

The LEGAL MONITOR

For feedback please email ZLHR on: info@zlhr.org.zw visit: www.zlhr.org.zw



12 November 2012

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

Edition 169

COST-FREE

Distributed without any inserts

Taming 'mystery' CIO

...you are accountable to Zim laws, Judge tells spooks

HARARE-Human rights activist Farai Maguwu has had the last laugh after the High Court ordered State intelligence officers - without identifying themselves - pounced on the activist and confiscated his property seized at Harare International Airport, since the seizure was illegal.

The case had dragged from September last year when intelligence officers - without identifying themselves - pounced on the activist and confiscated his property.

The agents prevented Maguwu from travelling to Dublin, Ireland, for an international conference focusing on rights violations.

But at the end, it ceased being about Maguwu as the rule of law emerged the bigger winner, particularly after High Court Judge Justice Nicholas Mathonsi trashed State Security Minister Hon. Sydney Sekeramayi's attempts to legalise the Central Intelligence Organisation (CIO) as an entity that can operate above the law.

Justice Mathonsi was particularly scathing on Hon. Sekeramayi, whom he described as untruthful and unhelpful.

He was giving a final order following Justice Samuel Kudya's provisional order granted in September last year ordering the return of Maguwu's property.

Defending the intelligence officers' actions, Tinei Dodo from the Attorney General's Office, representing Hon. Sekeramayi, told the court that the CIO should not be held accountable because "the Department of State Security does not operate under any statute".

To this, Justice Mathonsi said: "This argument is unfortunate indeed."

"Zimbabwe is a democratic country which subscribes to the rule of law. The applicant (Maguwu) is a citizen of Zimbabwe who is entitled to the protection of the law. He enjoys certain rights, including the right to property and free movement as enshrined in the constitution of Zimbabwe.

"If the property of an individual is to be seized such a seizure must be under the authority of the law," Justice Mathonsi said in a hard hitting 10-page ruling.

"The Fifth Respondent (Hon. Sekeramayi) has not cited any law under which the State agents acted in this matter. The Fifth Respondent has submitted the State agents do not operate under any law. His submissions are therefore exceedingly unhelpful," he said.

The Judge then turned the screws further on the Minister for exhibiting glaring contradictions.

In an affidavit deposed in September last year opposing Justice Kudya's provisional order, Hon. Sekeramayi admitted that his agents took three blank fuel cash sale slips, bank account numbers and transaction receipts, note pads, travel insurance cover and visa application receipt. He claimed to have returned the goods to Maguwu.

He denied that the agents had taken a laptop and accessories such as the power pack and bag, a digital camera, business cards and bank cards as well as \$2 000.

Justice Mathonsi said it was "not true" that the State agency had returned the items to Maguwu.

"It is also curious that the Fifth Respondent was now admitting under oath having more items belonging to the applicant when, in the letter from his legal practitioner dated 14 September 2011, he denied having taken any of the applicant's property except two reports from, and compiled by the applicant," the Judge noted.

He was not done yet.

"The Fifth Respondent has not been truthful in respect of the items that were taken from the applicant. One cannot help observe as well that all the valuable items which the applicant claims were seized from him have been denied. The Fifth Respondent has been shown to be completely unreliable on what was taken," said Justice Mathonsi, before sending the Minister to the cleaners.

"It is a principle of our law of evidence that where a witness has shown to be untruthful, as the Fifth Respondent has been demonstrably shown to be, an adverse inference has to be drawn against such a witness.

"The basis of that legal principle resides in the fact that the witness would be unreliable and the court would not know when the truth is told and when not," said Justice Mathonsi.

He tore into the Minister's definition of subversive material which the State suspected Maguwu wanted to carry to Ireland.

"We now know of course that the said documents of 'national security' other than reports, were receipts which do not commend themselves favourably as security threats," he said.

"In order to assess the reasonableness of the suspicion the court must be taken into confidence as to what exercised the mind of the agents, which, as things stand remain a mystery. What is known however is that the State agents admit taking a number of receipts, insurance policy, bank transaction slips and two reports compiled by the applicant.

