

DISTRIBUTED BY VERITAS

e-mail: veritas@mango.zw www.veritaszim.net

Veritas makes every effort to ensure the provision of reliable information,
but cannot take legal responsibility for information supplied

**VACANCIES IN NATIONAL ASSEMBLY
IN TERMS OF SECTION 129(1)(k) OF THE CONSTITUTION
SEVENTEEN FORMER MEMBERS OF MDC-T**

Extract from National Assembly Votes and Proceedings for Tuesday 17th March 2015

RULING BY MR SPEAKER

I would like to notify this August House that on the 4th of March 2015, I was notified by the MDC-T party that the following members:

- | | |
|-------------------------------|-----------------------------|
| 1. Hon. Tendai Biti | Harare East Constituency |
| 2. Hon. Willias Madzimure | Kambuzuma |
| 3. Hon. Lucia Matibenga | Kuwadzana |
| 4. Hon. Evelyn Masaiti | Proportional Representation |
| 5. Hon. Paul Madzore | Glen View |
| 6. Hon. Reggie Moyo | Luveve |
| 7. Hon. Solomon Madzore | Dzivaresekwa |
| 8. Hon. Bekithemba Nyathi | Mpopoma/Pelandaba |
| 9. Hon. Moses Manyengavana | Highfield West |
| 10. Hon. Albert Mhlanga | Pumula |
| 11. Hon. Sipepa Nkomo | Lobengula |
| 12. Hon. Roseline Nkomo | Tsholotsho |
| 13. Hon. Settlement Chikwinya | Mbizo |
| 14. Hon. Judith Muzhavazhe | Proportional Representation |
| 15. Hon. Gordon Moyo | Makokoba |
| 16. Hon. Gladys Mathe | Proportional Representation |
| 17. Hon. Anorl Tsunga | Chikanga-Dangamvura |

have ceased to be Members of the MDC-T party and, therefore no longer represent the interests of the party in Parliament. The notification was signed by Mr Mwonzora in his capacity as the Secretary General of the MDC-T party.

Section 129 (1) (k) of the Constitution of Zimbabwe provides as follows:

“A seat of a Member of Parliament becomes vacant if the Member has ceased to belong to the political party of which he or she was a member when elected to Parliament and the political party concerned, by written notice to the Speaker or the President of the Senate, as the case may be, has declared that the member has ceased to belong to it”

In regard to the same matter, I must also notify the House that I also received letters from Hon Biti, dated 6 March 2015, challenging the notice of recall on

the basis that the Hon Speaker made a ruling on the same matter in November 2014 and there being no change of circumstances the position is still the same that he, Hon Biti, is the legitimate Secretary General of the MDC - T party and the concerned members are indeed members of the MDC-T party.

It is vital that at this point that I should mention that, the ruling announced by the Chair in November 2014 was due to the fact that there were two cases pending in the High Court involving *Tamsanqa Mahlangu and 129 others v Tendai Biti and others* HC 4955/2014 and *Tamsanqa Mahlangu and 2 others v Tendai Biti and 3 others* HC 5303/14.

These were the matters which dealt with the crucial issue of leadership of the MDC-T party. The prayer sought in the applications was that the meeting held at Mandel Training Centre and all resolutions made thereat be declared null and void. It was prudent that I did not pronounce myself on the matter as it was *sub judice* and against the principle of separation of powers as set out in section 3(2)(e) of the Constitution of Zimbabwe.

In his Notification, Mr Mwonzora made submissions that there was a change of circumstances in that the two cases that pertained to the leadership wrangle were withdrawn in November 2014 and March 2015 respectively. In the same vein, Hon. Biti and others never approached the courts to claim legitimacy of their leadership of the MDC-T party. The resolution to recall the members was reached at the MDC-T Congress held in November 2015. The MDC-T congress was widely advertised and the affected members never sought at the material time to interdict the holding of that congress nor challenge it in the Courts of Law in so far as the outcome of that congress was concerned. Verifications that the matters mentioned are no longer pending before the High Court has been sought and that there is apparently no longer a legal dispute regarding the legitimacy of the leadership of the MDC-T party in the High Court, clearly changing the circumstances that had obtained prior to the withdrawal of the two cases from the High Court. If a matter is withdrawn from the courts without the other party seeking to reopen the case then the status quo remains. The courts are constitutionally mandated to interpret and apply the law in the cases that are brought before them. They provide legal solutions to legal problems or disputes.

I must reiterate as I have done in a previous ruling that the notification to the Speaker by the party that a member has ceased to represent its interest in the National Assembly and Parliament is all that is required at law to create a vacancy and for the Speaker to declare the seat vacant. The duty of the Speaker after receipt of the notification was clearly explained in the case *Abednico Bhebhe and others v. the Chairman National Disciplinary Committee (MDC-party)* HCB 85/2009 by Justice Cheda, which upon receipt, of the notification, the Speaker of the National Assembly is constitutionally bound to declare the seat(s) in question as vacant.

The Constitution is very clear, in particular with regard to the obligations on the Speaker and, therefore, in the absence of a court order setting aside the MDC-T party's decision to expel the affected members, I am obliged to declare the seats vacant. To that extent, the position of the Constitution in Section 129(1)(k) is unambiguous regarding the declaration of a vacant Parliamentary seat.

Consequently, vacancies have arisen in the following constituencies by the operation of the law.

1. Hon. Tendai Biti	Harare East Constituency
2. Hon. Willias Madzimore	Kambuzuma
3. Hon. Lucia Matibenga	Kuwadzana
4. Hon. Evelyn Masaiti	Proportional Representation
5. Hon. Paul Madzore	Glen View
6. Hon. Reggie Moyo	Luveve
7. Hon. Solomon Madzore	Dzivaresekwa
8. Hon. Bekithemba Nyathi	Mpopoma/ Pelandaba
9. Hon. Moses Manyengavana	Highfield West
10. Hon. Albert Mhlanga	Pumula
11. Hon. Sipepa Nkomo	Lobengula
12. Hon. Roseline Nkomo	Tsholotsho
13. Hon. Settlement Chikwinya	Mbizo
14. Hon. Judith Muzhavazhe	Proportional Representation
15. Hon. Gorden Moyo	Makokoba
16. Hon. Gladys Mathe	Proportional Representation
17. Hon Arnold Tsunga	Chikanga-Dangamvura

The necessary administrative measures will be taken to inform His Excellency, the President of the Republic of Zimbabwe, and the Zimbabwe Electoral Commission (ZEC) of the existence of the vacancies in line with Section 39 (1) of the Electoral Act, [*Chapter 2:13*] as amended
