

The LEGAL MONITOR

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COST-FREE

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Villager nailed for insulting Mugabe...

MOUNT DARWIN-A 65-year-old man is in trouble for allegedly calling President Robert Mugabe a dog.

Zimbabwe Lawyers for Human Rights (ZLHR) last week had to rescue Chakanetsa Murenga of Humbasha village under Chief Matope in Mt Darwin, Mashonaland Central province, who is facing a charge of undermining the authority of or insulting President Mugabe.

“I did not insult or undermine the authority of the President. I only went to the complainant’s house to collect my money (which) he owed me”

His trial, which was set to begin on Friday for contravening Section 33 (2) (b) of the Criminal Law (Codification and Reform) Act Chapter 9:23 at Bindura Magistrates Court, was postponed to 22 February.

This was after ZLHR lawyer, Jeremiah Bamu, asked to represent the 65-year-old Murenga, who initially had no legal representation.

According to the State, Murenga last August uttered the words “Mugabe *ngaabve pachigaro uye hatitongwe nekamunhu kachembera, imbwa yemunhu*,” as he approached the homestead of a fellow villager, Stanley Humbasha.

The State argues that the statement, which prosecutors translated to mean: “Mugabe must step down from power, we cannot be ruled by an old person, he is a dog” was “either abusive or obscene” as it insulted the “President of the Republic of Zimbabwe”.

But Murenga says Humbasha fabricated the allegation.

On the charge sheet, the complainant is identified as “the State.”

“I did not insult or undermine the authority of the President. I only went to the complainant’s house to collect my money (which) he owed me after working for him. That is when he started to allege (sic) me of this,” said Murenga in his warned and cautioned statement recorded at Mount Darwin police station.

...as residents appear in court over cartoons

PLUMTREE-Two men here face a year in jail for allegedly possessing “obscene” leaflets that police say undermine the authority of President Robert Mugabe and his immediate family.

Police allege that the cartoon images on the leaflets are caricatures of President Mugabe and his family.

Mxolisi Tshabala and Blessedgay Phiri are being charged with contravening Section 33(2)(b) of the Criminal Law (Codification and Reform) Act Chapter 9:23 for being “in possession of published (sic) material undermining the authority of or insulting the President or his immediate family”.

The offence attracts a maximum sentence of 12 months imprisonment.

“The accused distributed published (sic) material which contained abusive, obscene or insulting statements about or concerning the President of the Republic of Zimbabwe,” according to a police report tabled in court.

The pair’s case is one of many cases of a similar nature that have seen ordinary people and top officials from Prime Minister Morgan Tsvangirai’s party dragged to court for allegedly undermining or insulting President Mugabe.

Lawyers say they fear that such cases will increase even further as the State uses intimidatory tactics to silence critics ahead of elections to be held most likely at the end of this year or early next year.

Tshabala and Phiri, both of Plumtree, are out on \$50 bail granted by Magistrate Mark Dzira last week. They will return to court on 6 March.

Tshabala and Phiri were arrested on 18 January after allegedly being found in possession of the leaflets.

“It is so funny how the State wishes to prove its case with its papers alleging that the two were merely found in possession of some pamphlets with insulting images and comments. However, bail was successful with the State being put on



Several villagers have appeared in court in areas such as Honde Valley accused of undermining or insulting President Mugabe after allegedly ripping off posters such as the one above. The law used to prosecute these people is now being challenged at the Constitutional Court

notice that remand will be challenged on the next appearance,” said one of the pair’s lawyers, Lizwe Jamela of Zimbabwe Lawyers for Human Rights. Nosimilo Chanayiwa of ZLHR is the other lawyer in the case.

The State had opposed bail arguing that Tshabala and Phiri could interfere with investigations or abscond. Prosecutors also claimed that police were yet to arrest Tshabala’s unnamed girlfriend who allegedly supplied the leaflets.

Insult law challenged again

BINDURA-Magistrate Ruramayi Chitumbura has referred two matters to the Supreme Court to determine the constitutionality of a law used to prosecute people accused of undermining President Robert Mugabe's authority.

