

IN THE HIGH COURT OF ZIMBABWE
HELD AT MASVINGO

HC 230/18

In the matter between:

FIRINNE TRUST operating as VERITAS 1ST APPLICANT

VALERIE INGHAM-THORPE 2ND APPLICANT

BRIAN DESMOND CROZIER 3RD APPLICANT

AND

ZIMBABWE BROADCASTING AUTHORITY 1ST RESPONDENT

ZIMBABWE NEWSPAPERS (1980) LIMITED 2ND RESPONDENT

ZIMBABWE ELECTORAL COMMISSION 3RD RESPONDENT

ZIMBABWE MEDIA COMMISSION 4TH RESPONDENT

BROADCASTING AUTHORITY OF
ZIMBABWE 5TH RESPONDENT

1ST RESPONDENT'S NOTICE OF OPPOSITION


SCANLEN & HOLDERNESS

Applicants' Legal Practitioners

13th Floor, CABS Centre

74 Jason Moyo Avenue

HARARE (RMB/em)

*c/o Chihambakwe Law Chambers
30 Hefmyer Street
Masvingo*

**MTETWA & NYAMBIRA
LEGAL PRACTITIONERS**

12 JUN 2018

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ZIMBABWE ELECTORAL COMMISSION	3RD RESPONDENT
ZIMBABWE MEDIA COMMISSION	4TH RESPONDENT
BROADCASTING AUTHORITY OF ZIMBABWE	5TH RESPONDENT

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DATED AT HARARE THIS *Jt* DAY OF JUNE 2018

SCANLEN & HOLDERNESS
Applicants' Legal Practitioners
13th Floor, CABS Centre
74 Jason Moyo Avenue
HARARE (RMB/em)

TO: **THE REGISTRAR**
High Court
MASVINGO

AND TO: **MTETWA & NYAMBIRAI**
Applicants' Legal Practitioners
C/o Matutu&Muteri
FBC Building
179 Robertson Street
MASVINGO [DC/MM]

AND TO: **ZIMBABWE NEWSPAPERS (1980) LTD**
2nd Respondent
Herald House
Cnr G Silundika/S Nujoma
HARARE

AND TO: **ZIMBABWE ELECTORAL COMMISSION**
3rd Respondent
Mahachi Quantum Building
No 1 Nelson Mandela Ave
HARARE

AND TO: **ZIMBABWE MEDIA COMMISSION**
4th Respondent
Media Centre
Rainbow Towers Grounds
Belvedere
HARARE

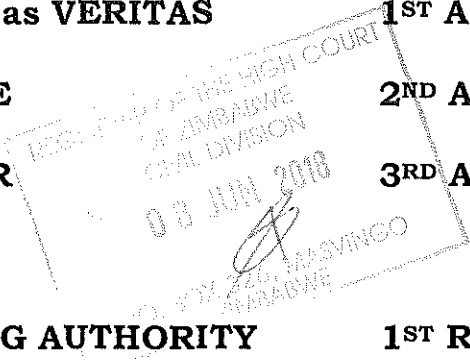
AND TO: **BROADCASTING AUTHORITY OF ZIMBABWE**
5th Respondent
27 Boscobel Drive West
Highlands
HARARE

**IN THE HIGH COURT OF ZIMBABWE
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ZIMBABWE NEWSPAPERS (1980)LIMITED	2ND RESPONDENT
ZIMBABWE ELECTORAL COMMISSION	3RD RESPONDENT
ZIMBABWE MEDIA COMMISSION	4TH RESPONDENT
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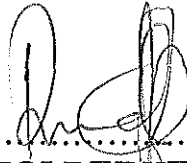


1ST RESPONDENT'S NOTICE OF OPPOSITION

TAKE NOTICE that the 1st Respondent intends to oppose the application on the grounds set out in the affidavit/s and supporting document/s annexed to this notice.

The application was served on the said Respondents on the 01st day of June, 2018.

DATED AT HARARE THIS 06th DAY OF JUNE 2017.



