

The LEGAL MONITOR

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COST-FREE

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Man demands millions for police injustice

HARARE-A man who was shot by the police and forced to suffer 14 months in a dilapidated prison before being acquitted has approached the High Court to compel Police Commissioner Augustine Chihuri and the government to pay him over \$1.5 million in damages.

Cosmas Nyambara was shot in the thigh in July 2009 while lying on the ground when police suspected him of being part of a gang that had recently robbed a vehicle in Harare's Mt Pleasant suburb. Nyambara said he was at his rural home when the alleged robbery occurred.

Whilst in hospital recovering from the gunshot wounds, Nyambara was charged with armed robbery as defined in Section 126 of the Criminal Law (Codification and Reform) Act on 16 July 2009. He was subsequently remanded in custody at Chikurubi Maximum Prison.

Through his lawyer, Belinda Chinowawa of Zimbabwe Lawyers for Human Rights, Nyambara is asking Chihuri, co-Home Affairs ministers Kembo Mohadi and Theresa Makone, Detective Constable Muuya and Detective Sergeant Musekiwa to pay him \$1 521 400 in compensation. Chinowawa says Nyambara can barely live a normal life after the ordeal.

Nyambara says his claim is for: "Payment in the sum of \$1 500 000 being damages for pain, suffering, shock, contumelia, unlawful arrest and imprisonment, loss of amenities of life and permanent disability and disfigurement sustained as a result of an unlawful shooting by members of the Zimbabwe Republic Police."

He wants a further \$5 400 for loss of income

during the time he was in remand prison and \$16 000 as compensation for loss of revenue from his farming activities.

Nyambara is demanding that the police return a Trium Galaxy cell phone, Econet sim card and \$168 taken by the police upon his arrest.

The defendants have 10 working days from 1 July to respond to the claim.

What started as a normal day on 13 July in 2009 turned into a nightmare for Nyambara when two plainclothes policemen Muuya and Musekiwa "brandished guns and ordered him to stop".

Fearing for his life, Nyambara complied and was ordered to lie on the ground before he was shot in the left thigh.

"This was totally uncalled for as the Plaintiff (Nyambara) had not shown any inclination to resist the order to lie down or to flee. The attack was not only brutal but also callous and unnecessary," said Nyambara's lawyer, Chinowawa.

The policemen had suspected Nyambara of being part of a gang of armed robbers led by Gift "Tyres" Mwale, who was on the police "most wanted" list. Mwale had died in a hail of bullets after hijacking a Mercedes-Benz in Harare days before Nyambara's ordeal.

Muuya and Musekiwa asked Nyambara to reveal the whereabouts of "his accomplices as well as the hiding place for some AK47s" to which he denied knowledge of.

According to court papers, the police officers bundled Nyambara into a grey Toyota Collora vehicle that had been parked on the opposite side of the road.

"The Plaintiff continued to protest his innocence and declared that he could not have committed the alleged robberies as he had just returned from his rural home on that very day and furnished proof in the form of a bus ticket to authenticate his claim," read the court papers.

"After the production of the ticket as

corroboration the police officers discontinued the questioning and proceeded to take him to Glen Norah police station and subsequently to Harare Central Hospital where he was placed under police guard and received treatment for his gunshot wound," according to the court papers.

After going through this torment, the charges were withdrawn before plea due to lack of evidence despite the fact that the police officers had claimed to have positively identified Nyambara as one of the robbers.

To save face, the State then charged Nyambara with possession of a firearm, "notwithstanding the fact that no firearm had been retrieved from him at the time of his arrest".

That charge was dropped on 9 September 2010 resulting in Nyambara's release.

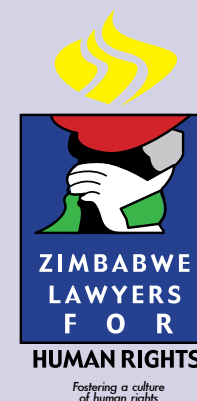
But life has never been the same, he says. Not only did he sustain bodily injury from the gunshot despite having committed no crime, Nyambara lost his sales job with Tyn-Serve Distributors where he earned a monthly income of \$450.

