MOVEMENT FOR DEMOCRATIC CHANGE-ALLIANCE HC 2811/20

and

CHALTON HWENDE

and

GODFREY COTTON

versus

TENDAI MUCHEKAHANZU

and

FRIDAY MULEYA

and

PAUL GOREKORE

and

DOUGLAS TOGARASEYI MWONZORA

and

MORGEN KOMICHI

and

MOVEMENT OFR DEMOCTRATIC CHANGE-TSVANGIRAI

and

MINISTER OF HOME AFFAIRS & CULTUTAL HERITAGE

and

COMMISSIONER GENERAL OF POLICE N.O

and

MNISTER OF DEFENCE AND WAR VETERANS AFFAIRS N.O

WASHINGTON GAGA HC 2813/20

and

CHANCELLOR NYAMANDE

and

KUDAKWASHE MATIBITIRI

and

EDITH SANA MANYIKA

and

DAVID ZVAVAMWE SHAMBARE

versus

THE COMMISSIONER GENERAL OF POLICE

and

COMMISSIONER ZIMBABWE DEFENCE FORCES

and

FRIDAY MULEYA

and

PAUL GOREKORE

and

TENDAI MUCHEKAHANZU

HIGH COURT OF ZIMBABWE

MANGOTA J

HARARE, 8 June 2020 & 26 June 2020

**Urgent Chamber Application**

*A Muchadehama,* for the applicants (HC 2811/20)

*L Madhuku,* for the 1st, 2nd, 3rd & 6th respondents

*J Kadoko*, for the 4th – 5th respondents

Ms *M Mavemwa*, for the 7th – 9th respondents

*C Mhike*, for the applicants (HC 2813/20)

Ms *M Mavemwa*, for the 1st & 2nd respondents

*L Madhuku*, for the 3rd – 5th respondents

MANGOTA J: HC 2811/20 and HC 2813/20 were allocated to me on the same day and at the same time. They had been filed through the urgent chamber book.

I read the contents of each case. I observed that, although the parties in one case were different from those of the other case, the two cases had one issue which called for determination. The issue was whether or not the applicants were dispoiled by the respondents.

Both applicants alleged that they were in peaceful and undisturbed occupation of Harvest House which is at number 44 Nelson Mandela Avenue, Harare [“the property”]. They claimed that they were, on the night of 4 June 2020, dispoiled of the same by the respondents. They moved me to restore occupation of the property to them.

Prior commitments which were on my desk before I received the applications did not allow me to hear them as soon as I should have. I received the applications on 8 June 2020. I set both of them down on 12 June 2020 for hearing.

The four-day window period which resulted from my prior commitments allowed the respondents in each case to prepare and file their notices of opposition, if such was their intention, well in time for the hearing of 12 June 2020. Apart from the Commissioner-General of Police who filed his notice of opposition in respect of each case on the late afternoon of 10 June 2020, the other respondents filed their respective notices of opposition and served the same on the applicants some thirty minutes or so before the first application – HC 2811/20 – was scheduled to be heard.

I view the conduct of these respondents with very serious disquiet. The cavalier manner which they displayed cannot be accepted. They placed me and the applicants in an invidious position. Whatever their reason was for filing their notices of opposition at the eleventh hour should be discouraged, if not censured. A *fortiori* when they gave no reason at all for the same other than a mere apology.

The respondents, it was my impression, appeared to have resolved to ambush the court and the applicants. They refrained from filing their opposing papers on time. They only did so when the first application was about to be heard. If what they adopted is a strategy for doing the other party down, it is a cheap one and it should be discouraged. It served no meaningful purpose.

The respondents know as much as I do that no litigant is allowed to take the court and his adversary by surprise. They know further that litigation is serious business which enjoins parties to open up to each other in the interest of a fair hearing. They know that they should respond to their adversary’s papers timeously by filing their papers at court with the minimum of delay so that, when the matter is heard, neither the court nor their adversary is placed at a disadvantage. They know also that it is within the interests of a fair hearing that both the court and the parties remain on the same page when a matter is heard. Their conduct cannot be condoned. It should, in fact, be censured as a measure of instilling discipline in them in all their future interaction with the court and other parties who happen to be their adversaries in future.

