REPORTABLE (3)

Judgment No. S.C. 7/02

Civil Application Nos. 22/02 & 27/02

THE REGISTRAR GENERAL OF ELECTIONS v

(1) COMBINED HARARE RESIDENTS ASSOCIATION
(2) DAVID SAMUDZIMU

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, EBRAHIM JA, CHEDA JA, ZIYAMBI JA & MALABA JA
HARARE, FEBRUARY 6 & 8, 2002

L Matenda-Moyo, for the appellant

E K Mushore, for the respondents

CHIDYAUSIKU CJ: The respondents in this case launched an urgent Chamber application on 25 January 2002. In that application the respondents sought the following relief:

"A. REGARDING THE FINAL ORDER SOUGHT

It is ordered that the respondents show cause why an order should not be granted in the following terms:

1. The interim relief granted hereunder be and is hereby confirmed.

2. It is declared that the Electoral Act (Modification) (Postponement of Harare Elections) Notice, 2002, SI 13A of 2002 is null and void.

3. (If the interim order has not been fully complied with) the Registrar General (which expression includes any acting Registrar General) be and is hereby committed to gaol for the continuing contempt of court until such time as a notice of election as set out therein is given in terms of and accordance with section 103L fixing the polling date 28 days thereafter, and/or all such other steps are taken as may be required in terms of the Electoral Act to hold the elections on that date.

4. That in the event of an appeal being noted against this order, notwithstanding such noting of an appeal, this order is declared operative and in effect and shall not be suspended.

B. INTERIM RELIEF GRANTED

IT IS ORDERED THAT THE SUPREME COURT ORDER SHALL, PENDING THE FINAL DETERMINATION OF THIS MATTER, BE ENFORCED BY THE ISSUANCE OF THE PROVISIONAL ORDER AND THE GRANTING OF THE FOLLOWING RELIEF:

1. The Registrar General shall forthwith give notice of the mayoral and council elections for the City of Harare in accordance with the Supreme Court Order, fixing the polling date twenty-eight days thereafter, being the shortest possible time thereafter permitted by the Electoral Act, and to take all such other steps as may be necessary in terms of that Act to have such mayoral and council elections on the date so fixed.

2. The Registrar General shall within twenty-four hours hereof arrange publication of such notice in at least one newspaper circulating in the area as quickly

as possible, and file proof of this with this court and furnish a copy of it to the applicants' legal practitioners within twenty-four hours hereof.

3. Should the Registrar General fail to comply with any part of the interim relief granted under this Provisional Order, the applicants may approach this court to anticipate paragraph 3 of the Final Order, so that this court may commit the first respondent to gaol until such time as such step/s as may be specified by it are taken. The applicants are hereby given leave to supplement their papers to show good cause for this. The applicants should first approach the Registrar General's legal practitioners to agree, in consultation with the registrar of this Court, on a suitable hearing date. If this cannot be agreed or there is a great urgency, they may make a chamber application, on notice to the applicants, for directions from a judge as to when that issue can be argued.

4. That in the event of an appeal being noted against this provisional order, notwithstanding such noting of an appeal, this order is declared operative and in effect and shall not be suspended, unless a court or judge with appropriate jurisdiction is duly furnished with all the documents filed herein and, in accordance with due process, orders otherwise."

It is clear from para 1 of the interim relief sought that when the respondents approached the High Court they were not insisting that elections be held on 11 February 2002. I have no doubt that this was due to an appreciation that, as of

that date, it was no longer possible to hold an election on 11 February 2002 without breaching the provisions of s 103L of the Electoral Act [*Chapter 2:01*], hereafter referred to as "the Act". I shall refer to this aspect of the case later on in this judgment.

It would also appear that para 1 of the interim relief was amended in the course of the hearing by its deletion and was substituted with the following paragraph:

> "That the Registrar General shall forthwith give notice of the Mayoral and Council elections for the City of Harare in accordance with the Supreme Court Order."

At the conclusion of the hearing the court *a quo* granted the following order:

> "The Supreme Court Order, therefore shall, pending the final determination of this matter, be enforced by the issuance of a provisional order and the granting of the following interim relief:
>
> 1. That the first respondent shall on or before 31 January 2002 give Notice of the Mayoral and Council Elections for the City of Harare and fix 11 February 2002, or 11 February and any preceding day or days, as the polling date or dates on which a poll shall take place, if a poll becomes necessary.