"I am not persuaded that these items could be regarded as subversive," he said, adding that the manner in which the agents handled Maguwu was "not only arbitrary but also over handed".

*Taken to the cleaners...
Hon. Sekeramayi*



Police torment Mangoma again

BINDURA-Fresh fissures are likely to emerge in the coalition government after police summoned Energy and Power Development Minister Hon. Elton Mangoma to stand trial tomorrow on charges of insulting President Robert Mugabe.

The police last week dispatched summons to Hon. Mangoma advising him of his trial date. According to summons, which was seen by *The Legal Monitor*, Hon. Mangoma is accused of undermining the authority of or insulting President Mugabe in contravention of Section 33 (2) (a) of the Criminal Law (Codification and Reform) Act after he allegedly uttered the words; "*Chifa Mugabe chifa. Chibva Mugabe chibva*," which the police translated to mean; "Die Mugabe die. Go Mugabe go" on 18 May 2012 at a Movement for Democratic

Change (MDC) meeting he addressed at Manhenga Business Center in Bindura, Mashonaland Central province. Last month, police arrested and charged Hon. Mangoma, one of the MDC negotiators to the Global Political Agreement for allegedly slandering President Mugabe.

Hon. Mangoma, the MDC deputy treasurer-general was released after Chief Superintendent Charles Ngirishi recorded a warned and cautioned statement from him. His arrest in October was full of drama as the police first took him to Harare Central Police Station before attempting to transfer him to Bindura Police Station but with his lawyers Selby Hwacha and Beatrice Mtetwa giving chase, the police made an about turn and returned to Harare Central Police Station where they recorded a warned and cautioned statement from him and later released him.

Lawyers pursue apostles of torture

MUTARE-Police Commissioner General Augustine Chihuri, whose born again Christian status has been widely publicised, should have been proud that a policeman at a far away post in Mutare's Dangamvura suburb is widely known in the neighbourhood as "Mupostori" (Apostle).

Just that this particular "apostle" has a different gospel from the scriptures that probably warmed Chihuri closer to Jesus.

Jesus' apostles were known for life saving miracles.

Not in this case.

Operating from Dangamvura, a policeman known as Mupostori is crushing bones in torture actions that can only suck life out of a soul, human rights lawyers say.

And Chihuri's other officers are on to him after Zimbabwe Lawyers for Human Rights (ZLHR) lodged a complaint. His true identity is not known although he leaves a trail in his wake but human rights defenders are closer to catching up with him.

The officer-in-charge has committed himself to the case and a recent victim is set to pick him at an identification parade scheduled by the officer in charge-that is if the "apostle" does not play a vanishing act at the "parade".

What started as an enquiry of a policeman's rank by a Mutare man, Trymore Muza resulted not only in a criminal charge, but a severe battering.

After refusing to admit to any criminal activity following a police dragnet arrest, Muza from Dangamvura high density suburb was assaulted after he asked the rank of two policemen who had arrested him and his friend.

Others who had been arrested in the police dragnet on 31 October submitted and paid admission of guilt fines.

Muza refused and after sustaining injuries during the assault by the police, he wants the policemen who harassed him, including Mupostori to face the music.

In a letter to the Officer-In-Charge at Dangamvura Police Station, Muza's lawyer Peggy Tavagadza said he would be able to identify the policemen who assaulted him.

The Officer-in-charge has agreed to conduct investigations as well as an identification parade.

"Our client advises that he left his home to visit a friend and he then saw his friend in the company of a certain man and upon being told he is a police officer, he proceeded to innocently inquire whether he was a member of the special constabulary or a uniformed police officer.

"Our client further advises that the said police officer then asked why he was so arrogant and wanted to arrest him for being arrogant. Our client advises that he had not committed any known crime and perceived that such an arrest was unlawful he ran away to evade the unlawful arrest," wrote Tavagadza to police, adding that: "He was later apprehended and was assaulted on the head, face, hands and legs by police officers whom he can positively identify if he can be given the chance."

