

IN THE HIGH COURT OF ZIMBABWE  
HELD AT MASVINGO

CASE NO. HC 230/18

In the matter between

FININNE TRUST operating as VERITAS

1<sup>st</sup> Applicant

VALERIE INGHAM – THORPE

2<sup>nd</sup> Applicant

BRIAN DESMOND CROZIER

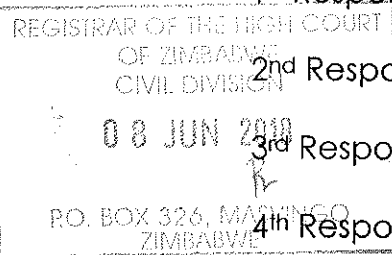
3<sup>rd</sup> Applicant

and

ZIMBABWE BROADCASTING AUTHORITY

1<sup>st</sup> Respondent

ZIMBABWE NEWSPAPERS [1980] LIMITED



2<sup>nd</sup> Respondent

ZIMBABWE ELECTORAL COMMISSION

3<sup>rd</sup> Respondent

ZIMBABWE MEDIA COMMISSION

4<sup>th</sup> Respondent

BROADCASTING AUTHORITY OF ZIMBABWE

5<sup>th</sup> Respondent

### NOTICE OF OPPOSITION

**TAKE NOTICE THAT** the 4<sup>th</sup> Respondent intends to oppose the Application.

**FURTHER TAKE NOTICE** that the 4<sup>th</sup> Respondent's Affidavit and supporting documents attached hereto will be used

**DATED AT HARARE THIS .....8.....DAY OF JUNE 2018**

**MUSUNGA AND ASSOCIATES**

4<sup>th</sup> Respondent's Legal Practitioners

Musunga Law Chambers  
203 Fife Avenue/10<sup>th</sup> Street

**HARARE [AAM/VM/bs]**

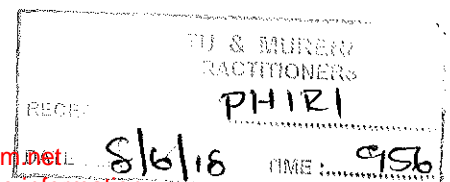
c/o Chihambakwe, Law Chambers  
No. 30 Hofmeyer Street

**MASVINGO**

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HELD AT MASVINGO**

In the matter between:

FIRINNE TRUST operating as VERITAS	1 <sup>st</sup> APPLICANT
VALERIE INGHAM-THORPE	2 <sup>nd</sup> APPLICANT
BRIAN DESMOND CROZIER	3 <sup>RD</sup> APPLICANT
And	
ZIMBABWE BROADCASTING AUTHORITY	1 <sup>ST</sup> RESPONDENT
ZIMBABWE NEWSPAPERS (1980)	2 <sup>ND</sup> RESPONDENT
ZIMBABWE ELECTORAL COMMISSION	3 <sup>RD</sup> RESPONDENT
ZIMBABWE MEDIA COMMISSION	4 <sup>TH</sup> RESPONDENT
BROADCASTING AUTHORITY OF ZIMBABWE	5 <sup>TH</sup> RESPONDENT

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**5<sup>TH</sup> RESPONDENT'S NOTICE OF OPPOSITION**

---

**PREPARED BY:-**

**TH CHITAPI & ASSOCIATES**

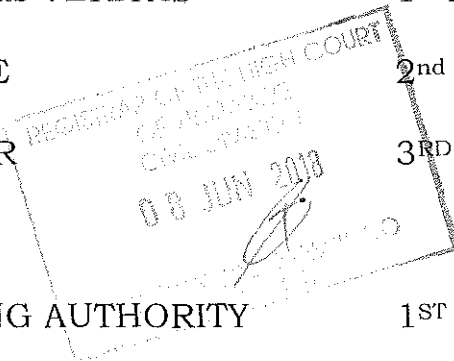
5<sup>th</sup> Respondent's Legal Practitioners  
c/o Chakabuda Foroma Law Chambers  
Suite 10, 1<sup>st</sup> Floor, Kyle House  
344 Josiah Tongogara Street  
**MASVINGO (SM/VM/mn)**

