

The LEGAL MONITOR

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A newsletter published by Zimbabwe Lawyers for Human Rights for members & human rights defenders



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COST-FREE

Bob's picture worth \$300

MARONDERA-A ZANU PF official has put the value of a banner beaming with President Robert Mugabe's picture at \$300.

And now, five Movement for Democratic Change (MDC) supporters are facing criminal charges for allegedly trashing and burning the banner belonging to ZANU PF Marondera district political commissar Stewart Materike.

The MDC supporters are charged with malicious damage to property under Section 140 of the Criminal Law (Codification and Reform) Act Chapter 9:23.

Charles Ngwenya, a security guard with Marondera Municipality as well as the unemployed duo of Shown Chinai and Brian Phiri were arrested on 19 October while Caleb Marange and Omega Mutsaru were arrested on 26 and 27 October respectively. The five, who are represented by Fred Machokoto of Mambosasa Legal Practitioners who is a member of Zimbabwe Lawyers for Human Rights are currently on bail. They will stand trial on 10 November.

According to the State outline, Materike was drinking beer with friends at Dombotombo Business Centre in Marondera on 16 October while proudly displaying a banner on the bar wall bearing President Mugabe's face and inscribed: "Our land is our sovereignty" when the MDC supporters allegedly pounced.

The MDC supporters allegedly arrived at the business centre in a convoy of five cars and allegedly pulled down the banner and set it on fire. The five Marondera residents waited until the banner was burnt to ashes, according to the State outline.

"The banner is valued at US\$300 and the remaining chuffs can be produced as exhibit," reads the State outline.

Prosecutors say the MDC supporters had "no right to act in the manner they did."

Scores of people have in the past got into trouble for allegedly tempering with Mugabe's posters or making fun of the President.

Two Honde Valley villagers are facing charges of contravening Section 152 of the Electoral Act after they allegedly destroyed a Mugabe political campaign poster in 2008.

Last year, the late Chipinge Magistrate Samuel Zuze sentenced Gift Mafuka to a year in jail with hard labour for allegedly insulting Mugabe.

Mafuka was found guilty of contravening Section 33 of the Criminal Law (Codification and Reform) Act, Chapter 9:23 after allegedly quizzing two young boys for wearing T-shirts emblazoned with Mugabe's image.



Mugabe's poster which has landed several people in court

Besides Mafuka and the Honde Valley villagers, several MPs have since January this year been brought before the courts for allegedly insulting and undermining the authority of Mugabe. In May, police charged MDC deputy chairperson

and non-constituency Senator Morgan Komichi with undermining the authority of or insulting President Mugabe after he allegedly sung lyrics likening First Lady Grace Mugabe to a dead donkey.

Lawyers dump Mudede again ...as High Court ponders jail bid

HARARE-Registrar-General of Citizenship Tobaiwa Mudede has changed lawyers for the third time inside five months in a matter in which he faces jail for allegedly defying a High Court order.

Dumped by the Attorney General's Office, Mudede had sought the services of private law firm Mushonga, Mutsvairo and Associates. But they too, have announced they no longer act on behalf of Mudede.

Mudede has now engaged Mudenda Attorneys as his latest lawyers. He is battling to ward off the possibility of jail as well as defend why he has failed to renew Canadian-based Zimbabwean citizen, Sebastian Piroro's passport as ordered by High Court Judge Justice Susan Mavangira in March.

Another High Court Judge, Justice Chinembiri Bhunu last week reserved judgment on Piroro's application seeking an order to compel the High Court to set down as an urgent case the contempt of court application filed against the Registrar-General after he defied a court order to renew his passport. In the contempt of court application, Piroro wants Mudede to be jailed for 90 days for defying Justice Mavangira's order.

In the application which was heard on Thursday, Piroro's lawyer Bryant Elliot of Zimbabwe Lawyers for Human Rights argued that his client's application for contempt of court should be urgently set down for hearing because his client has been unable to travel outside Canada since June 2010 when his passport expired.

The human rights lawyer said Piroro, a specialised Accountant/Strategist for a Canadian financial institution has been severely prejudiced to the extent of failing to travel outside Canadian borders to keep up to date with the ever changing regulations in the banking and accounting industries by travelling to and understudying trends in North America and Europe.