Several similar cases challenging the insult laws are already pending at the Supreme Court.

In the first case, Mary Sango from Chiweshe communal area successfully applied to Magistrate Chitumbura to refer her case to the Constitutional Court recently.

Sango is facing charges of undermining or insulting the President as defined under Section 33 (2) (a) of the Criminal Law (Codification and Reform) Act. She wants the Supreme Court to declare the law as unconstitutional on the basis that it curtails freedom of expression.

The State is alleging that Sango uttered the following words: *"Mugabe mudenga, Chen Chimutengwende mudenga, Grace mudenga, vabatanidzei, roverai pasi.* (Lift Mugabe. Lift Grace. Lift Chen Chimutengwende. Bundle them. Smash them to the ground.)

The State claims that Sango uttered the words at Nzvimbo Business Centre in Chiweshe where the MDC was holding a political awareness rally on the constitution-making process last year.

Gilbert Kagodora and Eliah Jembere – activists who attended the same rally – were also arrested on the same charge. The two were later removed from remand. The State, however, later summoned Kagodora to stand trial on the same allegations. His matter has since been referred to the Supreme Court, where he wants the insult law declared unconstitutional.

Kagodora is the MDC treasurer for Mashonaland Central province.

Magistrate Chitumbura also referred the case of Shreef Mohammed and Brian Pongweni from Mount Darwin to the Supreme Court over the same matter. The State alleges that the two uttered the slogan: *"Mugabe mudenga, roverai pasi.* (Lift Mugabe. Smash him to the ground.)"

The State claims that these words were uttered at Pfura grounds while the duo was watching a soccer match. Known Zanu PF supporters – Charles Fata and Godfrey Dumbura - who are now alleging that they were also criminally insulted by the pair, apprehended Mohammed and Pongweni.

"The accused persons had no right to denounce and insult the President of the Republic of

Zimbabwe in the way they did," reads the State outline.

Apart from Kagodora, two MDC MPs from Manicaland province, Hon. Douglas Mwonzora and Hon. Pishai Muchauraya, are facing similar charges of undermining or insulting President Mugabe.

Last year, Hon. Mwonzora successfully applied to the Mutare Magistrates Court for a referral to the Supreme Court challenging the draconian section of the Criminal Law (Codification and Reform) Act being used to prosecute him.

But a Buhera Magistrate on Friday turned down a similar application by Hon. Muchauraya.

Under fire Magistrate recuses self

MASVINGO-The fraud case of lawyer and politician, Douglas Mwonzora, failed to kick off last week after Magistrate Oliver Mudzongachiso recused himself because he is under investigation.

Mudzongachiso is on the spotlight for allegedly bragging in public that he would convict "puppets" from the Movement for Democratic Change (MDC).

"The trial was postponed to April 4 after the presiding Magistrate recused himself. A new Magistrate is expected to take over the matter when the trial resumes," Dumisani Kufaruwenga, Hon. Mwonzora's lawyer told *The Legal Monitor*.

Magistrate Mudzongachiso was supposed to preside over a case in which Hon. Mwonzora, whose firm initiated the Magistrate's investigation, is accused of failing to release a client's funds.

Magistrate Mudzongachiso convicted Deputy Minister of Youth Development, Indigenisation and Empowerment, Tongai Matutu, on assault charges and fined him \$100 in December last year.

Mwonzora, who served as Matutu's lawyer during the Masvingo Urban legislator's trial, immediately appealed against both conviction and sentence.

The matter took a new twist last month when Mudzongachiso's bosses gave him up to last Friday to prove that his judgment on Hon. Matutu was not driven by political vendetta.

Mudzongachiso, the Acting Masvingo Provincial Magistrate, allegedly bragged in public last month that he would continue using his office to convict MDC "puppets".

Both Matutu and Mwonzora are MPs from Prime Minister Morgan Tsvangirai's MDC party.



