

The LEGAL MONITOR

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Mudede faces jail

HARARE-Human rights lawyers have asked the High Court to jail Registrar-General (RG) Tobaiwa Mudede on contempt of court charges after he defied a court order to renew a citizen's passport.

In an application filed recently, the lawyers want Mudede jailed for 90 days for defying Justice Susan Mavangira's order for the RG's office to renew Sebastian Piroro's passport.

Mudede has failed to renew Piroro's passport despite being given a two-week ultimatum to do so in March this year by Justice Mavangira.

"That the Second Respondent be and is hereby sentenced to imprisonment in respect of the contempt of this Honourable Court as aforesaid for a period of ninety (90) days, or until such time as he fully complies with the Order of this Honourable Court in Case No. H.C.7248/2010 dated 31 March 2011, whichever is the earlier," reads an order sought by the lawyers.

Bryant Elliot of Zimbabwe Lawyers for Human Rights is representing Piroro, a Zimbabwean based in Canada and deemed by Mudede to be an alien despite being born here.

In an affidavit lodged with the High Court, Piroro argued that Mudede deserved jail because he had "wilfully and persistently failed to obey and comply with the Order of this Honourable Court."

"This wilful and persistent failure by the First Respondent has caused me severe prejudice in that I am still not recognised as a citizen of Zimbabwe and I am still without a Zimbabwe Passport, despite the fact that I live and work at the present time in Canada.

"Accordingly, it is respectfully submitted that the Second Respondent is in contempt of this Honourable Court," reads Piroro's affidavit.

Piroro was born and educated in Zimbabwe and had sought to renew his passport at the Zimbabwean embassy in Ottawa.

The travelling document was issued in 2000 and expired last year.

But in response Mudede refused, alleging that Piroro was a dual citizen on account of his father having been born in Mozambique. Mudede said Piroro should first renounce his purported Mozambican citizenship-which he does not hold-before he could obtain a new Zimbabwe passport.

Mudede's office turned down Piroro's application to renew the passport. He indicated that his office could only do so after Piroro renounced his purported foreign citizenship.

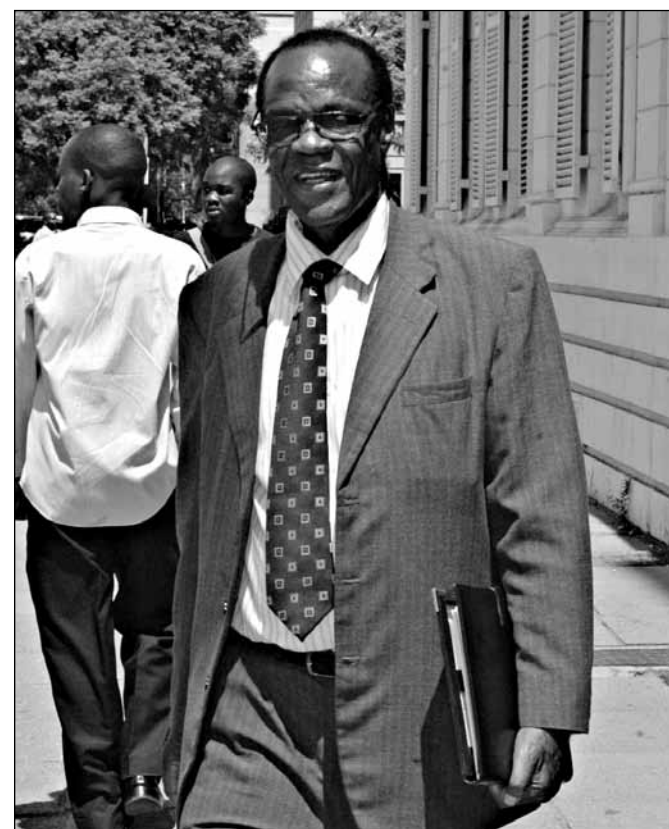
In his argument which was thrown out by Justice Mavangira, Mudede argued that Piroro was a "Mozambican citizen by descent" who should have renounced his purported citizenship between 6 July 2001 and 6 January 2002 under the provisions of section 9 (7) of the Citizenship of Zimbabwe Act.