Elliot said Piroro's failure to fulfil his job obligations could soon result in loss of employment.

During the same week, Mushonga, Mutsvairo and Associates said they had stopped working with Mudede. No reasons were given.

"Please take notice that Messrs Mushonga, Mutsvairo and Associates renounce agency on behalf of the respondents," the firm announced on 24 October. Mudenda Attorneys assumed agency on behalf of Mudede the next day.

In his application, Piroro argues that Mudede deserves time behind bars because he has neglected to implement the High Court order seven months after it was handed down.

Mudede is cited as the second respondent in the application.

Piroro has been stuck in Canada as a result of Mudede's failure to renew his passport, yet his job demands extensive travel.

"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.

In an affidavit lodged with the High Court, Piroro argues that Mudede has "willfully and persistently failed to obey and comply with the Order of this Honourable Court."

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At sixes and sevens... Mudede

Senator Komichi has since successfully applied for his removal from remand.

Epworth MP Hon. Eliah Jembere, is also under prosecution for allegedly insulting the octogenarian leader.

In April Mutare police charged Constitution Select Committee (COPAC) co-chairperson and Nyanga North MP Hon. Douglas Mwonzora with undermining the authority of or insulting Mugabe for allegedly enquiring about the health status of the ZANU PF leader.

The police charged the Nyanga North MP with contravening Section 33 (2) (a) (ii) of the Criminal Law (Codification and Reform) Act for allegedly mocking President Mugabe by posing questions on a portrait of the 87 year old leader, which was positioned in Nyanga Magistrates Court, when he appeared in court in March on charges of inciting public violence together with 23 Nyanga villagers. The police alleged that Hon. Mwonzora uttered the words "Makadii baba? Iri sei mwiri? Riri sei ziso?" The police translated this to mean "How are you father? How is your health? How is your eye?"

In January 2010, Hon. Mwonzora was summoned to stand trial on allegations of likening President Mugabe to a goblin at a rally at Ruwangwe Growth Point in Nyanga North constituency in March 2009.

The police alleged that Hon. Mwonzora uttered the following words: "Ndaona Mugabe achigeza, tauro muchiuo, sipo muhapwa uye ndebvu hwapepe. Pamberi neMDC, pasi nechihurumende chembavha chinotsungwa vanhu vasina mhosva chichitora zvinhu zvavo. Police took this to literally mean; President Mugabe is a goblin and will run I saw Mugabe bathing, towel on his waist, soap under his armpits and big beard forward with MDC down with bad government of thieves which arrest innocent people and taking away their property (sic)."

New constitution should unlock political crisis - Commonwealth

PERTH, AUSTRALIA-The Commonwealth Organisations Committee on Zimbabwe (COCZ) says it is concerned by lack of progress with constitutional reform and has appealed to regional leaders to intervene as Zimbabwe heads towards an election possibly next year.

Speaking ahead of the Commonwealth Heads of Government Meeting (CHOGM) in Australia last week, COCZ said a new constitution was key to unlocking the political stalemate in Zimbabwe.

“Progress has been made in economic and technical areas. However, the committee notes with concern the lack of progress with constitutional reform, which is the essential prelude to a framework for future elections,” said the committee, which was formed in London at the inception of the Global Political Agreement (GPA).

“The Committee encourages the Commonwealth Secretariat, in co-operation with the Southern African Development Community (SADC), to engage with the government to identify those areas in which it can use its expertise to assist with technical and relevant electoral advice to help secure satisfactorily conducted elections, in the context of the Harare Declaration, which could make Zimbabwe’s return to the Commonwealth possible.”

COCZ aims to bring together civil society groups with a background of working within Zimbabwe, who wish to assist with the rebuilding of the Zimbabwean economy and democratic structures.

