REPORTABLE (10)

JOYCE TEURAI ROPA MUJURU
v
(1) THE PRESIDENT OF ZIMBABWE (2) PARLIAMENT OF ZIMBABWE (3) THE MINISTER OF FINANCE AND ECONOMIC DEVELOPMENT (4) THE RESERVE BANK OF ZIMBABWE (5) THE GOVERNOR OF THE RESERVE BANK OF ZIMBABWE (6) THE ATTORNEY GENERAL

CONSTITUTIONAL COURT OF ZIMBABWE
CHIDYAUSIKU CJ, MALABA DCJ, GWAUNZA JCC,
GARWE JCC, HLATSHWAYO JCC, PATEL JCC,
GUVAVA JCC, MAVANGIRA & UCHENA JCC
HARARE, FEBRUARY 15, 2017

L. Madhuku, for the applicant

F. Chimbaru, for the first, third and sixth respondents

S.J. Chihambakwe, for the second respondent

T. Mpofu, for the fourth and fifth respondents

GARWE JCC

[1] After hearing argument on a point *in limine* raised by the first and third respondents, this Court issued the following order:-

> "1. The preliminary point raised by the respondents is upheld.
> 2. The matter is struck off the roll with costs.
> 3. The reasons for this order are to follow in due course."

[2] What follow are the reasons for that order.

FACTUAL BACKGROUND

[3] The Presidential Powers (Temporary Measures) Act, [*Chapter 10:20*] ("The Presidential Powers Act") provides as follows:-

"**2 Making of urgent regulations**

(1) When it appears to the President that-

(a) a situation has arisen or is likely to arise which needs to be dealt with urgently in the interests of defence, public safety, public order, public morality, public health, the economic interests of Zimbabwe or the general public interest; and

(b) the situation cannot adequately be dealt with in terms of any other law; and

(c) because of the urgency, it is inexpedient to await the passage through Parliament of an Act dealing with the situation;

then, subject to the Constitution and this Act, the President may make such regulations as he considers will deal with the situation.

(2) Regulations made in terms of subsection (1) may provide for any matter or thing for which Parliament can make provision in an Act:

Provided that such regulations shall not provide for any of the following matters or things-

(a) Authorizing the withdrawal or issue of moneys from the Consolidated Revenue Fund or prescribing the manner in which withdrawals may be made therefrom; or

(b) condoning unauthorized expenditure from the Consolidated Revenue Fund; or

(c) providing for any other matter or thing which the Constitution requires to be provided for by, rather than in terms of, an Act; or

(d) amending, adding to or repealing any of the provisions of the Constitution.

3. … (not relevant)

4 Regulations to be laid before Parliament

(1) Copies of all regulations made in terms of section *two* shall be laid before Parliament no later than the eighth day on which Parliament sits next after the regulations were made.

(2) If Parliament resolves that any regulations that have been laid before it in terms of subsection (1) should be amended or repealed, the President shall forthwith amend or repeal the regulations accordingly.

(3) Where any regulations have been amended or repealed in terms of subsection (2) in accordance with a resolution of Parliament, the President shall not, within a period of six months thereafter, make any further regulations in terms of section *two* that are identical in substance to the regulations before they were so amended or repealed, as the case may be.

5. Effect of regulations

Regulations made in terms of section *two* shall, to the extent of any inconsistency, prevail over any other law to the contrary, apart from regulations

that have been made and are in force in terms of the Emergency Powers Act [*Chapter 11:04*]."

[4] Pursuant to the provisions of s 2 of the above Act, the President of the Republic of Zimbabwe, in a supplement to the Zimbabwe Government Gazette dated 31 October 2016, issued the Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act and Issue of Bond Notes, Regulations, 2016 ("the Bond Notes Regulations"). Sections 2 and 3 of the Regulations, contained in Statutory Instrument 133/16, provide:

> "2.(1) The Reserve Bank of Zimbabwe Act [*Chapter 22:15*] (No. 5 of 1999)("the principal Act") is amended by the insertion in Part VI ("Banknotes and Coinage") of the following section after section 44A-
>
> "**44B Legal tender of bond notes and coins**
>
> (1) The Minister may by notice in a statutory instrument prescribe that a tender of payment of bond notes and coins issued by the Bank that are exchangeable at par value with any specified currency other than Zimbabwean currency prescribed as legal tender for the purposes of section 44A shall be legal tender in all transactions in Zimbabwe to the same extent as that prescribed currency.
>
> (2) Section 42 shall apply to bond notes prescribed under subsection (2) as they apply to banknotes."

