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Horrible week for MPs

MUTARE-Two MPs from Prime Minister Morgan Tsvangirai's party will this week stand trial for allegedly claiming that President Robert Mugabe suffers from diarrhoea and likening the octogenarian leader to a goblin.

Hon. Pishai Muchauraya, MP for Makoni South, will appear in court on Thursday at Murumbinda Magistrates Court, while Hon. Douglas Mwonzora, MP for Nyanga North, will be in court in Mutare a day later.

Hon. Muchauraya is alleged to have told supporters in 2006 that President Mugabe, 86, was too old, suffering from diarrhoea and dying. Hon. Mwonzora on the other hand is alleged to have said President Mugabe was a goblin in 2009.

Critics say the court cases are aimed at silencing criticism of President Mugabe ahead of elections most likely to be held next year.

Prosecutors allege that Hon. Muchauraya insulted and undermined President Mugabe's authority when he told villagers in his constituency that the former guerrilla leader was too old, suffering from chronic diarrhoea and near death.

The prosecutors claim that Muchauraya told villagers at a rally in October 2006 at Makoni Business Centre that; "Robert Mugabe *achembera, arikurwara nemanyoka asingaperi arikurarama achirapwa nachiremba*. Joshua Nkomo, Simon Muzenda naNdabaningi Sithole *vakafa vane makore (82) nokurwara kwaari kuita anogona kufa uye zvokuwedzera yokutonga hazvisi kuzoit*."

The police deduced Hon. Muchauraya's alleged statement to mean that; "Robert Mugabe is now old and is suffering from chronic diarrhoea and is living under the constant aid of a doctor. Joshua Nkomo, Simon Muzenda and Ndabaningi Sithole died at the age of (82). Robert Mugabe is now 82 and is sick and can die because of his illness therefore it is unacceptable for him to extend his term of office."

The police allege that Hon. Muchauraya undermined President Mugabe when he uttered the words; "*KaMugabe mudenga, batanidzai naGrace Mugabe, roverai pasi*."

In their charge sheet, police deduced this to mean; "Tiny Mugabe up. Put him together with Grace Mugabe then crush them both to the ground (sic)."

For allegedly making such statements during an address to villagers of Makoni South, the police say not only did Hon. Muchauraya make false statements but also engendered feelings of hostility towards or caused hatred, contempt or ridicule of President Mugabe.

Hon. Mwonzora will stand trial on charges almost similar to those faced by Hon. Muchauraya.

Prosecutors allege that Hon. Mwonzora likened President Mugabe to a goblin at a rally he addressed at Ruwangwe Growth Point in Nyanga North constituency in March 2009.

The State alleges that Hon. Mwonzora, uttered the following words: "President Robert Mugabe *chikwambo uye achamhanya. Ndaona Mugabe achigeza, tauro muchiuo, sipo muhapwa uye ndebvu hwapepe. Pamberi neMDC, pasi*

nechihurumende chembavha chinosunga vanhu vasina mhosva chichitora zvinhu zvavo".

Police took this to literally mean: "President Mugabe is a goblin and will run... I saw Mugabe bathing, towel on his waist, soap under his armpits and big beard... forward with MDC, down with bad government of thieves which arrest innocent people and taking away their property (sic)."

Besides the two legislators several MDC MPs and activists have been charged with insulting President Mugabe.

MDC Treasurer for Mashonaland Central Province Gilbert Kagodora will next month stand

trial on charges of undermining the authority of or insulting President Mugabe.

Bindura Magistrate Charles Murove last week postponed Kagodora's trial after his lawyers David Hofisi and Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR) informed the court that the prosecutor had not served them with the witness' statements so as to fully prepare for trial.

Kagodora will now stand trial on 10 November 2010 after the prosecutor undertook to provide Hofisi and Bamu with all the witness' statements.

The police allege that Kagodora denounced President Mugabe during an address to party

supporters at a constitutional awareness meeting held at Nzvimbo Council Hall in Chiweshe, Mashonaland Central in March this year and at another meeting held in Wadzanai suburb in Shamva, Mashonaland Central in June. Kagodora allegedly said: "Mugabe *mudenga, Grace mudenga, vabatanidzai, roverai pasi*," which the police deduced to mean "Mugabe up, Grace up, bring them together and drop them on the ground."

Apparently Kagodora was removed from remand in June 2010 by Magistrate Ruramai Chitumbura on the same charge that he has been summonsed to stand trial after his lawyers applied for refusal of further remand.

AG bemoans conditions

BULAWAYO-Attorney General (AG) Johannes Tomana has warned that poor working conditions for his office could affect the effectiveness of prosecutors.