Mudede argued that although Piroro was born in Zimbabwe and spent most of his life in the country, he had lost his Zimbabwean citizenship and was now regarded as an "alien".

Piroro's father, Saidon, was born in Mozambique. He migrated to Zimbabwe around 1955 and never returned to Mozambique. He became a citizen of Zimbabwe by registration and had a Zimbabwean identity number.

Piroro's mother, born in Marondera, was a citizen of Zimbabwe by birth.

Justice Mavangira ruled that Piroro was a citizen of Zimbabwe by birth in terms of Section 5 of the Constitution of Zimbabwe. The High Court Judge declared that "the provisions of Section 9 (7) of the Citizenship of Zimbabwe Act (Chapter 4:01) in so far as it relates to citizenship by birth are ultra vires the powers vested in the Parliament of Zimbabwe in terms of Section 9 of the Constitution of Zimbabwe and are in consequence of no force or effect."



Defiant... Mudede



Ignorance on transitional justice rife-report

HARARE-Most Zimbabweans are in the dark on transitional justice mechanisms, despite the majority of them being victims of repeated State sponsored human rights violations, a new report shows.

According to findings of a Zimbabwe Human Rights NGO Forum national survey on transitional justice, only two in every 10 Zimbabweans are familiar with transitional justice.

"The majority of the respondents (82 percent) demonstrated ignorance of the term 'transitional justice'. This demonstrates the need for civic programmes meant to educate the people about what transitional justice entails," noted the report.

The International Center for Transitional Justice describes transitional justice as a set of judicial and non-judicial measures aimed at redressing the legacies of massive human rights abuses. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms usually carried out during the times of transition.

In Zimbabwe, most people were unaware of the Organ on National Healing, Reconciliation and

Integration set up by the coalition government to deal with emotive national healing and transitional justice issues following three decades of State sponsored turmoil.

The following trends emerged from the survey:

- 74 percent of the respondents had never heard of the Organ

- Of the 817 respondents who had heard of the Organ, 32 percent gave it a positive rating of performing well or very well
- Of the same respondents, 45 percent rated it negatively, saying it was performing badly or very badly
- The remaining 23 percent had no knowledge of its performance

"The relative anonymity of the Organ was highlighted in the response of one elderly (aged 71) who said, 'I may lie to you about the Organ. I was not yet born when it was formed.' There is need for the Organ to make itself more visible to the communities if it is to advise on a credible framework for national healing that is acceptable to the broader society," reads the report.

As a result of the national healing organ's ineffectiveness in administering transitional justice, a "substantial number" of respondents said they trusted churches to lead the process.



Zimbabwe Human Rights NGO Forum Director Abel Chikomo and Zimbabwe Peace Project Director Jestina Mukoko

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Jembere's Mugabe slur trial set

BINDURA-Epworth Member of Parliament, Hon. Elias Jembere will this month stand trial for allegedly insulting and undermining the authority of President Robert Mugabe after Bindura Magistrate Kadye dismissed the legislator's application seeking referral of his matter to the Supreme Court.

Hon. Jembere wanted the Supreme Court to determine the constitutionality of a law used to prosecute people accused of undermining the ZANU PF leader's authority before his trial could commence.

His lawyer, Jeremiah Bamu of Zimbabwe Lawyers for Human Rights wanted the Supreme Court to declare the law as unconstitutional on the basis that it curtails freedom of expression.