Muza is on free bail granted by Mutare Provincial Magistrate Alex Shumba and is due in court on 3 December.

Magistrate Shumba ordered the officer-in-charge at Dangamvura Police Station to conduct and facilitate a medical examination for Muza by a government medical doctor. This was after the human rights lawyer said Muza was in need of medical attention after the assault.

"We noticed that he is still in anguish and has fresh injuries. The charge of assaulting a police officer which is now being preferred against our client is in our view a ploy to cover up the assaults which had been perpetrated upon the person of our clients. We thus petition you to carry out investigations into our client's complaints without delay," wrote Tavagadza.



Signs of the times...corner St Malo Ave and Wilson Drive, Greendale

Villager takes on cop

RUSAPE-A 59-year-old man from Guruza Village in Rusape is taking on the policeman who assaulted him on accusations of theft.

Never Mulayi has filed a criminal report against the policeman, so far only identified as Sachikoko.

He plans to sue in a civil court for damages and has already notified relevant authorities of this intention.

According to his lawyers, trouble for Mulayi started when his employer, Chiduku Chipiri Irrigation, reported the theft of equipment leading to the arrest of Mulayi and 19 other workers.

He was not informed of the charge he was facing but Sachikoko assaulted him on the face and back using a log, his lawyers say.

"The assault started around 6pm and was only released after 11pm without a charge. As a result of the assault he suffered a ruptured eardrum which may cause permanent deafness," said his lawyer Peggy Tavagadza of Zimbabwe Lawyers for Human Rights.

A report was made against the police officer and the criminal record number for the case is RRB1522623.

On 25 October, lawyers notified police Commissioner-General Augustine Chihuri and the co-Ministers of Home Affairs Hon. Theresa Makone and hon. Kembo Mohadi as well as the officer-in-charge of Rusape police of their intention to sue in terms of the State Liabilities Act as read with the Police Act.

Zimbabwe National Network for People Living with HIV and AIDS Calling for Transparency and Accountability: Follow-up to AIDS Levy Action

On the 10th of September 2012, 300 people living with HIV (PLHIV) staged a peaceful demonstration at the National AIDS Council (NAC) Office in Harare. This action was a follow up to formal correspondence sent to the Chief Executive Officer of NAC two weeks earlier by our lawyers. The purpose of the demonstration and the letter is simple. PLHIV want transparency and accountability: we want to know how the AIDS Levy is being spent.

Following the demonstration, NAC comments issued through the media failed to answer the pertinent questions posed in the letter and at the demonstration. Instead, the responses to date have tried to undermine PLHIV rather than to listen to our voices and our legitimate requests. This is deeply regrettable and runs absolutely contrary to national commitments to meaningfully involve PLHIV and to tackle stigmatising attitudes and behaviours.

The formation of the National AIDS Trust Fund

and NAC is as a result of PLHIV demanding a national HIV response to an escalating epidemic in 1999. With long marches, sleep and sit-ins at the Parliament of Zimbabwe and lobbying of individual parliamentarians, we successfully lobbied the Government of Zimbabwe to declare HIV as a national disaster and commit resources towards its eradication. Yet what began as a noble initiative has become a cause for concern. We are particularly disturbed by the growing number of reports of misuse of the AIDS levy especially at time when there are widespread shortages of the drugs and access to diagnostic services remains an uphill battle for many people living with HIV.

For this reason, we welcome the recent announcement by NAC of their plans to make public the audited statement for 2011 and to hand it over to the Ministry of Health and Child Welfare. We also commend NAC's decision to provide an opportunity for engagement by partners and the media on the occasion of the release of the audit statement. While the release

of the audited statement is a positive step towards greater transparency, we the network of PLHIV and our partners (the undersigned) urge the Chief Executive Officer of NAC to continue to build on this important initiative by:

- Make publicly available summarised income and expenditure records from the National AIDS Trust Fund from February 2009 to date
- Make publicly available human resource details, including personnel structure, salary grades, number of staff members per grade)
- Make publicly available the Procurement Policy and Procurement Report (since 2009) for the NAC
- Make publicly available the exact amount paid towards Anti-Retroviral drugs per person, per month for those supported through the NAC supported treatment programme 2009, 2010 and 2011.