The respondents stated, in their opposing papers, that they did not dispoil the applicants on 4 June 2020 or on any date before or after the mentioned date. They claimed that what occurred on the evening, and not night, of 4 June 2020 was an amicable handover – takeover by personnel who work at the property. They insisted that the sixth respondent in HC 2811/20, a juristic person, possessed the property from the time of its formation in 1999 to date. The sixth respondent, they asserted, did not ever lose possession of the property. They claimed that persons who came, or come, onto the property did not, and do not, as individuals, have possession of the same. Possession was, and is, always with the sixth respondent, according to them. They moved me to dismiss the application with costs.

The applications which the parties placed before me fall under the law of “*mandament* *van spolie*” [“*mandament*”]. The statement of the applicant in a *mandament* application, is simple and straight forward. It is that he was in peaceful and undisturbed possession of a thing which the respondent, through unlawful means, took away from him and he wants possession to be restored to him.

*Mandament* discourages people from resorting to the law of the jungle. It abhors self-help. Taken to its limits, it allows even a thief who has been despoiled by the owner of the thing which he stole to approach the court and claim restoration to him of what he stole.

*Mandament* is anchored on the concept of possession and not ownership. Possession can be physical or legal. The two are not synonymous. They are separate and distinct from each other.

Legal possession is more subtle than physical possession. It is commonly associated with possession of a thing by a juristic, as opposed to a natural, person. It generally manifests itself in an agreement – written or verbal – which the owner of the thing creates with the possessor in terms of which he confers possession of the thing to the possessor. Where a juristic person, as opposed to an individual, takes possession in writing, the written contract constitutes clear evidence of the juristic person’s possession of the thing.

The parties under HC 2811/20 acknowledge and accept the above-stated form of possession. The applicants do so in para 23 of the founding affidavit as read with Annexure C4 of their papers. They state in para 23 that the first applicant is the lawful occupier of the MRTH. They alleged that it occupies the property by virtue of an agreement which it entered into with Harvest House (Pvt) Ltd which, according to them, owns the property. Annexure C4 of their papers states to an equal effect. It appears at p 135 of the record. It reads, in the relevant part, as follows:

“I confirm that ... the rightful occupants are the MDC-Alliance.”

In stating he did, Timothy James Neil, a director of Harvest House (Pvt) Ltd, was only confirming the obvious. He did not state that the leadership of the MDC-Alliance has possession. He asserted that the MDC-Alliance, a juristic person, has occupation of possession of the property.

The statement of the first to fifth respondents in HC 2811/20 is that the sixth respondent is the lawful occupant of the property. They do not, as individuals, claim occupation or possession of the property. They ascribe that to the sixth respondent which is a juristic person.

In stating as they do, the respondents place reliance on clause 1.4 of the sixth respondent’s constitution. The clause appears at p 41 of HC 2811/20. It reads, in the relevant part, as follows:

“1.4 The Party is headquartered at Morgan Richard Tsvangirai House, No 44 Nelson Mandela Avenue, Harare...”

Judicial notice is taken of the fact that a juristic person which was known as the Movement for Democratic Change (“MDC”) was in occupation of the property from about the time of its formation. Judicial notice is further taken of the fact that, owing to strife which ensued within the leadership of the MDC at various stages of its existence, MDC changed its name to that of Movement for Democratic Change-Tsvangirai which, in short is “MDC-T.” The word “Tsvangirai” or the letter “T” which it suffixed to its name served to distinguish it from other political parties which broke away from it but maintained the name Movement for Democratic Change (MDC).

It is inconceivable that MDC-T would have stated that its headquarters were/are at Morgan Richard Tsvangirai House, No. 44 Nelson Mandela Avenue, Harare if it did not have an agreement with the owner(s) of the property to occupy the same. The logical conclusion which comes out of its statement is that the owners of the property conferred the right of occupation to it and that the right in question came into existence at about the time of its birth.

The applicants do not dispute the respondents’ assertion which is to the effect that the sixth respondent was in occupation of the property from about the time of its formation. They, if anything, appear to be in agreement with the assertion of the respondents on the stated matter.

It is trite that what is not disputed in affidavits is taken as having been admitted: *Fawcett Security Operations* v *Director of Customs & Excise* 1988 (2) ZLR 92; *DD Transport* *(Pvt) Ltd* v *Abbot* 1988 (2) ZLR, 92.