APPLICANT'S CASE BEFORE THIS COURT

[5] Following the publication of the above Regulations, the applicant filed a court application which she said was made in terms of s 167(2)(d) of the Constitution of Zimbabwe as read with Rules 15 and 27 of the Constitutional Court Rules, 2016. She sought an order in the following terms:-

> "1. That the first respondent be and is hereby declared to have failed to fulfil his constitutional obligation to obey section 134(a) of the Constitution of Zimbabwe, 2013 by exercising Parliament's primary law-making powers through his making of Statutory Instrument 133 of 2016.
>
> 2. As a consequence arising from 1, that it be and is hereby declared that the Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act and Issue of Bond Notes) Regulations, 2016 (SI 133 of 2016) be and are hereby declared null and void and of no force or effect, having arisen from 1st Respondent failure to fulfil his constitutional obligation within the contemplation of section 167(2) as read with section 2 of the Constitution of Zimbabwe, 2013.

3. That the 2nd Respondent be and is hereby declared to have failed to fulfil its constitutional obligation to protect section 134 (a) of the Constitution of Zimbabwe, 2013 by allowing section 2(2) of the Presidential Powers (Temporary Measures) Act (chapter 10:20) to remain on the statute books long after the enactment of the Constitution of Zimbabwe, 2013.
4. As a consequence arising from 2, that section 2(2) of the Presidential Powers (Temporary Measures) Act (Chapter 10:20) to the extent to which it permits the making of a statutory instrument that amends an Act of Parliament be and is hereby declared null and void and of no force or effect, having remained on the statute books from 2nd Respondent failure to fulfil its constitutional obligation within the contemplation of section 167(2) as read with section 2 of the Constitution of Zimbabwe, 2013 (*sic*).
5. That the proposed introduction of bond notes by the Respondents be and is hereby declared unconstitutional and therefore null and void for arising from the failures by the 1st and 2nd Respondents to fulfil their constitutional obligations as aforesaid (*sic*).
6. That the Respondents (if they oppose this application) jointly and severally pay the costs of this application the one paying the others to be absolved."

[6] In her founding affidavit, the applicant avers that, in terms of s 90 of the Constitution, the first respondent, as President, has a constitutional obligation to uphold, defend, obey and respect the Constitution as the law of the nation. Paragraph 10 of Schedule 6 to the Constitution provides that all existing laws continue in force but must be construed in conformity with the Constitution. The law therefore imposes a constitutional obligation on the President not to invoke s 2(2) of the Presidential Powers Act which is clearly inconsistent with the Constitution. He has a constitutional obligation not to resort to s 2(2) to the extent that it purports to empower him to amend an existing Act of Parliament. That section fell away the moment s 134(a) of the Constitution became law. Section 134 of the Constitution provides that Parliaments' primary law making function cannot be delegated. This means a Statutory Instrument cannot purport to amend an Act of Parliament. The President's constitutional obligation is to ensure that he does not make statutory instruments that amend Acts of Parliament. Instead he is obligated to initiate legislation to repeal such legislation.

[7] In respect of Parliament, the applicant avers that the Bond Notes Regulations have usurped Parliament's primary law making power. Parliament must not allow the President or any member of the executive to usurp legislative powers. Parliament has therefore failed to fulfil its constitutional obligation in two respects. First, it ought not to have allowed s 2(2) of the Act to remain on the statute books for more than three years after the promulgation of the 2013 Constitution. Instead it should have repealed that section. Secondly, it ought to have taken steps, within 24 hours of the gazetting of the Bond Notes Regulations, to direct the President to repeal them.

[8] The applicant made it clear that this was not an application made in terms of s 85(1) of the Constitution but rather one under s 167(2). She submitted that it was not necessary, therefore, to allege a breach of any of her fundamental rights. Having said so however, and in order to demonstrate how the failure by the President and Parliament in upholding their constitutional obligations is affecting her, she listed the rights violated as (1) equal protection and benefit of the law – s 56(1), (b) private property rights – s 71(2) and (c) choosing and carrying on any profession, trade or occupation – s 64.