COCZ recommendations to CHOGM:

- Welcome the interest that has been shown in the Zimbabwe situation by a large number of Commonwealth organisations since the last CHOGM in Trinidad in 2009 and the practical engagement that is taking place between Commonwealth organisations and their counterparts in Zimbabwe in the education, health, local government, legal and parliamentary sectors.
- Note the lack of progress that is being made in Zimbabwe on the reform of the constitution through the Constitution Parliamentary Affairs Select Committee (COPAC) and the concerns of the SADC troika at the rise in levels of violence and intimidation in Zimbabwe.
- Encourage the Commonwealth Secretariat and Foundation to engage with the Government of Zimbabwe, the parties to the GPA and relevant governments in the region to identify and promote those aspects of the GPA process which serve the welfare and security of the people of Zimbabwe. These are relevant to Zimbabwe’s full compliance with the principles of the Harare Declaration, leading to the re-establishment of the conditions necessary to enable Zimbabwe to resume full membership of the Commonwealth.
- Urge sustained support for NGOs in the run up to elections, as civil society has shown in other countries in Africa that it can play a critical role in areas such as monitoring, documenting and mitigating the effects of political violence,

especially in voter education, which is so important in longer term efforts to heal and rebuild.

- Forge a partnership through which the Commonwealth Secretariat and Foundation can join with COCZ to identify and prioritise areas where the Commonwealth has specific expertise which can be offered to the Zimbabwe Government, to the parties to the GPA and to Zimbabwean organisations with the capacity to engage in the process, so as to fill technical and skills shortages in operations relevant to the restoration of favourable political, economic, and social conditions in Zimbabwe.
- Be ready, through the Commonwealth Secretariat, to assist with advice and assistance in the electoral process, including the restoration of transparent and credible electoral rolls, and observing all phases of the electoral campaign and pre-campaign activities, as well as arrangements for polling and counting stations and the timing of the announcement of results.
- Recognise the vital role played by the Diaspora in terms of remittances and the skills and potential they have to offer, and promote their links with Commonwealth Organisations.
- Continue and enhance funding of Commonwealth Fellowships, which have been of such great assistance to the work of COCZ and to those Zimbabweans who have been able to participate.

Guidelines on ECOSOC Rights Complete’ the African Charter on its 30th anniversary



PRESS RELEASE

The 50th session of the African Commission on Human and Peoples’ Rights is cause for two major celebrations: the 30th anniversary of the African Charter on Human and Peoples’ Rights (African Charter) and the launch of its Guidelines on economic, social and cultural rights in the African Charter (ESCR Guidelines).

A two-day colloquium preceding the session provided 200 participants, mainly representatives of non-governmental organizations (NGOs), from all over Africa an opportunity to take stock of the opportunities, successes, weaknesses and challenges of the African human rights system.

In this context, the official launch of the ESCR Guidelines constitutes a landmark achievement to close the implementation gap of the African Charter.

Adopted in 1981 the African Charter protected economic, social and cultural rights on an equal footing to civil and political rights. It was the first time a major international human rights treaty had done so. However, the African Charter was not detailed in its explanation of the content of the rights and the obligations implied by each right. The Guidelines adopted by the Commission have attempted to fully explain the content of the rights and the nature of states’ obligations. In that respect, the Guidelines interpret the Charter as also protecting the right to housing, the right to food, the right to water and the right to social security.

The Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter (known as the Nairobi Guidelines) explain in detail the obligations of the States to realize economic, social and cultural rights, particularly minimum core obligations, the elaboration of national frameworks and actions plans for the implementation of rights, and the obligation to provide special attention to vulnerable and disadvantaged groups. The State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter (known as the Tunis Reporting Guidelines) assist States in their reporting on economic, social and cultural rights under the African Charter. Both Guidelines

emphasize the importance of civil society participation and serve as important advocacy tools for organizations working towards the realization of economic, social and cultural rights on the continent.

“The ESCR Guidelines make the African Charter a complete instrument for the protection and promotion of human rights. Not only do they confirm economic, social and cultural rights as enforceable rights, but they also assist States to develop national action plans to work

towards realization of these rights,” said Commissioner Atoki, member of the Working Group on Economic, Social and Cultural Rights, which worked to develop the guidelines.

The African Commission was established under the authority of the African Charter and has the mandate to monitor and implement it. The Guidelines are the result of a dialogue and joint efforts between non-governmental organizations and the African Commission. Successful collaboration and joint working is evidenced in other ways with civil society initiatives aiming to complement the work of the Commission. A series of handbooks on economic, social and cultural rights (called ‘Haki Zetu’) was launched during the NGO Forum (published by Amnesty International Netherlands with other partners like COHRE). The launch of the guidelines was therefore the occasion to acknowledge and to celebrate the unique partnership between the African Commission and NGOs that gives a voice to African peoples for the defense of their rights. The NGO Forum that precedes each session of the African Commission is a unique platform worldwide that has created a space for dialogue with the African Commission for more than twenty years.