.....
SCANLEN & HOLDERNESS

Respondent's Legal Practitioners [RM/em]
C/oChihambakwe Law Chambers
30 Hofmyer Street
MASVINGO

TO: **THE REGISTRAR**
High Court
MASVINGO

AND TO: **MTETWA & NYAMBIRAI**
Applicants' Legal Practitioners
C/o Matutu&Muteri
FBC Building
179 Robertson Street
MASVINGO[DC/MM]

AND TO: **ZIMBABWE NEWSPAPERS (1980) LTD**
2nd Respondent
Herald House
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4th Respondent
Media Centre
Rainbow Towers Grounds
Belvedere
HARARE

AND TO: **BROADCASTING AUTHORITY OF ZIMBABWE**
5th Respondent
27 Boscobel Drive West
Highlands
HARARE

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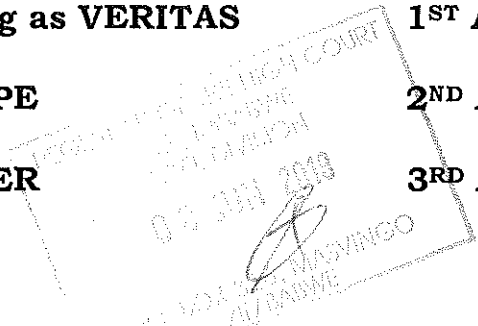
ZIMBABWE BROADCASTING AUTHORITY 1ST RESPONDENT

ZIMBABWE NEWSPAPERS (1980)LIMITED 2ND RESPONDENT

ZIMBABWE ELECTORAL COMMISSION 3RD RESPONDENT

ZIMBABWE MEDIA COMMISSION 4TH RESPONDENT

BROADCASTING AUTHORITY OF ZIMBABWE 5TH RESPONDENT



1ST RESPONDENT'S OPPOSING AFFIDAVIT

I **PATRICIA MUCHENGWA** hereby make oath and state that the following information is to my belief true and correct:

1. I am the corporate secretary for the 1st Respondent and in that capacity I am duly authorized to respond to this affidavit.
2. I have read and understood the Applicants' founding affidavit and wish to respond thereto as follows:

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3. AD PARAGRAPHS 1-11

Save to state that the 1st Respondent's address for service is care of its undersigned legal practitioners namely Messrs Scanlen and Holderness c/o Chihambakwe Law Chambers 30 Hofmyer Street Masvingo, no issues arise.

4. AD PARAGRAPHS 12-14

These paragraphs contain a report made by the 3rd Respondent in 2013, the 1st Respondent has no comment to it apart from noting that this was with respect to a past election and a lot of developments have taken place since then.

5. AD PARAGRAPHS 15-21

Once again the reports referred to herein relate to the 2013 electoral period. Needless to say this is a by-gone era. Suffice that as the Applicants remark elsewhere there has been a seismic shift not only in the political environment but also in the space of media and broadcasting services, with the result that there has been a lot of reforms consistent with the 1st Respondent's obligations under the Electoral Act and the Constitution as will be shown below.

6. AD PARAGRAPH 22-23

Noted.

7. AD PARAGRAPH 24-26

- 7.1. Inasmuch as Section 160G(1) of the Electoral Act speaks of 'free access' to the broadcasting services by public broadcasters 'as may be prescribed', the Applicants must and do concede that there is as yet a law prescribing same.
- 7.2. Notwithstanding that there is no law as yet prescribing for those matters provided in section 160G (2) regulating how the 1st Respondent may provide political parties with free access to its broadcasting services, as will be shown below the 1st Respondent has been giving coverage to all political parties in Zimbabwe.
- 7.3. Applicants are keenly aware of this reality which is why they seek in this application to have these regulations prescribed by the 3rd Respondent.

8. AD PARAGRAPHS 27-34

This relates to the 3rd, 4th and 5th Respondents who shall speak for themselves on these matters.

9. AD PARAGRAPH 35

As already highlighted above, apprehension of harm which is alleged ought to relate to current broadcasting trends by the 1st Respondent. It is denied that there is anything in contemporary

practice by the 1st Respondent to justify the fears expressed by the Applicants.

10. AD PARAGRAPHS 36-43

These averments relate to the 2nd Respondent which shall speak for itself on the matters herein.