MATRUU CHITAPI (LEGAL PRACTITIONER)	
RECEIVED BY	Phiri
DATE	8/6/18
FILE	208

**IN THE HIGH COURT OF ZIMBABWE CASE NO.HC 230/18  
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ZIMBABWE MEDIA COMMISSION	4 <sup>th</sup> RESPONDENT
BROADCASTING AUTHORITY OF ZIMBABWE	5 <sup>th</sup> RESPONDENT



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Dated at Harare this...<sup>7<sup>th</sup></sup>...day of June 2018



**T.H CHITAPI & ASSOCIATES**

5<sup>th</sup> Respondent's Legal Practitioners  
c/oChakabudaForoma Law Chambers  
Suite 10, 1<sup>st</sup> Floor, Kyle House  
344 Josiah Tongogara Street  
**MASVINGO (SM/VM/mn)**

TO: THE REGISTRAR  
High Court of Zimbabwe  
**MASVINGO**

AND TO: **MTETWA & NYAMBIRAI**  
Applicants' Legal Practitioners  
c/o Matutu & Mureri  
FBC Building  
179 Robertson Street  
**MASVINGO** (DC/MM)

AND TO: **ZIMBABWE BROADCASTING CORPORATION**  
1<sup>st</sup> Respondent  
1 Northend Road  
Pocket Hill  
Highlands  
**HARARE**

AND TO: **ZIMBABWE NEWSPAPERS (1980)**  
2<sup>ND</sup> Respondent  
Herald House  
Cnr George Silundika & Sam Nujoma  
**HARARE**

AND TO: **ZIMBABWE ELECTORAL COMMISSION**  
3<sup>RD</sup> Respondent  
Mahachi Quantum Building  
No. 1 Nelson Mandela Avenue  
**HARARE**

AND TO: **ZIMBABWE MEDIA COMMISSION**  
4<sup>TH</sup> Respondent  
Media Centre  
Rainbow Towers Grounds,  
P O Box BE33  
Belvedere  
**HARARE**

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And

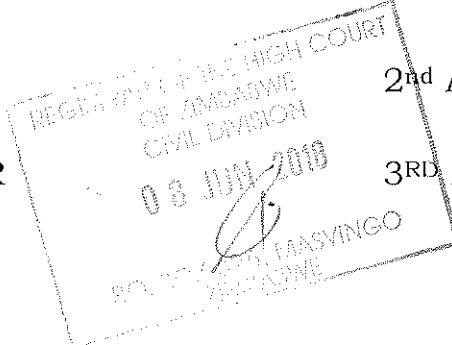
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ZIMBABWE MEDIA COMMISSION 4<sup>TH</sup> RESPONDENT

BROADCASTING AUTHORITY OF ZIMBABWE 5<sup>TH</sup> RESPONDENT



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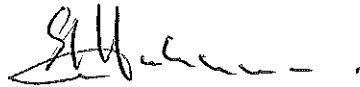
**5<sup>TH</sup> RESPONDENT'S NOTICE OF OPPOSITION**

---

**TAKE NOTICE THAT** the 5<sup>th</sup> Respondent herein opposes the Applicants' Application for a Mandatory Interdict and a Declaratory Order served on it on 1 June 2018.

**FURTHER TAKE NOTICE THAT** the opposing affidavit deposed to by Obert Muganyura will be used in opposition of the application.

DATED AT HARARE THIS...<sup>7<sup>th</sup></sup>...OF JUNE 2018



.....  
**TH CHITAPI & ASSOCIATES**

5<sup>th</sup> Respondent's Legal Practitioners  
c/o Chakabuda Foroma Law Chambers  
Suite 10, 1<sup>st</sup> Floor, Kyle House  
344 Josiah Tongogara Street  
**MASVINGO (SM/VM/mn)**

TO: **THE REGISTRAR**  
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Mahachi Quantum Building  
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**HARARE**

AND TO: **ZIMBABWE MEDIA COMMISSION**

4<sup>TH</sup> Respondent

Media Centre

Rainbow Towers Grounds,

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**HARARE**

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BRIAN DESMOND CROZIER 3<sup>rd</sup> APPLICANT