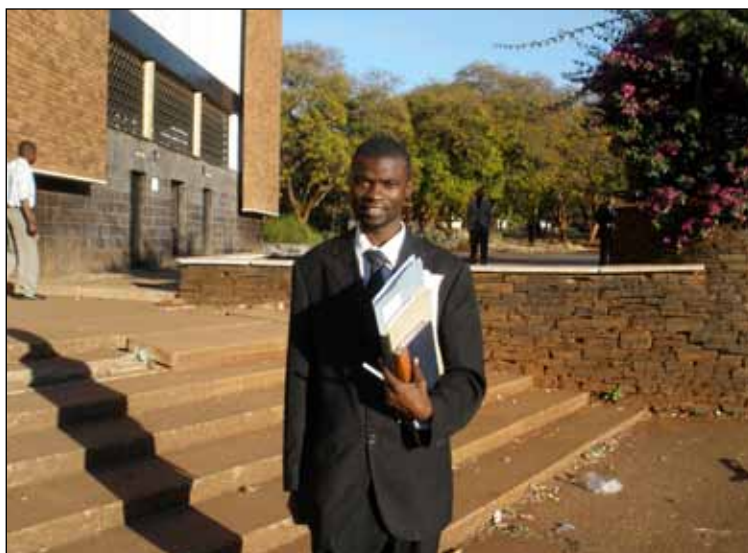
But Magistrate Kadye on Friday dismissed the application as frivolous

and vexatious and advised that he will give reasons for his ruling after Hon. Jembere's trial.

The Magistrate said the Movement for Democratic Change (MDC) legislator for Epworth constituency should stand trial on 27 September 2011 for allegedly contravening Section 33 of the Criminal Law (Codification and Reform) Act Chapter 9:23 by undermining the authority of or insulting President Mugabe.

However, Bamu told Magistrate Kadye that he will proceed to approach the Supreme Court directly in terms of Section 24 (1) of the Constitution to challenge the prosecution of Hon. Jembere.

Prosecutors allege that Hon. Jembere insulted President Mugabe when he addressed party supporters at a constitutional awareness meeting by saying "Mugabe mudenga,



Bamu

ZANU PF mudenga, vabatanidzei, roverai roverai pasi," which the police interpreted as meaning to say "Mugabe up, ZANU PF up, bring

them together and drop them down."

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

Transitional justice ignorance

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The second most popular option was for government to lead the process, with the majority of respondents believing that whichever government was in power should be responsible for a reparations programme, according to the report.

"In terms of the period to be covered by a transitional justice process 41 percent of the respondents said it should cover the period from 2000, while only 3 percent said the process should go back as far as before colonisation," reads the report.

"There were, however, stark differences among the 10 provinces with respect to this question. These differences were especially notable between the Matabeleland and Mashonaland regions. Respondents in Matabeleland regions favoured looking back to the period just after independence, whereas those in the Mashonaland regions predominantly believed that the period of time from 2008 to the present should be covered.

"This can be attributed to differences in the levels of violence in the regions at different time, most notably during the Gukurahundi era in Matabeleland," notes the report.

A North Korean-trained military brigade deployed by government massacred over 20 000 people, including children and pregnant women, soon after independence in Matabeleland in an operation known as Gukurahundi.

Highlighting the institutionalised form of human rights violations and violence in the country, Zimbabwe Human Rights NGO Forum reported that its researchers suffered harassment at the hands of State institutions such as the police during the research.

"In the course of the field research, several of the researchers were detained temporarily and interrogated by members of the Zimbabwe Republic Police," noted the report.



"WHAT DO YOU EXPECT - HAPANA CHEMBWA!"



A poem on Transitional Justice by Tafadzwa Muzondo © 2011

How does a fraudster preside over a fraud case of the person he openly defrauded?
How does a rapist preside over a rape case of the person he brutally raped?
How does a robber preside over a robbery case of the person he unashamedly robbed?
How does a murderer preside over a murder case of the person he murdered?
How on earth does a dreaded perpetrator become a trusted arbitrator?

What peace is possible without another piece of my body?
What reconciliation is feasible without reparation for my loss?
What healing is workable without restoring my dignity?
What tolerance is sustainable without stopping the violence?
What do you expect when the perpetrator becomes the arbitrator?