"His mobility and independence have reduced, as he is unable to participate in basic and ordinary activities that a farmer should be able to as his left leg cannot sustain this," wrote his lawyer.

Nyambara's case is one in many that show how police recklessness has cost innocent citizens.

Several claims similar to Nyambara's are before the courts. Chihuri's failure to pay claims he has lost in the courts also highlights how the police continue acting with impunity.





Press Statement

Defiant State invokes Section 121 of CPEA to veto Bindura man bail order

Zimbabwe Lawyers for Human Rights (ZLHR) condemns the spiteful and groundless actions of the State in vetoing a bail order granted in favour of Bindura resident Oliver Mukombwe, who is accused of undermining police authority.

Mukombwe, the Movement for Democratic Change treasurer for Bindura district, who is accused of contravening Section 177 (a) (1) of the Criminal Law (Codification and Reform) Act Chapter 9:23 was granted \$20 bail by Bindura Magistrate Charles Murove when he appeared in court on Wednesday 6 July 2011.

But Clement Kuwanda, a police prosecutor, invoked the notorious Section 121 of the Criminal Evidence and Procedure Act (CPEA) to suspend the bail order which had been granted to Mukombwe. Kuwanda alleged that Mukombwe undermined the authority of the police when he made a statement in

a public place on 2 July 2011 along Church road in Chipadze Township, Bindura, Mashonaland Central province directed at Nemiah Caleb Muzinda, a police constable stating that; *"Makajaidzwa naMugabe. Munofunga kuti chipurisa chinoshamisa here? Zvenyu zvokupinda nechizANU PF hazvina basa saka ini ndinoda kukuraya"*, which the prosecutor translated to mean "You have been spoiled by Mugabe. You think the police work is special? Your joining of the force through ZANU PF partisanship is useless, so I want to kill you."

Alternatively, the State is also charging Mukombwe, who is represented by Belinda Chinowawa of ZLHR with contravening Section 89 of the Criminal Law (Codification and Reform) Act Chapter 9:23.

The intransigent invocation of Section 121 of the CPEA suspends the bail order for seven days pending the filing of an appeal by the State in the High Court. ZLHR is perturbed by the malicious and obdurate actions of the State in continuing to unnecessarily infringe upon the fundamental

right to liberty of accused persons by bringing up Section 121 of the CPEA. This is despite the fact that the constitutionality of Section 121 of the CPEA is being challenged in numerous cases which are yet to be heard by the Supreme Court of Zimbabwe.

ZLHR is concerned at the frequent abuse of this draconian piece of legislation, which is used to the prejudice of suspects as prosecutors are clearly usurping the powers of the judiciary who in this case had safeguarded the fundamental right to liberty of Mukombwe.

We remain concerned about the increased number of cases in which Section 121 of the CPEA has been arbitrarily and unjustifiably invoked, particularly against members of the Movement for Democratic Change (MDC) and other genuine human rights defenders in Zimbabwe.

***Celebrating 15 years
of defending human rights***



Zimbabwe Lawyers for Human Rights (ZLHR), publishers of The Legal Monitor, would like to thank its members, human rights defenders and partners for successfully contributing to the production of its 100th edition last week. We continue to value your support

Pro-Mugabe song haunts MP

CHIREDDZI-Hon. Moses Mare, the Chiredzi West MP, is not yet off the hook in the case in which he is being accused of assaulting a minor for singing a pro-President Robert Mugabe song.

Chiredzi resident Magistrate Thomas Mandityira, dismissed the MP's application for discharge at the close of the State case. The Magistrate said the prosecution had convinced him that there was a *prima facie* against Hon. Mare.

Hon. Mare's lawyer, Blessing Nyamaropa of Zimbabwe Lawyers for Human Rights, had applied for discharge arguing that the prosecution's case was weak.

Hon. Mare was arrested in January last year on allegations of contravening Section 89 (1) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23.