OPPOSITION BY FIRST AND THIRD RESPONDENTS

[9] The third respondent filed opposing papers on behalf of both respondents. He took a point *in limine*. It was this. The Act under which the President acted is still part of our law and the President is duty bound, in the exercise of his duties, to make use of it. The opinion by the applicant that the Act is constitutionally invalid cannot be used to claim that the President has failed to discharge a constitutional obligation. In fact by using an existing law the President is discharging his constitutional obligation and in these circumstances one cannot approach the court in terms of s 167(2). If the complaint were on the constitutionality of the Act, then the

applicant could only have approached this Court in terms of s 85(1) of the Constitution and allege a breach of one or other of her rights.

[10] The third respondent further stated that the validity of the Bond Note Regulations is currently before Parliament. That institution has the right to amend or repeal the said regulations. Further, in terms of s 9 of the Fifth Schedule to the Constitution, Parliament may also apply to this Court for a declaration of invalidity in respect of the Regulations. Accordingly, the matter is not ripe for constitutional determination as there exists a process within the law for the determination of the fate of the statutory instrument. Lastly, he submitted that since the applicant is not applying for redress of any breach of her rights in terms of s 85(1), she does not have the right to directly make an application to this Court but should have made an application to the High Court which could have adequately dealt with the matter.

OPPOSITION BY THE SECOND RESPONDENT

[11] In its opposing papers, Parliament, represented by its Speaker, has submitted that s 117(1)(c), read together with s 134(a) of the Constitution, allows Parliament to confer legislative powers on another body or authority. The Speaker has denied that Parliament has failed to fulfil its constitutional mandate since the statutory instrument in question is undergoing scrutiny by its Legal Committee.

FOURTH AND FIFTH RESPONDENTS' OPPOSITION

[12] In his opposing affidavit, the Governor of the Reserve Bank prays for the dismissal of the application with costs on the higher scale. He has stated as follows. The Bond Note Regulations were meant to fortify and underpin the existing legal framework for the issuance of bond notes. That instrument was promulgated by the President pursuant to the lawful

authority given to him by the Act, which Act remains part of our law as it has not been repealed by the Constitution. In any event, para 10 of the Sixth Schedule to the Constitution provides that all existing laws remain in force but must be construed in conformity with the Constitution. He denies that the President has exercised primary law making power as envisaged in s 134(a) of the Constitution.

ISSUES FOR DETERMINATION

[13] On the basis of the papers before this Court, the first issue that arises for determination is whether the applicant has properly approached this Court in terms of s 167 (2) (d) of the Constitution. Should that question be answered in the positive, the issue that will follow is whether the President and Parliament have failed to fulfil their constitutional obligations. I deal first with the preliminary point taken by the first and third respondents.

WHETHER THE APPLICATION IS PROPERLY BEFORE THE COURT

[14] There is a presumption of validity in respect of all subsisting laws. Until such laws are set aside, they have legal effect and must therefore be complied with. A court cannot, generally speaking, make an order declaring an act illegal if, at the time the act was performed, it was done in terms of a valid law. Once an act is done in terms of a valid law that act is legal. The only exception to this position is where the legislature, in clear and unambiguous language, or by necessary implication, retrospectively prohibits the doing of something that was legal at the time it was performed, that is to say, where the law expressly states that something that was not prohibited before the promulgation of the retrospective law is illegal – *Greatermans Stores (1979) (Pvt) Ltd t/a Thomas Meikles Stores and Anor v The Minister of Public Service, Labour and Social Welfare & Anor* CCZ 2/18, at p 16 of the judgment.

[15] This Court has on several occasions held that there is a presumption of constitutionality of a law that has not been challenged for alleged unconstitutionality. The court has further held that not only does an unchallenged law compel full obedience but that even a law that is under challenge commands the same level of obedience unless declared invalid.

[16] In this regard, in *In Re: Prosecutor General of Zimbabwe on his Constitutional Independence and Protection from Direction and Control* CCZ 13/17, this court remarked at p7 of the judgment:-

> "… it is important to acknowledge the well-known canons that the Constitution is the supreme law and that the rule of law is a founding principle of our nation (section 3(b) of the Constitution). The quintessence of the rule of law is this and simply this, that where there is a law, it must be complied with …"

14.1 The court further cited with approval the Supreme Court decision in *Econet Wireless (Pvt) Ltd v Minister of Public Service, Labour and social Welfare & Ors* 2016 (1) ZLR 268(S) where at p272 A-E, the court remarked thus:

