through them, or on their behalf, shall refrain and desist from, and they are hereby interdicted, barred and restrained from submitting any nomination papers in terms of s 39(4)(*b*) of the Electoral Act [*Chapter 2:13*], or submitting or supplying the names of any other person for the purposes of filling up any perceived vacancies in the Parliament of Zimbabwe in respect of the seats held by the first and second applicants in the Senate and National Assembly respectively as at 3 April 2020."

8 June 2020

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Lovemore Madhuku Lawyers, second respondent's legal practitioners
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