2. That the first respondent shall fix 4 February 2002 as the date on which the Nomination Court will sit to receive nominations for candidates for election as Councillors or Mayor, as the case may be.

> 3. For the purposes stated in paragraphs 1 and 2 hereof and for the purpose of giving effect to the Supreme Court Order of

7 December 2001, the provisions of the Electoral Act [*Chapter 2:01*] shall be construed with such necessary modification as will ensure compliance with those paragraphs."

The appellant (the first respondent in the court *a quo*) was aggrieved by the above order and appealed against it upon the following grounds:

"1. The judge *a quo* erred in suspending the operation of the Electoral Law in particular section 103L of the Electoral Act in that in trying to enforce the Supreme Court Order in Case No. 348/2001 he failed to give the required period of twenty-eight days between the issuing of the Notice and the Election date.

2. The judge *a quo* erred in determining a matter which amounted to variation of the Supreme Court Order. The matter should have been referred to this Honourable Court for determination since enforcement of the Court Order was no longer practical; enforcement meant non-compliance with the law.

3. The judge *a quo* erred in finding that *prima facie* the Supreme Court Order in Case No. 348/2001 was still operational despite the promulgation and coming into force of Statutory Instrument 13A of 2002.

4. The judge *a quo* erred in finding that the noting of (an) appeal does not suspend the operation of his order.

5. The learned judge erred in finding that *prima facie* Statutory Instrument 13A of 2002 contravenes section 158 of the Electoral Act and in finding that the President is not empowered in terms of section 158 of the Electoral Act to issue a Notice setting aside an Order of Court."

After noting the appeal the appellant filed a Chamber application seeking an urgent hearing of the appeal. Upon receipt of the notice of appeal and the application, I issued directives to be found in *Registrar General v Combined Harare Residents Association & Ano* S-4-02. In accordance with the directives, the appellant sought leave of the court *a quo* to appeal against the provisional order. The court *a quo* refused to grant such leave on the grounds that there were no prospects of

success on appeal.

The appellant then sought leave of this Court to appeal against the provisional order. I advised both counsel at the commencement of the hearing that the Court would hear submissions on both the application for leave to appeal and the merits of the appeal. Should the Court refuse the leave to appeal that will be the end of the matter.

The Court is of the unanimous view that such leave should be granted for two reasons: Firstly, the matter is of such importance that each party should be allowed access to the highest court in the land, and, secondly, the appeal has prospects of success.

The first ground of appeal advanced by the appellant is that the court *a quo* erred in suspending the operation of the Electoral Act, in particular, s 103L thereof, in that in trying to enforce the Supreme Court Order in case No. SC 348/01 it failed to give the required period of twenty-eight days between the issuing of the notice publishing the election and the election date.

In my view, there is substance in this ground of appeal. In para 3 of the order issued in the court *a quo* the learned judge expressly stated that for the purpose of giving effect to the Supreme Court Order the provisions of the Act should be construed with such necessary modification as would enforce compliance with those paragraphs. At p 9 of the cyclostyled judgment he makes the following

observation:

> "The various steps which must be taken by the first respondent in terms of the Electoral Act must, of necessity, be modified to ensure that the Supreme Court Order is complied with."

With respect, this is where the learned trial judge fell into error. The court cannot suspend the provisions of the Act for whatever purpose and no matter how desirable and plausible that might be. It is the legislature itself, and possibly an authority properly delegated, that can amend an Act of Parliament. A court cannot amend an Act of Parliament. This is trite. P S Atiyah in his work *Law and Modern Society* at p 131 had this to say:

> "It is of course quite clear that law-making by the courts is a different sort of process from law-making by Act of Parliament. Apart from the totally different procedures involved, and the different characteristics of the persons who make the law in the two processes, even the most fervent admirer of judicial law-making will admit that it differs from parliamentary legislation in important respects. First, it is subordinate law-making. Parliament can override judicial decisions, while the judges cannot override what Parliament does. A court can declare a statutory instrument void on the ground that it was not within the authority delegated by Parliament but (subject to the doubts discussed above concerning Scotland and the EEC) no court can declare an Act of Parliament void."