> "It is a basic principle of our law which needs no authority that all subsisting laws are lawful and binding until such time as they have been lawfully abrogated. If, however, any authority is required for this proposition, one need not look further than *Black on the Construction and Interpretation of the Laws* (1911) page 10 para 41, where the learned author says:
>
> > 'Every act of the legislature is presumed to be valid and constitutional until the contrary is shown. All doubts are solved in favour of the validity of the Act. If it is fairly and reasonably open to more than one construction that construction will be adopted which will reconcile the statute with the constitution and avoid the consequence of unconstitutionality.'
>
> What it means is that all questioned laws and administrative acts enjoy a presumption of validity until declared otherwise by a competent court. Until the declaration of nullity, they remain lawful and binding, bidding obedience of all subjects of the law.
>
> The doctrine of obedience of the law until its lawful invalidation was graphically put across by Lord Radcliffe in *Smith v East Elloe Rural District Council* [1956] AC 736 at 769 when he observed that:
>
> > "An Order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of illegality on its forehead. Unless the necessary procedures are taken at law to establish the cause of invalidity

> and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

[17] The Presidential Powers Act is still part of our law, no court having declared it unconstitutional. The opinion expressed by the applicant that it is no longer valid law following the coming into force of the new Constitution cannot be correct. The Constitution itself has not said so. To the contrary, the Constitution provides, in paragraph 10 of Part 4 of the Sixth Schedule, that all existing laws remain valid, but are to be construed in conformity with the Constitution. Implicit also in the opinion of the applicant is the suggestion that it is the constitutional obligation of the President to analyse all the laws under which he purports to act in order to ascertain their compliance with the Constitution. Surely that cannot be the correct legal position. In the absence of a specific provision in the Constitution invalidating a law previously enacted, it cannot be the duty of a sitting President to embark upon such an inquiry. That is a role for the courts. Section 134 of the Constitution does not impose such an obligation on the President.

[18] What is sought before this Court is a declaration in terms of s 167 (3) of the Constitution that the President and Parliament have both failed to fulfil obligations imposed on them by the Constitution. The relief sought is predicated upon conduct of the President acting in terms of an Act of Parliament which allows him to make regulations to deal with urgent situations and which regulations have supremacy over any other law to the contrary.

[19] It is clear that the applicant should have sought, but did not do so, a declaration that the Presidential Powers Act is unconstitutional. However, having come under s 167 (2) (d) of the Constitution, that is not the issue before the court. Further having proceeded in terms of s 167

(2) (d), the question whether s 2 of the Presidential Powers Act amounts to unlawful delegation of Parliament's primary law-making function is not an issue before the court.

[20] I agree with learned counsel for the first and third respondents that since, as it appears, the gravamen of the complaint by the applicant is on the constitutional validity of s 2 of the Presidential Powers Act, the applicant should have, in these circumstances, approached this Court in terms of s 85(1) (a) of the Constitution, alleging a violation of one or more of her constitutional rights.

[21] In *Berry (Nee Ncube) & Anor v Chief Immigration Officer & Anor* 2016 (1) ZLR 38 (CC), the first applicant in that case approached the court both in her own interest and that of her husband seeking an order to the effect that her fundamental right to freedom of movement and residence under s 66 of the Constitution had been violated because the respondents, acting in terms of s 17 of the Immigration Act, [*Chapter 4:02*] had refused to grant her husband entry into and residence in Zimbabwe. It was common cause that the applicants had not sought to challenge the constitutional validity of s 17 of the Immigration Act.

19.1 At page 45 G-H, this Court (per GWAUNZA JCC as she then was) remarked:-

> "The applicants, therefore, take issue with the mere fact of the respondents doing their job, in other words, the respondents' actions in properly applying an unchallenged law that falls under their direct responsibility."

19.2 And, at p 46 C-D the court concluded:

> "…, one cannot impugn, on a constitutional basis, "conduct" that constitutes a proper, lawful application of the law, without challenging the constitutional validity of the same law, or actions premised on a misinterpretation of it."

[22] The conclusion is therefore inescapable that the application is not properly before this Court and that it stands to be struck off the roll.

IN ANY EVENT, EVEN ON THE MERITS, APPLICANT HAD NO CAUSA

[23] Having concluded that the application is not properly before the court that really should be the end of the matter. However, for the sake of completeness and for the benefit of the parties, it is, in my view, desirable that this Court deals with the question whether the failure by the President to determine whether an existing law is constitutionally valid is a sufficient basis for a declaration of failure to fulfil a constitutional obligation.