Hon. Douglas Mwonzora

The Magistrate now finds himself in the peculiar position of having to defend his conduct after he reportedly boasted during a beer drink with

colleagues at Chevron Hotel in Masvingo that he was just getting started with the conviction of MDC "puppets". Hon. Mwonzora's firm

subsequently protested to the Chief Magistrate's Office.

"On Saturday 8 January 2011, the Learned Magistrate went for a beer drink at Chevron Hotel in Masvingo. During the beer drink the Learned Magistrate uttered the following words; *'Zimbwasungata zveMDC tino convicted. Chimwe chacho takato convicted uye tichiramba tichizvi convicted. Tiri mawar vet isu,*" wrote Mwonzora and Associates Legal Practitioners to the Chief Magistrate's Office.

It was not immediately clear if Magistrate Mudzongachiso met the Friday deadline set by Acting Chief Magistrate Mwayera.

Mwonzora and Associates Legal Practitioners said they had suspected foul play well before the Magistrate's alleged public utterances because his conduct during the trial last year was inconsistent with a judicial officer keen on justice.

"Our suspicions about improper conduct on the part of the Magistrate arose during trial when it became clear to us that the Magistrate was not reading submissions written on behalf the accused person (Matutu).

"We later noticed that his keeping of the trial record was shoddy with the result that some key evidence favourable to the accused was not recorded. In his judgment, he never analysed or evaluated the evidence of the defence witness," wrote Mwonzora and Associates Legal Practitioners.

The law firm said it had been prepared to attribute this to "simple ineptitude" on the part of the Magistrate, but Mudzongachiso's subsequent behaviour after the trial "led us to believe that he acted maliciously in this trial".

Speaker slams govt reluctance to ratify treaties

HARARE-Speaker of the House of Assembly, Hon. Lovemore Moyo, has said the Executive is reluctant to facilitate the ratification and implementation of international treaties on human rights, a sign of how the country's leaders lowly rate people's freedoms.

He was speaking at the launch of the first volume of a publication by Zimbabwe Lawyers for Human Rights (ZLHR) on the status of the country's compliance with human rights instruments.

According to the law, it is the responsibility of the Executive to present any treaty or convention signed at regional or international

level to Parliament for consideration, debate and ratification.

"For those human rights treaties that have not been domesticated, there is urgent need for government to seriously consider domesticating them. Domestication of these human rights will certainly bring about peace and stability, law and order, and subsequently, national healing and integration," said Moyo, urging civil society to "make it their business" to pressure the government to bring treaties and conventions before Parliament within a decent time frame.

Moyo said in an effort to counter the Executive's reluctance, MPs were tabling motions that sought to respect and protect human rights as well as

some that sought to compel government to bring treaties to Parliament.

"In 2000, I supported a motion by Hon. Mike Auret that government should bring before the House the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment for ratification. Although the motion was passed, the Executive has not brought the Convention to Parliament.

"In 2010, Hon. Matutu moved a motion that sought to create a Committee of Parliament to investigate election-related violence. That motion is still on the Order Paper. Hon. Gonese brought a Bill into the House which sought to amend provisions of the Public Order and Security Act that violate human rights," said Hon. Moyo.

Hon. Gonese's Bill is now before Senate after passing through the House of Assembly last year.

The ZLHR publication, a result of a historic research that had been in progress since May last year has six chapters. These are: Overview of state of compliance; children's rights; women's rights; administration of justice; international crimes; and participation rights. It is structured in a user-friendly way that enables the reader to quickly identify issues and will be a useful tool for parliamentarians, academics, researchers, as well as civil society activists and the broader public.

The book is available at a nominal fee on request.

Victory as magistrate overturn police ban

BULAWAYO-Magistrate Rose Dube last week overturned a police decision prohibiting Rooftop Promotions from staging a theatre performance entitled "Rituals" which exposes the consequences of violence.

In actions that exposes the coalition government's intolerance for dissent ahead of a planned vote on a new governance charter, the police through a zealous police boss only identified as Chief Superintendent Masina of Bulawayo Central Police Station banned the public performance of Rituals by Rooftop Promotions, the country's leading theatre production group.