Zimbabwe has a written Constitution. Courts can declare an Act of Parliament unconstitutional by virtue of the provisions of s 3 of the Constitution of Zimbabwe, which provides that the Constitution shall be the Supreme Law of Zimbabwe and if any other law is inconsistent with the Constitution that other law shall, to the extent of the inconsistency, be void. A court can strike down an Act of Parliament for being *ultra vires* but cannot amend it simply because necessity so demands. Thus the learned judge clearly misdirected himself in concluding that it

was incumbent upon him to modify the provisions of the Act.

Having erroneously assumed powers to amend the Act, the learned judge proceeded to set down 31 January 2002 as the date when notice publishing the election should be issued, 4 February 2002 as the nomination date and 11 February 2002 as the election date, contrary to s 103L of the Act which expressly provides that the nomination date shall not be more than sixty-six days or less than twenty-eight days before the election date.

Section 103L(1)(c) also provides that no less than seven days and no more than twenty-one days must separate the publication of the notice and the nomination day. The court *a quo* altered the period to four days by ordering that publication of notice should be on 31 January 2002 and nomination on 4 February 2002. This non-compliance with the provisions of the Act renders such an election liable to be declared invalid in terms of s 149 thereof. See *Mader v Fraserburg Municipality* 1899 SCC (16) 503; and *Kairowsky v Gradner & Ano* 1933 CPD 295.

On this ground alone I would set aside the interim order made by the court *a quo*.

There is also a further ground upon which the interim order cannot be allowed to stand. On 23 January 2002 Statutory Instrument 13A, the Electoral Act (Modification) (Postponement of Harare City Council Elections) Notice 2002 (the Statutory Instrument) was published and came into effect. The Statutory Instrument

has the effect of overriding the Supreme Court Order of 7 December 2001. The fact that the Statutory Instrument is the law in force until such time as it shall have been struck down by a court of competent jurisdiction as being invalid cannot be disputed. Until such an adjudication there is a presumption in favour of the validity of the Statutory Instrument. It is quite clear from the learned judge's judgment, HH-24-02, that he held over for determination on the return day the question of the validity or otherwise of the Statutory Instrument.

In this regard this is what the learned judge said in his judgment:

> "Now to satisfy myself whether or not a *prima facie* case has been made, I think I have to have regard, in this case, to the following considerations. First, whether *prima facie* the Notice is null and void. I must mention and emphasise the fact that the question of the validity or otherwise of the Notice is a matter to be dealt with on the return day." (The underlining is mine)

On the same page the learned judge further comments:

> "I do not want to enter the debate, which is really a jurisprudential question, as to whether, in view of the doctrine of the separation of powers, a law may be passed to directly nullify *ex post facto* an order of the Supreme Court. This point may be addressed by the parties on the return day of this provisional order." (The underlining is mine)

On p 7 of the same judgment the learned judge continues in the same vein:

> "I think, however, that the Notice may be found wanting and therefore likely to be declared invalid because of its wide sweep as alluded to by the applicants in paras 33 and 34 of their founding affidavit." (The underlining is mine)

Again at p 8 the learned judge makes the following remark:

> "So it seems therefore that, having said that the Supreme Court Order is extant and having satisfied myself that there might be no validity in relying on Statutory Instrument 13A of 2001, the Registrar General, the first respondent, should have long taken steps to ensure that the elections will be held on or before 11 February 2002." (The underlining is mine)

The above remarks of the learned judge clearly establish that he did not make a final determination on the issue of the validity of the Statutory Instrument. In the judgment refusing leave to appeal he attempts to resile from this position. In my view, this cannot be done as he was not then seized with the issue of the validity of the Statutory Instrument.

Thus, on a proper reading of Judgment No. HH-24-02, the learned judge concluded that the probabilities were that the Statutory Instrument would be declared invalid on the return day and proceeded to give interim relief predicated on that probable outcome. Such an approach is directly in conflict with the presumption of validity.

In the case of *Batitsa v Commanding Officer, SANAB, SA Police, Port Elizabeth* 1995 (4) SA 717, it was held that an applicant cannot rely, in order to establish a present *prima facie* right, on the probability that existing legislation which he contravened may be altered at some future time or on the probability that such existing legislation may be held unconstitutional. By parity of reasoning I am of the view that the respondents were not entitled to the interim relief they obtained on the basis that the Statutory Instrument that disentitles them to that relief may be held to be *ultra vires*.