Prosecutors claim that Hon. Mare was so incensed by a 13-year-old boy's decision to join in the singing of one of President Mugabe's praise hymns *Nyatsotera* at a funeral that he hit the juvenile on the neck using open hands.

The MDC MP denies the charge, which he says is fabricated.

Mare's case is not isolated.

President Mugabe's praise songs, repeatedly played on radio and television, have landed several residents in trouble over the past year.

Three Chiweshe villagers in Mashonaland Central province, Tinashe Chinyemba, Luckson Khumalo and Tafadzwa Chironga recently appeared at Bindura Magistrates' Court for allegedly distorting one of the songs by inserting Prime Minister Morgan Tsvangirai's name into the lyrics.

The villagers are being charged under Section 41 of the Criminal Law (Codification and Reform) Act Chapter 9:23 for conduct likely to provoke the breach of peace.

Another three residents from Penhalonga in Manicaland province, Patrick Chikoti, Faith Mudiwa and Phillip Dowera were in February charged under the same law for allegedly singing a modified version of Mbare Chimurenga Choir's *Nyatsotera* song at a funeral. (See story on page 3).



President Robert Mugabe... his praise songs have landed Zimbabweans in trouble

Personal reflections of 100 editions

By Jeremiah Bamu

HARARE-When I first read *The Legal Monitor*, I told myself this was just the cause in a moment which would vanish just as swiftly as it had entered the news scene. I was certain it would not last. I was wrong. Within a short space of time, I found myself yearning for the next edition. My fascination with this paper quickly grew, but then again, I found myself involuntarily being featured in some of the articles. At first I welcomed this new exposure and it gave me a thrill every time I found my name mentioned in it, and I always had a tinge of excitement when my face actually appeared in *The Legal Monitor*.

The worst was yet to come, incessant calls, requests for comments and updates and endless inquiries on legal matters. This naturally comes with its own demands, being propelled into the spotlight brings the unintended scrutiny into my work by a whole host of players including my peers, friends and relatives, colleagues in the profession, stakeholders, clients (both existing and prospective), and the Law Society among other actors. Then I began to rue the day I first read *The Legal Monitor*, and yet ironically, I still can't miss an edition of that green paper.

The whole concept of *The Legal Monitor* to me initially appeared to be an exclusive treat for those in the legal profession. Who else would be interested in monitoring legal developments other than those who use it on a daily basis? This is especially so when the law itself is couched in so many technical terms and often



incomprehensible legal jargon. I always imagined that this would be the general outlook of *The Legal Monitor*, a chip off the old block, replicating the same technical legal jargon which makes lawyers seem so cold and incommunicable. I have always equated legal jargon to a medical doctor's handwriting in terms of being incomprehensible.

Again I was wrong on this score. Demand for *The Legal Monitor* rose with each publication, and surprisingly, its demand rose among human rights defenders and even the general public, normally considered as lay people. When I was in mainstream private practice, at Mbidzo, Muchadehama & Makoni Legal Practitioners, we used to keep copies of *The Legal*

Monitor at the clients' waiting area for them to be entertained, but gradually we began missing copies and were left with no option but to request for larger quantities as they often disappeared before the lawyers had read through them.

It is from then, especially when some of the cases I was handling began to feature in *The Legal Monitor*, that I began receiving calls from long lost relatives and friends, "we read about you in your lawyer's newspaper... that green one... that was an interesting case you were dealing with, where can we find copies of that paper?" That was the general line. It still happens to this day. Many people tell me how they are reading about me in the newspapers. When I met one of my lecturers, who trained me as a lawyer, and he commended me for the work

that I was doing, as reflected from the reports he was reading from *The Legal Monitor*, I felt encouraged.

I also quickly realised that *The Legal Monitor*, apart from being a tabloid in its own right, had become a source of news to other mainstream newspapers. I have often come across several publications that have reported in verbatim, articles published in *The Legal Monitor*.