It is evident, from a reading of documentary evidence which the first applicant and the sixth respondent filed under HC 2811/20, that possession of the property has never been with natural persons who reside at the property. These have resided at the property but have not had possession of the same. Possession has always been with the juristic person.

If it is accepted, as it should, that possession of the property was/is with the juristic person, and not with the individuals who form the membership of that juristic person, the applications should come to a close with little, if any, further ado. They are misplaced. They are anchored on the wrong understanding of the law of possession which is under consideration currently.

The applicants focused their attention on physical, as opposed to legal, possession. They failed to realise that the juristic person and not them, as individuals, possesses the property.

The applicants may have been residing at the property. However, the question which begs the answer is were they, or are they, the legal possessors of the property. The simple answer to the question is in the negative.

It stands to reason and simple logic that a non-possessor cannot successfully sue under the law of *mandament van spolie*. He cannot be dispolied. He has no *locus* to sue and, if he does as the applicants are doing *in casu*, the suit cannot stand. It stands on no leg. It is a nullity which is bound to collapse.

I am, in this instance, reminded as well as persuaded by the learned *dictum* which Lord Denning made in *Macfoy* v *United African Co*. *Ltd* (1961) 5 ALL ER 1169 (PC) 1172. The learned Lord Justice remarked in the same that:

“You cannot put something on nothing and expect it to stay there. It will collapse.”

The applications which were filed by applicants who lack *locus* are a nullity. They cannot stand. They will, therefore, collapse.

The contract of legal possession which the sixth respondent concluded with the owners of the property appears to have remained in existence from1999 to June 2020. The applicants did not ever lead any evidence which showed that the sixth respondent did, at some point in time earlier than June 2020, lose legal possession of the property. The first to the fifth respondents in HC 2811/20 cannot, therefore, be faulted when they assert, as they do, that the sixth respondent did not ever lose possession of the property.

Annexures C1, C2, C3 and C4 which the applicants attached to their founding papers are, in my view, an attempt by them to show that the sixth respondent lost legal possession of the property this month. These respectively appear at pp 132, 133, 134 and 135 of the record.

It is pertinent for me to consider the annexures, each in turn. Annexure C1 makes reference to a legal entity which is known by the name Harvest House (Pvt) Ltd. Its directors are one Timothy James Neil and one Ian Muteto Makone (“Makone”).

Annexure C2 is a resolution which the above-mentioned two directors of Harvest House (Pvt) Ltd passed on 5 June 2020. The resolution confers authority on Makone, as at the mentioned date, to:

1. protect the proprietary interests of Harvest House (Pvt) Ltd – and
2. defend, institute or do whatever is legally possible to protect the property.

The resolution is witnessed by one Eric Taurai Matinenga.

Annexure C3 is a written communication to all and sundry. It does not have any specific addressee. It is dated 5 June 2020. It is a confirmation by Timothy James Neil. The confirmation is to the effect that the rightful occupants of the property which is the subject of these proceedings are the MDC-Alliance which is the first applicant under HC 2811/10.

Annexure C4 is another communication which is, once again, addressed to all and sundry. It was written by Makone on 5 June, 2020. It advises its reader that the company of which he is a director owns the property. It advises further that no one else but it owns the property. It states that the MDC-Alliance has, from the date of its formulation, been in undisturbed possession of the property with the permission and blessing of Harvest House (Pvt) Ltd. It does not state in the same that Harvest House (Pvt) Ltd permitted MDC-Alliance to take legal possession of the property.

None of the annexures shows that the directors of Harvest House (Pvt) Ltd, the owner of the property, passed a resolution which states, in clear and unequivocal terms, that:

1. the sixth respondent was/is divested of legal possession of the property- and
2. legal possession of the same was/is conferred onto the first applicant under HC 2811/20.

Paragraph 3 of Annexure 4 which reads “…the MDC Alliance, since its formation, has been in undisturbed possession of the property with the permission and blessing of the company” is, in the absence of the directors’ resolution, of no moment. It is, at best, an expression of the intention of one director to divest the sixth respondent of legal possession of the property and to confer the same onto MDC-Alliance.