- Make publicly available the funds spent on the procurement of ARVs per annum for 2009, 2010 and 2011.

- Make publicly available information relating to investments made by NAC in terms of section 26 of Zimbabwe National Aids Council Act Chapter 15:14.

Furthermore, we urge the Minister of Health and Child Welfare to issue a statement on what actions have been taken to implement the recommendations made by the Auditor-General and Comptroller in 2011 on the Management of HIV Care and Treatment Programme. National HIV responses will always be handicapped if resources are used in an environment that lacks accountability and fraught with policy inconsistencies. It is of utmost importance that public officials act justly and fairly in dispensing their duties and not only pay lip service to transparency and openness. Personal self-interest should in all circumstances be subordinate to the public good.

Outrage on care givers' arrests

HARARE-The arrest and detention of Counselling Services Unit (CSU) staff has enraged the world, with human rights groups saying the action shows how rights defenders remain an endangered species in Zimbabwe.

Police last week raided CSU offices in Harare and arrested five staff members who have dedicated their lives to providing medical care and counselling to victims of organised political violence and torture in the country.

Two of the staff members were released while Fidelis Mudimu, Zachariah Godi and Tafadzwa Geza were transferred to Bulawayo where they were charged with causing malicious damage to property in contravention of Section 140 of the Criminal Law (Codification and Reform) Act, before being granted bail on Thursday.

In a statement, Amnesty International said the "unlawful" detention of the three employees is part of a pattern of systematic harassment and intimidation of civil society by government as it attempts to stifle dissent ahead of elections in 2013.

"Amnesty International regards all three of these men as prisoners of conscience, arrested solely for their legitimate work assisting victims of torture," said Noel Kututwa, Amnesty International's southern Africa director.

"This flagrant bullying and intimidation of human rights defenders in Zimbabwe must end."

Kutukwa said human rights defenders were increasingly becoming targets because of their work.

"We fear that these men, who are highly respected for their work with survivors of human rights abuses, may themselves become the victims of torture," said Kututwa, adding that the development showed how the Southern African Development Community (SADC), which is a mediator in Zimbabwe's political crisis, has failed to deal with a partisan security sector. "This situation is indicative of the Southern Africa Development Community's failure to enforce reform of the security services in Zimbabwe as agreed in the Global Political Agreement. SADC must urgently act to stop this ongoing harassment and intimidation of civil society organisations in Zimbabwe," added Kutukwa.

A coalition of local NGOs said it was enraged by the police actions.

In a joint statement issued on Thursday, the organisations said the behaviour of the police had led to the following:

- Disruption of medical services to victims of trauma, and the unwarranted terrorisation of patients awaiting services
- Illegal access to confidential patient medical records
- The unwarranted deployment of armed riot police to the offices creating alarm and fear to the other tenants of the building and surrounds
- The illegal removal of a computer, which is not covered in the search warrant which stated a "search for material likely to deface any house, building, wall, fence, lamp post, gate or elevator without the consent of the owner or occupier thereof".
- The removal of confidential medical and legal records without permission of the patients to whom they pertain.
- The arbitrary selection of staff for arrest with no concrete evidence of any crime having been committed, particularly in Bulawayo where CSU has no clinic.
- The illegal detention and transfer of senior staff to Bulawayo without formal charges, and exceeding the time limit for appearance before in court.

Timeline of CSU harassment

Monday 5 November

Police resume their crackdown against NGOs blacklisted by President Robert Mugabe's ZANU PF party by arresting five CSU employees. That follows a raid at CSU by about 20 police officers led by notorious Detective Assistant Inspector Henry Dowa and Detective Assistant Inspector Murira armed with a search warrant claiming they wanted to recover "offensive and subversive material" from the organisation's offices in Harare.