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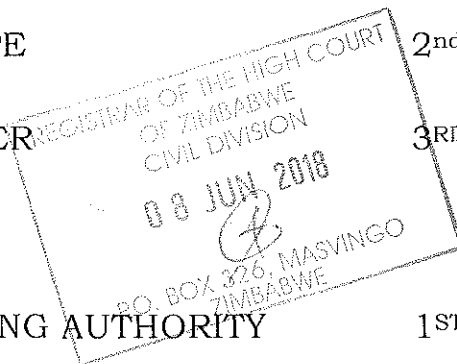
ZIMBABWE BROADCASTING AUTHORITY 1<sup>st</sup> RESPONDENT

ZIMBABWE NEWSPAPERS (1980) 2<sup>nd</sup> RESPONDENT

ZIMBABWE ELECTORAL COMMISSION 3<sup>rd</sup> RESPONDENT

ZIMBABWE MEDIA COMMISSION 4<sup>th</sup> RESPONDENT

BROADCASTING AUTHORITY OF ZIMBABWE 5<sup>th</sup> RESPONDENT



---

**5<sup>TH</sup> RESPONDENT'S OPPOSING AFFIDAVIT**

---

**I, Obert Muganyura do** hereby make oath and solemnly state that;

1. I am employed by 5<sup>th</sup> Respondent in the capacity of Chief Executive Officer.
2. I am duly authorized to depose to this affidavit on 5<sup>th</sup> Respondent's behalf.
3. The facts I depose to herein are to the best of my knowledge and belief , true and correct.



4. Where I make averments of law, it is on the advice of 5<sup>th</sup> Respondent's legal practitioners, which advice, on 5<sup>th</sup> Respondent's behalf, I take
5. I have read and understood the founding affidavit of **Valerie Ingham-Thorpe** and documents attached thereto. I respond thereto as detailed hereunder.

## **IN LIMINE**

### **6. Locus standi in judicio**

I aver that 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants have no *locus standi judicio* to bring the proceedings in casu on the basis that it has not been shown that they have a direct and substantial interest on the subject matter and outcome of the application.

- 6.1. Applicants base their entire claim on 1<sup>st</sup> and 2<sup>nd</sup> Respondents' purported failure to comply with the provisions of the Constitution relating to freedom of the media and access to information and to respect the right to free and fair elections by complying with the electoral law in respect to opposition political parties and independent candidates.
- 6.2. The opposition political parties and independent candidates are not before the court and have not been shown to have filed or instituted any proceedings in furtherance of the purported injury to them.
- 6.3. Applicants have not shown or even alleged that they are members of the opposition political parties and independent candidates.
- 6.4. No evidence has been proffered to establish that the alleged opposition political parties and independent candidates are beneficiaries of 1<sup>st</sup> Applicant.

- 6.5. It has not been shown who 1<sup>st</sup> Applicant's beneficiaries are other than the bald claim that it is registered to work in the field of human rights and the general promotion of the rule of law and constitutionalism in Zimbabwe. To that extent I aver that the 1<sup>st</sup> Applicant has no *locus standi in judicio* to bring the present application.
- 6.6. Section 160G (1) of the Electoral Act specifically confers the right to free access to broadcasting services to all political parties and independent candidates contesting an election. Applicants are not such political parties and independent candidates.
- 6.7. I aver in the event, that Applicants have no direct and substantial interest in the opposing political parties and independent candidates' rights enshrined in the law in general and in section 160G (1) of the Electoral Act in particular, moreso given the nature of the relief sought.
- 6.8. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants have no *locus standi judicio* to institute the proceedings in casu, which I aver, can only be properly instituted by affected political parties and independent candidates.
- 6.9. I therefore pray, on 5<sup>th</sup> Respondent's behalf, for dismissal of the application in casu with costs on this basis alone.

## **ON THE MERITS**

### **7. Ad para 1**

No issues arise

### **8. Ad para 2-5**

Save to point out that;

- 8.1. Applicants have no locus standi in judicio to bring this action,
- 8.2. No indication is given as to who the beneficiaries of 1<sup>st</sup> Applicant are on whose behalf this application is brought, and;
- 8.3. That Applicants' legal practitioners of record appear conflicted on the basis that Beatrice T Mtetwa is a trustee of 1<sup>st</sup> Applicant as evidenced by Annexure A to the founding affidavit, no issues arise.