In a letter dated 31 January and addressed to the National Arts Council of Zimbabwe (NACZ), a board representing artists, which had notified the police on behalf of Rooftop Promotions, Masina stated that the police could not sanction the performance of the play. The police chief said the government was already attending to issues of national healing through the Organ for National Healing, Reconciliation and Integration.

But Zimbabwe Lawyers for Human Rights (ZLHR) lawyers Lizwe Jamela and Nosimilo Chanayiwa instituted urgent proceedings in the form of an ex-parte application challenging the police ban of the play.

In the ex-parte application, the lawyers sought to declare as unlawful, the prohibition of the drama performance and to set aside the police order prohibiting the public show of the play.

Magistrate Dube, who presided over the application, granted the order sought by ZLHR, which also sanctioned Rooftop Promotions to proceed with the staging of the drama performance as scheduled and promote the organisation's right to freedom of association and assembly as set out in the Constitution and the right to freedom of expression as guaranteed in the Constitution.

The police and their agents were interdicted from disturbing or interfering in any way with the drama performance, which was held on Wednesday at Bulawayo Polytechnic College.

Written by renowned artist Stephen Chifunyise, "Rituals" is a story told in panoramic fashion chronicling how community initiated cultural solutions to mitigate the effects of violence meet with serious challenges that either prevent their conclusive enactment or achievement of the desired results.



Silvanos Mudzvova

The police ban on the premiering of Rituals was the second one inside one month after Chimanimani police arrested and detained the Rituals cast of prominent artist Silvanos Mudzvova, Mandla Moyo, Zenzo Nyathi, Joyce Mpfu, Rutendo Chigu and Chipo Bizure, who were on a national tour promoting the play.

In November police banned a one man protest which had been planned by Mudzvova demanding that legislators, civil servants, mayors, councillors and other elected officials should declare their assets before assuming office.

In March 2010 Bulawayo police arrested and charged prominent visual artist Owen Maseko with undermining President Robert Mugabe's authority after he mounted an exhibition on the Gukurahundi massacres.

However, Maseko's prosecution was halted after Magistrate Ntombizodwa Mazhandu granted his application challenging the constitutionality of the law criminalising his artistic work.

Gorekore granted free bail

HARARE-Mbare Magistrate Rebecca Kaviya on Thursday granted free bail to Paul Gorekore, the councillor for Ward 3 and six other residents, who were arrested on Monday, for allegedly assaulting some ZANU PF youths.

Councillor Gorekore and the six Movement for Democratic Change (MDC) supporters namely Kudakwashe Usai, Amon Mutasa, Muchofa Pfundhurai, Ephraim Purazeni, Patrick Chibhabha and Leo Mutema were arrested and charged with assault as defined in Section 89 of the Criminal Law (Codification and Reform) Act Chapter 9:23.

The seven Mbare residents were accused of pelting three ZANU PF youths namely Elliot Munyama, Gerald Ticharwa and Givemore Kamhashu with stones as they passed by the MDC offices in Mbare.

The residents were allegedly clearing some debris from their party's shattered offices, which were demolished by some ZANU PF youths the previous week.

Magistrate Kaviya granted free bail to the seven Mbare residents after the residents' lawyers Tawanda Zhuwarara and Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR) applied for their release on bail.

The State had opposed bail and had led evidence from the investigating officer, Detective Assistant Inspector Lazarus Jonasi Majonga.

The seven Mbare residents were remanded out of custody to 17 February.

The arrest of councillor Gorekore and other residents comes just a week after the detention of 19 other residents of the volatile high density suburb, who were charged with public violence. The 19 residents were granted free bail.