This new found exposure at first gave me a tinge of excitement, then it had its own kinds of pressures bearing down on me. From the day I first appeared in *The Legal Monitor*, I have been inundated with phone calls from various newspaper agencies, seeking my comment on this legal matter or that, or for quick updates and interviews on some of the cases I will be handling. Other than that, the exposure brings about broader and unintended public scrutiny into my work, which often pushes me to keep cross checking on my performance in my cases as a single blunder in the execution of my duties will be in the public eye, which of course means the Law Society will be quickly breathing on my neck should I offend against any professional practice.

There is no greater pressure than knowing that with each report appearing in the newspaper, my superiors to whom I report to are also being informed through the media and it does not need to wait for a formal complaint to be lodged before it brings me to task.

With each publication, I have also learnt that *The Legal Monitor* has grown to be a reliable source of news, and a source of inspiration, particularly to human rights defenders, their friends and families. It does not only capture the developments in courts, but also takes time to follow through the litigants and hear their side of the story.

A touching experience is the manner in which it covered the story of Rwisai Nyakauru, the late 82 year-old village head of Nyakauru village in Nyanga, who was arrested together with Hon. Douglas Mwonozora in February 2011.

The Legal Monitor is the only publication which held, what unfortunately became the last interview of the late Rwisai Nyakauru, on his arrest, time in remand prison after the State maliciously invoked Section 121 of the Criminal Procedure and Evidence Act against him and how he succumbed to the ailments which soon cost him his life owing to the uninhabitable prison conditions he was subjected under. Indeed, *The Legal Monitor* has dared the odds and brought unbiased coverage of legal developments in a manner that has made it a competitive newsletter with the unique advantage of being cost free.

On the turn of its first centenary publication, *The Legal Monitor* is clearly poised to scale greater heights. It has created many friends and foes alike. It must however continue to dare the odds and continue in its quest for generational change. Jeremiah Bamu is a senior projects lawyer at ZLHR



Nyatsoterera trial in August

MUTARE-The trial of three Penhalonga residents accused of singing a modified version of Mbare Chimurenga Choir's *Nyatsoterera* song will continue next month after being postponed because the Magistrate was unavailable to preside over the matter.

Patrick Chikoti, Faith Mudiwa and Phillip Dowera were arrested in February and detained for a fortnight before their release following the intervention of Peggy Mapfumo-Tavagadza of Zimbabwe Lawyers for Human Rights who successfully secured bail for the trio.

The trial was initially set for 15 June, but was postponed for the second time on 29 June to 16 August because Magistrate Sharon Chipanga was said to be away.

According to the State, on 3 February this year, the three craftily turned *Nyatsoterera* - a song that heaps praise on President Robert Mugabe - into a "defamatory" funeral hymn.

The trio is now being charged with contravening Section 41 of the Criminal Law (Codification and Reform) Act Chapter 9:23 for conduct likely to provoke the breach of peace.

"On 3 February 2011 and at Tsvingwe cemetery, Penhalonga, Patrick Chikoti, Faith Mudiwa and Phillip Dowera or one or more of them engaged in disorderly and ritious (sic) conduct

and threatening words i.e. '*Nyatsoterera unzwe kupenga muhofisi mune mboko nyatsoterera unzwe kupenga*' and '*Ngatishandei nesimba takabatana tibvise kamudhara aka muoffice mupinde president wenyika* Morgan Tsvangirai,' that they would remove President Mugabe from office intending to provoke a breach of the peace, realising that there was a real risk or possibility that a breach of peace may be provoked," reads the State outline.

Nyatsoterera and other pro-President Mugabe songs are enjoying massive airplay on all radio stations as well as on television as ZANU PF heightens its campaign ahead of elections whose date is yet to be announced.

When Mapfumo-Tavagadza secured bail for the trio, the State invoked Section 121 of the Criminal Procedure and Evidence Act to keep them in detention for seven days.

But after seven days, the trio paid their bail and were released because the State had not appealed against the granting of bail. The State's use of Section 121 of the Criminal Procedure and Evidence Act, a law that has the effect of suspending bail for seven days to give time for the State to appeal, has been widely condemned.

Lawyers say the law is being cruelly used to keep suspects that would have been granted bail in remand prison because in most instances the State does not appeal against the bail during the seven days.