**9. Ad para 6-10**

Save to point out that 1<sup>st</sup> Respondent is incorrectly cited as Zimbabwe Broadcasting Authority instead of Zimbabwe Broadcasting Corporation, no issues arise.

**10. Ad para 11-21**

- 10.1. I aver on 5<sup>th</sup> Respondent's behalf that, there is no factual or legal basis on which Applicants can properly seek a mandatory interdict to compel 5<sup>th</sup> Respondent to comply with the provisions of the constitution of Zimbabwe relating to freedom of the media and access to information and to respect the right to free and fair elections by complying with the electoral law.
- 10.2. It has not been shown in any way that 5<sup>th</sup> Respondent has failed to provide any assistance requested by 3<sup>rd</sup> Respondent in the past and that it is inclined not to render such assistance if so requested in the forthcoming July 2018 elections.
- 10.3. I aver that 5<sup>th</sup> Respondent was requested for assistance in the 2013 elections and was co-opted as a member of 3<sup>rd</sup> Respondent's Media Monitoring Committee. 5<sup>th</sup> Respondent duly seconded members of its staff led by Tabeth

Mazorodze, its Broadcast Content Compliance Director to 3<sup>rd</sup> Respondent for the purposes of rendering the requested assistance for the entire election period. I attach Tabeth Mazorodze's supporting affidavit to this effect as **Annexure 'A'**.

10.4. I aver on 5<sup>th</sup> Respondent's behalf that, it has again been requested by 3<sup>rd</sup> Respondent for assistance in the forthcoming July 2018 elections and has already seconded members of its staff to 3<sup>rd</sup> Respondent under the leadership of Tabeth Mazorodze to render the requested assistance. Refer to **Annexure 'A'** supra.

10.5. I accordingly reiterate that there is no proper basis at law for the order sought against 5<sup>th</sup> Respondent.

10.6. Save for the averments made above, the rest of the averments made in paragraphs 11 to 21 do not apply and are unknown to the 5<sup>th</sup> Respondent.

#### **11. Ad para 22**

No issues arise.

#### **12. Ad para 23-34: A clear right.**

The provisions of the law in general and the Constitution and the Electoral Act in particular per se, are common cause.

12.1. I aver that Applicants have not established a clear right to warrant or justify the granting of the mandatory interdict sought on the following basis;

12.1.1. The Applicants' claim is entirely premised on the rights of opposing political parties and independent candidates, who themselves are not before the court and have not instituted any known proceedings against the Respondents on the purported infringement of their rights.

- 12.1.2. Applicants have not shown or established how they are connected to the opposing political parties and independent candidates on whose rights their claim is premised. No evidence has been proffered to show that the political parties and independent candidates have mandated Applicants to institute the proceedings and or that they are members of said political parties or that the political parties and independent candidates are beneficiaries of 1<sup>st</sup> Applicant.
- 12.1.3. Applicants' rights to freedom of expression, free and fair elections and access to information have not been shown to be exercisable through the opposing political parties and independent candidates, who are allegedly stifled by the conduct of the Respondents.
- 12.1.4. Applicants, in the circumstances, have not established in any way how their own rights in terms of the Constitution and the electoral law have been affected in the past and are likely to be affected in the forthcoming elections by the conduct of the 5<sup>th</sup> Respondent, who has always complied with requests by 3<sup>rd</sup> Respondent and is already complying with a request for assistance in the forthcoming elections.
- 12.1.5. I aver that, even assuming that the Applicants have a clear right as claimed, I contend that they do not have a clear right against 5<sup>th</sup> Respondent on the basis that such right is conditional upon 3<sup>rd</sup> Respondent requesting 5<sup>th</sup> Respondent for such assistance in terms of section 160K of the Electoral Act. I reiterate in any event that 5<sup>th</sup> Respondent is already complying with 3<sup>rd</sup> Respondent's request for assistance in the media monitoring of the forthcoming elections.

**13. Ad para 35-53:an injury actually committed or reasonably apprehended**

This is denied in its entirety in respect of the 5<sup>th</sup> Respondent.