2011 has generated much hope for the entire world with the “Arab Spring”. The violation of economic, social and cultural rights undermines the roots of democracy – no one that does not enjoy these rights can be expected to fully enjoy the right to life, nor participate in the political life of the country. The launch of the ESCR Guidelines comes at a time when there is a need for the African Commission to support the establishment of these new democracies, help them assess their human

rights situation and push their new governments to integrate in their national constitutions and other laws the provisions of the African Charter, as authoritatively interpreted by the ESCR Guidelines.

About the NGO Group on Economic Social and Cultural Rights

The NGO Group on Economic Social and Cultural Rights gathers NGOs with a view to supporting the work of the African Commission in these thematic areas. The following NGOs are part of the NGO group:

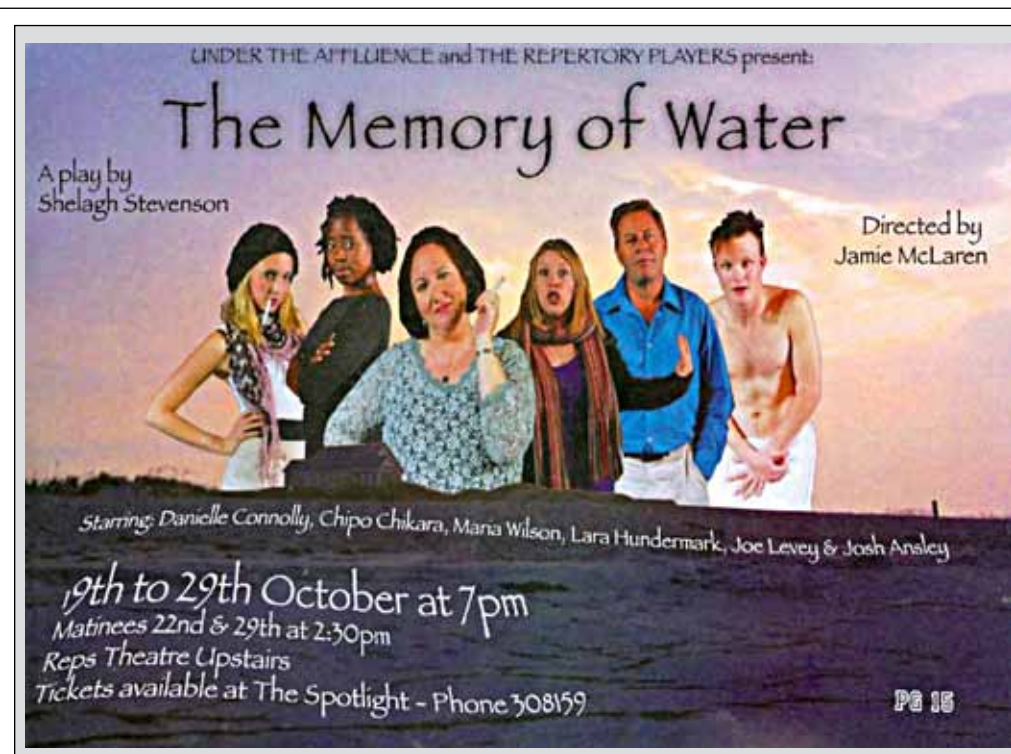
- Amnesty International Netherlands www.amnesty.nl
- Association Justice, Peace and Democracy www.ajpdangola.org
- Cairo Institute for Human Rights Studies www.cihrs.org
- East and Horn of Africa Human Rights

Defenders Project, www.defenddefenders.org

- Interights, www.interights.org
- Legal Resources Centre, www.lrc.org.za
- Mozambican League of Human Rights, <http://www.ldh.org.mz>
- Open Society Initiative of Southern Africa, www.osisa.org
- WaterLex, www.waterlex.org
- West African Human Rights Defenders Network www.westafricadefenders.org
- Zimbabwe Lawyers for Human Rights www.zlhr.org.zw
- Zimbabwe Women Lawyers Association www.zwla.co.zw

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Lawyers under fire

HARARE-ZANU PF youths last week harassed and threatened to assault three human rights lawyers who had represented two Mbare residents charged with committing sodomy.