11. AD PARAGRAPH 44

11.1. This is denied. The Applicant makes bald allegations which from purported Media Monitors which are disputed. The alleged report simply throws figures which purport to represent the times allocated to various political parties without being specific about the actual dates and nature of coverage around. It does not show the nature of investigations carried out on the reporting done by the 1st Respondent. It cannot by any stretch of the imagination be called a report for purposes of serious court proceedings.

11.2. For the avoidance of doubt, attached hereto as **Annexure J** is a list showing specific details about coverage given to political parties other than ZANU PF. It must be noted that Applicants have cherry picked two articles interpreting them in a manner meant to paint the 1st Respondent in bad light and suit their own purposes. They do not give the court a true picture of the nature and extent of coverage of all other political parties as shown by **Annexure J**.

11.3. For example 1st Respondent aired Nelson Chamisa's entire interview on BBC's hardtalk in which the MDC Alliance President outlined the MDC-T vision and manifesto.

11.4. On or about 1 June 2018, the 1st Respondent also carried a news article by Nelson Chamisa in which he promised to bring the next World Cup to be hosted in Africa to Zimbabwe.

11.5. To further illustrate the point 1st Respondent announced as breaking news on its online platform the appointment of Nelson Chamisa as the MDC-T's Acting President. The headline which is demonstrably neutral read as follows:

BREAKING NEWS: Chamisa appointed Acting President of MDC-T by the party's national council

11.6. Thus the allegations by Applicants based on two cherry picked articles are contrived and calculated to mislead the court.

11.7. In addition coverage on political parties is aided by provision of diaries of activities by political parties. Most political parties other than ZANU PF are not providing their diaries to the national broadcaster so as to obtain from it coverage of their activities. Those which the 1st Respondent covered were to its credit not based on provided diaries but its own research and interest in covering political parties in

Zimbabwe. The obligation of the 1st Respondent in the Act is purely facilitatory, it is up to the parties themselves to obtain better access by cooperating with the broadcaster on activities they wish to be covered.

11.8. It is not inconceivable that some political parties do not want 1st Respondent's coverage of their activities. See attached **Annexure K** which is an article from 2011 showing that the MDC-T barred 1st Respondent from covering its rally. So even though as highlighted earlier that the regulations for allocation of broadcast times for political parties have not been promulgated in terms of section 160G (2) of the Electoral Act, and despite this gaping hole in the legal framework, 1st Respondent still gives coverage to all political parties as shown in **Annexure J**.

11.9. Moreover it can be seen from matters which the regulations under section 160G must provide for that it is envisaged that allocation of time to each political party and candidates practically can only be achieved when all contesting candidates and individuals are legally known and registered.

11.10. In past practice the 1st Respondent would receive a proclamation advising it of the nomination court and contesting candidates. The Third Respondent will advise and the 5th Respondent will monitor the format for adverts by the political parties and specification of programs. The 1st

Respondent is yet to receive. For all the above reasons the Applicants cannot complain of breach by the 1st Respondent of any provisions of the Electoral Act with respect to access by it to public broadcasting media.

11.11. It may also be noted that as the state broadcaster, the 1st Respondent also covers government activities. It is mere coincidence that the ruling party in government being ZANU PF also uses these platforms to get coverage. This must not be viewed as the 1st Respondent favoring the one party to others and it is not clear to what extent if any do the reports referred by the Applicants take this into account.

12. AD PARAGRAPHS 45-48

12.1. This is denied. Annexures H and I simply quote words from their sources as they said it. It does not reflect an opinion by the 1st Respondent and most certainly it does not represent a biased editorial stance of the 1st Respondent. It is purely factual and quoting persons which is not unusual in journalism and media.

12.2. In any case the story alluded to was in fact a response by Zanu PF youths to the MDC hence it did not require an MDC response since it is already a response to that party.

13. AD PARAGRAPH 49-51

13.1. This is denied. Again the application does not present for court determination of its efficacy, the purported report by the so called media monitors and the scientific method used to arrive at the conclusion made. It simply throws around figures and expects the court to regard them as facts when really they are mere opinion.