Tomana, who presented the keynote address at the annual general meeting of the Zimbabwe Law Officers Association (ZILOA) held last weekend in Bulawayo, told prosecutors that law officers should be well remunerated to avoid any enticement.

"We (prosecutors) should get a living wage enough to live decent lives. Enough to send your children to school so that we ignore the kind of temptation to sell our mandate," said Tomana.

In March the AG disclosed before the Parliamentary Portfolio Committee on Justice, Legal Affairs, Constitutional and Parliamentary Affairs that his office had become a training ground as law officers were leaving the public service to join private practice once they gained experience.

"We will never be effective as long as the conditions of service are not addressed. We need to address the issue of accommodation, transport and a living salary," Tomana said.

The AG said that during an inspection of several of his stations he observed that prosecutors were struggling to make ends meet.

"I have unfortunately seen one sorry state at one station where a prosecutor wore a torn shirt. The collar was torn and that (prosecutor) is the face of our pillar. The shoe really was gone and I understood why. So the government should cushion the institution from all vulnerabilities. If we are unable to guarantee the accommodation of prosecutors we haven't done enough," said Tomana.

The AG said prosecutors were earning between \$150 and \$300 just like most civil servants.

"In January we expect a salary rise. I also expect a salary rise. I am happy that there has been some stabilisation of the economy and the government is working on a skills retention facility," he added.



AG Tomana delivers his keynote address at the ZILOA AGM

Tomana paid tribute to some prosecutors for remaining committed to duty in spite of the economic hardships that they grappled with on a daily basis.

"Thank you for holding on. Some of you have been around for a very very long time. I am very very proud of you and Zimbabwe must be proud of you. You have to be recognised. We will have to work and seek that recognition," he said.

Meanwhile, Tomana congratulated Zimbabwe Lawyers for Human Rights (ZLHR) for organising several training workshops to capacitate prosecutors.

To date ZLHR has trained prosecutors on economic, social and cultural rights, women's rights litigation and intensive human rights training.

"We have accepted training programmes from Zimbabwe Lawyers for Human Rights and it is us who assess the areas of deficiencies first," said Tomana.

In March Tomana complained about the reluctance by senior lawyers to extend training to law officers in his office while Justice and Legal Affairs Minister Patrick Chinamasa blamed the unwarranted invocation of Section 121 of the Criminal Procedure and Evidence Act (CPEA) on lack of training on the part of prosecutors and law officers from the AG's office.

Although Chinamasa defended the law, he said invocation of Section 121 of the CPEA should be reserved to senior officials and not be delegated to prosecutors in outlying areas.

Prosecutors from the AG's office have, on numerous occasions, abused this controversial provision of the CPEA. The practice of invoking Section 121 has had the effect of keeping individuals in custody for a further seven days in order to allow the State time to appeal the granting of bail. In almost all cases the appeals have either never been filed, or were dismissed by the superior courts.



Africa Human Rights Day: ZLHR Yearns for the Dawn of Democracy

Zimbabwe Lawyers for Human Rights (ZLHR) joins fellow Zimbabweans and the rest of the African continent in marking Africa Human Rights Day. Commemorated on 21 October 2010 under the theme “*Realising Human Rights: A key to achieving sustainable peace in Africa*”, this day is set aside by the African Union annually to reflect upon the entry into force in 1986 of the African Charter on Human and Peoples’ Rights.

Being deeply committed to fostering a culture of human rights and respect for the Rule of Law in Zimbabwe and throughout the region, ZLHR regrets that the majority of Zimbabweans do not have anything considerable to celebrate as the State and other non-State actors continue to undermine the fundamentals of democracy in the country.

Although there were high hopes for the improvement of political, economic and social conditions in Zimbabwe following the formation of a transitional coalition government in February 2009, democratization continues to prove a challenge, while the ordeals of human rights defenders have not subsided.

Citizens continue to be subjected to flagrant violations of their fundamental rights by State and non-State actors. Arbitrary arrest, torture and detention of human rights defenders continues two years after the formation of an “inclusive government” which committed to upholding civil liberties in the Interparty Political Agreement.

National healing processes have failed to materialize or to contribute meaningfully to rebuilding of the lives of those who have suffered such grave violations in Zimbabwe throughout history. Impunity remains a blight on the nation through failure to prosecute perpetrators of grave human rights violations.

It is equally unacceptable that the majority of Zimbabweans remain unemployed or informally employed and unable to clothe, feed, house, treat and educate themselves and their families in a Zimbabwe which is so blessed with abundant natural resources.

