

- (1) DUMISO DABENGWA (2) ZIMBABWE AFRICAN PEOPLE'S UNION
- v
- (1) ZIMBABWE ELECTORAL COMMISSION
(2) THE CHAIRPERSON OF THE ZIMBABWE ELECTORAL COMMISSION
(3) CHIEF ELECTIONS OFFICER
(4) MINISTER OF JUSTICE, LEGAL & PARLIAMENTARY AFFAIRS

SUPREME COURT OF ZIMBABWE
MALABA DCJ, GOWORA JA & MAVANGIRA JA
HARARE, JANUARY 12, 2015

T Mafukidze, for the applicants

T M Kanengoni, for the respondents

MALABA DCJ: The preliminary question raised is whether the document filed as the notice appeal complies with r 29 of the Supreme Court Rules. Rule 29 requires that a notice of appeal shall state whether the appeal is against the whole or part of the judgment. The rule is mandatory in its terms and has been construed as such in numerous decisions of this Court. The principle emanating from these authorities is that a document which fails to comply with the requirements of the rule is fatally defective and cannot be amended. The reason is that there will be nothing to amend.

In this case, the document states that the appeal is “against part of the judgment and the whole order”. Mr *Mafukidze* concedes that the document as it stands does not comply with the requirements of r 29. The court agrees with Mr *Kanengoni* that

once the defect is conceded the purported notice of appeal is fatally defective. On the authorities of this Court, the purported notice of appeal cannot be amended.

The only remedy available is an order striking the matter off the roll.

The matter is struck off the roll with no order as to costs.

GOWORA JA: I agree

MAVANGIRA JA: I agree

Zimbabwe Lawyers for Human Rights, applicants' legal practitioners

Nyika Kanengoni & Partners, 1st, 2nd & 3rd respondents' legal practitioners