The ZANU PF youths, who were led by Jim Kunaka, the party's Harare province youth chairperson ambushed Belinda Chinowawa and her co-counsel, Jeremiah Bamu and Kennedy Masiye all of Zimbabwe Lawyers for Human Rights (ZLHR) as they left the court room last Monday and interrogated them for being "unpatriotic", by

representing the two Mbare residents, who were accused of committing sodomy, against President Robert Mugabe's pronouncements castigating the practice.

At first Chinowawa, Bamu and Masiye tried to explain to the ZANU PF mob that as lawyers it was their function and duty to represent anyone who sought their services.

But this only served to further incense the youths as they began hurling profanities and threatened to assault the lawyers.

Kunaka blocked the lawyers as they attempted to drive away from the court and launched a tirade against them and threatened to stone their car if they defied him by continuing to drive.

The ZANU PF youth leader threatened the lawyers with violence should they dare to return to court last Tuesday for the delivery of the ruling of a bail application which they had filed for their clients before recording the registration numbers of their vehicles.

While these events unraveled, prosecutors and police details stationed at the court watched from their offices, and at no point did they attempt to disperse the crowd, or otherwise rescue the lawyers.

The Mbare residents were on Tuesday denied bail by Magistrate Reward Kwenda who remanded them in custody for trial today.

In response to the harassment of the lawyers, ZLHR executive director Irene Petras protested to the Resident Magistrate at the Mbare Magistrates Courts against the treatment of the legal practitioners whom she said faced "a serious security issue in terms of which the lawyers face the very real probability of being assaulted and possibly even worse should they attend the Mbare Magistrates' Court."

Petras requested that the matter be moved from Mbare Magistrates Court to any other court where the lawyers can continue to represent their clients without fear of reprisals.

"Our three lawyers have no doubt that the threats of violence are real and that the mobsters are capable of meting out acts of violence as threatened... We therefore wish to register this complaint formally and place this complaint on record, and to further state that the lawyers now fear for the safety of their clients," said Petras, whose organisation has represented several tormented human rights and political activists around the country.

The human rights lawyer said not only will the trial of the Mbare residents be imperiled should the behaviour of the ZANU PF supporters not dealt with effectively and urgently by the appropriate judicial and law enforcement authorities, but also such impunity will spur similar criminal acts and escalate the assault against the justice delivery system in future cases which are not to the liking of particular individuals and/or sectors of society.

On Thursday Mbare Resident Magistrate Brighton Pabwe assured Petras of some security guarantees for her lawyers to represent their clients when trial commences today at the court.

"However, as for your members this office undertakes to put in place security measures to prevent accused on initial remand when they come to court on 31 October. In actual fact, there would be vetting for all civilians entering the court house, and people as you mentioned will be flashed (sic) out and refused entry," reads part of Magistrate Pabwe's letter.

The Magistrate said moving the case to another court would delay justice.



Under attack... Chinowawa (centre), Bamu (right) and Masiye

Court orders pave way for rallies

BINGA-Lawyers were last week forced to mount court challenges to interdict the police from banning Movement for Democratic Change (MDC) rallies in Matabeleland North provinces.

In Binga, human rights lawyer, Thulani Nkala of Dube and Partners who is a member of Zimbabwe Lawyers for Human Rights (ZLHR) on Friday morning challenged the police ban and obtained an order from the Binga Magistrates Court entitling the MDC to hold its rally on Friday afternoon, which was scheduled to be addressed by party leader and Prime Minister Morgan Tsvangirai and his second in command and Deputy Prime Minister Thokozani Khupe.

Nkala also secured a court order prohibiting the police from interfering with the former opposition party's rally scheduled for Sunday in the resort town of Victoria Falls. However, Innocent Ndlovu, the MDC youth leader who was arrested on Thursday for allegedly putting up posters promoting the rally remained in police custody as the police had not brought him to court by end of day on Friday.

In the politically volatile Lupane area Kossam Ncube of Kossam Ncube and Partners Legal Practitioners, who is a board member of ZLHR on Thursday successfully challenged the police ban paving way for the holding of a rally on Saturday. The police had denied the MDC authority to congregate citing that they would be engaged in "other activities."