If the above-quoted statement carried any weight, it was within Mr Makone’s right to produce the resolution which supports the allegation that legal possession of the property moved from MDC-T to MDC-Alliance on a specific date. The contents of the resolution should have been clear and unambiguous. Its production would have constituted the clearest evidence by which MDC-T lost legal possession of the property to MDC-Alliance.

The applicants do not show that the attention of the sixth respondent who had legal possession of the property was ever drawn to the contents of Annexures C2, C3 and C4. They purport to have cancelled the contract which conferred possession of property to the sixth respondent.

It is trite that a contract which is unilaterally cancelled, such the one *in casu*, should be communicated to the other party who is in the same. Where no communication takes place, as appears to be the case with the annexures, cancellation cannot be regarded as holding. It is not.

I observe and mention, in passing, that the conduct which the applicants complain of is alleged to have occurred on the evening, or night, of 4 June, 2020. The annexures which they attached to their founding papers are all dated 5 June, 2020.

If it is accepted, hypothetically, that spoliation occurred on 4 June, 2020 and MDC-Alliance took legal occupation of the property on 5 June, 2020, the applicants cannot logically assert that they were despoiled. What comes out of the above-analyzed set of circumstances is that:

1. the applicants did not have possession of the property on 4 June 2020 and were not, therefore, despoiled-and
2. where they apparently took possession of the property on 5 June, 20202 when the events which they complained of occurred a day before they assumed legal possession, if they did, spoliation does not arise.

The applicants bear the *onus* of proof. They should show, on a balance of probabilities, that they:

1. had possession-and
2. were despoiled.

HC 2811/20 speaks to the events of 4 June, 2020 and HC 2813/20 does not refer to those. It refers to the events of 5 June, 2020 which is the day which follows the alleged spoliation.

The two applications are, in substance, considered together. Evidence of one case may be compared to that of the other with a view to showing consistency, or lack of it, in the applicants’ narration of events.

Applications, such as the present ones, which are filed through the urgent chamber book do, more often than not, have two very important components to them. The components support the founding affidavit of the applicant. These are:

1. the notice which states the grounds of the application-and
2. the certificate of urgency which a legal practitioner prepares under rule 244 of the High Court Rules, 1971 certifying the urgency of the matter and giving reasons therefor.

Both the notice and the certificate should be in harmony with the founding affidavit which, in fact, the two documents support. Where the three documents – notice, certificate and founding affidavit – remain in disharmony, the conclusion which one reaches is that either the person who prepared the notice and the certificate told a lie or the founding affidavit is telling a lie about itself. A lie which is told dents the credibility of the author(s) of the papers in an irreparable manner.

It is in the spirit of the above statement that I proceed to consider the evidence of the applicants. I commence with paragraphs 4,5 and 6 of the notice which falls under HC2811/20. These appear at page 2 of the record. Both are to the effect that soldiers and the police assisted the first to the fifth respondents in despoiling the applicants of their property. They respectively read as follows:

“4. The soldiers were in the company of some youths who claimed to be representing the interests of 1st to 4th respondents among others.

5. The police officers, soldiers and the said youths forceably opened the door to the MRTH which had been secured by padlocks.

6. Members of the police force and youths entered the building and started to forcibly evict security guards who had been manning the entrance to MRTH.”

Paragraph 15 of the notice is more specific than the above-mentioned paragraphs. It reads:

“15. Members of the Zimbabwe Republic Police and the Zimbabwe National Army be interdicted, stopped and barred from interfering with the applicant’s occupation of MRTH or ejecting them unlawfully”.

One Tonderai Bhatasara, a legal practitioner, prepared the applicants’ certificate of urgency. He states in paras 4,7,8,11,12 and 13 as follows:

“4…the respondents were able to disposes the applicants through the irrestible coercive force of armed military men and police officers.

7. I have no doubt that the conduct of the 1st, 2nd, 3rd, 4th, 5th and 6th respondents with the aid of the 7th, 8th and 9th respondents amounts to unlawful self-help...”

8…the respondents have a political dispute that they are fighting with the applicants and have invoked the might of the army and the police to beat their rivals into submission.

11. The involvement of the police and the army in the dispossession is the clearest indication of high handedness and an intention to legitimize such a grave miscarriage of justice.