13.1. I aver that;

- 13.1.1. 5<sup>th</sup> Respondent has always complied with requests for assistance from 3<sup>rd</sup> Respondent in terms of section 160K of the Electoral Act.
- 13.1.2. 5<sup>th</sup> Respondent has not shown any inclination whatsoever not to comply with any request for assistance by 3<sup>rd</sup> Respondent in terms of section 160K supra. On the contrary, 5<sup>th</sup> Respondent is already complying with 3<sup>rd</sup> Respondent's request for assistance in the media monitoring of the forthcoming elections.
- 13.1.3. 5<sup>th</sup> Respondent, contrary to the import of paragraph 53 of the founding affidavit, only has an obligation to assist 3<sup>rd</sup> Respondent in accordance with the request made in terms of section 160K of the Electoral Act in the manner and only to the extent of such request.
- 13.1.4. The application ought to be dismissed in respect of the 5<sup>th</sup> Respondent on this basis alone.

**14. Ad para 54-55: No other adequate remedy**

I reiterate that the 5<sup>th</sup> Respondent has always complied with requests for assistance by 3<sup>rd</sup> Respondent in terms of section 160K of the Electoral Act and has not shown any inclination not to comply with any such request and is already complying with 3<sup>rd</sup> Respondent's request in the forthcoming elections. I aver in the event, that not only are the Applicants not entitled to the

reliefsought against 5<sup>th</sup> Respondent but, no alternative remedy will be available at law where Applicants have no proper cause of action against 5<sup>th</sup> Respondent.

**15. Ad para 56: ad urgency**

I aver that this matter is not urgent on the basis that;

15.1. The election date is in terms of section 158 (1) (a) of the Constitution and as such, it has always been common cause that national elections will be held in July 2018 at the latest.

15.2. I aver that the proclamation in S.I 83 of 2018 is merely a procedural step by the President of Zimbabwe to effect the mandatory provisions of section 158 (1) (a) of the Constitution and cannot create urgency in view of the mandatory election period provided in section 158 (1)(a) supra.

15.3. Applicants are deemed to know the law and had ample time to bring the current action well in time. They left it late and therefore created their own urgency, which they cannot properly rely on.

15.4. I aver that the publications and the reports sought to be relied on by the Applicants for the matter to be heard on an urgent basis, date back to 2013. The application in casu was filed on 31 May 2018 and no urgency can arise from Applicants' conduct.

15.5. In any event, the fact that Applicants have seen it fit not to proceed by way of urgent chamber application in terms of Rule 244 of the High Court Rules, 1971, is confirmation that Applicants realise and accept that the matter is not urgent.

**16. Ad Relief sought**

IN THE HIGH COURT OF ZIMBABWE  
HELD AT MASVINGO

CASE NO. HC 230/18

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1<sup>st</sup> Applicant

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2<sup>nd</sup> Applicant

BRIAN DESMOND CROZIER

3<sup>rd</sup> Applicant

and

ZIMBABWE BROADCASTING AUTHORITY

1<sup>st</sup> Respondent

ZIMBABWE NEWSPAPERS [1980] LIMITED

2<sup>nd</sup> Respondent

ZIMBABWE ELECTORAL COMMISSION

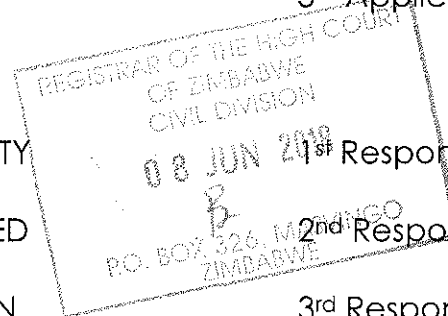
3<sup>rd</sup> Respondent

ZIMBABWE MEDIA COMMISSION

4<sup>th</sup> Respondent

BROADCASTING AUTHORITY OF ZIMBABWE

5<sup>th</sup> Respondent



---

**4<sup>TH</sup> RESPONDENT'S OPPOSING AFFIDAVIT**

---

I, ACADEMY BVUMAYI CHINAMHORA do hereby take oath and state the following:

1.

I am the manager for research and development of 4<sup>th</sup> Respondent and in that capacity, I am authorized to depose to this affidavit on behalf of the 4<sup>th</sup> Respondent.

2.

I have read Applicant's founding affidavit and wish to respond as follows:



-2-

3.

**AD PARAS 1 -10**

No issues arise.