Kossam Ncube who obtained a court order overturning a police ban of an MDC rally in Lupane

Govt attempts to hoodwink ACHPR

BANJUL, THE GAMBIA-Delegates attending the 50th session of the African Charter on Human and Peoples' Rights (ACHPR) were last week left in stitches when a government representative claimed that the police were still investigating violence that rocked Parliament in July, three months after the incident.

"On the incident that took place at Parliament before the Human Rights Bill was presented this year, investigations are underway. Those who were involved will be brought to book," said Mabel Musika, the Director of Policy and Research in the Ministry of Justice and Legal Affairs at the ongoing ACHPR meeting.

Musika said the police had received video footage from State broadcaster ZBC which they are currently using to identify perpetrators.

In July ZANU PF hooligans disrupted the public hearing of the Zimbabwe Human Rights Bill and left scores of people injured.

The mob assaulted Movement for Democratic Change (MDC) MP for Hwange Central Hon. Brian Tshuma for allegedly not singing the national anthem.

Journalists Levi Mukarati, then with The Financial Gazette newspaper and Nqaba Matshazi of The Standard newspaper, who were covering the hearing were ejected by the thugs for not singing the national anthem and writing falsehoods in their newspapers.

At the Banjul Charter Musika added that Zimbabwe was committed to upholding democratic principles.

"Despite the onslaught on the economy by the illegal sanctions imposed on the country the government has registered a measure of success. It is clearly evident that our initiative to improve the livelihood of our people would have improved had sanctions not been imposed on Zimbabwe.

"The government of the Republic of Zimbabwe notes that it has been reported that it has the highest number of communications filed with the commission. This is evidence that the people of Zimbabwe are aware of their rights," she said, adding the "sole purpose" of the complaints was to harass the government.

ACHPR has so far received 18 communications from Zimbabweans.

The ongoing 50th session of the ACHPR is being attended by several African State delegates and non governmental organisations working in the field of human rights and other related sectors who all reported on the human rights situation in their countries.



Mabel Musika

In May, David Mangota, the permanent secretary in the Ministry of Justice and Legal Affairs attempted to pacify delegates attending the 49th session of the ACHPR by claiming to have registered tremendous progress in implementing democratic reforms in the country.

Mangota claimed that the coalition government had accomplished a lot including opening up the media sector to new players and maintaining peace and tranquility in the country even in the face of rising political violence.

VOP FM bids for radio licence

HARARE-The Broadcasting Authority of Zimbabwe (BAZ) on 27 October convened its last scheduled public hearing for prospective free-to-air radio licensees with VOP FM appearing before the authority's board.

The BAZ sitting as a commission of inquiry was chaired by Dr Tafataona Mahoso. The BAZ panel which was constituted in terms of the Commissions of Inquiry Act and the Broadcasting Services Act section 10 (8) comprised commissioners: Dr Mahoso, Chief Gambiza, Colonel Reuben Mqwayi, Mrs Erica Mususa, Dr Vimbai Chivaura, Charity Moyo, Edward Dube, Dr Kurasha and Eng. Muganyura.

The presentation bid for VOP FM was made by its chairperson David Masunda and Chief Executive Officer John Masuku. The presentation gave a detailed account of the station's historical background, shareholding structure, studio facilities, transmission plan, business plan, roll-out plan, vision, and mission statement.

Amongst the contentious questions raised by commissioners Mahoso and Moyo was on the identity of the shareholders and the practicality of

the projected profit turnovers within the first year of going on air.

However, VOP FM maintained that according to its cash flow projections, this was achievable.

The other issue was whether Radio VOP (Communications), which is listed among the shareholders, would continue broadcasting should VOP FM be granted a licence. Masunda said the former would immediately cease broadcasting should VOP FM be granted a licence since it had donated all its studio equipment to the latter.

Commissioner Dube also questioned the definition of sponsored programmes and whether this meant they would come in the form of donations. However, Masuku noted that VOP FM was purely a commercial venture and would not bank on any donations.

In an inordinately lengthy interrogation by the commission that lasted more than an hour, VOP FM also disclosed that it will have its own news crew when it commences operations so that it is in a position to generate its own news.

Source: MISA Zimbabwe

Mudede dumped

Continued from page 1

"This willful 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."