12. The solicitation of military and police assistance in a political dispute suggests the respondents’ fear of due process and a disdain of judicial processes.

13. It must concern the court that the State which is supposed to be at the forefront of upholding the constitution and protecting citizens’ rights is now the chief protagonist and is the main culprit in aiding and abetting such glaringly, unlawful conduct.” [emphasis added]

The above statements as read together with the founding affidavit show some very serious disharmony which exists between the three founding papers of the applicants. The notice and the certificate state one thing and the founding affidavit states the other on the same point. Neither the founding affidavit nor the supporting affidavit of Mr Makone states that the police and/or the army were involved in the alleged spoliation of 4 June, 2020. What the founding affidavit alleges is that the police and the soldiers were within the vicinity of the property.

The applicants’ founding papers, it is evident, contradict each other on a very important aspect of the application. They tell a lie about themselves. They leave me wondering as to the veracity of their story. Their credibility, as litigants whose papers are before me, remains severely dented.

A person who lies through his papers, or on the witness stand, is hard to believe. L.H. Hoffman and D.I. Zeffert recommend the position which the court should take as regards the evidence of a lying litigant. The learned authors state at page 472, 3 ed of their *South African Law of Evidence* that:

“If a litigant lies about a particular incident, the court may infer that there is something about it which he wishes to hide.”

Ndou J took the issue of a lying litigant further when he remarked in *Leather Trade Zimbabwe (Pvt) Ltd* v *Smith*, HH 131/03 that:

“…if a litigant gives falls evidence, his story will be discarded and the same adverse inferences may be drawn as if he had not given evidence at all.”

I associate myself fully with the wise words of the learned authors as succinctly expressed by my brother Ndou J. People who come to court are exhorted to tell the truth, only the truth and nothing else but the truth. It is the truth, and that alone, which sets them free. Any litigant who takes litigation as a game of chance does, more often than not, open his eyes to a rude shock when, on an analysis of his evidence, the lie which he sought to hide refuses to remain hidden.

All the applicants who filed their application under HC 2813/20 are workers. They state that they work at the property. They, however, make every effort not to disclose their employer. They claim to have applied in their individual capacities or as persons who are adversely affected by the alleged spoliatory conduct of the respondents.

The applicants in HC 2813/20 gave no specific reason for withholding the identity of their employer. Evidence filed of record, however, shows that all the five applicants work for the MDC-Alliance. Reference is made, in this regard, to para 25 of the founding affidavit for HC 2811/20. The paragraph appears at page 25 of HC 2811/20. It reads:

“25. The Building [i.e. the property] consists of six floors. All the floors are/were occupied by officials and workers of 1st applicant.”

HC 2813/20 is, no doubt, an extension of HC 2811/20. HC 2811/20 and HC 2813/20 are the opposite of the phrase ‘killing two birds with one stone’. They are *in sync* with the phrase ‘killing one bird with two stones’. They were filed on the same date but not without a reason.

It is evident, from the papers which relate to the two applications, that HC 2813/20 was meant to serve as the applicants’ fall-back position for the application which falls under HC 2811/20. The footprints of the MDC-Alliance in both applications is irresistibly evident. The idea was to ensure that if, for some reasons or other, HC 2811/20 failed to hold and HC 2813/20 held, the net result would be, more or less, the same: The applicants would have achieved their desired end-in-view of removing MDC-T from the property.

It is disquieting to observe that the applicants for both applications were very manipulative. They made every effort to withhold vital information from the court. The position which they took does not assist them at all.

Litigants who seek the assistance of the court are enjoined to place all their cards on the table. That entitles the court and their adversary to appreciate the nature of their complaint or defence. They should not, therefore, play the game of hide and seek with the court. They should, in short, place themselves into the court’s confidence.

The founding, and the supporting, affidavits of the applicants in HC 2811/20 corroborate the statement of the police and the soldiers in regard to the alleged spoliation of 4 June 2020. The police and the soldiers admit having been within the vicinity of the property on 4 June, 2020. They deny that they involved themselves in dispoiling the applicants. Their statement is that they were going about their normal duties of enforcing the lockdown measures which Government imposed on the nation following the advent of the corona virus pandemic which gripped not only Zimbabwe but the entire globe.