13.2. In this regard, Applicants have failed to demonstrate that there is clear apprehension of injury by the 1st Respondent.

14. AD PARAGRAPHS 52-53

I shall not comment on the averments herein as they relate to third, fourth and fifth respondents whom I believe shall speak for themselves if they find it needful.

15. AD PARAGRAPH 54-56

This is denied. Applicants are not entitled to the remedy sought as they have failed to establish the necessary facts required for an interdict.

WHEREFORE 1ST Respondent prays that the application as against it be dismissed with costs.

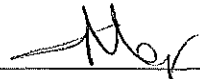
SWORN AND SIGNED AT HARARE THISDAY OF JUNE 2018

SIGNED



PATRICIA MUCHENGWA

BEFORE ME



COMMISSIONER OF OATHS

LYDIA MANGACHENA LLBS (UZ)
LEGAL PRACTITIONER, NOTARY PUBLIC,
CONVEYANCER AND
COMMISSIONER OF OATHS

<u>NEW POLITICAL AND OPPOSITION PARTIES 2018</u>	<u>NAME OF CANDIDATE / SPOKESPERSON</u>	<u>DATE COVERAGE</u>
1. ZIMBABWE PARTNERSHIP FOR PROSPERITY	MR INNOCENT NETANYAHU (SPOKESPERSON)	05.04.18
2. NATIONAL CONSTITUTIONAL ASSEMBLY	MR MURDOCK CHIVASA (SPOKESPERSON)	10.04.18
3. ALLIANCE FOR THE PEOPLE'S AGENDA	NKOSANA MOYO	25.04.18
4. DEMOCRATIC ALLIANCE UNITED PEOPLE'S PARTY	MR ANDREW DHIZARA	26.04.18
5. DEMOCRATIC ASSEMBLY FOR RESTORATION AND EMPOWERMENT-	MR GILBERT DZIKITI	30.04.18
6. MULTI PEOPLE'S DEMOCRATIC PARTY OF ZIMBABWE (MPDPZ)	MR EMMANUEL MOYANA	09.05.18
7. ECONOMIC NATIONAL DEMOCRATIC PARTY (ENDP)	MR THABANI TIGERE	14.05.18
8. NEW ZIMBABWE REPUBLIC0 PARTY	EDISON NZIMBE	26.05.18
9. DEMOCRATS OF ZIMBABWE PRESIDENT	ELTON MANGOMA	17.04.18

AND THE COALITION OF DEMOCRATS' CODE		
10.FREEDOM FRONT	MR COSMAS MUPONDA	25.05.18
11.ZIMBABWE INDUSTRIAL AND TECHNOLOGICAL REVOLUTIONARY PARTY (ZITTER)	DANIEL CHINGOMA	27.05.18
12.MAAT PARTY	NEFERKARE NEMBAWARE	23.05.18
13.NEW PATRIOTIC FRONT (NPF)	ENGINEER TENDAI MUNYANDURI	03.04.18
14.ZIMBABWE UNITED FOR DEMOCRACY (ZUNDE)	MR FARAI MBIRA ZUNDE	26.05.18
15.ECONOMIC NATIONAL DEMOCRATIC PARTY ENDP	MR THABANI TIGERE	14.05.18
16.RIGHTEOUS AFRICAN CONGRATULATIONS (RAC)	MR EVIDENCE NYONI	28.05.18
17.FORCES OF THE LIBERATION ORGANIZATION OF AFRICAN NATIONAL PARTY (FOLANP)	MR EGYPT DZINEMUNHENZVA	04.05.18

18. MDC.T YOUTHS 2018 POLLS	HAPPYMORE CHIDZIVA (NATIONAL YOUTH CHAIRPERSON)	04.04.2018
19. CHAMISA ON 2018 POLLS	NELSON CHAMISA	05.04.2018
20. MDC ALLIANCE PRIMARIES		26.05.2018
21. MDC-T PRIMARIES	MR MURISE ZWIZWAI (MDC-T NATIONAL CHAIRMAN FOR ELECTIONS DIRECTORATE)	26-05-2018
22. MDC GWANDA RALLY	MR NELSON CHAMISA	25.06.18
23. MDC ALLIANCE RALLY	MR NELSON CHAMISA	25.05.18
24. MDC ALLIANCE PRIMARIES	COUNCILOR GOMBA	25. 05.2018
25. MDC T PRIMARIES	MR MURISI ZVIZVAI (MDC-T NATIONAL CHAIRPERSON OF ELECTIONS DIRECTORATE)	19-05-2018)
26. MDC ALLIANCE NKAYI	WELSHMAN NCUBE	19.05.2018