On that basis also, I would set aside the interim relief granted by the court *a quo*.

In my view, the relief sought and granted in the draft interim order is the same as that sought on the return day.

Where the relief sought as interim relief is essentially the same as the relief sought on the return day, the court's correct approach should be to proceed by way of an urgent court application seeking final relief – see *Econet v Mujuru* HH-58-97.

Having set aside the interim order of the court *a quo*, it is not competent for this Court to determine whether or not the Statutory Instrument is *ultra vires* s 158 of the Act because no final determination of that issue has been made by the court *a quo*. It might have been different if the interim order had been allowed to stand. While it is correct that I directed counsel to address the issue, such a directive does not confer jurisdiction on this Court to hear an appeal against a judgment that has not been made or is yet to be made. The directive was issued on the basis that the validity of the Statutory Instrument would have to be considered if it was found that the interim relief was a relief properly granted.

I have read the draft judgment of my brother EBRAHIM JA. He has determined the issue of the validity of the Statutory Instrument. I wish to leave open

the issue of the validity of the Statutory Instrument until such time as this Court is properly seized with the matter. To express a view on that issue would be premature since there is no final judgment of the High Court on the matter. All that was in existence was an interim order, which has been set aside. This approach is consistent with the approach taken by the respondents and upheld by this Court, that the appellants needed leave of the court *a quo* to appeal against the interlocutory ruling, the interim order in question. Had the court *a quo* given a final judgment no leave to appeal would have been necessary.

In the circumstances, I would order that the interim order granted by the court *a quo* be set aside. The rest of the provisional order remains intact. Proceedings to confirm or discharge the remaining part of the provisional order may proceed before the High Court in terms of the Rules of that court. For the avoidance of doubt, the Statutory Instrument remains the existing law until such time as it is declared invalid.

In the result, the appeal succeeds and the interim order of the court *a quo* is hereby set aside.

Neither party addressed the Court on the issue of costs. The normal practice is that costs follow the result. However, this is a matter of considerable public importance justifying a departure from normal practice in order not to discourage litigation in matters of public importance. For this reason no order of costs will be made against the respondents.

In the result, the appeal succeeds and the interim order of the court *a quo* is hereby set aside. There will be no order as to costs.

CHEDA JA: I agree.

ZIYAMBI JA: I agree.

MALABA JA: I agree.

EBRAHIM JA: In my view the key to determining this issue is for this Court to consider the validity of the Electoral Act (Modification)(Postponement of Harare City Council Elections) Notice, 2002 S.I. 13A of 2002. I agree with the

sentiments expressed by the learned CHIEF JUSTICE in *The Registrar General of Elections v Combined Harare Residents Association and David Samudzimu* S-4-2002, where he said:-

> "It is quite apparent to me from the papers and the judgment of the learned judge in the court *a quo* that the critical issue in this case is: 'Whether the Electoral Act (Modification) (Postponement of Harare City Council Elections) Notice 2002, published in SI 13A of 2002, is *ultra vires* s 158 of the Electoral Act [Chapter 2:01] and the Constitution of Zimbabwe and that in the event of it being *intra vires* what effect, if any, does it have on the Supreme Court Order of 7 December 2001.'"

This notice reads as follows:-

> "WHEREAS the High Court issued judgment on the 23rd November 2001, ordering the Registrar-General of Elections to conduct elections of councillors and for the office of mayor for the Harare City Council in accordance with a timetable set by the High Court;
>
> AND WHEREAS on the 7th December 2001, the Supreme Court, on an appeal from the judgment referred to in the preceding paragraph, ordered that the afore-said elections should be held on or before the 11th February, 2002;
>
> AND WHEREAS the Registrar-General of Elections lacks the human, material and financial resources to properly prepare for and conduct elections of councillors and for the office of mayor for the Harare City Council on or before the 11th February, 2002.

NOW, THEREFORE, it is hereby notified that His Excellency the President, in terms of section 158 of the Electoral Act [Chapter 2:01], has made the following notice:-

> 1. This notice may be cited as the Electoral Act(Modification) (Postponement of Harare City Council Elections) Notice, 2002.

2. In this notice –

'Harare City Council elections' means the election of councillors and for the mayor for the Harare City Council referred to in section 3.