It is common cause that the first lockdown for Zimbabwe was announced by Government on 20 March 2020. The lockdown took effect from the mentioned date to date. Government has reviewed its position *vis-a-vis* the dreaded menace through such successive Statutory Instruments as:

(a) Statutory Instrument 83/2020 which prohibits gatherings except in certain stated circumstances.

(b) Statutory Instrument 99/2020 which amends Statutory Instrument 83/2020 by increasing the number of permissible individuals allowed at public gatherings to fifty (50) and expands the list of essential services – and

(c) Statutory Instrument 110/2020 which expands the national lockdown to an indefinite date subject to fortnightly reviews.

Given that the national lockdown was in force, as it indeed is currently, when the alleged spoliation took place on 4 June, 2020 the presence of the police and soldiers at the property cannot be put into question at all. They state, and I agree, that their mission was to enforce the regulations which relate to the Covid-19 pandemic.

The law does not allow soldiers to roam the streets of any town in Zimbabwe. Their place is in the barracks as well as in army cantonments. They only come out of those on orders from the President and Head of State for Zimbabwe who, in terms of the Constitution of the country, is their Commander-in-Chief.

That the President allowed them to work alongside the police in enforcing the national lockdown requires little, if any, debate. Their presence is evident at all the road blocks which the police are mounting along the roads of Zimbabwe. The soldiers are working hand-in glove with the police at this trying time of the nation. The presence of members of both institutions of Government at the property on 4 June 2020 should not, therefore, be interpreted to suggest that they worked with some officials of the sixth respondent under HC 2811/20 to despoil the applicants of their residence at the property. No evidence was led to suggest that they participated in the alleged spoliation. What came out on the stated matter were allegations and assumptions which lacked evidence.

The applicants saw the police and the soldiers within the vicinity of the property. They created the perception that these were assisting the alleged dispoilers. They turned their perception into reality. The perception which they entertained is erroneous. It is devoid of merit and does not, therefore, stand.

It is within the purview of the police to ensure that law and order prevails throughout the length and breathe of Zimbabwe. The statement which the Police Commissioner-General made in his notice of opposition is to an equal effect. He states that police officers were deployed to enforce lockdown regulations as well as to do regular patrols in the Central Business District of Harare on 4 July, 2020. The Zimbabwe Defence Forces commander’s statement is also to an equal effect. He states that current ZDF deployments are in support of the Zimbabwe Republic Police (ZRP) operations of enforcing Covid-19 lockdown measures. He denies that his institution played any role in the alleged spoliation.

I am satisfied, from the absence of evidence which links the police and the soldiers to the events of 4 June 2020, that neither the police nor the soldiers were involved in the alleged spoliation. The applicants complain that the police are still camped at the property. The respondents state that the police were ordered to remain as well as maintain peace at the property by an order which the magistrate issued on 5 June 2020, under case no. 1541/20.

Two juristic persons’ pity each other in the order which the magistrate issued under the above mentioned case number. These are the MDC-T which is the first applicant and the MDC – Alliance which is the second respondent in the same. The order prohibits the second respondent’s members from harassing, assaulting or committing any acts of violence against members of the first applicant. It prohibits the second respondent, through its members, from taking the property without a valid court order. It directs the police to enforce law and order at the property.

The order which the magistrate issued on 5 June, 2020 is law. The police cannot ignore it. If they do, they would naturally be in contempt of court the consequences of which are obvious. The order is extant. It has not been appealed or reviewed. It pends the return day for its confirmation or discharge.

The police’s presence at the property is, therefore, in tandem with the order of the court. The complaint of the applicants on the point in issue is, accordingly, without merit. It is misplaced. They are not persuading me to believe that the police should disobey a valid order of court as a way of dissociating themselves from the alleged spoilatory conduct of the other respondents.

On an objective and dispassionate consideration of the evidence which the parties placed before me, therefore, I remain satisfied that both HC 2811/20 and HC 2813/20 have no merit. The applicants did not prove, on a balance of probabilities, that:

1. the first applicant in HC 2811/20 has legal possession of the property. They did not produce a resolution from the directors of the company which owns the property showing that the sixth respondent under HC 2811/20 lost legal possession in the property which the first applicant acquired on a specific date – and/or
2. Individual applicants who fall under either case acquired possession of, other than residence at, the property which possession was always with the sixth respondent. Because they did not have possession, they were not dispoiled and they, therefore, lack the *locus* to sue as they did.