Lawyers Tarisai Mutangi, Kennedy Masiye and Tonderai Bhatasara, members of Zimbabwe Lawyers for Human Rights and Blessing Gorejena, Tafadzwa Christmas and Aretha Dzingirai of the Zimbabwe Human Rights NGO Forum try to seek the release of the arrested and to recover a computer and some documents confiscated computer and some documents from the CSU offices. Late Monday, two employees are released from police custody together with The Daily News photojournalist Watson Ufumeli who had been arrested while covering CSU office raid.

Tuesday 6 November

Three CSU representatives endure their second night in custody after the police detained them overnight at Harare Central Police Station. Police detectives tell lawyers Dr Tarisai Mutangi, Tonderai Bhatasara, Rose Hanzi, Kennedy Masiye and Jeremiah Bamu from Zimbabwe Lawyers for Human Rights, who are representing the three CSU employees that they intend to transfer them to Bulawayo on the morrow, where they claim the offence, which they intend to charge them for, was committed. Lawyers are advised that the CSU employees defaced a billboard and an information centre in Bulawayo.

Wednesday 7 November

Police transfer CSU employees to Bulawayo where they are condemned to their third night in detention without formally preferring charges against them. From Harare, Detective Assistant Inspector Henry Sostein Dowa and his lieutenants only identified as Mhuriro and Nyambuwa handed the CSU trio into the custody of Detective Sergeant Ngondo and other police officers from Bulawayo Central Police Station's Law and Order Section including a certain Nyanhete. The detectives from Bulawayo immediately handcuffed Mudimu, Godi and Geza, who all along were not shackled.

Thursday 8 November

A coalition of civil society organisations issue a statement condemning the inhuman treatment of CSU employees, as the trio end their four-day detention ordeal by appearing before Bulawayo Magistrate Learnmore Mapiye.

They are ultimately charged with causing malicious damage to property, in contravention of Section 140 of the Criminal Law (Codification and Reform) Act. Magistrate Mapiye grants bail of \$100 each to the CSU employees. The Magistrate orders the three to surrender their passports to the Clerk at Harare Magistrates Courts and to report once every week on Mondays to CID Law and Order Section at Harare Central Police Station.

Their lawyers register complaints against the inhuman and degrading treatment that their clients were subjected to including over detention, being shackled while being moved from Kwekwe Central Police Station to Bulawayo Central Police Station, being denied to wear spectacles while in Bulawayo police cells and the raiding of the CSU offices on the strength of a defective search warrant.

Know Your Rights

POSA and the Right to Freedom of Assembly

Following the conviction of Nkosilathi Moyo, the director of the Zimbabwe Organization for Youth in Politics (ZOYP) in October for contravening the Public Order and Security Act (POSA), Zimbabwe Lawyers for Human Rights finds it pertinent and as a public service to educate and conscientise citizens on this obnoxious piece of legislation which curtails and severely erodes people's freedoms.

The Public Order and Security Act (Chapter 11:17) (hereinafter referred to as "POSA"), promulgated in 2002, has severely curtailed the right to

free assembly that is articulated in various established human rights instruments to which Zimbabwe is, of its own free will, a State Party. These include the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR), amongst others.

This corrosive legislation has also eroded the content of the right to freedom of assembly provided for in section 21(1) of the Constitution of Zimbabwe, as well as the right to freedom of movement, association and expression, amongst other fundamental rights.

Fundamental rights can be sparingly limited, on good and reasonable cause, where this is in the interests of (a) preserving public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights or freedoms of other persons; or (c) where exercising one's fundamental rights imposes restrictions upon public officers in the execution of their constitutional duties.¹

Whilst it is accepted that the right to assembly can be limited, this must only be done in exceptional circumstances which are reasonably justifiable in a democratic society. Any limitation must therefore be done transparently, and in a manner which respects the principle of separation of powers.