The events in the past two years have proven that mere appendage of signatures to paper and political rhetoric has failed to usher in a new and improved method of governance. It will require much dedication and non-partisanship from both ZANU-PF and the two MDC formations to roll back the disastrous authoritarian policies of the previous government and replace them with people-centered policies and action.

Such commitment is required not only from political party representatives, but also those in control of state institutions, which continue to exhibit a lack of independence, professionalism and accountability, as well as an engrained mindset and *modus operandi* steeped in intolerance for criticism, lack of transparency and accountability, and subscription to political patronage.

Despite committing itself to the celebrated and progressive African Charter on Human and Peoples’ Rights (“the Charter”), Zimbabwe is still afflicted by serious violations of its fundamental provisions and shortcomings in democratic processes.

As we reflect on progress in attaining and maintaining the tenets of the Charter, it is of deep concern that the government continues to ignore the visionary recommendations of the Fact-Finding Mission of the African Commission on Human and Peoples’ Rights (ACHPR), which set out a clear action-plan for fighting impunity, reducing violations and working towards strengthening of institutions to build a lasting peace in Zimbabwe.

The government has further neglected the ACHPR’s ruling more than a year ago that it should repeal sections 79 and 80 of the repressive Access to Information and Protection of Privacy Act (AIPPA) which contravene Article 9 of the Charter. The ACHPR also ruled that statutory media regulation was contrary to the principle of media self-regulation as enunciated under the Charter to which Zimbabwe is a State party.

This urgently calls for the transitional coalition government to speed up the repeal of obnoxious security legislation such as the Public Order and Security Act, AIPPA and provisions which criminalize free speech, among other repressive legal instruments.

Socio-economic and cultural rights similarly remain a pipedream as evidenced by the blatant violation of citizens’ right to shelter and the State’s failure to avert the violation of the right to education. It is a scandal that five years since 2005, victims of Operation *Murambatsvina* are still surviving in plastic shacks without basic essential services – again in contravention of clear recommendations by the ACHPR for the government to ensure adequate shelter, medicine

and education is immediately provided to those affected.

ZLHR reiterates the need for the government of Zimbabwe to reflect on its shortcomings in relation to adherence to the Charter and its obligations to implement recommendations from the ACHPR which is a body of African specialists in human rights chosen by African governments themselves. Only a country which respects its obligations, institutions and people will, in turn, be respected by the people.

Despite all the challenges ZLHR salutes the progressive people of Africa and Zimbabwe working towards fostering a culture of human rights, democracy and sustainable peace on the continent. We salute them for their courage, determination and tireless struggle to liberate the continent and Zimbabwe from all forms of discrimination and oppression in spite of a repressive environment where the exercise of fundamental rights is not tolerated.

On its part ZLHR will continue to contribute to the struggle for democratization, peace and observance of the Rule of Law in our country, cognizant that this is not an overnight process, and so as to ensure that the people of Zimbabwe remain at the center of all nation-building processes and are their true beneficiaries. ZLHR hopes that a day will dawn when the practice of undermining democracy and human rights will be completely eradicated in Zimbabwe and on our beloved African continent.

Lawyers drag police chief to court

HARARE-Harare Magistrate Tayengwa Chibanda will today hear an urgent appeal filed by the Progressive Teachers Union of Zimbabwe (PTUZ) challenging a prohibition notice issued by the Zimbabwe Republic Police (ZRP) prohibiting the union from staging a demonstration against a school headmaster accused of corruption and maladministration.

The urgent appeal, which was initially set for hearing on Friday, was postponed to Monday after Benjamin Bangajena of the Police Legal Services unit advised Magistrate Chibanda that

lawyers from the Attorney General’s Office would be unavailable to represent Chief Superintendent Chagwedera, the Officer Commanding Harare South District, who banned the PTUZ protest.

Chagwedera denied the PTUZ permission to hold a demonstration last Thursday to protest against the harassment of teachers at Gombo Primary School in Dzivarasekwa by the school headmaster only identified as Wafawanaka and against corruption in the Ministry of Education, Sport, Arts and Culture. The PTUZ had planned to stage the demonstration during lunch time to avoid disrupting lessons.

In his letter to the PTUZ last Wednesday, Chagwedera said the demonstration would inconvenience ongoing examinations at the school and directed the PTUZ to report the case against Wafawanaka to the Ministry of Education, Sport, Arts and Culture.

The suppression of the teachers’ demonstration prompted PTUZ lawyer David Hofisi of Zimbabwe Lawyers for Human Rights (ZLHR) to file an urgent appeal against the ban of the demonstration by Chagwedera, which he described as unlawful.

In his grounds of appeal, Hofisi said Chagwedera did not have the power to prohibit the PTUZ demonstration.