The two cases were/are characterized by contradictions and lies on the part of the applicants. Their act of withholding vital information from the court is a clear mark of dishonesty by them. They make unsubstantiated assumptions. The applicants blame no one but themselves for the unfortunate result which comes their way. They should have done their homework before they put pen to paper to draw up their applications. A *fortiori* given that HC 2811/20 and HC 2813/10 are two sides of the same coin.

The most disquieting part of HC 2811/20 is the resolution which members of the first applicant passed to clothes the deponent of the founding affidavit with the authority to sue for, and on behalf of, the juristic person. The resolution is long and winding. It deals with matters which do not specifically relate to the authority of the deponent. It appears at p 33 of HC 2811/20.

Paragraphs 1 and 12 of the resolution are a cause of some concern. I quote them *in extenso* for one to appreciate their meaning and import. They each read:

“1. The standing committee noted the perverse and insidious attempt by ZANU PF and its proxies to dismember the MDC Alliance by executing a coup against the legitimately elected leadership of the MDC Alliance under the guise of implementing the equally insidious judgment of the Supreme Court which seeks to foist ZANU PF proxies as leaders of the MDC Alliance in the brazen violation of the MDC constitution.

12. The Covid-19 Supreme Court judgment has foist engendered an illegality by seeking to extend the mandates of the 2014 structures which had since expired. The terms of office of all 2014 structures expired in October 2019 and the toxic judgment illegally seeks to give a Lazarusmoment by seeking to resurrect the expired mandate of the MDC T structures” (emphasis added)

The fourth, fifth and sixth respondents raised an *in limine* matter in respect of the above quoted contents of the resolution. They moved me not to hear the applicants until they purged what they described as the applicants’ contempt of the Supreme Court judgment.

The applicants stated, through counsel, that the resolution was their internal memorandum in which the issue of the Supreme Court judgment was discussed. They could not, however, explain how the contents of their internal memorandum were allowed to go into the public domain.

The contents of the memorandum, as quoted in the foregoing paragraphs, are disquieting. The memorandum appears to have been written with some passion. A lot of energy and effort must, in my view, have been put into it by those who authored it.

The resolution, no doubt, contained impolite language. That notwithstanding, however, it did not affect my mind at all. I refused to share the views of the respondents. I decided to hear the applicants as well as to consider their applications on merit. I refused to be swayed by any subjective issues. I considered it wise as well as appropriate to look at what the parties placed before me from an objective perspective of each application.

The applicants told lies and were assumptive. They corroborated the assertions of the police and the soldiers in a clear and unambiguous manner. They made sweeping statements which they did not support with any evidence. Their evidence was contradictory in material respects. They manipulated the system of justice delivery. Their narration of events for each case cannot stand. It does not pass the test of scrutiny. Their respective applications are, therefore, bound to fail.

I stated in the first part of this judgment that the respondents who almost disturbed the schedule of the hearing of the applications should be censured. My statement was not in vain. The censure is, after all, the only stick which lies at the disposal of the court to whip into line such errant litigants as the respondents who/which filed their opposing papers at the eleventh hour.

I have considered all the circumstances of HC 2811/20 and HC 2813/20. I am satisfied that the applicants in each case failed to prove their applications on a balance of probabilities.

In the result, it is ordered that:

1. HC 2811/20 be and is hereby dismissed.
2. The 1st, 2nd, 3rd, 4th, 5th and 6th respondents bear the costs of this application jointly and severally the one paying the others to be absolved.
3. HC 2813/20 be and is hereby dismissed.
4. The 3rd, 4th and 5th respondents bear the costs of this application jointly and severally the one paying the other to be absolved.

*Messrs Mbidzo Muchadehama & Makoni*, applicants’ legal practitioners

*Messrs Chatsanga & Partners*, 1st – 5th respondents’ legal practitioners

*Lovemore Madhuku Lawyers*, 6th respondent’s legal practitioners

*Civil Division of the Attorney General’s Office*, 7th – 9th respondents’ legal practitioners