[24] Decided cases from across the Limpopo, with which I agree, distinguish, on the one hand, obligations that are readily ascertainable and those, on the other, which are not. In *Doctors for Life International v Speaker of The National Assembly & Ors* 2006 (6) SA 416 (CC); 2006 (12) BCLR 1399 (CC), the South African Constitutional Court stated at p 435 A-D:-

> "It seems to me therefore that a distinction should be drawn between constitutional provisions that impose obligations that are readily ascertainable and are unlikely to give rise to disputes, on the one hand, and those provisions which impose the primary obligation on Parliament to determine what is required of it, on the other. In the case of the former, a determination whether those obligations have been fulfilled does not call upon a court to pronounce upon a sensitive aspect of the separation of powers. An example of such a provision that comes to mind is a provision that requires statutes to be passed by a specified majority. The criteria set out are clear, and a failure to comply with them would lead to invalidity …"

[25] In *Von Abo v Government of The Republic of south Africa* 2009 (2) SA 526(T), in defining a failure to fulfil a constitutional obligation, the court stated thus:

> "In *Doctors for Life,* NGCOBO J, writing for the court, observed that the word "obligation" connotes a duty specifically imposed by the Constitution on Parliament to perform specified conduct. It seems to me that by parity of reasoning the same consideration applies to an "obligation" relating to the President.
>
> The Constitution carefully apportions powers, duties and obligations to organs of State and its functionaries. It imposed a duty on all who exercise public powers to be responsible and accountable and to act in accordance with the law. This implies that a claimant who seeks to vindicate a constitutional right by impugning the conduct of a state functionary, must identify the functionary and its impugned conduct with reasonable precision."

[26] In *Economic Freedom Fighters v Speaker of The National Assembly and Ors*; *Democratic Alliance v Speaker of The National Assembly & Ors* 2016 ZACC 11, the court stated:-

> "An alleged breach of a constitutional obligation must relate to an obligation that is specifically imposed on the President or Parliament. An obligation shared with other organs of State will always fail the section 167(4)(e) test …"

[27] In light of the above, the view I take therefore is that the President has no legal obligation to ascertain the validity of an existing law and that, ultimately, the responsibility of determining whether a law is valid or not is that of the courts unless the Constitution specifically invalidates that law.

[28] Indeed, in a recent decision in *City of Harare v Tawanda Mukungurutse & Ors* SC 46/18, the Supreme Court of Zimbabwe, whilst considering the question when invalidity of existing legislation occurs following a declaration of invalidity, cited with approval remarks by ACKERMANN J in *Ferreira v Levin; Vryenhoek v Powel* 1996(1) SA 984 (CC); 1996(1) BCLR 1, that:-

> "It is very seldom patent and in most cases is disputed, that pre-constitutional laws are inconsistent with the provisions of the constitution. It is one of this Courts' functions to determine and pronounce on the validity of laws, including Act(s) of Parliament …"

[29] In the result, therefore, the conclusion is irresistible that unless the Constitution makes specific provision to the contrary, neither the President nor Parliament can be expected to undertake an inquiry to determine which law is constitutional and which is not. That is clearly the role of the courts. In the present matter, what amounts to Parliament's primary law making function is the subject of serious dispute, particularly given the controls under the Presidential Powers Act that are exercised by Parliament. In this situation there can be no talk of a failure to fulfil a constitutional obligation.

COSTS

[30] The general consideration in constitutional litigation is that the promotion or advancement of constitutional justice should not be hindered by litigants who are discouraged from pursuing constitutional matters for fear of an order of costs being mulcted against them. Du Plessis M, Penfold G & Brickhill J, in their text, *Constitutional Litigation* (1st edn, Juta & Co. Ltd, Cape Town, 2013) outline the reason underlying the general principle adopted by courts in South Africa that constitutional matters are generally decided without orders of costs. At page 129 they state as follows:-

> "The treatment of costs is important in all litigation but it is especially important in constitutional litigation. It is not in the interests of advancing constitutional justice that persons should be deterred from litigating to enforce and protect fundamental rights (in the case of Bill of Rights issues) or to uphold the principles and requirements of our foundational legal text (in litigation relating to non-Bill of Rights issues) through fear of an adverse costs order against them."

[31] In *Motsepe v Commissioner of Inland Revenue* 1997 (2) SA 898 (CC) at para 30 the court stated as follows:-

> "In my view one should be cautious in awarding costs against litigants who seek to enforce their constitutional right against the State, particularly where the unconstitutionality of a statutory provision is attacked, lest such orders have an unduly inhibiting or 'chilling' effect on other potential litigants in this category."