Legal Resources Foundation

Well done on a very professional output; good succinct articles, regularly produced and feeding the information needs of many.

Good luck with the next 100!

Maguwu trial opens

MUTARE-Defiant prosecutors have summoned Lisbern Maguwu to stand trial here on charges of obstructing the arrest of his uncle Farai, a campaigner against human rights abuses in the diamond-rich Chiadzwa area last year.

Lisbern appeared in court last month after he was summoned for trial. He had been removed from remand in March this year but defiant prosecutors chose to bring him to court again. His trial, which commenced last month, has been deferred to 25 July.

Lisbern is facing charges of obstructing the police from arresting Farai Maguwu, who was then wanted for allegedly giving false information about military abuses in Chiadzwa to a visiting diamond monitor.

Farai was later arrested and acquitted for lack of evidence in October last year.

Despite Farai's acquittal almost a year ago, the State appears determined to press on with Lisbern's case.

He is being charged with contravening Section 184(1)(a) of the Criminal Law (Codification and Reform) Act for "obstructing the police to arrest a wanted person".

Officers that were involved in the arrest of Farai, such as detective Henry Sostein Dowa, testified against Lisbern when the trial resumed last month.

Dowa is best remembered in the case for being accused of camping at Farai's house for close to a week while feasting and sleeping on the activist's bed.

According to Lisbern's lawyers, Dowa and his fellow detectives took in Lisbern after earlier attempts to arrest Farai had been futile.

Police were so hostile that the lawyer who first attended at the police station after Lisbern's arrest was threatened with detention himself.

"The accused was denied his right to legal representation. Accused was targeted for failing to disclose the whereabouts of his uncle Farai. It is through the intervention by lawyers that accused got his liberty," according to a brief by Lisbern's lawyers.

The case has been dragging on since October last year. His trial date was first set for October last year but failed to commence because the State was not ready. Determined to nab Lisbern, the State later summoned him to stand trial last month.



Farai Maguwu

Reprieve for tormented councillor and residents

HARARE-High Court Judge Justice Felistas Chatukuta on Friday granted bail to Oddrey Sydney Chirombe, a Movement for Democratic

Change (MDC) councillor for Harare City Council and three other party members who had been languishing in remand prison since

their arrest last month. The four are part of 24 Glen View residents arrested last month for allegedly murdering a police officer, Inspector

Petros Mutedza. Justice Chatukuta freed Chirombe, Moyo, Rutsito and Chinyama after lawyers applied for their release on bail pending trial.



Police detectives lead some of the Glen View residents into court

Chirombe, Jephias Moyo, the MDC regalia shop manager, Abina Rutsito, who is employed in the MDC security department and Tendai Maxwell Chinyama, the MDC Kambuzuma District Organising Secretary were arrested last month and charged with committing the crime of murder as defined in Section 47 of the Criminal Law (Codification and Reform) Act Chapter 9:23.

In the bail application, Tawanda Zhuwarara and Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR) argued that their clients were victims of "profiling", a practice that has been directly outlawed in certain jurisdictions and has been frowned upon by implication in Zimbabwean courts. Prosecutor Edmore Nyazamba opposed the application.

The lawyers argued that though on surface the allegations of murdering a police officer seemed serious and grave, a closer inspection revealed that the charges were tenuous, improbable and incoherent.

Justice Chatukuta ordered Chirombe, Moyo and Rutsito to pay bail of \$100 each and continue residing at their given residential addresses and not interfere with State witnesses. Chinyama was asked to deposit \$300 and report once a week on Fridays to Marimba Police Station and continue residing at his residential address and not interfere with State witnesses.

However, eight other suspects, human rights campaigner Cynthia Manjoro, Glenview Ward 32 councillor Tungamirai Madzokere, Rebecca Mafikeni, Phenias Nhatarikwa, Lazarus Maengahama, Stanford Maengahama, Yvonne Musarurwa and Stanford Mangwiro remain in remand prison after Justice Tendai Uchena dismissed their freedom bid early this month. The Judge ruled that the eight could flee from justice if freed on bail.