Councillor Gorekore

Launch in pictures

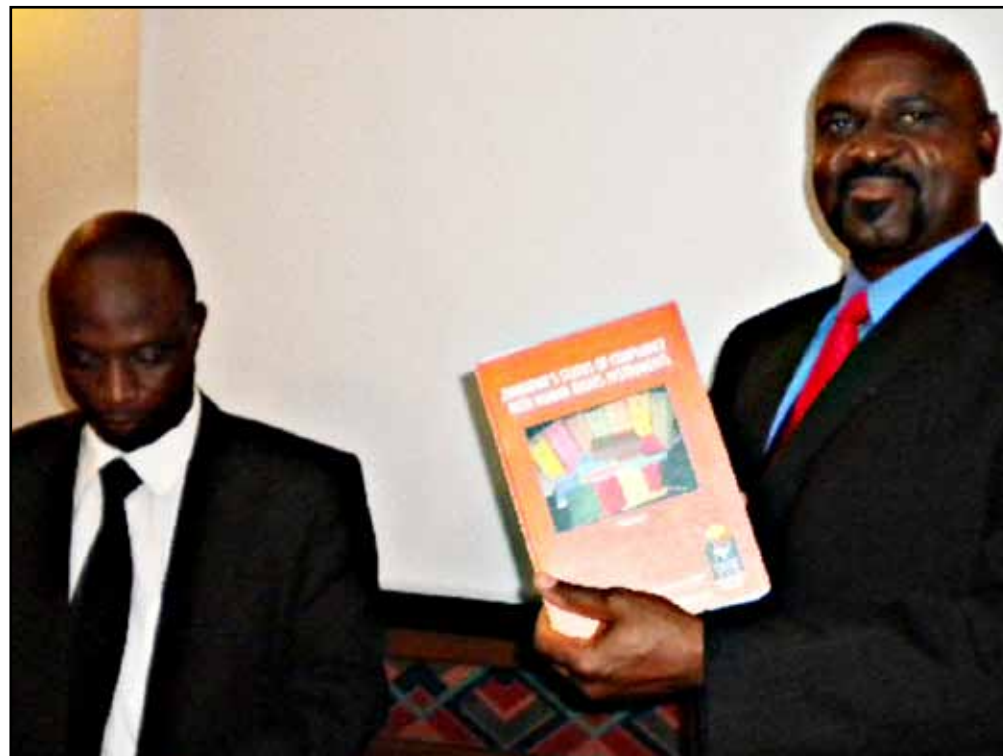
HARARE-Zimbabwe Lawyers for Human Rights (ZLHR) on Monday launched its publication entitled *Zimbabwe's status of compliance with human rights instruments*.

The publication, which was launched by Hon. Lovemore Moyo, the Speaker of Parliament first identifies all human rights instruments that Zimbabwe has acceded to, ratified, or has become State Party through

succession as understood under international human rights law. It then interrogates sector-specific Zimbabwean legislation to audit compliance with these international and regional human rights norms and standards. The publication is available at a nominal fee from ZLHR. Below are pictures captured at the launch.