27. ZANU PF MDC ALLIANCE	JACOB MAFUME MDC ALLIANCE REPRESENTATIVE TENDAI CHIRAU ZANU P.F YOUTH WING SECRETARY FOR ADMINISTRATION	18.05.2018
28. MDC-T VP SQUABBLES	FELIX MAGALELA MAFA SIBANDA (MDC-T BULAWAYO PROVINCIAL SPOKESPERSON	03.05.18
29. MDC.T REACTIONS	MR TENDAI BITI MDC.T ALLIANCE PARTNER	10.05.2018
30. MDC CHAMISA KHUPE LEGAL BATTLE		30.04.2018
31. MDC-T RALLY (Chipinge)	NELSON CHAMISA	22-04-18
32. MDC T CONGRESS	DR THOKOZANI KHUPHE : MDC-T PARTY PRESIDENT	21-04-18
33. MADHUKU ON MDC.T WRANGLE		17.04.2018
34. MDC JERERA RALLY	MR NELSON CHAMISA (MDC ALLIANCE LEADER)	15/04/18

35. MDC.T YOUTHS 2018 POLLS	HAPPYMORE CHIDZIVA- MDC.T NATIONAL YOUTH ASSEMBLY CHAIRPERSON	04.04.2018
36. MDC CHIWESHE	NELSON CHAMISA	25-03-18
37. MDC ALLIANCE MREHWA RALLY	NELSON CHAMISA	24.03.2018
38. MDC T FIRES VP KHUPE		23-03-18
39. MDC-T JUDGEMENT	MR GIFT BANDA (BULAWAYO MDC-T PROVINCIAL CHAIRPERSON)	16-03-2018
40. MDC T SADC	LUKE TAMBORINYOKA MDC T PRESIDENTIAL SPOKESPERSON AND DIRECTOR OF COMMUNICATIONS	13-03-18
41. MDC-T VIOLENCE	MR ABEDNICO BHEBHE: NATIONAL ORGANISING SECRETARY OF THE MDC-T	04-03-18

42. MDC-T COUNCIL FAILS	MICHEAL CHIDEME HARARE CITY COUNCIL SPOKESPERSON	22/02/18
43. MDC PRESSER/FUNERAL UPDATE	MR NELSON CHAMISA	15.02.18
44. MDC ALLIANCE	SENATOR MORGAN KOMICHI, THE MDC-T'S DEPUTY NATIONAL CHAIRMAN	29.01.18
45. OPPOSITION DEFECTIONS	DR WIN MLAMBO- CHIPINGE EAST MEMBER OF PARLIAMENT	03-03-18
46. ZVORWADZA CONDEMNS OPPOSITION'S HYPOCRISY	ZVORWADZA	17.08.2018
47. MUKUPE DEMOS	DENZEL ROMOL STUDENT REPREHENSIVE COMMITTEE MEMBER (ZOU).	29-05-18
48. UNITED AFRICAN NATIONAL COUNCIL	REVEREND DOCTOR GWINYAI MUZOREWA	30.05.2018
49. INDEPENDENT CANDIDATE PRESSER	PROFESSOR AUSTIN CHAKAODZA INDEPENDENT CANDIDATE FOR GURUVE SOUTH CONSTITUENCY.	01.06.18

50. ZAPU CAMPAIGN	MR IPHITHULE MAPHOSA (ZAPU NATIONAL SPOKESPERSON)	01.06.2018
51. MDC ASPIRING MP FOR GLENORAH AND COUNCILLORS	YVONE (MDC PR)	04.06.18
52. ZIMBABWE PARTNERSHIP FOR PROSPERITY (ZIPP) RALLY		04.06.18

K

Home Opinion

OPINION

MDC youths were right to bar ZBC from rally

On Jun 23, 2011 79 0

By Makusha Mugabe

The Voluntary Media Council of Zimbabwe (VMCZ) issued a statement condemning “in the strongest terms” the barring of a Zimbabwe Broadcasting Corporation (ZBC) news crew from covering the MDC rally at Mkoba Stadium, in Gweru at the weekend.