3. Notwithstanding any provision of the Urban Councils Act [*Chapter 29:15*], the Electoral Act [*Chapter 2:01*] or any other law or order of court to the contrary, the Harare City Council elections shall be held on the 9th and 10th March, 2002.

4. Notwithstanding anything in the Urban Councils Act [*Chapter 29:15*], the Electoral Act [*Chapter 2:01*] or any other law or order of court to the contrary –

a) the commissioners appointed for the Harare City Council in terms of section 80 of the Urban Councils Act [*Chapter 29:15*] shall continue in office and exercise all of the functions of Harare City Council until the last day of the Harare City Council elections:

(b) all decisions and acts of the commissioners referred to in paragraph (a) made before the date of commencement of this notice, in the exercise or purported exercise of the functions of the Harare City Council, are hereby validated."

This Court, on 7 December 2001, issued an order which in part read as follows:-

"IT IS ORDERED:

That the first appellant shall hold mayoral and council elections for the City of Harare in terms of the Electoral Act [Chapter 2:01] on or before the 11th February 2002."

It is apparent that what is being attempted to be achieved by this Notice S.I. 13A of 2002 is that the court order referred to above be rendered of no force and effect.

The issue then which falls for determination is whether this is permissible in terms of the provisions of S 158 of the Electoral Act [Chapter 2:01].

Section 158 provides that:-

"(1) Notwithstanding any other provision of this Act but subject to subsection (2), the President may make such statutory instrument as he considers necessary or desirable to ensure that any election is properly and effectively conducted and to deal with any matter or situation connected with, arising out of or resulting from the election.

(2) Statutory instruments made in terms of subsection (1) may provide for –

(a) suspending or amending any provision of this Act or any other law in so far as it applies to any election;

(b) altering any period specified in this Act within which anything connected with, arising out of or resulting from any election must be done;

(c) validating anything done in connection with, arising out of or resulting from any election in contravention of any provision of this Act or any other law;

(d) empowering any person to make orders or give directions in relation to any matter connected with, arising out of or resulting from any election;

(e) penalties for contraventions of any such statutory instrument, not exceeding the maximum penalty referred to in section *one hundred and fifty-five*."

The crisp issue as I see it is whether the President had the power to negate the court order.

The learned judge *a quo* in his judgment *Combined Harare Residents Association and Samudzimu v Registrar-General of Elections and The President of Zimbabwe and the Members of the Chanakira Commission* HH-24-2002 stated:-

"Now to satisfy myself whether or not a *prima facie* case has been made, I think I have to have regard, in this case, to the following considerations. First, whether *prima facie* the Notice is null and void. I must mention and emphasise the fact that the question of the validity or otherwise of the Notice is a matter to be dealt with on the return day. But in order to satisfy myself whether in fact a *prima facie* case has been made, I think I must be satisfied too that the Supreme Court order is extant, i.e. is still alive and surviving even in view of the Notice, and I think I must be satisfied that *prima facie* the first respondent is in contempt of the Supreme Court Order. The Notice in effect sets aside the Supreme Court Order and any Court Order which may have been made against (or its attempts to nullify any order of Court made against) any decision or any act of the Commissioners appointed for the City of Harare."

In the same judgment the learned judge also observed:-

"Additionally, there is what may appear to many as the obvious point, that the Notice was made in terms of section 158 of the Electoral Act. That section empowers the President to make certain Statutory Instruments as he considers desirable. I do not wish to recite the entire section. But what is significant is that, in my view, the section does not empower the President to issue a Notice or issue a Statutory Instrument which has the effect of setting aside a Court Order. That is my reading of that section. It is specific that it relates to the provisions of any Act or any other law.

I must confess I do not subscribe to Mrs *Matanda-Moyo's* view that 'any other law' includes a Court Order. And even if one were to look at section 158 of the Electoral Act from the point of view of the interpretation of statutes, one would obviously say, if the Legislature intended to include a Court Order, it would very easily have done so. It is not a matter which would have been left to doubt, but the reason why it was not done that way is probably self evident, considering the respective functions of the three arms of the State."

In a later judgment *Registrar-General of Elections v Combined Harare Residents Association and Daniel Samudzimu* HH-27-2002 the same learned judge stated:-

"That ground of appeal revolves around the question whether the Notice invalidated the Supreme Court order or it did not. Mr *Majuru* for the applicant conceded this as being so.