The current limitations to fundamental rights which are imposed by provisions of POSA and the manner in which such provisions and powers have been implemented in the past have clearly shown that the legislation,

as it currently exists, does not protect the fundamental rights and interests highlighted above; neither has its implementation in practice complied with permissible limitations provided in the Constitution of Zimbabwe or the regional and international treaties to which Zimbabwe is bound.

Rather, this legislation, which we must never forget replaced and actually tightened the Law and Order (Maintenance) Act which was imposed on the

majority population by the racist and illegal minority Smith regime, has been used since 2002 to suppress legitimate political and social dissent and criticism, as well as to unconstitutionally and arbitrarily restrict the exercise by human rights defenders, legitimate political activists, and the general public, of their fundamental rights to move, gather, receive information and speak out-critical aspects of exercising their right to participate in the governance of their country. One only has to have reference to statistics of POSA use and abuse since it came into force and effect for the picture to become clear.

‘This corrosive legislation has also eroded the content of the right to freedom of assembly provided for in section 21(1) of the Constitution of Zimbabwe, as well as the right to freedom of movement, association and expression, amongst other fundamental rights’

When lawyers turn merciless

HARARE-The scoreboard reflects margins which are usually unimaginable in netball-but that's only because the Zimbabwe Lawyers for Human Rights (ZLHR) soccer team is manufacturing goals in a fashion that has left opponents in awe.

Defenders of two teams in particular had a weekend to forget after Zim Lawyers FC turned its matches against Telecel and Suis Generis into a goal fiesta.

Such was the bonanza that Zim Lawyers FC hammered in 14 goals in two matches at a tournament held at the University of Zimbabwe grounds last week.

In the first match, Zim Lawyers FC coached by human rights lawyer Jeremiah Bamu completely sent offline mobile operator Telecel and fired five goals without reply.

Fans hadn't seen anything yet if they thought Zim Lawyers FC was merciless towards Telecel.

It was a massacre against Suis Generis.

Again, the Zim Lawyers FC defence kept a clean sheet as the team captained by Tinashe Mundawarara scored nine against the hapless Suis Generis.



Star players...Tinashe Mundawarara and Fanwell Hungwe are the Zim Lawyers FC engine room



Magic touch...Zim Lawyers FC coach Jeremiah Bamu ensures the team play to instructions



ZLHR in the community... Sekuru Razawu of Glen Norah supporting Zim Lawyers FC

MP Chikwinya moves to settle choking media

HARARE-Mbizo Member of Parliament, Hon. Settlement Chikwinya say he plans to introduce a Media Freedom and Transparency Bill in Parliament as a Private Members Bill to repeal stringent laws affecting media freedom in the country.

Addressing journalists in the capital last week, Hon. Chikwinya said: "The proposed bill should establish an institutional framework for freedom of expression, access to information and a free press in Zimbabwe, whilst also introducing openness and transparency in both public and private bodies."

He said he enjoyed the support of legislators across the political divide.

Another Private Members Bill by Mutare Central MP Hon. Innocent Gonese has hit the wall after failing to garner support from President Robert Mugabe's Zanu PF MPs.

Hon. Gonese had tabled amendments to the Public Order and Security Act, a harsh security law which many say gives too much power to the police.

Private Members Bills to repeal Section 121(3) of Criminal Procedure and Evidence Act and to amend the Urban Councils Act are now gathering dust as the major political parties are disagreeing on approving them.



Zimbabwe readies to join the world in commemorating the 16 Days of Activism Against Gender Violence Campaign. This year, the global campaign continues with the theme: From Peace in the Home to Peace in the World: Let's Challenge Militarism and End Violence Against Women! Campaigners are challenging militarism as well as explore the deep socio-economic structures that perpetuate gender-based violence. Campaigners say militarism is a major source of violence and perpetuates a culture of fear and the use of violence, aggression, and military interventions as a means of settling disputes and enforcing economic and political interests.