The lawyer said Chagwedera, as the regulating authority, failed to convene a consultative meeting with the organisers of the demonstration to explore the options available to prevent any probable threats to the event as prescribed under the harsh Public Order and Security Act.

Hofisi wants Magistrate Chibanda to set aside Chagwedera’s decision to prohibit the PTUZ demonstration and allow the labour union to proceed with the protest on Thursday.

Lawyers want Biti detention case heard

HARARE-Movement for Democratic Change (MDC) Secretary-General Tendai Biti's lawyers say they will soon file a Chamber Application in the Supreme Court seeking condonation of late filing of an appeal challenging his prolonged detention on treason charges.

This follows the Supreme Court's decision on 18 October to throw out Biti's appeal against a 2008 High Court ruling that declared his detention for five days on treason charges as lawful.

Biti, now Finance Minister in a fragile coalition government of bitter rivals President Robert Mugabe and Prime Minister Morgan Tsvangirai, wanted the Supreme Court to declare the detention as illegal.

Supreme Court Judge, Justice of Appeal Vernanda Ziyambi, who sat with Justice of Appeal Paddington Garwe and Justice of Appeal Misheck Cheda, refused to consider the matter because Biti's lawyers filed the appeal late.



Lewis Uriri

Biti's lawyers Sarudzayi Njerere and Advocate Lewis Uriri said they would ask the court to consider their application.

The lawyers conceded that they filed the appeal on 10 July 2008, one day after the lapse of the stipulated 15-day period. High Court Judge Justice Samuel Kudya had delivered his ruling on the matter on 17 June 2008, declaring Biti's prolonged detention as lawful.

Biti's lawyers filed the appeal in July 2008 seeking to overturn Justice Kudya's ruling which declared as lawful Biti's detention for five court-sitting days without being brought before the courts. The lawyers challenged the validity of Biti's prolonged detention. They insist police should have brought Biti before the courts immediately after arrest as stipulated in his warrant of apprehension which police relied on to detain him. The warrant stated that Biti be "apprehended and brought before the court of a magistrate".

Biti was arrested and detained by Assistant Commissioner Boysen Matema and Chief Superintendent Crispin Makedenge on 12 June 2008 at the Harare International Airport upon his arrival from South Africa. The two officers are regularly named as being at the forefront of arresting and harassing political and rights activists as well as human rights defenders.

Biti's treason case stemmed from a document police said was authored on 25 March 2008 allegedly linking the MDC Secretary-General to illegal change of government plans. Further charges of communicating or publishing falsehoods emanated from Biti's announcement that his party leader, Morgan Tsvangirai, had defeated President Robert Mugabe in an election held in March 2008.

Official results of the election later showed that Tsvangirai had indeed defeated President Mugabe in the poll, but the Zimbabwe Electoral Commission said he lacked a clear majority needed to avoid a runoff election.

Both charges were withdrawn in February 2009 around the time that the MDC agreed to form a transitional coalition government with ZANU PF.

GALZ case: trial next month

HARARE-The trial of Ellen Chademana, the Gays and Lesbians of Zimbabwe (GALZ)'s administrative assistant who is facing charges of contravening the Censorship and Entertainment Control Act, will resume next month after a Harare Magistrate dismissed her application for discharge.

Magistrate Donald Ndirowei last week dismissed Chademana's application for discharge which was filed at the close of the State case. He ruled that the State had established a *prima facie* case against the GALZ employee.

"We are waiting for the Magistrate's reasons to enable us to put the remaining touches to our defence. All the same we are ready to defend

her (Chademana)," said Chademana's lawyer Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR) who together with David Hofisi is representing the GALZ employee.

The trial resumes on 12 November when Chademana would be put to her defence.

Chademana is on trial on charges of possessing prohibited materials in contravention of Section 26 (1) (a) of the Censorship and Entertainment Control Act Chapter 10:04.

Ignatius Mhambi, another GALZ employee, who was arrested together with Chademana on almost similar charges of possessing prohibited or pornographic material, was acquitted by Harare Magistrate Sandra Mupindu in July.

Maguwu free but cautious of future

HARARE-Farai Maguwu, the diamond activist who became a State enemy for exposing military brutality and illegal diamond mining in Chiadzwa, remains cautious despite the State dropping criminal charges.

Prosecutors dropped charges against Maguwu last week, but could still summon him to answer the case in which the executive director of the Centre for Research and Development is accused of leaking false information that could damage national security.

This case arose after Maguwu allegedly handed a document detailing violations in Chiadzwa to Abbey Chikane, a monitor from diamond regulator Kimberley Process Certification Scheme (KPCS) who was in the country to monitor Zimbabwe's compliance with international diamond mining procedures earlier this year.