...

> The Notice which is the Statutory Instrument in terms of which the order of the Supreme Court was purportedly rendered inoperative provides that any court order (which in context is a reference to the Supreme Court order) shall be of no effect. The argument made before me was that s 158(2)(a) in reference therein to 'any other law' encompasses a Court Order. I was of the *prima facie* view that it does not."

The learned judge then extensively researched authorities which give judicial interpretation to the words "any other law". The following were the cases he looked at:

R v Mpeta 1912 AD 414 at 417

Bowker v Registrar of Deeds 1939 AD 401 at 407
Johannesburg City Council v Makaya 1945 AD 252 at 255
Goslar (Pty) Ltd v Garglan 1949 (3) SA 240 (C) at 242
Galant v Du Toit 1946 CPD 247 at 251
Torwood Properties (Pty) Ltd v South African Reserve Bank 1996 (1) SA 215 (W) at 218 and 226
Schuurman & Anor v Motor Insurers' Association of South Africa 1960 (4) SA 317 (T) at 318.
R v Kisten & Ors 1959 (1) SA 104 (W) at 109.

In my view he correctly concluded that the sheer weight of legal opinion was that the phrase "any other law" cannot be interpreted to include "a court order". I too have examined these cases and find the learned judge's conclusion unassailable. See also *Torwood Properties (Pty) Ltd v South African Reserve Bank* 1996 (1) SA 215 in which case the same conclusion is reached. These authorities clearly lay down the principle that the phrase "any other law" does not embrace court order.

It is significant that s 158(2)(a) of the Electoral Act allows "for the

suspending or amending (of) any provision of the Act or any other law …" Yet the Statutory Instrument, purporting to be made in terms of S 158, goes further and speaks of "any other law or order of court". (my emphasis added). The added words show clearly that the Statutory Instrument goes further than the empowering Act.

The learned judge *a quo* did not suspend the operation of s 103 of the Electoral Law. The main thrust of the first paragraph of his order is that the mayoral election be held in compliance with the order of the Supreme Court which was issued on 7 December 2001, namely, that the election be held on or before 11 February 2002. What the learned judge did do, however, is that he recognised that in view of the inactivity of the applicant to comply with the time scales provided for by the provisions of the Electoral Act he could still achieve the target date of 11 February 2002 if he followed the prescription suggested by the learned judge. There is, therefore, no merit in the appellant's first ground of appeal.

It seems to me that what clearly emerges from the judgments of the learned judge *a quo* (HH-24-2002 and HH-27-2002) is that he did make the ruling that the Notice as reflected in S.I. 13A of 2002 was *ultra vires* s 158 of the Electoral Act. He stated in his judgment HH-27-2002:-

> "To the extent that the notice provides for the suspension or amendment of a court order which is not mentioned in s 158(2)(a), the Notice is *ultra vires* s 158 of the Act."

In the light of this finding one cannot therefore avoid determining the issue of the validity of the relevant Statutory Instrument. That is the inevitable conclusion to be drawn from the reading of the two judgments.

It is my view, therefore, that s 3 of 13A of the Notice is *ultra vires* the powers conferred on the President in terms of s 158 of the Electoral Act.

Mrs *Matanda-Moyo* correctly conceded that s 4 of the relevant notice is, in fact, *ultra vires* and I therefore do not consider it necessary to say any more on this aspect. But I must observe in passing that the very wide wording of s 4(b) of the Statutory Instrument goes much further than I think would possibly have been intended. It purports to validate all decisions and acts of the Commission whether or not they would have been lawful if taken or done by a lawfully elected Council. It thus purports to grant some sort of general amnesty or blanket pardon for anything decided by the Commission regardless of incapacity, incompetence or error.

I believe that the issue which we were required to resolve was the validity or otherwise of the notice. Having come to the conclusion I have there is really no need to determine on the constitutionality of s 158 of the Electoral Act.

In the result I would order that the Electoral Act (Modification) (Postponement of Harare City Council Elections) Notice 2002, S.I. 13A of 2002 is *ultra vires.*

The appeal is dismissed with costs.

Civil Division of the Attorney-General's Office, appellant's legal practitioners

Atherstone & Cook, respondents' legal practitioners