4.

**AD PARA 11**

No issues save to state that 4<sup>th</sup> Respondent is an institution which falls under Chapter 12 of the Zimbabwe Constitution and therefore operates within the framework of the existing regulations.

5.

**AD PARAS 12-21**

No issues arise herein.

6.

**AD PARAS 22-28**

No issues arise.

7.

**AD PARAS 29-30**

4<sup>th</sup> Respondent is enjoined to assist at the request of 3<sup>rd</sup> Respondent, and that is what it is doing. 4<sup>th</sup> Respondent and other stakeholders are required to support and assistance to 3<sup>rd</sup> Respondent in terms of Section 160[K] of the Electoral Act.

8.

**AD PARA 31**

No issues

9.

**AD PARA 32-34**

4<sup>th</sup> Respondent is guided by the Zimbabwe Electoral Commission [Media Coverage of Elections] Regulations, 2008 known as Statutory Instrument 33 of 2008. That is the existing framework for monitoring broadcasting during the election period. 4<sup>th</sup> Respondent hereby submits that any journalist found in breach of the law will be dealt with according to the laws of Zimbabwe.

10.

**AD PARA 35 -52**

No issues herein.

11.

**AD PARA 53**

As has been stated before, 4<sup>th</sup> Respondent is guided by Statutory Instrument 33 of 2008 which regulates the conduct of broadcasters.

12.

**AD PARA 54-55**

No issues arise.

13.

**AD PARA 56**

This issue is not urgent as Statutory Instrument 33 of 2008 has been in existence since 2008. If Applicants felt that it is not adequate, they had ample time that is, 10 years to lobby for a change in the law. The regulations as they stand are what was agreed to by all stakeholders.

That makes this application frivolous. It is humbly submitted that the current legal framework in place in Zimbabwe is adequate to protect all stakeholders.

It is further submitted that existing legal provisions of the Constitution of Zimbabwe adequately cover the freedoms and rights of the people of Zimbabwe and therefore there is no need for a mandatory interdict to be granted against the 4<sup>th</sup> Respondent.

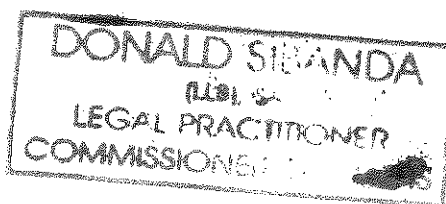
WHEREFORE the application should be dismissed with costs on a higher scale.

THUS DONE AND SWORN TO AT HARARE THIS 07<sup>th</sup> DAY OF JUNE 2018

  
.....  
ACADEMY BVUMAYI CHINAMHORA

before me

  
.....  
COMMISSIONER OF OATHS

  
DONALD SIBANDA  
LEGAL PRACTITIONER  
COMMISSIONER

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2<sup>nd</sup> Respondent

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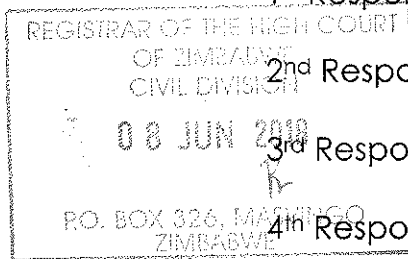
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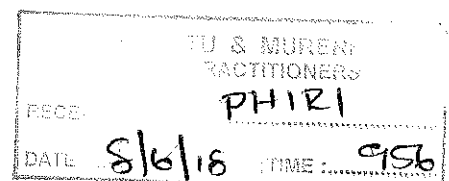
4<sup>th</sup> Respondent's Legal Practitioners

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**HARARE [AAM/VM/bs]**

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**MASVINGO**



**TO: THE REGISTRAR**  
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**MASVINGO**

AND MESSRS MTETWA AND NYAMBIRAI  
TO: Applicant's Legal Practitioners  
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**MASVINGO [DC/mm]**

AND ZIMBABWE BROADCASTING CORPORATION  
TO: 1st Respondent  
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**HARARE**

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AND ZIMBABWE ELECTORAL COMMISSION  
TO: 3<sup>RD</sup> Respondent  
Mahachi Quantum Building  
1 Nelson Mandela Avenue  
**HARARE**

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