[32] However, inasmuch as it is generally undesirable to grant costs in constitutional matters, one must always be mindful that the award of costs is one within the discretion of the court unless otherwise specified by legislation. This is further reinforced by the *proviso* to rule 55 (1) of our own Constitutional Court Rules, 2016 which provides as follows:-

> "(1) Generally no costs are awarded in a constitutional matter:
> *Provided that, in an appropriate case*, the Court or the Judge, as the case may be, may make such order of costs as it or he or she deems fit." (my emphasis)

[33] In *Constitutional Litigation, op cit*, at page 130, the learned authors state as follows;

> "Any person deciding whether or not to litigate will need to assess the pros and cons of doing so. In this balancing exercise, the risk of a costs order in the event that one is not ultimately successful may act as a significant deterrent to bringing or defending litigation in the first place. It is one thing to pay the fees of one's own legal team, and quite another to take on the risk of also having to pay the other side's costs in the event of losing the case."

[34] The court in *Motsepe v Commissioner of Inland Revenue (supra)* also stated as follows;

> "This cautious approach cannot, however be allowed to develop into an inflexible rule so that litigants are induced into believing that they are free to challenge the constitutionality of statutory provisions in this Court, no matter how spurious the grounds for doing so may be or how remote the possibility that this Court will grant them access. This can neither be in the interest of the administration of justice nor fair to those who are forced to oppose such attacks."

[35] Attention is also drawn to the recent decision of MALABA CJ in *Liberal Democrats & Ors v President of the Republic of Zimbabwe E.D. Mnangagwa N.O. & Ors* CCZ 7/18 and, in particular pages 24-26 of the judgment.

[36] It is the court's view that this is an appropriate case for an order of costs. As correctly pointed out by the first and third respondents, it is apparent that the applicant seeks to have s 2(2) of the Presidential Powers (Temporary Measures) Act declared unconstitutional. That is also made clear in paragraphs 2 and 4 of her draft order quoted earlier in this judgment. That is not the approach she adopted. Where the constitutionality of subsidiary legislation is challenged, the proper channel is to approach this Court by way of direct access in terms of s 85(1) of the Constitution alleging that the particular statute or its provisions violate one or more of a person's fundamental rights.

[37] It is one thing to allege that Parliament and the President have failed to fulfil a constitutional obligation and quite another to seek a declaratur that the conduct by either or the two is not in line with one or more provisions of the Constitution. In the former instance, a

litigant, by virtue of Rule 27(1) of the Constitutional Court Rules as read with s 167(2)(d) of the Constitution, may make a court application supported by an affidavit setting out the constitutional obligation in question and what Parliament or the President has failed to do in respect of such obligation. In the latter instance however, the proper procedure would be to make an application in terms of s 85(1) of the Constitution seeking an order that such conduct be declared null and void for violating any one or more of the fundamental rights provided for in the Constitution.

[38] The applicant clearly failed to follow the proper procedure before bringing her case before the court. The defect was pointed out to her in the first and third respondents' opposing affidavit and in their heads of argument. The applicant had the opportunity to assess the pros and cons of proceeding with the application despite the indication that it was not properly before the court. She took a calculated risk. It was highlighted to her at all times that the application was opposed and that the respondents were seeking an order for costs upon its failure.

[39] Moreover, an application based on similar facts had been filed by the applicant but had been dismissed by this Court in November 2016 on the basis that the application was speculative as no bond notes had been issued and the legal basis for their issuance had not, despite public announcements, been disclosed. About three months after that dismissal, she filed the present application.

[40] In all the circumstances, therefore, it is clear that an order for costs against the applicant is in the interests of justice. The principle that costs follow the event is therefore applicable.

[41] For the above reasons, the preliminary point taken by the first and third respondents was upheld and the application consequently struck off the roll with costs.

CHIDYAUSIKU CJ: I agree

MALABA DCJ: I agree

GWAUNZA JCC: I agree

HLATSHWAYO JCC: I agree

PATEL JCC: I agree

MAVANGIRA JCC: I agree

GUVAVA JCC: I agree

UCHENA JCC: I agree

Hamunakwadi & Nyandoro Law Chamber, applicant's legal practitioners

Civil Division of The Attorney-General's Office, 1st & 3rd respondents' legal practitioners

Chihambakwe, Mutizwa & Partners, second respondent's legal practitioners

G.N. Mlotshwa & Company, 4th & 5th respondents' legal practitioners