The barring was apparently effected by MDC youths whom the VMCZ said were rowdy, accusing the broadcaster of reporting negatively about their party.

Makusha Mugabe

The VMCZ was set up to co-ordinate voluntary compliance by the media with a code of conduct that does not allow hate speech or deliberate misreporting

such as that practiced by the ZBC on MDC stories.

While the council must champion the cause for access for all media to national events, it must respect the MDC youths for taking the stance that ZBC is barred from its activities, because their crews are always there to find something negative to report about.

The fact the ZBC consistently spreads hate speech against the MDC in perpetual violation of the VMCZ’s code of conduct should be cause for the VMCZ to approach ZBC with a view to making it change its practices, rather than demonising the MDC for protecting itself.

To actually “condemn in the strongest terms” the barring of the ZBC reporters from executing “their mandate of reporting accurately and objectively to society” smacks of the Council tripping over its own objectives and mandate.

Firstly the ZBC, as demonstrated time and again, was not there to report “accurately and objectively” about the rally, but to find another platform for denouncing the MDC, as is evident in the Herald’s “reporting” of the same event.

As sister organisation which work together to tarnish the MDC, it would not be surprising if the footage had been published in a doctored form to justify an attempt by Jonathan Moyo to make a ludicrous case against MDC President Morgan Tsvangirai.

No such calls are made for the arrest of the military leaders when they refuse to recognise the authority of the Prime Minister or make threats against constitutional order by saying they will not recognise the results of any election which is won by Tsvangirai.

The issue of serious concern here is not that MDC youths interfered with journalists who were undertaking their professional duties – in fact with hindsight, they should be commended. The issue of concern is that the VMCZ seems to embrace such a myopic view, which looks at the rights of journalists to access without taking into consideration the context in which this is taking place.

Constitutional guarantees of freedom of expression and access to information was intended to protect citizens and allow for accuracy, rather than the abuse of the medium for political gain.

As the VMCZ correctly says the Constitution makes the right of the Zimbabwean public and all media professionals to receive and impart information a fundamental human right and not a privilege, so we, or they on our behalf, should ask why the ZBC makes it its business to misinform the public.

Their misinformation is such that youths in the MDC, who would normally welcome and protect journalists at their rallies, because they know that the journalists will give coverage to their party, are now turning away ZBC and the Herald.

Until such time as the Zanu (PF) government agrees to media reforms, which it is now clear that they should start at the Commission level and go down to board level and to the newsrooms, they should not attempt to abuse the Constitution by claiming the right to misinform.

It would not be so bad if it ended at misinforming, the ZBC together with The Herald, are also known to incite hatred and violence.

No party would want journalists to be attacked and the MDC has demonstrated consistently that it tolerates divergence of views that exist in Zimbabwean society – in fact the MDC is demanding that divergent views be allowed to find expression in the nation’s media, but it is Zanu (PF) that is refusing.

While we would like the VMCZ to be fully empowered to provide redress in the case of complaints being made, the current structure of the media is such that the whole view presented by the ZBC and the Zimbabwe Newspapers Group would be so objectionable that one does not need to make a complaint.

The Council itself should see what reporting is coming out of the media houses and make an assessment. If they did so they would not be “condemning in the strongest terms” the barring of Reuben Barwe and his crew from a rally where the MDC President is speaking and where they believe they are protecting him from negative publicity, if not incitement.

Makusha Mugabe is the editor of Change Zimbabwe.com



Makusha Mugabe

MDC youths

MDC-T Mkoba Rally

MDC-T youths

VMCZ

Voluntary Media Council of Zimbabwe

ZBC

ZBC news crew

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