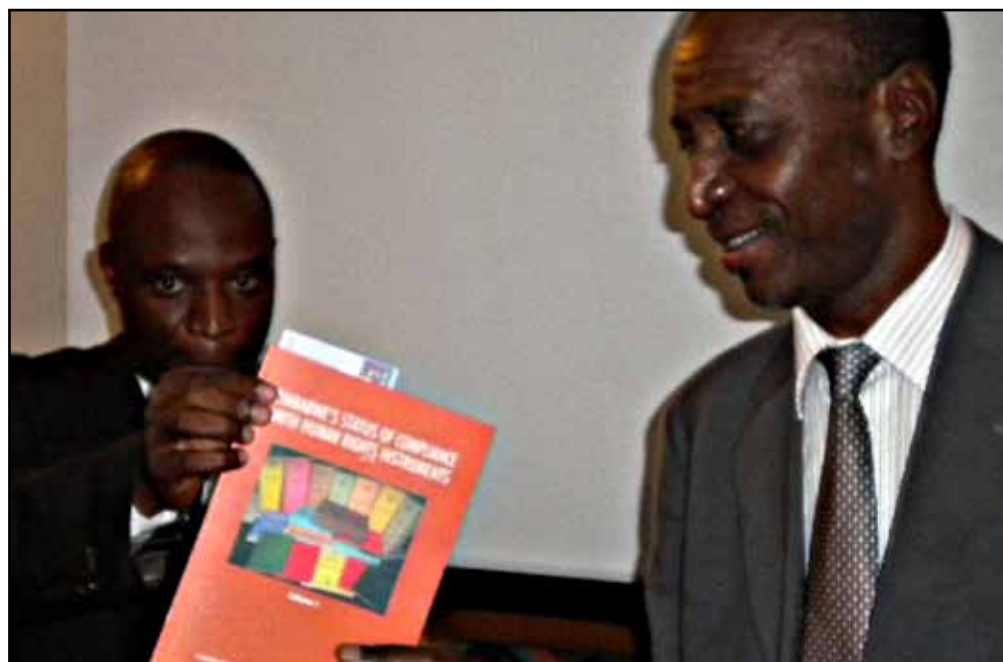
Ellen Sithole, the deputy chairperson of the Zimbabwe Human Rights Commission, who is also the deputy Dean of the Faculty of Law at the University of Zimbabwe, smiles with ZLHR chairperson Andrew Makoni while Irene Petras, the ZLHR Executive Director looks on



Speaker of the House of Assembly Lovemore Moyo (left) launches the book



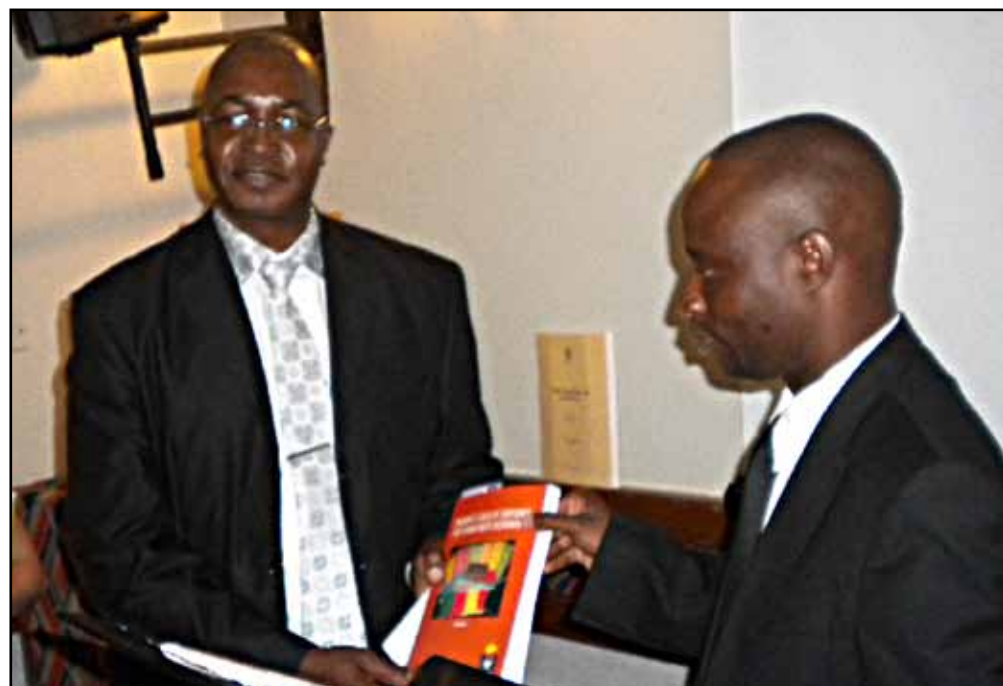
Beatrice Metwa, a ZLHR board member addressing delegates at the book launch



ZLHR chairperson Andrew Makoni hands a copy to Lovemore Matombo, the Zimbabwe Congress of Trade Unions president



Deputy Attorney General Nelson Dias following the proceedings at the book launch just before he receives his copy



Justice Charles Hungwe (left) receives the book from ZLHR chairperson Andrew Makoni