How can political independence clash with individual independence?
How can sovereign rights compromise human rights?
How can the threat of re-colonization justify terrorization of people?
How can egocentric nepotism be called afrocentric patriotism?
Honestly, what can you expect when aggressors are learned professors?

Violence does not begot violence
But silence begets violence
No difference by silence
Yet it's not over until it is over
It's not done until it is done
There is no peace until there is peace

Musavateerere vanonyepa
Hunzi rambai meberere
Mungatimutsira zvirere
Gutai nederere ndozviripo
Ndokuti marwadzo aserere
Rambai munyerere
Hatidi mhere mhere

Tinopona sei tirere muberere
tichidya derere?
Tinopora sei tinerere tichitya
kumutsa zvirere?
Tinopedza sei mhere mhere tichitongwa
nema gwere gwere?

Tafadzwa Muzondo is an award-winning theatre practitioner who has written, directed, acted and produced a number of plays working with different organizations and/or community theatre groups. This poem was inspired by the interaction the author had with various communities as he went on tour with different anti-violence plays. He can be contacted on: edzaiisu@yahoo.com or tafartist@gmail.com



National Association of Non-Governmental Organisations (NANGO) has honoured Zimbabwe Lawyers for Human Rights (ZLHR) for its unwavering commitment to fostering a culture of human rights in the country.

NANGO rewarded ZLHR with its Human Rights Roll of Honour Award at a dinner to mark the end of the NGO Expo held in Harare last month. In a statement, NANGO said the award recognises the critical role played by ZLHR, which celebrates its 15th anniversary this year in promoting human rights development in the country. The award carries a floating trophy. Besides ZLHR, NANGO



honoured the Legal Resources Foundation for the best exhibition stand, Zimbabwe Women's Resource Centre and Network, Habakkuk Trust, Gweru United Residents Association, Family AIDS Care Trust, Pamuhacha and Hippo Valley Estate.

The award winners were nominated by civil society organisations that exhibited during the three-day NGO Expo. Labour and Social Services Minister, Paulina Mpariwa, who officially opened the NGO Expo visited the ZLHR stand.

Guard chokes on anti-Mugabe slur

HARARE-A 52 year-old security guard who allegedly taunted a workmate that Movement for Democratic Change (MDC) leader, Morgan Tsvangirai, was to thank for a snack of biscuits and a fruity milk drink returns to court today.

Zebedia Mpofu, a general hand labourer at a private security firm is scheduled to stand trial at Mbare Magistrates Court after his trial was postponed last month when witnesses failed to turn up in court.

The State accuses Mpofu, a father of three, of undermining the authority or insulting President Robert Mugabe when he allegedly told a colleague, Gilbert Matarutse-a known ZANU PF supporter, that he owed a fruity drink and a packet of biscuits he was enjoying for lunch to economic policies spearheaded by Tsvangirai, the first opposition leader to defeat President Mugabe in presidential polls.

According to the State, Mpofu contravened Section 33 (1) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23 as read with Section 33 (2) (a) of the same Act when he told Matarutse who was having his lunch at the time that “the biscuits

and the cascade he was having were brought by MDC-T through its leader Prime Minister Morgan Tsvangirai.”

The State alleges that Mpofu also stated that “President Mugabe had ruined the country and that he was going to be dead by December 2010 then Morgan Tsvangirai would take over as President of Zimbabwe.”

But statements recorded from other workmates acting as witnesses all deny hearing Mpofu utter the alleged words.

Mpofu is just but one of several Zimbabweans, from politicians to ordinary villagers, who have been dragged before the courts for allegedly undermining the authority or insulting the octogenarian leader.

MDC spokesperson Hon. Douglas Mwonozora has also been charged with insulting the former freedom fighter after he allegedly bowed to a portrait of Mugabe, compulsorily displayed in a court room and enquired about his health condition saying: “Makadii baba? Iri sei mwiri? Riri sei ziso?” The police translated this to mean “How are you father? How is



Zebedia Mpofu



your health? How is your eye?”

