

IN THE CONSTITUTIONAL COURT OF ZIMBABWE CASE NO CCZ 71/13
HELD AT HARARE

In the matter between:

MORGAN RICHARD TSVANGIRAI

And

ROBERT GABRIEL MUGABE

And

THE ZIMBABWE ELECTORAL COMMISSION (ZEC)

And

RITA MAKARAU N.O

And

THE CHIEF ELECTIONS OFFICER



APPLICANT

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

4th RESPONDENT

AFFIDAVIT by MORGAN RICHARD TSVANGIRAI

I, the undersigned, MORGAN RICHARD TSVANGIRAI do hereby make oath and state that:

1. It is with deep regret and sadness that I find myself having to depose to this affidavit, which I present for purposes of explaining the reasons behind the withdrawal of the Election Petition just filed by my legal practitioners at my specific instance.
2. It is common cause that I filed a Petition challenging the outcome of the Presidential Election in terms of its processes and outcome.
3. In the petition various allegations regarding the conduct of the elections by the 2nd Respondent were made, which allegations touch on the credibility and authenticity of the voting material which is currently under the control of the 2nd and 3rd Respondents.
4. In order to gain access to voting material and other documents and information, two (2) Urgent Chamber Applications were filed under case EC 27 and 28 / 13. Whilst arguments were advanced on the points *in limine*, judgment was indefinitely reserved in the matter. The merits have not been heard.
5. On the same day my legal practitioners were called to attend a Case Management Meeting presided over by the Chief Justice at which parties were directed to file papers according to a timeline as follows:
 - 5.1 All parties to file all their papers including heads of argument by 20:00 hours (8pm) on Friday 16 August 2013.
 - 5.2 Hearing of the Application/ petition commences at 10:00 am on Saturday 17 August 2013.

6. I also understand that while the issue of opposing papers is not captured in the Order, the Respondents directed to file their opposing papers and serve same on the Applicant by day end on Thursday the 15th of August 2013.
7. As at the time of deposing to this affidavit (15:43hours on Friday 16th August 2013), the judgment in the Applications for materials had not been delivered. This in my view seriously handicaps my prosecution of the petition and it has rendered it impracticable for me to proceed with same.
8. I draw attention to the fact that I had specifically indicated in my petition that such material would be needed for the purposes of prosecuting the petition. The fact that I still do not have the material means that I cannot meaningfully prosecute my petition.
9. At any rate, given that the hearing of the Petition is set to commence tomorrow, Saturday the 17th of August 2013, the grant of the urgent chamber application will be of no assistance to me as I will not have the time to plough through the considerable material that I desire to have regard to before the hearing.
10. Further, the timelines that were set by the Chief Justice have not been complied with by most of the Respondents in this matter. I have now been put into a position in which I have to file all my papers without knowing what the position of the other respondents is. I recall in this regard that second, third and fourth respondents have been consistently secretive and have taken a position which makes a mockery of the neutral role that they must play in these matters.
11. By way of example, despite my petition raising serious issues which concern the voters roll, I still do not have an electronic copy of the voter's roll to date. In other words second respondent has deliberately taken a position which is inconsistent with a just determination of the matter and which position obviously prejudices me. The fact that the position it has taken effectively aids first respondent makes it completely futile to pursue this petition.
12. I am also aware that first respondent addressed crowds at the National Heroes Acre during the Heroes Day celebrations on 12 August 2013. I am further aware that he made certain unsavoury comments in which he criticized my decision to approach this court. The fact that the Chief Justice was in attendance on the day and the fact that he is expected to preside over my petition does very little to inspire my confidence in the possibility of my enjoyment of the constitutional right to a fair hearing. In this regard I make no imputation, gratuitous or otherwise, about the integrity of the honourable Chief Justice. My concern is with the conduct of the first respondent.
13. I have also noted with concern the very wide adverse pre-trial publicity which has been championed by the state media and in particular the Herald newspaper. In their reports, positions have been taken essentially rubbishing my efforts in pursuing my constitutional rights. I am acutely aware that the position of the law has long been that such adverse publicity is inconsistent with the fair trial guarantee set out under the constitution. The fact that nothing has been done to arrest such incessant and prejudicial publicity gravely undermines the process which I had been prepared to submit to.
14. For these reasons, I consider that I have no other option but to take this grave decision. This, sadly, as far as I am concerned entails that the Zimbabwe situation is far from resolved and on my part as the leader of my political party I shall endeavour to use all democratic means to bring about the successful resolution of this issue. I wish however, to thank the court and all its officials who have taken time to consider the petition that I had filed.