Tinoziva Bere, Maguwu's lawyer, said his client feared the charges could be resuscitated whenever the State wished to do so.

"Because the charges were dropped before plea, the authorities may choose to issue summons and bring up the same charges. So Farai celebrates but with full knowledge that the same malice that motivated his arrest and lengthy detention and persecution could start anew," said Bere, who is part of Maguwu's legal defence team.

He added: "We are delighted that Maguwu's charges which have haunted him for five months have finally been dropped by the Attorney General's office. We expected the charges to be dropped for many reasons. What it means is that Farai is now free to carry on with his life."

Maguwu was arrested in June on the publication of falsehoods charges after

Chikane reportedly surrendered documents to Harare which he allegedly received from Maguwu about the human rights abuses at the controversial Marange diamond fields.

Maguwu languished in police and prison cells in Mutare and Harare for more than a month before he was freed on bail following massive international protests and much controversy within the KP which was considering certification of Marange diamonds.

"This has been a long battle and we are happy that Farai can now go back to rebuilding his life, his work and his organisation which this persecution had all but destroyed," added Bere.

Maguwu appeared jovial as relatives and friends hugged him after Magistrate Vongai Muchuchuti threw out the charges against him. This followed submissions by prosecutor Tapiwa Kasema who told the court that the State was no longer interested in pursuing the matter.

Standing next to one of his lawyers Trust Maanda, a usually subdued Maguwu could not hide his joy: "It is not easy to walk around with such charges hovering over your head. To me it's over but the question is who is next. We need to attend and address the root of the matter especially the persecution of human rights defenders."

Although now free, Maguwu remains bitter because no action has been taken against agents that harassed and tortured him on trumped up charges.

"Any apology from the side of the State to me is not bad," said the Mutare based activist and researcher.

Maguwu was earlier this year appointed to coordinate the technical team of the Local Focal Point (LFP) for the KPCS in Zimbabwe.



Bere and Maguwu

COPAC arrest mere political gimmick

HARARE-A Harare resident on trial for allegedly assaulting a police officer says the charges are fabricated by officers who teamed up with ZANU PF supporters to block residents and supporters of the Movement for Democratic Change (MDC) from contributing views at a constitutional reform outreach meeting.

Edmore Manyofa's trial for allegedly assaulting a police officer during a Constitution Select Committee (COPAC) meeting opened on Thursday before a Harare Magistrate.

Munyofa, of Hatcliffe Extension is denying the charges. The State alleges that Munyofa, who works in Glen Lorne and is the organising secretary for the MDC's Harare North district assaulted Raymond Mufudza, a police constable on 19 September in Hatcliffe where a COPAC outreach meeting was due to take place.

The outreach meeting was one of the many outreach hearings aborted on that same day in Harare and Chitungwiza because ZANU PF militants caused commotion and violently blocked the public from offering alternative views.

In his defence outline last month, Munyofa says he was "simply arrested because he is the organising secretary for the MDC for Harare North constituency".

"The accused person will tell the court that on 19 September 2010 he attended a COPAC meeting at Greystone Park Primary School. Whilst at Greystone Park Primary School, the accused person was called by Ian Makone to bring Ian Makone's vehicle which he was using to Hatcliffe where another COPAC meeting was scheduled.



Edmore Manyofa

"He drove the vehicle and upon arrival there was commotion at the meeting. He went to a police vehicle to inquire as to the situation at the meeting. Whilst talking to the member in charge

he was asked to talk to the complainant. This is when rowdy ZANU PF supporters indicated him as the person who had assaulted the police officer," read part of Munyofa's defence outline.

He says the officers who arrested him were working with ZANU PF supporters to ensure only views in sync with President Robert Mugabe's thinking were captured during the outreach hearings.

"He (Munyofa) will further tell the court that the police officers who arrested him teamed up with ZANU PF supporters to intimidate and arrest MDC activists who attended the meeting to make sure that their views will not be heard. The accused person will in the end tell the court that his arrest was a mere political gimmick meant to tarnish his name and that of the people's party," reads part of Munyofa's defence outline.

Prosecutors AGM in pictures



Zimbabwe Law Officers Association (ZILOA) chairman Austin Muzivi, ZLHR Vice board chairperson Sarudzayi Njerere, ZILOA vice chairperson Andrew Kumire, and AG Johannes Tomana



Tomana chats with Njerere and ZLHR lawyers Tawanda Zhuwarara and Agnes Muzondo



ZILOA executives



Prosecutors engaged in a group work