Early this year, President Mugabe had a cataract operation on his eye in Singapore. The police claimed that by uttering such a statement Hon. Mwonozora caused ridicule, contempt and hatred of the “President, his person or his office” as people who were in court broke into laughter.

Three Chiweshe villagers, Tinashe Chinyemba, Luckson Khumalo and Tafadzwa Chironga have been

summoned to Bindura Magistrates’ Court for allegedly distorting one of the pro-Mugabe songs by inserting Prime Minister Morgan Tsvangirai’s name into its 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.

In Manicaland, another three residents from 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 “Nyatsoterera unzw kutonga” song at a funeral. The residents were accused of having sung: “Nyatsoterera unzw kupenga muhofisi mune mboko nyatsoterera unzw kupenga” and ‘Ngatishandei nesimba takabatana tibvise kamudhara aka muoffice mupinde president wenyika Morgan Tsvangirai (Listen carefully to the madman and idiot in the office. Let’s work hard to remove this old man from office and install Tsvangirai).”

Tribute to ZimRights’ Sakala

HARARE-Zimbabwe’s human rights movement has been robbed of a tireless human rights defender following the death of Zimbabwe Human Rights Association (ZimRights) National Programmes Coordinator, Edwin Tonderai Sakala.

Sakala, aged 50, died on Friday 26 August 2011 after collapsing at the ZimRights Head Office, in Harare.

Sakala was laid to rest on Sunday 28th August 2011 at Warren Hills Cemetery in the capital.

ZLHR executive director, Irene Petras, described Sakala as an eminent human rights campaigner. She said Sakala raised his voice against human rights violations, adding his death was a “great loss not only to ZimRights but to the entire human rights movement in Zimbabwe because he was very much connected to the grassroots level activism.”

Sakala joined ZimRights in January 2006 as an Assistant Information Officer at the organisation’s Head Office before he was elevated to the position of Information Officer in January 2008.

He also served as the head of the Education department beginning April 2009 before doubling as a Deputy National Programmes Coordinator. In February 2011 Sakala was promoted to the position of National Programmes Coordinator, a position he held to the time of his death.

In a message of condolence, ZimRights said Sakala’s

involvement in governance, social justice, human rights and democracy issues could be traced back to the early 90’s as shown below:

- 2003-2005 Project Manager, Zimbabwe Youth Integrated Project
- 2001-2003 Coordinator, Zimbabwe Peace Project (ZPP)
- 1992-2001 Public Education Officer, Catholic Commission for Justice and Peace in Zimbabwe (CCJP)
- 1990-1992 Research Officer, Catholic Commission for Justice and Peace in Zimbabwe

Other than that, Sakala’s records indicate that he acquired a diploma in education at Mutare Teachers College. He became an English and Mathematics teacher at Jari Secondary School in 1985 before becoming a teacher in charge at Chrome Secondary School in Mutorashanga in 1986.

He ended his teaching field as a headmaster for Tengwe Secondary School in Hurungwe between 1987 and 1990. He was also a holder of a Certificate in Human Rights and Humanitarian Law and a Certificate in Journalism.

Sakala is survived by his wife and four children.

May his soul rest in eternal peace.



Sakala

Launch in pictures

HARARE-The Zimbabwe Human Rights NGO Forum last week launched a national survey on transitional justice. Carried out between February and March this year, the research looked at nine main areas. These are: Understanding of transitional justice, the Organ on National Healing, Reconciliation and Integration, effect of human rights violations, responsibility for human rights abuses, what the victims feel, healing and repentance, recommendations on the way forward, how far should we go and security.

Below are moments captured during the launch attended by representatives of the Zimbabwe Human Rights NGO Forum including Zimbabwe Lawyers for Human Rights.

